An Bord Pleanála

# Inspector's Interim Report
# ABP-300209-17

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| **Type of Application** | Strategic Infrastructure pre-application. |
| **Development** | 35 MWe Biomass Electricity Generation Station. |
| **Location** | Dundalk, County Louth. |
| **Issue** | SID Pre-application – whether project is or is not strategic infrastructure development (Seventh Schedule). |
| **Planning Authority** | Louth County Council. |
| **Applicant(s)** | Viridian Renewables ROI Limited. |
| **Type of Application** | Strategic Infrastructure pre-application. |
| **Date of Site Inspection** | None. |
| **Inspector** | Patricia Calleary |

# Contents

1.0 Introduction ..... 3

2.0 Site Location and Description ..... 3

3.0 Proposed Development ..... 4

4.0 Prospective Applicants case ..... 5

5.0 Planning History ..... 7

6.0 Strategic Infrastructure – Legislative Provisions ..... 7

7.0 Assessment ..... 9

7.1. Seventh Schedule Consideration ..... 9

7.2. Section 37A(2)(a) ..... 10

7.3. Section 37A(2)(b) ..... 12

7.4. Section 37A(2)(c) ..... 13

7.5. Conclusion of Section 37A(2)a, b and c ..... 14

8.0 Interim Conclusion and Recommendation ..... 14

## 1.0 Introduction

1.1. Mott McDonald have submitted a pre-application consultation request on behalf of Viridian Renewables Limited seeking a determination from An Bord Pleanála as to whether or not a proposal to develop a biomass fuelled power station c. 3km to the south west of Dundalk, in Co. Louth would constitute strategic infrastructure within the meaning of section 37A and 37B of the Planning and Development Act 2000, as amended (hereinafter 'the Act'). One pre-application meeting was held between representatives of An Bord Pleanála and the prospective applicant on 26th January 2018.

1.2. An interim report is now prepared with the intention of seeking the Board's preliminary view as to whether or not the proposed development would constitute strategic infrastructure within the meaning of the Act, particularly given the submissions made by the prospective applicant on the issue. Subject to the Board's view it may be decided to hold a further meeting(s) with the prospective applicant and/or other bodies to consider issues that may have a bearing on the Board's final determination on the matter.

## 2.0 Site Location and Description

2.1. The site location and description below are informed by the applicant's submission and available mapping and imagery as no site visit has been conducted at this stage.

2.2. The site is a located approximately 3km south of Dundalk town. It is bounded by the Mullagharlin Road to the north and the N52 is located further north of this road. The site is located adjacent to and west of an IDA business park, which comprises a number of industrial and commercial premises. There are a number of residential properties to the north west and south west of the site. Agricultural lands are located to the west and there is a stream located c.500m south of the site. The 110kV Mullagharlin substation is located c.360m to the north of the site. The M1 motorway is located c.1.2 kilometres to the west. The coast and bay are located c.2.8km to the east.

## 3.0 **Proposed Development**

3.1. As submitted by the prospective applicant, the proposed development would comprise a biomass-fuelled power station, with c.35 megawatt electrical (MWe) output capability and the electricity generated would be exported to the transmission grid. It is stated that the power station would operate continuously 24 hours per day, seven days per week.

3.2. The type of Biomass fuel proposed to be accepted at the power station would primarily be chicken litter of approximately 195,000 tonnes per year. The fuel mix would also include smaller quantities of turkey litter as well as feathers, forest waste and sawmill residues, powdered meat and bone meal and would have a collective quantity of c.302,000 tonnes/year. A breakdown of the Biomass fuel mix and approximate quantities proposed is set out in Table 1 of the prospective applicant's report and the prospective applicant stated that the mix may be subject to change as the design is finalised. The contents of Table 1 are repeated directly below for ease of reference.

**Table 1 – Biomass Fuel Consumption**

| **Type of Fuel** | **Approximate Quantity (Tonne/year)** |
|---|---|
| Chicken Litter | 195,000 |
| Turkey Litter | 12,000 |
| Feathers | 15,000 |
| Forest Waste and Sawmill Residues | 30,000 |
| Powdered Meat and Bone Meal | 50,000 |
| **Total** | **302,000** |

3.3. The prospective applicant provided the relevant European Waste Catalogue Codes for the Biomass under consideration.

3.4. The proposed power station would include a number of buildings including a Biomass reception building, a fuel store, an air-cooled condenser, a boiler building, a turbine building, a control room and a service building. In addition, the facility would include a

large stack with an assumed height of 80m together with other ancillary buildings and structures. The prospective applicant stated that very little processing of the material would be carried out on site other than drying and that no chemicals would be added to any of the materials. The prospective applicant also stated that the types of waste materials that could be accepted would be specific to the plant and there are no proposals to take in general waste.

3.5. The prospective applicant gave examples of similar developments in Derry and the Netherlands. The footprint for the proposed development would be approximately five acres (located on an overall site of approximately 60 acres).

3.6. It is anticipated by the prospective that there would be approximately 13,000 deliveries of fuel per year and a further 250 deliveries of lime, which would be used for flue cleaning. It is anticipated that 1,000 loads of ash would be removed from the plant and there would be in the order of another 500 deliveries associated with the operations. Collectively, this would result in approximately 100 HGV movements in any one day. The prospective applicant has indicated that the poultry litter and other Biomass would be generated from the surrounding counties of Cavan, Monaghan and Fermanagh.

3.7. The plant would be automated and it is anticipated that 45 staff would be directly employed and in the order of 50 other people would be indirectly employed in related roles, arising out of the development. Electricity from the generator would be stepped up to 110 kV either in a sub-station on site or the neighbouring EirGrid owned Mullagharlin sub-station. The construction period is anticipated to take two and a half years.

## 4.0 Prospective Applicants case

### 4.1. Introduction

4.1.1. The prospective applicant stated that active discussions are ongoing with a number of the major poultry processers in Ireland (North and South) and that Ireland produces in the order of 300,000 tonnes of poultry litter per year. The poultry litter is stated as being currently used as a raw material for mushroom compost and is also landspread for use as a fertilizer on agricultural lands in accordance with the European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2014, as amended, which is commonly known as the ‘Nitrates Regulations’. The manure has

high concentrations of phosphorous (P) and nitrogen (N), which has potential to result in adverse impacts on water quality. It is also stated that a small but growing quantity is used in Anaerobic Digestion plants.

4.1.2. The prospective applicant stated that Ireland currently avails of a derogation from the European Union from the 170kg of nitrogen (N) per hectare from organic manure limit to 210kg of N per hectare and this derogation was expected to expire at the end of 2017 when the third programme was to conclude and alternative options need to be considered. (Note: I am aware that this position was updated on 20th December 2017, as on that date, Ireland was granted a further derogation until the end of 2021 under the Nitrates Directive under new Nitrates Regulations which gave effect to Ireland's fourth Nitrates Action Programme).

4.1.3. The prospective applicant asserted that there are many benefits arising from the type of development proposed, such as being able to manage chicken litter and other matter/materials generated in the surrounding counties of Cavan, Monaghan and Fermanagh in a more sustainable manner. The prospective applicant further submits that they are in active discussion with a number of large meat processors in relation to by-products from chicken processing. It was stated that clean timber waste is available for purchase from sawmills and timber harvesting companies. It was also stated that this type of development would be the first of its type in the State.

4.1.4. It was emphasised by the prospective applicant that the primary purpose of the proposed development is to generate and sell electricity rather than managing waste.

### 4.2. Strategic Infrastructure

4.2.1. The prospective applicant is of the view that the development type would fit within the category description set out under Class 1 (Energy Infrastructure) of the Seventh Schedule of the Act, save at a scale of 35 MWe, it would be substantially below the threshold specified.

4.2.2. The prospective applicant notes that the power station would recover energy from waste as part of the electricity generation process and would therefore fit within Class 3 (Environmental Infrastructure) of the Seventh Schedule and would exceed the thresholds. However, it is their case that the development category would not fulfil any of the criteria set out in Section 37A(2) and accordingly would not constitute strategic infrastructure.

4.2.3. Specifically, it is their case that the development would not meet the criteria of Section 37A(2)(a) having regard to the scale of the development, which it is stated would be less than 0.5% of the total dispatched power generation in Ireland and in the order of 0.34% of all agricultural wastes currently landspread in Ireland. Accordingly, it is their view that the contribution of the development could not be considered of strategic economic or social importance in terms of its primary function to generate electricity or in terms of its fuel source, which would be derived from the agriculture manure waste industry.

4.2.4. In relation to Section 37(A)(2)(b), it is the prospective applicants case that while the proposal would contribute to the objectives in the National Spatial Strategy (NSS), the Draft National Planning Framework (NPF) and the Regional Planning Guidelines (RPGs), it is not considered that the contribution would be significant in the context of Strategic Infrastructure Development, having regard to the contribution would be made at a local / county level and would not be of regional or national importance. Since the prospective applicant's initial submission, the National Planning Framework has been finalised and now succeeds the National Spatial Strategy.

4.2.5. In relation to Section 37(A)(2)(c), it is asserted that as the proposal would be located in one Local Authority's functional area, impacts would be localised, and accordingly it would not have a significant effect on more than one Local Authority due to the localised nature of impacts associated both during construction and post-construction phases. Reference is made to transportation, air quality and landscape and visual impacts, none which are considered by the prospective applicant to be significant.

## 5.0 Planning History

5.1. No Planning history has been brought to my attention at this stage.

## 6.0 Strategic Infrastructure – Legislative Provisions

6.1. Under Section 37A(1) of the Act, an application for permission for any development specified in the Seventh Schedule shall, subject to Section 37A(2), be made to the Board under section 37E and not to a planning authority. The Seventh Schedule sets out infrastructure developments for the purposes of sections 37A and 37B including the following classes:

Class 1 **'Energy Infrastructure'**

An industrial installation for the production of electricity, steam or hot water with a heat output of 300 megawatts or more.

Class 3 '**Environmental Infrastructure'**

—A waste disposal installation for—

(a) the incineration, or

(b) the chemical treatment (…..), or

(c) the landfill,

of hazardous waste …….

—A waste disposal installation for—

(a) the incineration, or

(b) the chemical treatment (…..),

of non-hazardous waste with a capacity for an annual intake greater than 100,000 tonnes.

—An installation for -

the disposal, treatment or recovery of waste with a capacity for an annual intake greater than 100,000 tonnes.

6.2. In addition, Section 37 of the Act, as amended, requires that development falling under the Seventh Schedule of the Act, in order to constitute strategic infrastructure would meet one or more of the following criteria set out under section 37A(2)(a), (b) and (c), namely:

(a) the development would be of strategic economic or social importance to the State or the region in which it would be situate;

(b) the development would contribute substantially to the fulfilment of any of the objectives in the National Spatial Strategy or in any regional spatial and economic strategy in force in respect of the area or areas in which it would be situate;

(c) the development would have a significant effect on the area of more than one planning authority.

## 7.0 Assessment

### 7.1. Seventh Schedule Consideration

7.1.1. An Bord Pleanála is requested to determine whether or not the development which is the subject of the pre-application consultation strategic infrastructure, within the meaning of the Act. In my assessment, I firstly consider whether or not the development type would fit within the category set out under Class 1 (Energy Infrastructure) or Class 3 (Environment infrastructure) of the Seventh Schedule.

7.1.2. In relation to Class 1 **(Energy infrastructure),** I am satisfied that, having regard to the stated power output of 35 MWe, the development would not fall within the category description of 'An industrial installation for the production of electricity, steam or hot water with **a heat output of 300 megawatts or more'**. The proposed development therefore cannot be considered as strategic infrastructure relying on this class (Class 1) within the Seventh Schedule.

7.1.3. In relation to Class 3 (**Environmental Infrastructure),** the first two categories can be discounted as they relate to **waste disposal installations**. The third category is relevant however, being '**An installation for the disposal, treatment or recovery of waste with a capacity for an annual intake greater than 100,000 tonnes'.** The omission of reference to 'waste' could be read to allow other categories of development which can dispose, treat or recover waste to be included under this Class 3.

7.1.4. The development proposed would be for the purpose of thermal recovery, using predominately poultry litter and other Biomass, as a fuel to generate energy. The quantity of waste proposed to be recovered in the power station would exceed 100,000 tonnes annually.

7.1.5. In correspondence received from the prospective applicant, reference is made to the Industrial Emissions Directive (2010/75/EU) which defines 'Biomass' as **products** consisting of any vegetable matter from agriculture or forestry which can be used as a fuel for the purpose of recovering its energy content. This is contained under

Article 3 (Definitions), specifically (31)(a). Under Article 3 of the same Directive, 31(b) clearly implies that 'Biomass' also means **waste** including, among others, (i) vegetable waste from agriculture and forestry.

7.1.6. I note the prospective applicant's assertion that the primary function of the power station is to generate electricity and not to manage waste. Nonetheless, having regard to the nature of the Biomass and that it would sit within the recovery tier of the waste hierarchy, I am satisfied that the proposed development would in addition to being a power station, also comprise 'An installation for the disposal, treatment or recovery of waste' and given the cumulative annual intake of 302,000 tonnes/year including the poultry litter, which is clearly in excess of the 100,000 tonnes thresholds, it would be an installation with 'a capacity for an annual intake greater than 100,000 tonnes'. The proposed development is therefore considered to come within a class of development and meets the threshold applicable to the class, as specified in the Seventh Schedule. Accordingly, I proceed to consider whether or not the proposed development complies with the criteria set out under Section 37A(2) a, b and c directly below.

## 7.2. Section 37A(2)(a)

7.2.1. Section 37A(2)(a) requires consideration as to whether or not the development would be of **strategic economic or social importance to the State or the region in which it is situate**.

7.2.2. At a national level, Ireland's Transition to a low Carbon Energy Future 2015-2030 (The Energy White Paper) sets out a framework for Irish energy policy up to 2030. By 2050, Ireland is required to have a low energy system with a reduction of greenhouse gas emissions by 80-95%. In July 2017, the first National Mitigation Plan was prepared by the Department of Communications, Climate Action and Environment in accordance with the Climate Action and Low Carbon Development Act, 2015. It sets out policy to reduce Ireland's greenhouse gas emissions. It encourages the sustainable use of farm manures, agricultural residues and forest-based Biomass (FBB) that can displace fossil fuels and energy intensive materials. It states that the circular economy, or bio economy, provides opportunities for FBB and agriculture residues, such as animal by-products, to be used to produce heat and/or power through combustion or anaerobic processes. Measure AF6 – animal by-

products states that it is one of the objectives of the Mitigation plan 'to encourage the use of Animal by-products (e.g. poultry litter) as a Biomass energy source'.

7.2.3. For the purposes of waste management planning, Ireland is divided into three regions, in line with a key objective of Policy Document – A Resource Opportunity – Waste Management Policy in Ireland (DECLG, 2012). Louth is located in the Eastern-Midlands region. Waste management plans for each of the regions were published in May 2015. The plan for the Eastern-Midlands region recognises that managing waste from a growing agricultural sector, as a challenge, needing to be addressed to support Ireland's growing agri-food sector. There is no specific reference or policies around thermal treatment of poultry litter or animal by-products.

7.2.4. During the initial pre-application consultation, the prospective applicant indicated that the production of chicken litter waste was a major issue in Ireland and the proposal would serve to address it's further use, in the current proposal for thermal recovery. An annual intake of **302,000 tonnes** of Biomass is proposed. The prospective applicant also made the point that the development would provide less than 0.5% of the total dispatched power generation in Ireland and in the order of 0.34% of all agricultural wastes currently landspread in Ireland and contends that the development could not meet the criteria of 37(2)(a), as it could not be considered of strategic economic or social importance having regard to the low power output. In this regard, I note that in terms of the energy output, the category of Class 1 (Energy Infrastructure) has already been discounted under initial Seventh Schedule considerations and the proposed development is being considered following on from concluding that it comes within Class 3 (Environmental Infrastructure) of the Seventh Schedule. In relation to the scale of the development resulting in 0.34% of all agricultural wastes, it is of relevance to note that poultry litter is of a particular type of waste that it cannot be compared to all agricultural wastes generically. The proposal would include thermal recovery of c.207,000 tonnes of combined chicken and turkey litter which is approximately 70% of the poultry litter produced in the country by reference to information provided in the prospective applicant's submission set out in **Table 1 (Biomass Fuel Consumption)** above. It was indicated by the prospective applicant that the poultry litter and other Biomass would be generated from the surrounding counties of Cavan, Monaghan and Fermanagh and that the development would be the first of its type in Ireland. Meat and bone meal by-product

from chicken processing is currently exported to the UK and the development would also harness an opportunity of energy recovery of meat and bone meal arising from chicken processing.

7.2.5. Having regard to the above, I am satisfied that based on the volumes and the specific types of waste including acceptance of poultry litter and meat and bone meal in particular, for use as a Biomass energy source in the generation of electricity in Ireland, it would be of strategic economic importance to the region, if not the State and would satisfy the criteria set out in Section 37A(2)(a).

### 7.3. **Section 37A(2)(b)**

7.3.1. Section 37A(2)(b) requires consideration as to whether the development would **contribute to the achievement of the objectives of the National Spatial Strategy or any regional spatial and economic strategy in force in respect of the area or areas in which it would be situate**.

7.3.2. The National Planning Framework (NPS) recently published by Government, under 'Project Ireland 2040: Building Ireland's Future' replaces the National Spatial Strategy (NSS). The NPF provides a framework for national planning, drawing together relevant Government policies and investment on national and regional development, focussed on ten national strategic outcomes. The Plan sets out its support for Waste to energy facilities which treat residual waste that cannot be recycled in a sustainable way delivering benefits such as electricity and heat production. It also states that 'Development of necessary and appropriate hazardous waste management facilities will be needed to avoid the need for treatment elsewhere'.

7.3.3. County Louth was originally located in the Border Region and consequently the Border Regional Authority - Regional Planning Guidelines 2011-2022 applied. The regions have since been restructured and Louth comes within the Eastern and Midlands Regional Assembly area in one of three Assemblies. New Regional Economic and Spatial Strategies by the three new Regional Assemblies will be prepared in the context of the National Planning Framework and when prepared, will replace the Border Regional Authority Guidelines. In the interim, the 'Border Regional Authority Guidelines 2010-2022' designed to steer the future growth of the

region including County Louth, continues to apply. Section 5.7.6 of these guidelines states that there is a requirement to provide an energy recovery / thermal treatment facility to service all areas within the region in line with EU and National Policy. Under Waste Management Policy, Policy INFP29 requires the region to explore and develop waste management practices on an inter-regional and on a cross-border basis. Policy INFP30 sets out that Energy Recovery and Thermal treatment of waste must be incorporated into relevant Waste Management Plans, subject to necessary environmental assessments.

7.3.4. The proposed facility would undoubtedly contribute to the achievement of the objectives of the National Planning Framework and the Regional Planning Guidelines for the Border Regional Authority.

7.3.5. Accordingly, I am satisfied that the development would be of strategic importance by reference to the requirements of condition (b) of section 37A(2).

### 7.4. Section 37A(2)(c)

7.4.1. Section 37A(2)(c) requires consideration, as to whether the development would **have a significant effect on the area of more than one planning authority.**

7.4.2. The development would be physically located in the administrative boundary of one local authority, Louth County Council. Whilst waste would be accepted from a number of local authorities in the region and from Fermanagh in Northern Ireland, I have had regard to access and proximity to the M1 motorway and the N52 national road which should ensure that road network has sufficient capacity to ensure that traffic is not an issue in other counties. While Air quality is a matter which requires consideration in any future application, at this point, it is not considered that it would give rise to a significant effect in more than one local authority. Given the nature and scale of the development, including the stack with an indicative height of 80m, and the context within which it would be located adjacent to an IDA business park, which comprises a number of industrial and commercial premises, neither is it considered that the landscape and visual impacts beyond the subject planning authority's administrative area would be significant.

7.4.3. I am satisfied that the development would give rise to certain environmental and economic impacts (positive and negative) which would extend beyond County Louth

and which would be required to be assessed if an application is lodged in due course. These impacts are unlikely be of such a scale as to give rise to a significant effect on the area outside of Louth Planning Authority. The proposed development would thereby not meet the requirement of Section 37A(2)(c).

7.5. **Conclusion of Section 37A(2)a, b and c**

Having regard to the above, I am satisfied that the proposed development would satisfy Section 37A(2)(a) and (b) but not (c) of the Act.

## 8.0 Interim Conclusion and Recommendation

8.1. Having regard to the nature and scale of the proposed waste development it is considered to fall within Class 3 - Environmental Infrastructure, Seventh Schedule and within the terms of Section 37A(2) paragraphs (a) and (b) but not (c) of the Planning and Development Act 2000, as amended. I therefore recommend that the Board should indicate its preliminary view that the development in question constitutes strategic infrastructure development within the meaning of 37A and 37B of the Planning and Development Act 2000, as amended, and that the prospective applicant would be informed accordingly.

8.2. A further meeting with the prospective applicant should therefore proceed at which the prospective applicant can be advised of the Board's preliminary view.

Note 1:

Due to the proposed development site being proximate to the administrative boundary with Northern Ireland, transboundary effects may require consideration in any future planning application. This matter will form part of the further discussions to be held with the prospective applicant.

Patricia Calleary
Senior Planning Inspector
27th February 2018