From: [redacted]
Sent: 19 June 2024 11:25
To: [redacted]
Subject: COMAH CAI response to KellsVOCAL
Attachments: COMAH CA response to KellsVocal 13th June 2024.pdf

Importance: High

[redacted],

COMAH CA response to KellsVOCAL attached.

Regards,

[redacted]

For the attention of: **KellsVOCAL**
Care of [redacted].

Our reference: AC202404-0004
Your reference: 2nd April 2024 (e-mail)

Issued via e-mail.

Date: 13th June 2024

Dear Representatives of KellsVOCAL,

RE: Control of Major Accident Hazards Regulations (Northern Ireland) 2015
Kells BESS - Assessment of Obligations of HSENI & NIEA acting jointly as COMAH Competent Authority under COMAH Regulations

Further to our e-mail acknowledgement of 20th May 2024 and following a review of the 128 page assessment and 884 pages of exhibits prepared on behalf of Kells Vocal, by [redacted] dated 30th March 2024, please find below the response from The Joint Competent Authority (herein 'The CA') which is comprised of the Executive (HSENI) and NIEA (acting on behalf of the Department of the Environment). For ease of reference, we have reproduced the questions posed within your covering e-mail of 2nd April 2024, in ***bold italics*** and present the Joint Competent Authority response below to each.

1 Questions posed by Kells Vocal (2nd April 2024)

1.1 Question 1:

'Decide whether the constructed Kells BESS constitutes an establishment subject to COMAH obligations, considering the as-built specifications and the evidence provided in [redacted] Kells BESS Assessment, and to provide the technical reasons for that decision.'

The CA has considered the two documents prepared by [redacted]am referenced above. We do not share [redacted] assessment that the Kells BESS is operating as an "Upper Tier" COMAH site and on this basis the establishment would not be subject to the requirements or the obligations of a COMAH facility as prescribed within The Control of Major Accident Hazards Regulations (Northern Ireland) 2015. We provide the technical reasons for our position on this matter within Part 2 below.

Northern Ireland Environment Agency
17 Antrim Road
Tonagh
Lisburn
BT28 3AL
Tel: 02890569305
Fax: 02890569263
Email:IPRI@daera-ni.gov.uk
Web: www.daera-ni.gov.uk/topics/pollution/control-major-accident-hazards

Health & Safety Executive Northern Ireland
83 Ladas Drive,
Belfast
BT6 9FR,

Tel: 028 9024 3249
Fax: 028 9023 5383
Email: hseni@economy-ni.gov.uk
Web: www.hseni.gov.uk

INVESTOR IN PEOPLE

1.2 Question 2:

'If the COMAH CA concludes that the Kells BESS is a COMAH site, the residents expect that HSENI and NIEA, acting jointly as the COMAH CA, issue a notice prohibiting the operation of the Kells BESS pursuant to R. 23(2) of the Control of Major Accident Hazards Regulations (Northern Ireland) 2015, due to a failure to notify details of the site to the COMAH CA as required by R.6.'

Regulation 23 of the COMAH Regulations only applies to those facilities which are subject to the prescribed regulations. As highlighted within the response to Question 1 above, as we do not share [redacted] assessment that the Kells BESS is operating as an "Upper Tier" COMAH site, the establishment would not be subject to the requirements or the obligations of a COMAH facility as prescribed within The Control of Major Accident Hazards Regulations (Northern Ireland) 2015. As a result, the enactment of the requirements of Regulation 23 would not be appropriate in these circumstances.

2 Response to the submission on behalf of Kells Vocal by [redacted] entitled 'Assessment of Kells BESS by EurIng [redacted]' dated 30th March 2024, Version 1.2.

NIEA and HSENI are the Joint Competent Authority as prescribed by the Control of Major Accident Hazards Regulations (Northern Ireland) 2015.

With regards to Hazardous Substance Consent, the requirements of which are prescribed within the Planning (Hazardous Substances) (No.2) Regulations (Northern Ireland) 2015, the enforcement authority for these regulations, including the final decision on hazardous substances consent (HSC) matters, rests with Local Planning Authorities (LPAs).

It is noted within [redacted] assessment that there are a number of references made that relate specifically to Hazardous Substance Consent. On the basis that the CA does not have any enforcement vires in respect of the Planning (Hazardous Substances) (No.2) Regulations (Northern Ireland) 2015, NIEA and HSENI will not comment on matters related to HSC as any questions or comments on this topic are for the relevant enforcement authority to respond.

Notwithstanding the above, the assessment completed by [redacted] has been considered and we note the following points of argument that relate specifically to the applicability of the COMAH Regulations:

1. Reclassification of lithium batteries in a state of charge (SOC) as explosive articles;
2. The generation of nickel inhalable compounds in a loss of control scenario;
3. Contaminated fire water run off generated in a loss of control scenario.

[redacted] raises additional points relating to COMAH and the Kells BESS, specifically the risk of other toxic gases such as hydrogen fluoride. For this loss of control scenario to result in a COMAH threshold being exceeded, multiple BESS containers must be involved.
The CA, specifically HSENI has already addressed this matter within previous correspondence.

We have considered the three points of argument identified above and provide our response within the sections below. For ease of reference, we have included [redacted] points of argument in bold italics and our response is presented below each.

2.1 Point of Argument No. 1 - Reclassification of batteries as explosive articles.

Section 11. of the Executive Summary of [redacted] assessment includes the following statement:

(B) the BESS cells exceed the "upper-tier" QQ as P1a or P1b Explosive Articles.

[redacted] provides additional information, including pages 32 to 34 and Appendices EFApp1 and EFApp3, implying a connection between a battery in a high state of charge and having explosive properties.

2.2 Joint Competent Authority Response to Point of Argument No. 1

As previously determined within correspondence to Kells Vocal in relation to the reclassification of batteries as explosive articles, despite the opinions presented within [redacted] assessment, the CA does not arrive at the same conclusion in relation to the reclassification of lithium batteries in a state of charge (SOC) as explosive articles. Within the sections below we present the technical evidence to support this.

2.2.1 Classification

The classification of a battery is referenced within several statutory provisions which include (but are not limited to) The Classification, Labelling and Packaging of Chemicals (Amendment) Regulations (Northern Ireland) 2015 (herein 'CLP'), The Globally Harmonized System of Classification and Labelling of Chemicals (GHS), The UN Recommendations on the Transport of Dangerous Goods – Model Regulations (herein 'UN RTDG Model Regulations') and UK REACH (this is not an exhaustive list).

The CLP Regulations which are based upon GHS, make provision for two types of classification:

1) Harmonised - based upon the classification for a particular hazard of a substance which has been taken at an EU level; and
2) Self-classification - the decision on a particular hazard classification and labelling of a substance or mixture taken by the manufacturer, importer, or downstream user.

The classification of explosives according to the GHS is almost entirely adopted based on the UN RTDG Model Regulations. Li-Ion batteries are assigned within the UN RTDG Model Regulations as Class 9 Dangerous Goods (Miscellaneous), and not Class 1 Dangerous Goods (Explosives). Li-Ion batteries have their own distinct classification within the UN RTDG Model Regulations, referenced as UN3480 or UN3481 and have their own specific suite of tests sets to ensure conformity with this classification.

Once the manufacturer, supplier or importer of batteries has fulfilled their requirements under the relevant regulations, on this basis it is accepted that the batteries can move and be utilised throughout the EU and Northern Ireland.

The individual substances or mixtures that are the components of the Li-Ion batteries are **not** classified as 'explosive' under the criteria set out in UN GHS or the CLP Regulations.

2.2.2 Regulatory Authority

While the COMAH Regulations reference CLP, the COMAH CA does not have the regulatory vires with regards to CLP and on this basis would not be involved in the determination of the classification or testing process.

Changes to CLP classification process would have consequences beyond COMAH and are also beyond the remit of an individual enforcement authority.

2.2.3 The European Chemicals Agency (ECHA)

ECHA plays a central role for the implementation of REACH and the CLP Regulations, including guidance.

The ECHA Guidance on the Application of the CLP Criteria (Version 6.0, January 2024), include the following definitions:

- An explosive article is an article containing one or more explosive substances;
- An explosive substance is a solid or liquid substance (or mixture of substances) which is in itself capable by chemical reaction of producing gas at such a temperature and pressure and at such a speed as to cause damage to the surroundings;
- Pyrotechnic substances are included even when they do not evolve gases;
- A substance or mixture which is not itself an explosive, but which can form an explosive atmosphere of gas, vapour or dust is not included in the class of explosives;

ECHA Guidance on requirements for substances in articles (Version 4.0, June 2017) provides a workflow in Appendix 3 that concludes a battery is an 'article' with an integral substance/mixture.

2.2.4 Thermal runaway in batteries

It is recognised that when thermal runaway occurs in a battery, flammable gases can be produced. The production of these gases can increase the internal pressure of the battery resulting in the expansion of the outer casing. In some circumstances the casing will rupture due to overpressure. If the stored energy and failure rate are sufficient, a mechanical explosion can occur. However, a mechanical explosion does not always require a chemical reaction with the simplest examples being a ballon or car tyre exploding.

Thermal runaway in a battery does not always result in fire and explosion. Incidents and research involving thermal runaway of batteries demonstrate various combination of fire (jet, flash), explosion (mechanical, vapour cloud explosion) and also neither hazard occurring.

2.3 Point of Argument No. 2 – The generation of nickel inhalable compounds in a loss of control scenario.

Section 11. of the Executive Summary of [redacted] assessment includes the following statement:

> *(C) the generation in loss of control accidents, even if confined to a single container, of a reasonably foreseeable quantity of "Nickel Compounds in Inhalable Powder Form", exceeding the "upper-tier" QQ.*

[redacted] provides additional information, including pages 39 to 44 and Appendix EFApp2 on nickel oxides in inhalable powder form.

2.3.1 Joint Competent Authority Response to Point of Argument No. 2

To address this point, we have sub-divided the argument into two distinctive areas:

a) Generation of inhalable compounds;
b) A loss control scenario.

In respect of a), the COMAH CA is aware of the potential of dangerous substances being liberated in a battery fire, including the potential for various inhalable metal compounds. Whilst the global understanding of this subject matter is currently limited, research into this specific issue continues at pace and we will continue to remain appraised of any developments into this area in association with our regulatory counterparts.

In relation to b), for the COMAH Regulations to be applicable due to a loss of control scenario, all of the following three criteria must be satisfied which is based upon reasonable foreseeability. This is as follows:
It must be reasonable to foresee:

1. The loss of control scenario that potentially generates dangerous substances;
2. The identification of the dangerous substance(s) generated so the appropriate threshold(s) can be attributed;
3. The quantity of the mass of the dangerous substances(s) generated to determine if a threshold is exceeded, either individually or via the aggregate rule.

Within the assessment completed by [redacted], reference is made to item 11 from Schedule 1, Dangerous Substances, Part 2 Named Dangerous Substances of the COMAH Regulations. This states:

'Item 11 - Nickel compounds in inhalable powder form: nickel monoxide, nickel dioxide, nickel sulphide, trinickel disulphide, dinickel trioxide, with an upper tier threshold of 1 tonne.'

Question 17 of the Seveso III Directive Questions and Answers, Autumn 2013 session, (produced by the European Commission), clarifies that this list of five nickel compounds is exhaustive.

As a result, for COMAH to be applicable, it must be shown that:

- one or more of the five named nickel compounds is generated in a loss of control scenario; and
- the combined mass is above the 1 tonne threshold.

Whilst the research evidence provided by [redacted] indicates the presence of nickel and other substances generated in a fire, it does not provide new evidence regarding the identification of the actual compounds generated (the five named nickel compounds note above). Further, the research papers referenced by [redacted] does not quantify the mass of the individual nickel compounds generated.

Based upon the information presented, [redacted] has been unable to provide sufficient new evidence in relation to a Li-Ion battery fire, to:

a) reasonably determine if the threshold of one tonne is exceeded; and
b) determine if one or more of the five named nickel compounds is generated in a loss of control scenario.

2.4 Point of Argument No. 3 – Contaminated fire water run off generated in a loss of control scenario.

Section 13. of the Executive Summary of [redacted] assessment includes the following statement:

(C) the generation in loss of control accidents, even if confined to a single container, of a reasonably foreseeable quantity of E1 environmental hazard, exceeding the "lower-tier" QQ.

Additional supporting information for this claim are provided (but not limited to) in sections 10 and 18, along with pages 24, 36, 38, and 62.

2.5 Joint Competent Authority Response to Point of Argument No. 3

As prescribed within the CLP Regulations, the classification of substances as E1 or E2 environmental hazards is contingent upon their impact on the aquatic environment. A substance is classified an E1 or E2 environmental hazard if it satisfies the following criteria:

- **E1 (Aquatic Chronic 1/Acute 1):**
  - Acute Aquatic Toxicity: LC50 or EC50 ≤ 1 mg/L.
  - Degradability: Not readily biodegradable.
  - Bioaccumulation: BCF ≥ 500 or log Kow ≥ 4.

- **E2 (Aquatic Chronic 2):**
  - Acute Aquatic Toxicity: LC50 or EC50 > 1 mg/L but ≤ 10 mg/L.
  - Degradability: Not readily biodegradable or not rapidly degradable.
  - Bioaccumulation: BCF ≥ 500 or log Kow ≥ 4.

Firewater itself does not inherently fall within a specific hazard category; its classification depends on the contaminants it contains.

Determining whether firewater qualifies as an E1 or E2 environmental hazard it must meet the specific criteria for acute toxicity, degradability, and bioaccumulation. To assess these measures, the substances and quantities contained in fire water must be known. As [redacted] elucidated in his paper, it is complex, and the available data is insufficient to definitively classify firewater as an E1 or E2 environmental hazard.

> *'Assessing hazards to the aquatic environment is complex, requiring data on (a) substances arising, (b) the quantities likely, and also (c) data on aquatic eco-toxicity, to decide, according to CLP rules, whether contaminated fire water comprises an E1 or E2 environmental hazard. Available data is simply insufficient'.*

For COMAH applicability, it must be demonstrated that firewater generated in a loss of control scenario qualifies as an E1 or E2 environmental hazard. While considerable volumes of firewater may be utilized in such scenarios, COMAH does not apply unless it is established as an E1 or E2 environmental hazard.

3 Summary

The Joint Competent Authority has considered the assessment completed by [redacted] and submitted on behalf of Kells Vocal. Based upon the information provided, the COMAH CA does not share [redacted] assessment that the Kells BESS is operating as an "Upper Tier" COMAH site. As a result, the establishment would not be subject to the requirements or the obligations of a COMAH facility as prescribed within The Control of Major Accident Hazards Regulations (Northern Ireland) 2015.

Notwithstanding the above, regardless of the applicability of COMAH to a BESS facility, such a facility will be subject to the requirements and statutory provisions as prescribed within the Health and Safety at Work (NI) Order 1978 and Environmental Protection Act 1990. This includes the requirement to prepare a suitable and sufficient risk assessment under the Management of Health and Safety at Work Regulations and to protect people from the risk of fire and explosions under the Dangerous Substances and Explosive Atmospheres Regulations.

As part of the COMAH CA, HSENI and NIEA have, when consulted, advised local authorities on the risks associated with planning applications involving a BESS facility.

Yours sincerely,

[redacted]
Senior Scientific Officer
Northern Ireland Environment Agency

[redacted]
Signed on behalf of [redacted]
Health and Safety Inspector
[redacted]
Principal Health and Safety Inspector
Health & Safety Executive Northern Ireland

Cc:

KellsVOCAL representatives:

[redacted]

NIEA and HSENI:

- Mr. David Reid (Chief Executive, NIEA);
- Mr. Robert Kidd (Chief Executive, HSENI).

From: DFI Regional Planning
Sent: 15 January 2024 10:18
To: [redacted]
Subject: DfIPG 012/24: Appeal Hearing against Enforcement for the Kells BESS ref 2022/E0052 - [redacted]

I acknowledge receipt of your e-mail which has been forwarded to officials.
A response will issue in due course.

Thank You

[redacted]
Planning Service HQ Inbox

Caution – This email has been received from outside the NICS network.
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FOR INTERNAL NICS STAFF ONLY - If you have any concerns regarding the email please forward to spam@finance-ni.gov.uk.

Dear Mr Beggs
I note the recent publication of DMPN 09b and the stated interest of the SPG in Battery Energy Storage Systems in the planning system (I understand there are around 60 applications/approvals in NI to date).

I again would ask DFI to attend as observers, in their oversight capacity of LPAs, the new Appeal Hearing against Enforcement for the Kells BESS on 17th January, 2024 at 10.30 am.

This is a landmark case involving EIA screening determinations, the hazards, risks and consequences in a BESS loss of control event, clarification of the role of statutory bodies in the planning process and post-construction oversight, and the need for the establishment of appropriate distances to receptors.

Best
[redacted]

Sent from AOL on Android

On Wed, 8 Nov 2023 at 12:51 pm, Beggs, Alistair [redacted] wrote:

Dear [redacted]

Please see attached from Alistair Beggs - Director of Regional Planning Policy and Casework Directorate, Department for Infrastructure, for your attention.

Kind regards.

[redacted]

Department for Infrastructure
An Roinn Bonneagair
Depairtment fur Infrastructure
www.infrastructure-ni.gov.uk

[redacted], Personal Secretary for Alistair Beggs, Chief Planner & Director

Regional Planning Policy and Casework Directorate

Department for Infrastructure, Clarence Court, 10-18 Adelaide Street, Belfast BT2 8GB

[redacted]

From: [redacted]
Sent: Wednesday, October 18, 2023 8:47 PM
To: Beggs, Alistair [redacted] DFI Regional Planning <Planning@infrastructure-ni.gov.uk>
Subject: Kells BESS PAC Hearing 2022/E0052

Dear Mr Beggs

Ref: 2022/E0052 Kells BESS PAC Hearing 10.30am, 9th November, 2023.

I understand you have taken over as Chief Planner from Angus Kerr. May I take this opportunity to offer my congratulations, I trust you are enjoying your new post and please give my best regards to Angus when you next see him.

Given DFI's oversight role and direct involvement with the BESS controversy, and the proximity (46m) to the nearest house, I wanted to alert you to the PAC hearing for Kells BESS's Appeal against the Council's Enforcement Notice, s.143, and invite you, or someone from your department, to observe the Hearing. It is scheduled as an informal hearing at 10.30am, 9th November.

I have attached our SOC and you will see that it is a complex case, a landmark case, involving lack of EIA, lack of HRA, lack of HS Consent and an invalid DfE generation consent for a BESS

that is built and operating whilst bearing in mind that DfE rely on Planning as proxy to carry out their environmental obligations under EIA and HRA, neither of which have been done either correctly or at all.

I am deeply concerned that the PAC continues to process this as an Informal Hearing which seems entirely inappropriate for the breadth of the case – I have been advised by the PAC that I should raise any questions about any new technical evidence presented in the Agent's Bundle to the Commissioner on the day of the hearing only.

I look forward to hearing from you.

Kind regards

[redacted]

From: DfI PG Secretariat
Sent: 15 January 2024 10:19
To: [redacted]
Subject: DfIPG 012/24: Appeal Hearing against Enforcement for the Kells BESS ref 2022/E0052 - [redacted]
Attachments: DfIPG 012/24: Appeal Hearing against Enforcement for the Kells BESS ref 2022/E0052 - [redacted]

Categories: [redacted] DFIPG

[redacted]

Acknowledgement attached - Please see below – ref DfIPG 012/24 due 04.02.2024

Please copy Planning Service HQ into your response.

HPRM: IN1-24-192

Thank you

[redacted]
Planning Service HQ Inbox

From: Beggs, Alistair [redacted]
Sent: Monday, January 15, 2024 9:54 AM
To: DfI PG Secretariat [redacted]
Cc: [redacted]
Subject: FW: Appeal Hearing against Enforcement for the Kells BESS ref 2022/E0052

To log in please

A follow up from previous correspondence and for [redacted]

Thanks

Alistair

Department for Infrastructure
An Roinn Bonneagair
Depairtment fur Infrastructure
www.infrastructure-ni.gov.uk

Alistair Beggs
Chief Planner
& Director, Regional Planning Policy and Casework

Personal Secretary
[redacted]

RTPI
Chartered Town Planner

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From: [redacted]
Sent: Monday, January 15, 2024 9:31 AM
To: Beggs, Alistair [redacted]
Subject: Appeal Hearing against Enforcement for the Kells BESS ref 2022/E0052

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[redacted]

Sent from AOL on Android

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Kind regards.

[redacted]

Department for Infrastructure
An Roinn Bonneagair
Depairtment fur Infrastructure
www.infrastructure-ni.gov.uk

[redacted] Personal Secretary for Alistair Beggs, Chief Planner & Director

Regional Planning Policy and Casework Directorate

Department for Infrastructure, Clarence Court, 10-18 Adelaide Street, Belfast BT2 8GB

[redacted]

[redacted]
Sent: Wednesday, October 18, 2023 8:47 PM
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Subject: Kells BESS PAC Hearing 2022/E0052

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I have attached our SOC and you will see that it is a complex case, a landmark case, involving lack of EIA, lack of HRA, lack of HS Consent and an invalid DfE generation consent for a BESS that is built and operating whilst bearing in mind that DfE rely on Planning as proxy to carry out their environmental obligations under EIA and HRA, neither of which have been done either correctly or at all.

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I look forward to hearing from you.

Kind regards

[redacted]

Regional Planning Policy & Casework

Department for Infrastructure
An Roinn Bonneagair
Depairtment fur Infrastructure
www.infrastructure-ni.gov.uk

[redacted]
Chairman
West Tyrone Against Wind Turbines
[redacted]
Email: [redacted]

Clarence Court
10-18 Adelaide Street
BELFAST
BT2 8GB
Tel: 0300 200 7830

Ref: DfIPG 014/24

1 February 2024

Dear [redacted]

Re: HSENI Technical Capacity to assess BESS

Thank you for your letter dated 14 January 2024 which raises questions surrounding the technical capacity of the Health and Safety Executive (HSENI) to assess Battery Energy Storage (BES) Systems. It has been determined that the request does not fall under the Environmental Information Regulations, but a response has been provided below.

In determining planning applications, including for BESS, planning authorities will consider a range of information from the applicant, third parties and from their own research. Planning authorities may also consult with a range of stakeholders including the HSENI before making a decision.

Your enquiry as to the technical capacity of the HSENI in providing advice, should properly be addressed to that body.

I trust this information is of assistance.

Yours sincerely

Regional Planning Policy & Casework

From: DFI Regional Planning
Sent: 01 February 2024 11:04
To: [redacted]
Subject: DfIPG 014/24 - HSENI Technical Capacity to assess BESS
Attachments: DfIPG 014 24 West Tyrone Against Wind Turbines Response.pdf

Good morning

Please see the attached letter FAO - [redacted] (Secretary), West Tyrone Against Wind Turbines

Kind regards

DfI Planning
Regional Planning Policy & Casework

Department for Infrastructure
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Depairtment fur Infrastructure
www.infrastructure-ni.gov.uk

Regional Planning Policy and Casework

Department for Infrastructure
An Roinn Bonneagair
www.infrastructure-ni.gov.uk

[redacted]
Lisburn & Castlereagh City Council,
Civic Headquarters,
Lagan Valley Island,
Lisburn
BT27 4RL

Email: [redacted]

Clarence Court
10-18 Adelaide Street
Belfast
BT2 8GB
Tel: 0300 200 7830

Our Ref. DfIPG 026/24

Date: 25 January 2024

Dear [redacted]

Re: Pre-Application Notice - proposed battery energy storage system [BESS] 600MW, landscaping and ancillary development at lands approximately 230m East of No. 2 Moneybroom Road, Lisburn, BT28 2QP.

I refer to your email dated 19 January 2024 in relation to the above and to your query as to whether it should be directed to the Department for a determination under section 26 of the Planning Act (Northern Ireland) 2011.

A Battery Energy Storage System development is considered to fall within Class 9 of the Schedule to the Planning (Development Management) Regulations (NI) 2015 which does not include any applicable threshold or criterion for major development prescribed for the purposes of s26(1) of the Planning Act (Northern Ireland) 2011.

The Department concludes therefore that there is no requirement to consult the Department under S26(1).

Yours sincerely

Regional Planning Policy & Casework

From: DFI Regional Planning
Sent: 25 January 2024 15:55
To: [redacted]
Subject: DfIPG 026/24: Pre-Application Notice
Attachments: DfIPG 026 24 - response to [redacted] re BESS s26.pdf

Good afternoon

Please see the attached for your attention.

Kind regards

DfI Planning
Regional Planning Policy & Casework

Department for Infrastructure
An Roinn Bonneagair
Depairtment fur Infrastructure
www.infrastructure-ni.gov.uk

From: [redacted]@lisburncastlereagh.gov.uk>
Sent: Friday, January 19, 2024 1:22 PM
To: DFI Regional Planning <Planning@infrastructure-ni.gov.uk>
Subject: Pre-Application Notice

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Folks

We have received a PAN for a proposed battery energy storage system [BESS] 600MW, landscaping and ancillary development.

The applicant has indicated on the related PAN form that no determination has been made as to whether the proposed development would be of Regional Significance. For convenience and ease of reference, the Form and related site location plan are attached.

It is my understanding from correspondence from the Department that such proposals are electricity generating and as such, paragraph 2 of the Schedule to the Development Management Regulations apply.

2. Energy Infrastructure Electricity generating stations	1. The construction of an electricity generating station where its capacity is or exceeds 5 megawatts. 2. All onshore development associated with the construction of an offshore electricity generating station.	1. The gener excee 2. All with th electri capac mega

Given that the PAN indicates that the capacity of the proposed facility is 600MW, grateful if you could advise at your earliest convenience if this is something that should be directed to the Department. Please note it is our intention to bring this PAN to the attention of our Members on 05 February 2024. A response in advance of this meeting would be helpful.

Regards

[redacted]
Job Title: Principal Planning Officer
Tel: [redacted]
Mobile: [redacted]

Lisburn & Castlereagh City Council
Civic Headquarters, Lagan Valley Island, Lisburn BT27 4RL

www.lisburncastlereagh.gov.uk /lisburncastlereagh /lisburnccc

From: [redacted]
Sent: 16 January 2024 11:50
To: [redacted]
Cc:
Subject: Letter from RES
Attachments: Letter from RES - 16-01-2024.pdf

Morning Folks,

Please see attached – I have the hard copy if required.

Thanks, [redacted]

Renewable Energy Systems Limited
Willowbank Business Park, Willowbank Road, Millbrook, Larne
County Antrim, Northern Ireland BT40 2SF, United Kingdom
T +44 (0)28 2844 0580 F +44 (0)1923 299 299
E info@res-group.com www.res-group.com

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Belfast,
Bt2 8GB

DFI Planning
RECEIVED
16 JAN 2024
File No. .....
SPD 2

Our Ref: 05195-7099680

12th Jan 2024

To Whom It May Concern

RE: Proposed Battery Energy Storage System on lands adjacent NW of 103 Trench Rd, Londonderry BT47 3UA

In accordance with Section 26 of the Planning Act (Northern Ireland) 2011 regarding the Department's jurisdiction in relation to developments of regional significance, I am writing to consult with the Department regarding a proposed planning application and to request an opinion from the Department as to whether the development would be considered of regional significance.

The proposed Battery Energy Storage System (BESS) is located in the townland of Disertowen, approximately 500m northwest of Killymallaght substation, on land adjacent NW to Trench Rd, Londonderry. A preliminary Development Boundary drawing is enclosed, the area of which is 18.86 acres. The final completed development is expected to occupy an area within this of no more than 9 acres. No energy will be generated on site.

The proposed 50MW BESS development would include the following: 64 Battery Enclosures (typical dimensions of 6.1m long, 2.4m wide and 2.9m high), 2 Control Buildings (Typically max dimensions of 10m long, 5m wide and 4.5m high), 8 Power Conversion Units (Typical max dimension of 10.3m long, 6m wide and 2.4m high), 2 Spares Containers, Auxiliary transformer, Grid compliance equipment, Security and lighting equipment, Fencing, underground cabling, site entrance, access tracks, crane hardstanding.

I would be grateful if the Department would confirm its opinion as to whether the development, if carried out, would

(a) be of significance to the whole or a substantial part of Northern Ireland or have significant effects outside Northern Ireland, or

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Registered office Beaufort Court, Egg Farm Lane, Kings Langley, Hertfordshire WD4 8LR | www.res-group.com

(b) involve a substantial departure from the local development plan for the area to which it relates

either of which would constitute a development of regional significance under Section 26 of the Planning Act (Northern Ireland) 2011.

I trust that the information provided is satisfactory, however if you have any queries please do not hesitate to contact me.

Sincerely,

[redacted]
Development Project Manager
E: [redacted]@res-group.com
T: [redacted]

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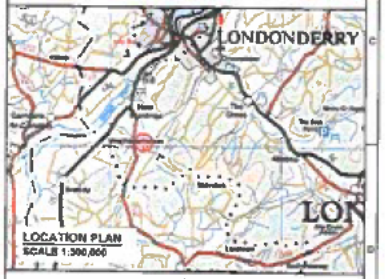
KEY:

DEVELOPMENT AREA
(OUTSIDE EDGE OF LINE DENOTES BOUNDARY)

SITE LOCATION - NOT TO SCALE



1	BM	BY APPD	PD	2024-04-11	FIRST ISSUE
ISSUE	DRAWN	CHKD	APPD	DATE	REVISION NOTES

PURPOSE: PRELIMINARY	COORDINATES: TM65 IRISH GRID
SCALE: 1:2,500 @A3	DATUM: N/A
LAYOUT DRAWING: N/A	T-LAYOUT NO: N/A

PROJECT TITLE:
KILLYMALLAGHT
ENERGY STORAGE FACILITY

DRAWING TITLE:
DEVELOPMENT AREA

RES DRAWING NUMBER	REV
05195-RES-MAP-DR-XX-003	1

THIS DRAWING IS THE PROPERTY OF RENEWABLE ENERGY SYSTEMS LIMITED AND NO REPRODUCTION MAY BE MADE IN WHOLE OR IN PART WITHOUT PERMISSION

RES
BEAUFORT COURT,
EGG FARM LANE,
KINGS LANGLEY,
HERTS WD4 8LR, UK
TEL +44 (0) 1923 299200
WWW.RES-GROUP.COM

From: [redacted]
Sent: 22 January 2024 16:56
To: Beggs, Alistair
Cc: [redacted]
Subject: FW: FOR ACTION - Major or Regionally Significant Determination (BESS, Trench Rd, Londonderry BT47 3UA)
Attachments: Trench Road BESS S 26 determination -response to RES.tr5; Trench Road BESS S 26 determination.tr5; 05195-RES-MAP-DR-XX-003.pdf; Letter to DFI Major or Regionally Segnificant (Killymallaght) (released).pdf

Alistair

As just discussed for your consideration

Regards,

[redacted]
DfI Planning
Regional Planning Policy & Casework

Department for Infrastructure
An Roinn Bonneagair
Depairtment fur Infrastructure
www.infrastructure-ni.gov.uk

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From: [redacted]@infrastructure-ni.gov.uk>
Sent: Monday, January 22, 2024 11:02 AM
To: [redacted]@infrastructure-ni.gov.uk>
Cc: [redacted]@infrastructure-ni.gov.uk>; [redacted] @infrastructure-ni.gov.uk>
Subject: RE: FOR ACTION - Major or Regionally Significant Determination (BESS, Trench Rd, Londonderry BT47 3UA)

[redacted]
Please find attached a draft response and report (which may not be necessary but sets out the Department's position).
As discussed, it hasn't been given a ref no. as there is no determination required.
[redacted]

From: [redacted]@infrastructure-ni.gov.uk>
Sent: Monday, January 15, 2024 10:55 AM
To: [redacted]@infrastructure-ni.gov.uk>
Cc: [redacted]@infrastructure-ni.gov.uk>; [redacted] @infrastructure-ni.gov.uk>
Subject: FOR ACTION - Major or Regionally Significant Determination (BESS, Trench Rd, Londonderry BT47 3UA)

[redacted]

Can you please take this one forward and prepare consideration.

Regards,

[redacted]
Dfl Planning
Regional Planning Policy & Casework

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From: [redacted]@res-group.com>
Sent: Friday, January 12, 2024 4:35 PM
To: DFI Regional Planning <Planning@infrastructure-ni.gov.uk>
Subject: Major or Regionally Significant Determination (BESS,Trench Rd, Londonderry BT47 3UA)

Hi,

I am writing regarding a proposed Battery Energy Storage System on lands adjacent NW of 103 Trench Rd, Londonderry BT47 3UA, ahead of PoAN and Full Application to Derry City and Strabane District Council Planning Office.

Please see attached letter outlining a request for Major or Regionally Significant determination, as well as accompany preliminary Development Area drawing. Any question please don't hesitate to contact me by any means outline in my email footer. Thank you.

Regards,

[redacted]
Development Project Manager

W(ROI): [redacted], P(UK): [redacted]
[redacted]@res-group.com | www.res-group.com

Committed to a future where everyone has access to affordable zero carbon energy

Renewable Energy Systems Limited, registered in England and Wales with Company Number 1589961
Registered Office: Beaufort Court, Egg Farm Lane, Kings Langley, Hertfordshire WD4 8LR

Renewable Energy Systems Limited
Willowbank Business Park, Willowbank Road, Millbrook, Larne
County Antrim, Northern Ireland BT40 2SF, United Kingdom
T +44 (0)28 2844 0580 F +44 (0)1923 299 299
E info@res-group.com www.res-group.com

DFI Planning,
Clarence Court,
10-18 Adelaide Street,
Belfast,
Bt2 8GB

Our Ref: 05195-7099680

12th Jan 2024

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[redacted]

Development Project Manager
E: [redacted]y@res-group.com
T: [redacted]

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From: DFI Regional Planning
Sent: 23 January 2024 11:54
To: [redacted]@res-group.com
Subject: Major or Regionally Significant Determination (BESS, Trench Rd, Londonderry BT47 3UA)
Attachments: Trench Road BESS S 26 determination -response to RES.pdf

[redacted]

Please see the attached for your attention.

Kind regards

DfI Planning
Regional Planning Policy & Casework

Department for Infrastructure
An Roinn Bonneagair
Depairtment fur Infrastructure
www.infrastructure-ni.gov.uk

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Registered Office: Beaufort Court, Egg Farm Lane, Kings Langley, Hertfordshire WD4 8LR

From: Beggs, Alistair
Sent: 23 January 2024 10:57
To: [redacted]
Cc: [redacted]
Subject: RE: FOR ACTION - Major or Regionally Significant Determination (BESS, Trench Rd, Londonderry BT47 3UA)

[redacted]
I agree with the conclusion reached and for the letter to issue.
Many thanks all
Alistair

Department for Infrastructure
An Roinn Bonneagair
Depairtment fur Infrastructure
www.infrastructure-ni.go.uk

Alistair Beggs
Chief Planner
& Director, Regional Planning Policy and Casework

Personal Secretary
[redacted]
[redacted]@infrastructure-ni-gov.uk

RTPI
Chartered Town Planner

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From: [redacted]@infrastructure-ni.gov.uk>
Sent: Monday, January 22, 2024 4:56 PM
To: Beggs, Alistair [redacted]
Cc: [redacted]@infrastructure-ni.gov.uk>
Subject: FW: FOR ACTION - Major or Regionally Significant Determination (BESS, Trench Rd, Londonderry BT47 3UA)

Alistair

As just discussed for your consideration

Regards,

[redacted]
DfI Planning
Regional Planning Policy & Casework

Department for Infrastructure
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Regards,

[redacted]
Development Project Manager

W(ROI): [redacted] P(UK): [redacted]
[redacted]@res-group.com | www.res-group.com

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Department for Infrastructure
An Roinn Bonneagair
Depairtment fur Infrastructure
www.infrastructure-ni.gov.uk

Regional Planning Policy & Casework

[redacted]

Via email [redacted]

Clarence Court
10-18 Adelaide Street
BELFAST
BT2 8GB

Email: [redacted]@infrastructure-ni.gov.uk
[redacted]infrastructure-ni.gov.uk

Our reference: DFIPG 319/23

Date: 08 November 2023

Dear [redacted]

Re: Kells BESS PAC Hearing

Thank you for your email of 18 October 2023 in relation to the above and the kind congratulations on my becoming Chief Planner.

I acknowledge that a hearing is to be held on 9th November 2023 and, whilst I do not propose to or have a DfI Planning official attend, the Department will certainly consider the Commission's decision when this is issued.

I also note your concerns about the case being considered in an Informal hearing, however the Planning Appeals Commission as a statutorily independent body determines the appropriate appeal procedures. As such, you may wish to again raise your concerns over the appeal hearing arrangements with the PAC directly.

Yours sincerely

Alistair Beggs
Chief Planner &
Director Regional Planning Policy & Casework

From: [redacted] on behalf of Beggs, Alistair
Sent: 08 November 2023 12:51
To: [redacted]
Subject: DFIPG 319/23 Response to [redacted] - Kells BESS PAC Hearing 2022/E0052 - 08.11.23
Attachments: DfIPG 31923 Response to [redacted] re Kells BESS hearing.pdf

Dear [redacted]

Please see attached from Alistair Beggs - Director of Regional Planning Policy and Casework Directorate, Department for Infrastructure, for your attention.

Kind regards.

[redacted]

Department for Infrastructure
An Roinn Bonneagair
Depairtment fur Infrastructure
www.infrastructure-ni.gov.uk

[redacted], Personal Secretary for Alistair Beggs, Chief Planner & Director
Regional Planning Policy and Casework Directorate
Department for Infrastructure, Clarence Court, 10-18 Adelaide Street, Belfast BT2 8GB
[redacted] [redacted] [redacted]@infrastructure-ni.gov.uk

From: [redacted]om>
Sent: Wednesday, October 18, 2023 8:47 PM
To: Beggs, Alistair [redacted]; DFI Regional Planning <Planning@infrastructure-ni.gov.uk>
Subject: Kells BESS PAC Hearing 2022/E0052

Dear Mr Beggs

Ref: 2022/E0052 Kells BESS PAC Hearing 10.30am, 9th November, 2023.

I understand you have taken over as Chief Planner from Angus Kerr. May I take this opportunity to offer my congratulations, I trust you are enjoying your new post and please give my best regards to Angus when you next see him.

Given DFI's oversight role and direct involvement with the BESS controversy, and the proximity (46m) to the nearest house, I wanted to alert you to the PAC hearing for Kells BESS's Appeal against the Council's Enforcement Notice, s.143, and invite you, or someone from your department, to observe the Hearing. It is scheduled as an informal hearing at 10.30am, 9th November.

I have attached our SOC and you will see that it is a complex case, a landmark case, involving lack of EIA, lack of HRA, lack of HS Consent and an invalid DfE generation consent for a BESS that is built and operating whilst bearing in mind that DfE rely on Planning as proxy to carry out

their environmental obligations under EIA and HRA, neither of which have been done either correctly or at all.

I am deeply concerned that the PAC continues to process this as an Informal Hearing which seems entirely inappropriate for the breadth of the case – I have been advised by the PAC that I should raise any questions about any new technical evidence presented in the Agent's Bundle to the Commissioner on the day of the hearing only.

I look forward to hearing from you.

Kind regards

[redacted]

From: DFI Regional Planning
Sent: 19 October 2023 09:42
To: [redacted]
Subject: FW: Kells BESS PAC Hearing 2022/E0052
Attachments: 01- KellsVOCAL SOC.pdf; 02-Appendices Parts 1 2 3 merged.pdf

[redacted]

I acknowledge receipt of your email to Alistair Beggs, a response will issue in due course

Thank you

[redacted]

Business Support
DFI Regional Planning

From: [redacted]
Sent: Wednesday, October 18, 2023 8:47 PM
To: Beggs, Alistair [redacted]; DFI Regional Planning <Planning@infrastructure-ni.gov.uk>
Subject: Kells BESS PAC Hearing 2022/E0052

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I look forward to hearing from you.

Kind regards

[redacted]

Regional Planning Policy and Casework

Department for Infrastructure
An Roinn Bonneagair
www.infrastructure-ni.gov.uk

[redacted]
RES UK & Ireland Limited
Willowbank Business Park
Willowbank Road
Millbrook Industrial Estate
Larne
County Antrim
BT40 2SF

Clarence Court
10-18 Adelaide Street
Belfast
BT2 8GB
Tel: 0300 200 7830

Date: 23 January 2024

Dear [redacted]

Location: Lands adjacent NW of 103 Trench Rd, Londonderry BT47 3UA

Proposal: Proposed Battery Energy Storage System

I refer to your letter dated 12 January 2024 and your request for a determination under section 26 of the Planning Act (Northern Ireland) 2011 for the above proposal.

A Battery Energy Storage System development is considered to fall within Class 9 of the Schedule to the Planning (Development Management) Regulations (NI) 2015 which does not include any applicable threshold or criterion for major development prescribed for the purposes of s26(1) of the Planning Act (Northern Ireland) 2011.

The Department concludes therefore that there is no requirement to consult the Department under S26(1).

Any planning application should therefore be made to the local planning authority, in this case, Derry and Strabane District Council.

Yours sincerely
Regional Planning Policy & Casework

Department for Infrastructure
An Roinn Bonneagair
Depairtment fur Infrastructure
www.infrastructure-ni.gov.uk

SECTION 26 DETERMINATION

From: [redacted]

Date: January 2024

Ref: N/A

To: [redacted]
PPTO

Alistair Beggs
Director RPP&C

Location: Lands adjacent NW of 103 Trench Rd, Londonderry BT47 3UA

Proposal: Proposed Battery Energy Storage System

Applicant: RES

1. Regional Planning Policy & Casework Directorate has received a request from RES seeking a determination on whether section 26 of the Planning Act (Northern Ireland) 2011 would apply to this development.

2. The proposed 50MW BESS development would include the following: 64 Battery Enclosures (typical dimensions of 6.1m long, 2.4m wide and 2.9m high), 2 Control Buildings (Typically max dimensions of 10m long, 5m wide and 4.5m high), 8 Power Conversion Units (Typical max dimension of 10.3m long, 6m wide and 2.4m high), 2 Spares Containers, Auxiliary transformer, Grid compliance equipment, Security and lighting equipment, Fencing, underground cabling, site entrance, access tracks, crane hardstanding. No energy will be generated on site.

3. The proposed Battery Energy Storage System (BESS) is located in the townland of Disertowen, approximately 500m northwest of Killymallaght substation, on land adjacent NW to Trench Rd, Londonderry. The preliminary development boundary area is 18.86 acres with the final completed development expected to occupy an area within this of no more than 9 acres.

4. Section 25 of the Planning Act (Northern Ireland) 2011 states a development belongs to one of two categories: major or local developments. The Planning (Development Management) Regulations (Northern Ireland) 2015 must then be taken into consideration. A BESS development does not fall “wholly within” one of the classes 1 to 8 of the Schedule to the Planning (Development Management) Regulations (NI) 2015. (In light of the judgment in ABO Wind NI Ltd & Energia Renewables Company 1 Limited v Department for Infrastructure [2021] NIQB 96) It thus falls within the “catch-all” category of “all other development” within Class 9 of the Schedule.

5. Class 9 of the Schedule does not include any applicable threshold or criterion for major development prescribed for the purposes of s26(1) of the Planning Act (Northern Ireland) 2011 to identify major development for assessment as to whether it is of regional significance or not.

6. It is concluded that there is no requirement for an assessment to determine whether Section 26 of the 2011 Act would apply to this proposed development.

Regional Planning Policy and Casework

Department for Infrastructure
An Roinn Bonneagair
www.infrastructure-ni.gov.uk

[redacted]
RES UK & Ireland Limited
Willowbank Business Park
Willowbank Road
Millbrook Industrial Estate
Larne
County Antrim
BT40 2SF

Clarence Court
10-18 Adelaide Street
Belfast
BT2 8GB
Tel: 0300 200 7830

Date: 23 January 2024

Dear [redacted]

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SECTION 26 DETERMINATION

From: [redacted]

Date: January 2024

Ref: N/A

To: [redacted]
PPTO

Alistair Beggs
Director RPP&C

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2. The proposed 50MW BESS development would include the following: 64 Battery Enclosures (typical dimensions of 6.1m long, 2.4m wide and 2.9m high), 2 Control Buildings (Typically max dimensions of 10m long, 5m wide and 4.5m high), 8 Power Conversion Units (Typical max dimension of 10.3m long, 6m wide and 2.4m high), 2 Spares Containers, Auxiliary transformer, Grid compliance equipment, Security and lighting equipment, Fencing, underground cabling, site entrance, access tracks, crane hardstanding. No energy will be generated on site.

3. The proposed Battery Energy Storage System (BESS) is located in the townland of Disertowen, approximately 500m northwest of Killymallaght substation, on land adjacent NW to Trench Rd, Londonderry. The preliminary development boundary area is 18.86 acres with the final completed development expected to occupy an area within this of no more than 9 acres.

4. Section 25 of the Planning Act (Northern Ireland) 2011 states a development belongs to one of two categories: major or local developments. The Planning (Development Management) Regulations (Northern Ireland) 2015 must then be taken into consideration. A BESS development does not fall “wholly within” one of the classes 1 to 8 of the Schedule to the Planning (Development Management) Regulations (NI) 2015. (In light of the judgment in ABO Wind NI Ltd & Energia Renewables Company 1 Limited v Department for Infrastructure [2021] NIQB 96) It thus falls within the “catch-all” category of “all other development” within Class 9 of the Schedule.

5. Class 9 of the Schedule does not include any applicable threshold or criterion for major development prescribed for the purposes of s26(1) of the Planning Act (Northern Ireland) 2011 to identify major development for assessment as to whether it is of regional significance or not.

6. It is concluded that there is no requirement for an assessment to determine whether Section 26 of the 2011 Act would apply to this proposed development.