



Medworth Energy from Waste Combined Heat and Power Facility Advice on Public Consultation Events and Coronavirus Regulations

28 September 2020

1. EXECUTIVE SUMMARY

- 1.1 MVV Environment Ltd (**MVV**) has scheduled non-statutory consultation events (the **Events**) on the proposed development consent order application for the Medworth Energy from Waste Combined Heat and Power Facility (**Medworth**). The Events are due to take place on seven dates across seven venues in the Wisbech area and commence on 1 October 2020.
- 1.2 MVV has requested advice on whether holding the Events is compatible with the current legal restrictions in place in England (as at today's date) to manage the coronavirus pandemic.
- 1.3 We understand that, in each case, the Events are to take place on premises operated by a business, a charitable, benevolent or philanthropic institution or a public body. We also understand that social distancing guidelines will be observed¹.
- 1.4 On that basis, in our opinion holding the Events is compatible with the current legal restrictions. We expand on this below. The restrictions are however subject to review and change and we recommend they are monitored immediately before and during the period of the Events to ensure continued compliance.
- 1.5 We also conclude that the Events are not licensable under the Licensing Act 2003.

2. LEGISLATIVE FRAMEWORK

- 2.1 The current restrictions on participation in gatherings are given legal effect by the Health Protection (Coronavirus, Restrictions) (No.2) (England) Regulations 2020 (as amended).
- 2.2 Regulation 5(1) provides that, during the emergency period (which ends at the direction of the Secretary of State), no person may participate in a gathering which consists of more than six people unless one of the stated exceptions applies.
- 2.3 Regulation 5(1)(b) provides one of those exceptions. A gathering of more than six people is permitted if it falls within Regulation 5(2) or 5(2A) (see below) and participants participate alone or as a member of a qualifying group.
- 2.4 Regulation 5(2) is relevant to the Events. It provides that a gathering of more than six people may take place if it takes place on or at premises which is not a private dwelling and which is operated by a business, a charitable, benevolent or philanthropic institution or a public body. The exception also applies if the gathering takes place on part of premises used for one of those purposes. As noted above, our understanding is that in each case the Events will be held at premises which fall within this description.
- 2.5 To benefit from the exception in regulation 5(2), attendees must participate in the gathering alone or as a member of a qualifying group.
- 2.6 "Qualifying group" is defined as:
 - 2.6.1 a group of no more than six persons; or
 - 2.6.2 only persons who are members of the same household, or who are members of two households who are linked together.
- 2.7 A member of a qualifying group is not permitted to join another qualifying group at the gathering or otherwise mingle with a person not in the same qualifying group.

¹ Current social distancing guidelines recommend distancing of 2m or 1m plus mitigation. Mitigation includes wearing face coverings, thorough and regular cleaning and maintaining hand hygiene. Government Guidance on "Review of two metre social distancing guidance" provides further information - <https://www.gov.uk/government/publications/review-of-two-metre-social-distancing-guidance/review-of-two-metre-social-distancing-guidance>



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2.8 It is worth noting there is also an exception for gatherings which are reasonably necessary for work purposes (regulation 5(3)(c)(i)). This may also apply to the Events.

3. GUIDANCE

3.1 MHCLG published guidance² on procedural requirements for major infrastructure projects on 22 July 2020. The guidance is statutory guidance (i.e. it must be complied with) to the extent it applies to the statutory pre-application phase of the development consent process.

3.2 The guidance sets out how statutory consultation obligations (including making project documentation available for inspection) can be met during the coronavirus pandemic. Given the temporary changes that have been introduced for statutory consultation, its focus is ensuring online participation and access to documentation. It does however note:

3.3 *"Changes in social distancing guidelines and lockdown measures may permit the reopening of buildings and increase their accessibility during the period where the temporary changes in the 2020 Regulations are still in effect. In such circumstances, applicants should also make the relevant documents available for inspection in public buildings in the vicinity of the relevant land where reasonably practicable and safe to do so."*

3.4 Whilst the Events do not form part of the statutory consultation for Medworth, the guidance remains relevant to the extent it demonstrates the government's position on pre-application consultation.

4. APPLICATION TO THE EVENTS

4.1 Our view is that the exception in regulation 5(1)(b) and (2) of the Health Protection (Coronavirus, Restrictions) (No.2) (England) Regulations 2020 applies to the Events.

4.2 We therefore consider that the Events can be held without breaching the legal restrictions on gatherings.

4.3 Participants should only be permitted to participate alone or as part of a qualifying group. Social distancing should also be maintained throughout in accordance with government guidance³.

5. LICENSING ACT 2003

5.1 The Events do not constitute a licensable activity (or activities) for the purpose of the Licensing Act 2003.

5.2 Licensable activities for the purposes of the Act are:

5.2.1 the retail sale of alcohol;

5.2.2 the supply of alcohol by or on behalf of a club, to or the order of, a member of the club;

5.2.3 the provision of regulated entertainment (as defined in paragraph 2 of Schedule 1 to the Act); or

5.2.4 the provision of late night refreshment.

5.3 We do not consider the Events to fall within any of these definitions.

Pinsent Masons LLP

² <https://www.gov.uk/guidance/guidance-on-procedural-requirements-for-major-infrastructure-projects#statement-of-community-consultation>

³ For example - <https://www.gov.uk/government/publications/staying-alert-and-safe-social-distancing/staying-alert-and-safe-social-distancing-after-4-july> and <https://www.gov.uk/government/publications/covid-19-guidance-for-the-safe-use-of-multi-purpose-community-facilities/covid-19-guidance-for-the-safe-use-of-multi-purpose-community-facilities>