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Llywodraeth Cymru  
Welsh Government

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Welsh Government

## Consultation Document

# Developments of National Significance

Date of issue: **20 May 2015**

Action required: Responses by **12 August 2015**

## Overview

The Positive Planning consultation paper consulted on our intention to introduce a new category of development known as Developments of National Significance. Planning applications for such developments will be made directly to the Welsh Ministers and decided by them.

This consultation sets out our detailed proposals for a system to process and decide upon this category of planning application.

## How to respond

The closing date for responses is **12 August 2015** and you can reply in any of the following ways.

Email: Please complete the consultation response form at Annex D and send it to:

[Planconsultations-g@wales.gsi.gov.uk](mailto:Planconsultations-g@wales.gsi.gov.uk)

(Please include 'Developments of National Significance Consultation – WG 25023' in the subject line.

Post: Please complete the consultation response form at Annex D and send it to:

Developments of National Significance  
Consultation  
Decisions Branch  
Planning Directorate  
Welsh Government  
Cathays Park  
Cardiff  
CF10 3NQ.

## Further information and related documents

**Large print, Braille and alternate language versions of this document are available on request.**

Further information can be found here:

Positive Planning – Proposals to reform the planning system in Wales

[www.wales.gov.uk/consultations/planning/draft-planning-wales-bill/?status=closed&lang=en](http://www.wales.gov.uk/consultations/planning/draft-planning-wales-bill/?status=closed&lang=en)

## Contact details

For further information:

e-mail:

[Planconsultations-g@wales.gsi.gov.uk](mailto:Planconsultations-g@wales.gsi.gov.uk)

Tel: Lewis Thomas on 029 2082 3201

## Data protection

### How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

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## **Glossary of Terms**

<b>1990 Act</b>	The Town and Country Planning Act 1990
<b>DCO</b>	Development Consent Order
<b>DNS</b>	Developments of National Significance
<b>EIA</b>	Environmental Impact Assessment
<b>IAG</b>	The Independent Advisory Group
<b>LIR</b>	Local Impact Report
<b>LNG</b>	Liquefied Natural Gas
<b>LPA</b>	Local Planning Authority
<b>NDF</b>	National Development Framework
<b>NSIP</b>	Nationally Significant Infrastructure Project
<b>MW</b>	Megawatt
<b>PINS</b>	The Planning Inspectorate
<b>SoCG</b>	Statement of Common Ground
<b>SofS</b>	The Secretary of State

# 1. Introduction and Background

## Preface

- 1.1 The planning system in Wales plays an important role in helping to support economic prosperity, promote sustainable development and address the challenges posed by climate change, whilst safeguarding our access to a quality environment. These objectives are reinforced by the Planning (Wales) Bill. The Bill sets out a statutory purpose for the planning system in Wales which ensures that the development and use of land contributes towards sustainable development by improving the economic, social, environmental and cultural well-being of Wales, in accordance with the Well-being of Future Generations (Wales) Act 2015.
- 1.2 On average, 23,000 planning applications per year are submitted in Wales. The Positive Planning consultation paper<sup>1</sup> acknowledged that the planning system does not always determine those applications in a smart way, often adopting a ‘one size fits all’ approach, irrespective of the potential benefits and impacts that a development may bring. In response, we have introduced measures which will ensure that planning applications are determined in a proportionate way, dependent on their likely benefits and impacts.
- 1.3 Our evidence<sup>2</sup> also highlights concerns about local planning authorities’ (“LPAs”) ability to make timely decisions on some of the most challenging applications, including those that raise complex technical issues and are of a contentious nature. Some of these applications already fall to the Welsh Ministers to decide, either as a result of being called in, or on appeal following refusal by the LPA. This is an inefficient approach. It is our intention to ensure that in future these applications are submitted directly to, and determined by, the Welsh Ministers. To address this we consulted on the introduction of a new category of development called Developments of National Significance (“DNS”). These are developments which are few in number but of greatest significance to Wales because of their potential benefits and impacts.

## The Planning (Wales) Bill

- 1.4 At the time of the publication of this consultation paper, the Planning (Wales) Bill (“the Bill”) has been passed by the National Assembly for Wales with the Stage 4 Assembly vote on the Bill having taken place on the 19 May 2015. Subject to a four week period of intimation, it is anticipated that the Bill will receive Royal Assent and become an Act during the week commencing 29 June 2015. The Bill provisions will enable the Welsh Ministers to determine planning applications that are

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<sup>1</sup> Welsh Government consultation paper: Positive Planning: Proposals to Reform the Planning System in Wales (4 December 2013).

<sup>2</sup> Welsh Government research: Evaluation of Consenting Performance of Renewable Energy Schemes in Wales (January 2013).

of significance to Wales under a new process that is appropriate for the handling of such applications.

1.5 The Bill makes provision, amongst others:

- for the Welsh Ministers to specify what proposed development constitutes DNS, either through individual designation within the National Development Framework (“NDF”) for Wales or by meeting particular criteria and thresholds prescribed in regulations, and for applications for those developments to be made directly to the Welsh Ministers;
- requiring any person who proposes to make an application for DNS to notify the Welsh Ministers and the LPA of their intention to do so;
- for the Welsh Ministers to place an obligation on developers to undertake pre-application consultation with the community and statutory consultees in accordance with prescribed steps, prior to the submission of an application for DNS;
- enabling developers to submit, for the consideration of the Welsh Ministers, a number of consents which are connected to the principal application for DNS from a prescribed list;
- for the Welsh Ministers to prescribe the procedure associated with the submission, consideration and determination of an application for DNS;
- requiring that LPAs submit a Local Impact Report to the Welsh Ministers for consideration and for the Welsh Ministers to detail the matters that may be contained within it;
- for the Welsh Ministers to confer functions upon appointed persons to exercise functions in relation to DNS applications. We propose that PINS will be those appointed persons.
- setting the timescale at 36 weeks in which decisions on DNS applications must be reached; and
- for the Welsh Ministers to make provision in relation to fees for DNS applications.

1.6 The purpose of the legislation is to provide more certainty and rigour in the decision-making process for planning applications determined under this particular category. The detail of the process is to be prescribed in regulations and orders, which support the Bill.

## **Purpose of consultation**

- 1.7 Comments received in response to the Positive Planning consultation paper established overall agreement on the establishment of a new category of nationally significant development. These principles were also approved by the National Assembly for Wales as a result of the passing of the Planning (Wales) Bill by the Assembly. This new category of development will ensure that planning applications are dealt with in a proportionate way dependent on their likely benefits and impacts. There was also broad agreement that the Planning Inspectorate (“PINS”) in Wales is the most appropriate body to undertake the processing of a DNS application and that those applications should be examined through a similar procedure to that proposed for call-ins and appeals.
- 1.8 This consultation paper sets out detailed proposals for a system to administer and determine this category of planning application and build on those proposals set out in the Planning (Wales) Bill. It will contain the detail that we intend to prescribe in a series of regulations and orders. This consultation paper does not revisit the principles of the Planning (Wales) Bill, since views on those proposals were sought in the ‘Positive Planning’ consultation paper.
- 1.9 The Welsh Government has set out an ambitious programme for the delivery of a system capable of accepting DNS applications early in 2016. To ensure we meet that time scale, this consultation is being run prior to, and subject to, gaining Royal Assent for the Planning (Wales) Bill.

- 1.10 This consultation paper is split into six sections:

### Criteria and thresholds

- 1.11 Projects within the DNS category will be identified in the NDF for Wales with unforeseen speculative projects identified by criteria and thresholds. The Positive Planning consultation paper sought views on a draft set of criteria and thresholds, which mirrored as closely as possible those introduced in England under the UK Government’s Nationally Significant Infrastructure Projects (“NSIP”) regime with the addition of onshore generating stations which produce between 25MW and 50MW. The response to this consultation was inconclusive. Your views are now sought on a refined set of thresholds and criteria.

### Secondary consents

- 1.12 We received overwhelming support for our proposals in the Positive Planning consultation paper, which will allow the Welsh Ministers to handle secondary consents connected to a DNS at the same time as the main application. Your views are now sought on a detailed list of those secondary consents, and for the handling of them.

### Pre-application process

- 1.13 The Planning (Wales) Bill contains a number of provisions requiring developers to submit a notification of the intention to submit an application for DNS, the requirement to undertake pre-application consultation with the local community and statutory consultees, and for the Welsh Ministers to provide pre-application services, where requested by prospective applicants. Your views are sought on the procedural requirements of the pre-application process, and the level of consultation which must be undertaken by the developer prior to the submission of an application for DNS.

### The application process

- 1.14 It has been established that PINS will undertake all functions relating to the processing of an application for DNS, with the final determination being reserved for the Welsh Ministers. Responses to Positive Planning also supported the view that applications for DNS should follow a similar procedure to that for appeals and call-ins. In this section, we will prescribe the process and requirements for making an application for DNS and set out how an application will progress from submission to determination. Your views are sought on the details of this process. A flow diagram of the proposed process is set out at Annex C.

### The role of local planning authorities

- 1.15 Whilst the decision-making power for DNS will be removed from LPAs, they will still have a vital role to play in the determination of DNS applications and their subsequent delivery. Your views are sought on the future roles and responsibilities of LPAs in relation to such applications.

### Fees and costs

- 1.16 Application fees for DNS are to be set out in new fees regulations. Your views are sought on our proposed model for the charging of fees and the circumstances in which costs may be awarded to parties in cases of unreasonable behaviour by one or more participants in the DNS process.



## **2. Criteria and Thresholds**

### **Overview**

- 2.1 The provisions in the Planning (Wales) Bill enable the Welsh Ministers to prescribe in regulations what constitutes a DNS project. Being able to prescribe those projects in secondary legislation permits the process to respond quickly to changing circumstances, such as the introduction of new technologies or where further powers in relation to energy and other planning consents may be devolved to Wales in the future. The projects which qualify as DNS will be kept under constant review.
- 2.2 The Positive Planning consultation paper sought views on a set of criteria and thresholds for DNS. It contained projects which are currently determined by the SofS under the NSIP regime in England but are currently determined by LPAs in Wales and are within the competence of the Welsh Ministers. Onshore energy generating stations with a capacity between 25MW and 50MW were also included. The response received to the Positive Planning consultation was inconclusive. This consultation further refines those categories and thresholds for DNS to ensure that they are appropriate in a Welsh context.

### **Our policy proposals**

- 2.3 The types of development defined as DNS are those which will be of greatest significance to Wales because of their potential benefits and impacts, although they are likely to be few in number. Ultimately, some of these cases would have fallen to be determined by the Welsh Ministers, either as a result of being called in or on appeal following refusal by the LPA.
- 2.4 The Planning (Wales) Bill has already established that applications for specific projects identified by the NDF for Wales would be made directly to the Welsh Ministers under the DNS process. Such proposals are of national significance by virtue of their designation in the national tier of planning policy and by their strategic nature.
- 2.5 There are, however, likely to be projects which are not identified within the NDF which have strategic or national importance. It is essential that a set of thresholds and criteria identify those projects for them to be captured as DNS.
- 2.6 To identify DNS project types, we have undertaken research<sup>3</sup> which examined the number of planning applications for infrastructure projects and business or commercial projects submitted to LPAs between April 2005 to October 2013. The categories of infrastructure project assessed were those included in Annex B of the Positive

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<sup>3</sup> Welsh Government research: 'Quantification of infrastructure and business/commercial planning applications submitted in Wales' (30 July 2014)

Planning consultation paper. Data was collected from LPAs for all applications which fell both above and below the thresholds contained at Annex B of Positive Planning, other than those which have been undertaken by statutory undertakers with the benefit of permitted development rights. The data reflects infrastructure projects for all planning applications that would fall outside Section 14 of the Planning Act 2008 as far as they required planning permission and where responsibility for determination currently rests with LPAs in Wales.

- 2.7 The research established that there were 107 infrastructure applications submitted to LPAs during the data period. Whilst 69% of infrastructure applications were approved or were subject to a resolution to grant planning permission subject to the completion of a satisfactory section 106 agreement, the approval-rate is significantly lower than the national average. The research highlighted concerns over the timing of decisions on infrastructure projects. Only 33% were determined within the 8 and 16 week targets for non-EIA and EIA development. Furthermore, around 30% of those applications took more than 52 weeks to be determined. A number are still yet to be determined or are the subject of an appeal.
- 2.8 Further evidence was sought from stakeholders and industry specialists to examine the categories of DNS development and appropriate thresholds in light of the above research. This evidence-gathering process considered afresh the thresholds and categories consulted upon in the Positive Planning consultation paper and assessed the suitability and proportionality of the thresholds in relation to Wales as well as the appropriateness of removing permitted development rights in relation to certain categories of development.
- 2.9 This evidence gathering process has resulted in some changes to the proposed thresholds and criteria since the publication of the Positive Planning consultation paper. Notably, pipe-lines constructed underground by a gas transporter and harbour facilities are no longer proposed as a DNS project category as the type and size of projects that would be captured under these categories are not considered as significant in the national context. Alterations have been made to thresholds for airport development, rail freight interchanges and pipelines not constructed by a gas transporter, to reflect the scale of potential projects coming forward in Wales and the wording of the thresholds have changed for the purposes of precision.

### **List of DNS projects**

- 2.10 Since the initial consultation in Positive Planning and following the submission of further evidence from stakeholders, we have revised the thresholds and criteria for DNS to reflect a proportionate approach for Wales. The types of development and relevant thresholds are detailed in *Annex A*.

- 2.11 When in force, it is our intention that the projects in *Annex A* remain under constant review with additional categories of consent being inserted, or removed as required. Any alterations to the list, including changes to project thresholds arising from the further devolution of powers<sup>4</sup> to the Welsh Ministers, the development of new technologies, or where wider and comprehensive reforms are held into particular categories, would be subject to further consultation.

### **Consultation questions**

- Q1:** Do you agree with the proposed thresholds and categories of development set out in *Annex A*? If not, why not?

### **Enabling powers in the Planning (Wales) Bill**

- 2.12 Section 19 of the Planning (Wales) Bill inserts sections 62D and 62E into the 1990 Act.
- 2.13 Section 62D requires that planning applications for DNS are to be made to the Welsh Ministers. A DNS application is an application for planning permission (other than outline planning permission) for the development of land in Wales, which is either of a description prescribed by the Welsh Ministers in regulations or one which is specified by the Welsh Ministers in the NDF.
- 2.14 An application for planning permission to vary conditions attached to a previous planning permission is not to be treated as an application for DNS unless it is of a description prescribed in regulations by the Welsh Ministers.

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<sup>4</sup> Silk Commission: 'Powers for a Purpose : Towards a Lasting Devolution Settlement for Wales' (March 2015)

### **3. Secondary consents**

#### **Overview**

- 3.1 To minimise the number of separate applications required to enable a DNS to proceed and to provide greater clarity for all parties, an applicant for DNS will have the option of submitting certain connected applications, licences, orders, notices and consents to the Welsh Ministers at the same time and following the same process as the main application for DNS.
- 3.2 This 'one stop shop' proposal was consulted upon within the Positive Planning consultation paper and received widespread support.

#### **Our policy proposals**

- 3.3 The ability to submit these applications for secondary consents will be at the discretion of the developer. When a developer notifies the Welsh Ministers of the intention to submit a planning application for DNS, they will be required to set out in that notice a list of secondary consents that they intend to apply for from a specified list, although there will be no statutory requirement to require applicants to apply for those consents contained in the specified list.
- 3.4 When accepting this notice, the Welsh Ministers may recommend to the developer that they should submit certain additional secondary consents at the same time from that list. Any pre-application consultation undertaken following that initial notification must include details as to the secondary consents that are intended to be applied for.
- 3.5 Upon submission of an application for DNS, the developer must present the application or notice for secondary consents alongside it in the manner that it would be presented to the normal consenting authority, to meet the minimum registration requirements for that consent. It is not the intention to alter those validation requirements for a secondary consent where it is applied for alongside an application for DNS. The applicant must also confirm their intention for the secondary consent to be determined by the Welsh Ministers on the DNS application form.
- 3.6 The Welsh Ministers will be permitted to use powers to 'call in' an identified type of secondary consent if they consider it to be connected with an application for DNS and the developer has not already submitted that matter as a secondary consent to the primary DNS application. It is intended that those powers should be used very rarely. In such instances, the statutory time period (see *paragraphs 5.54-5.60*) for the application for DNS will be paused until the secondary consent has been presented to the Welsh Ministers in its entirety.

- 3.7 Once an application for a secondary consent has been submitted and validated by the Welsh Ministers, it will be considered at the same time as the principal DNS application. Applications for DNS will be considered by way of written representations, hearings, inquiries, or a mixture of two or more of those methods. The applicant or other parties may make a case for certain matters to be considered by way of a hearing or inquiry, but the determination of procedure will ultimately be decided by the Welsh Ministers. Matters relating to the connected consents will be considered through the same method, although the Welsh Ministers may decide to hold a separate hearing or inquiry into that consent. Our full proposals relating to the examination of an application for DNS are at *paragraphs 5.41-5.50*.
- 3.8 The basis on which a secondary consent is decided will not change through being aligned to the DNS process. It is our intention that when such a consent is considered by the Welsh Ministers, the same statutory consultees will be consulted and a decision will be based on the same considerations as if the consent had been made to the normal consenting authority. The decision on the secondary consent may differ, therefore, from that of the principal application for DNS. It is our intention for the decision on all secondary consents applied for to be provided on the same decision notice as the application for the primary DNS.
- 3.9 To enable those secondary consents to fit with the application process for DNS, some variations may need to apply to their existing processes. These will include:
- The secondary consent will be subject to the pre-application procedure of the primary DNS, giving statutory consultees an opportunity to comment on the proposed secondary consent application prior to its submission to the Welsh Ministers (see *section 3*);
  - Timescales for consultation with statutory consultees will be changed to align with the consultation periods for the primary DNS application. Consequently the secondary consent may be subject to wider public consultation and comment than usual (see *paragraphs 5.21-5.29*);
  - There will not be a separate fee for applications for secondary consents. The cost of administering secondary consents will be incorporated into the overall fee for the DNS application, which will be based on Inspector resource used rather than the size of the development (see *section 7*); and
  - The usual consenting authority will be consulted as part of the process and will be required to issue a substantive response.

## **Reason for approach**

- 3.10 There are clear benefits to incorporating a process for secondary consents into the DNS consenting regime. Principally, it allows a single body to undertake the examination into a number of applications which are connected to a scheme, offering significant time and cost savings for all parties. Furthermore, such a process would allow for decisions to be made in a consistent and transparent way.
- 3.11 This approach will provide greater clarity for all concerned by enabling all necessary applications, and the issues raised by such a project, to be considered together, thus improving the quality of decision-making. The approach also enables the public to participate by giving their views on a number of consents through making a single set of representations. This will be less repetitive for communities and preferable to having to make similar comments to a number of consenting authorities.

## **List of secondary consents**

- 3.12 We will set out in secondary legislation a list of consents that may be applied for as a secondary consent alongside the primary DNS application. The purpose of this is to provide clarity and consistency to applicants in respect of the secondary consents that may be sought alongside the principal application for DNS.
- 3.13 To that end we have undertaken a refining exercise, which looked at a number of potentially relevant consents, to ascertain whether each consent identified would be appropriate to be included as part of an application for DNS. The aim was to establish a core set of consents that would be directly relevant to an application for DNS. The criteria we established for an application to be included in the list of secondary consents was to:
- (a) Be a necessary part of a DNS application, rather than a detailed operational consent that could be obtained at a later stage;
  - (b) Be a consent likely to arise as part of a DNS proposal and not be so specific that it would be unlikely to be part of a DNS project; and
  - (c) Be a devolved matter normally consented by the Welsh Ministers or other Welsh bodies.
- 3.14 The refining exercise has informed *Annex B*, which sets out a list of secondary consents which we intend to prescribe in secondary legislation. It is our intention that this list may be further refined and additional consents inserted, as required, once the DNS process has bedded in. Any changes to the list would be subject to further consultation:

## **Consultation questions**

- Q2:** Do you agree with this proposed approach for determining secondary consents? If not, why not?
- Q3:** Do you agree that the Inspector may determine the procedure for secondary consents? If not, why not?
- Q4:** Do you agree with the proposed list of secondary consents in *Annex B*? If not, why not?

## **Enabling powers in the Planning (Wales) Bill**

- 3.15 Section 20 of the Planning (Wales) Bill (as introduced) inserts sections 62F, 62G and 62H into the 1990 Act.
- 3.16 Section 62F allows the Welsh Ministers to make a decision on a consent which they consider to be connected to an application for DNS and which they consider should be made by them instead of the normal consenting authority.
- 3.17 Section 62G gives power to the Welsh Ministers to give directions to the normal consenting authority to do things in relation to a secondary consent. The Welsh Ministers may make regulations about the manner in which a secondary consent is dealt with by the Welsh Ministers, including consultation arrangements. Regulations may provide for other enactments or requirements in respect of secondary consents either to apply with changes or not to apply, where decisions are to be made by the Welsh Ministers.
- 3.18 Section 62H defines a secondary consent and when it is connected to an application for DNS. The Welsh Ministers will have power to prescribe secondary consents in regulations.

## 4. Pre-application process

### Overview

- 4.1 Early engagement between developers and stakeholders is vital to ensure that an application for DNS proceeds in a timely manner. We propose a number of measures which ensure that sufficient engagement occurs between the developer, statutory consultees, the public, local planning authorities, community councils and the Welsh Ministers at the pre-application stage.
- 4.2 Our intention is that any significant planning issues can be raised prior to the submission of a formal application. An efficient pre-application process would provide developers with the opportunity to consider these issues and, if necessary, amend their proposals before they are finalised and submitted as a planning application for DNS (with associated secondary consents). The expectation is that a DNS application will be complete on submission with no need for further amendment unless unforeseen circumstances arise.
- 4.3 Our DNS pre-application process will largely follow that for major developments, illustrated in the ‘Frontloading the development management system’<sup>5</sup> consultation paper, with some proportionate variations to tailor the process to the specific requirements of applications for DNS.

### Our policy proposals

#### Pre-application services

- 4.4 The Welsh Ministers are committed to pre-application services as a means of ensuring that the system for determining applications for DNS operates efficiently. The provision of pre-application services can improve the quality of submissions which should facilitate quicker decisions, thus stimulating development. Current practice indicates that most developers seek pre-application advice and consider it to be beneficial.
- 4.5 We consulted on the principle of requiring pre-application services for DNS as part of the Positive Planning consultation paper. Initially, we proposed that pre-application advice and discussions would comprise the provision of procedural information to ensure that the developer gives consideration to relevant social, economic and environmental issues and identifies the relevant bodies or persons to be consulted in advance of an application being formally submitted. We have since received evidence that a more comprehensive service should be provided by the Welsh Ministers, with services extended to giving advice on the merits of a proposed scheme.

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<sup>5</sup> Welsh Government Consultation Document: “Frontloading the development management system” (6 October 2014).



- 4.6 We have taken these comments into consideration and propose that the pre-application services will also include ‘without prejudice’ advice on the merits of a proposed scheme. We consider that PINS will be best placed to provide that advice on behalf of the Welsh Ministers. The Inspectorate enjoys a level of autonomy which is sufficient for their views not to be construed as those of the Welsh Ministers. In the interests of impartiality and transparency, such advice would be given by a different person from the Inspector who will be appointed to consider and examine any subsequent application for DNS that is submitted to the Welsh Ministers. No formal opinion of the proposal will be given by officials of the Welsh Government or the Welsh Ministers unless it forms part of the formal decision issued by them.
- 4.7 We propose that pre-application services may be given at any stage prior to the submission of an application for DNS. The pre-application services provided by PINS will be publicised through a service statement. This will set out in detail the level of service, which will typically involve:
- Advice on the form and content (including technical reports) of the application for DNS;
  - Advice on information to include within any technical document submitted by the applicant;
  - Advice on the relevant policy;
  - Non-binding advice on the merits of a proposed scheme; and
  - Guidance on the amount and type of community consultation required.
- 4.8 LPAs will be expected to respond to any requests for pre-application services in accordance with a service agreement, as specified in the ‘frontloading the development management system’ consultation paper. In the context of DNS, we expect the services of LPAs to be different from those provided where the subsequent application is determined by them.
- 4.9 We envisage that LPAs should provide the following services in relation to DNS proposals, where requested:
- Relevant planning history;
  - Advice on whether any section 106 or Community Infrastructure Levy contributions are likely to be sought and an indication of the scope and amount of these contributions (see *paragraphs 5.8-5.16*);
  - An indication of whether a Statement of Common Ground (“SoCG”) would be invited (see *paragraphs 5.17-5.20*);
  - An indication of local issues, baseline conditions or designations which require consideration;
  - Advice on the local planning policy framework;

- Likely mitigation or conditions requested as a result of the proposals; and
  - Suggestions of local individuals, groups or societies who should be consulted as part of the applicant's requirement to consult with the community.
- 4.10 LPAs have an important role to play in the pre-application stage due to the range of knowledge and information they possess of the locality. We will encourage developers to contact LPAs at the earliest possible opportunity in the DNS process to discuss the above requirements.
- 4.11 Requests for pre-application services may be made prior to the notification of a DNS proposal. All requests to use the pre-application service must be made in writing submitted on an enquiry form which, as a minimum, will require:
- Contact details and name of the developer and/or agent;
  - A description of development;
  - Confirmation that the developer considers the application to be a DNS;
  - A site address and associated location plan on an OS base; and
  - Any plans or additional information which will aid PINS or the LPA in providing a helpful and focussed response.
- 4.12 PINS or the LPA may ask for additional information, where required, to enable them to provide a substantive response.
- 4.13 PINS and the LPA will respond to pre-application requests in written form and may entertain meetings with prospective applicants, where necessary. In the interests of transparency and open governance, they will maintain a record of all pre-application enquiries made to them. Whilst not being a requirement, it is our intention for PINS to publicise a summary of pre-application requests received and advice given. As indicated in the 'Frontloading the development management system' consultation paper, PINS will be required to respond to pre-application enquiries within a prescribed period and must offer the opportunity to discuss the proposals with the developer. We propose that the prescribed period be 28 days, though this period may be extended by PINS where required. Pre-application services from PINS will not be limited to one written response.
- 4.14 Local planning authorities will be able to recover the cost of providing a pre-application service in relation to applications for DNS. This is to be in accordance with a standard national fee for pre-application services. It is also the intention for PINS to charge an hourly fee for any advice given by them (see *section 7*)

## Notification

- 4.15 When preparing an application for DNS, the developer must first notify the Welsh Ministers via PINS of the intention to submit such an application. The developer will not be able to carry out any statutory pre-application consultation for a proposed DNS application before receiving notice from PINS that their notification has been accepted. Any consultation undertaken prior to this event will not be treated as such.
- 4.16 Early notification enables the Welsh Ministers to understand and recognise the impacts of a project at an early stage, and to ensure that the developer has considered the requirement for an Environmental Impact Assessment. The requirement to provide a notification in a prescribed form is intended to give PINS sufficient information to determine whether the proposal is DNS and for them to allocate inspector resource in respect of pre-application requirements and for the consideration of the application, when submitted.
- 4.17 The notification must include sufficient information to confirm to PINS whether the proposed development constitutes a DNS, while not creating a burden on the developer in putting together the notification. We envisage prescribing the following requirements:
- The name and address of the applicant (and/or their agent);
  - A statement that the applicant intends to make an application for DNS;
  - A statement to confirm whether the application is EIA development and supporting reasons;
  - A description of the proposed development, specifying its location;
  - The identification of which of the prescribed secondary consents the developer would like to be considered by the Welsh Ministers;
  - An indicative timescale for pre-application consultation and the submission of an application;
  - A plan which sufficiently identifies the land to which the application relates; and
  - A notification fee.
- 4.18 PINS will be required to provide a notice of acceptance of this notification within 10 working days, or any such longer time as notified in writing.
- 4.19 Once accepted by PINS, the developer will have 12 months to carry out their pre-application consultation requirements and submit an application for DNS. Any action carried out after this period shall not be treated as pre-application consultation. However, PINS may give a short extension to the date to which the notification of an application for DNS expires, upon request from the developer.

- 4.20 When notifying PINS of a DNS application, there will be an expectation that the developer will be sufficiently progressed with the making of an application to be able to undertake statutory pre-application consultation. Hence, it will be a prerequisite that developers assess the requirement for EIA, either through self-determination or seek a screening or scoping direction from PINS, prior to the issue of the notification.

#### Pre-application publicity and consultation

- 4.21 It is essential that communities and consultees are aware of proposed developments which affect them at the earliest possible stage. This allows those parties to have more effective involvement in influencing schemes. The community and consultees may bring to the attention of developers vital information and considerations which were previously unknown to them. A process of pre-application publicity and consultation provides an opportunity for those considerations to be taken into account when compiling a final scheme for submission.
- 4.22 The Planning (Wales) Bill introduces a new requirement for statutory pre-application publicity and consultation to be carried out by potential applicants for certain categories of development. These proposals are to apply to applications for DNS. The intention is to ensure that the **immediate community** is provided with an opportunity to comment on development proposals before they are formalised as planning applications. **The new duty will also require potential applicants to consult with other 'specified persons'. We propose that those specified persons are statutory consultees<sup>6</sup>.**
- 4.23 The proposals contained in the 'frontloading of the development management system' consultation paper outlined the level of detail required to initiate publicity and consultation. Our proposals build on the consultation paper in requiring developers to undertake more rigorous consultation requirements, proportionate to the impact of a DNS.
- 4.24 As a minimum, we will expect developers to supply and publicise a complete copy of the planning application which they intend submitting to the Welsh Ministers for a period of at least 28 days. The information must comply with that set out in the DNS application form which will be supplied by the Welsh Ministers and the validation requirements specified by them. The intention is that sufficient information is provided to enable informed representations and feedback to the developer.

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<sup>6</sup> As currently defined by the Town and Country Planning (Development Management Procedure) (Wales) Order 2012; Schedule 4.

- 4.25 To inform parties of the publication of the above pre-application information, we will require developers to publicise a development proposal in each of the following ways, in accordance with guidance contained in Circular 32/92<sup>7</sup> (where applicable):
- (a) The display of site notices within the vicinity of the site;
  - (b) Notification letters to neighbouring properties, all local ward members and any Town or Community Councils; and
  - (c) The publication of a press notice in a local newspaper.
- 4.26 We will prescribe that the above notices and letters contain the following information:
- (a) A statement explaining the purpose of the notification, clarifying that it provides the opportunity for comment prior to the submission of a planning application in accordance with statutory requirements;
  - (b) A description and address of the proposed development;
  - (c) The address of a building in the locality, including opening hours, where a hard copy of plans and any relevant supporting information will be made available for public viewing for the duration of the publicity. The website on which the proposal is published must also be provided. For statutory consultees, a copy of the relevant plans must be sent or a link to the website must be attached;
  - (d) The timescales for response for the community (28 days) or the timescales for receipt of the substantive responses from statutory consultees (28 days);
  - (e) A postal address and e-mail address for the submission of any comments;
  - (f) A statement explaining that any comments submitted to the developer may be placed on the public file; and
  - (g) A statement to clarify that any resulting planning application will be publicised by or on behalf of PINS, providing the public with an opportunity to comment directly to PINS.
- 4.27 Prospective applicants will also be required to identify locations where the plans and supporting information will be made available for viewing. As a minimum, we will require that applicants:
- (a) Deposit a copy of the proposed application with supporting materials in a publically accessible location within the locality of the application site; and
  - (b) The publication of the proposed application and supporting materials on a website.
- 4.28 We consider that the frontloading of consultation in this manner has benefits for all parties. For the applicant, responses to the proposals would be received at an earlier stage allowing a scheme to be refined

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<sup>7</sup> Welsh Office Circular 32/92: 'Publicity for planning applications'.

as much as possible to minimise and mitigate the impact on local communities and concerns of consultees. This will reduce delays later in the process.

- 4.29 Communities and statutory consultees will benefit from a more transparent process with greater opportunity to offer a formal view. These parties may also have more influence on a scheme as there would be no restrictions on subsequent amendments prior to the submission of a formal application.
- 4.30 Developers will be required to undertake the process of publicising a DNS proposal for pre-application consultation at least once as a minimum. We will not make provision which prevents an applicant from carrying out the minimum requirements for pre-application consultation more than once.
- 4.31 As an output from this process, developers will be required to produce a 'pre-application consultation report' which documents their compliance with statutory pre-application consultation requirements. This must be submitted as part of the planning application for DNS (see *paragraphs 5.3-5.4*).
- 4.32 The report is the means of formally reporting the process and outcome of pre-application consultation, enabling PINS and other parties to ascertain whether appropriate consultation has been undertaken prior to the submission of an application and to document the origins and progress of and reasons for any changes made to a proposal.
- 4.33 As a minimum requirement, we expect the consultation report to contain the following:
  - (a) Copies of the publicity measures undertaken, including site notices, press notices, a link to the relevant web site publicising the application, publicity letters, letters to local members, Town and Community Councils, statutory consultees;
  - (b) A list and details of those persons notified of the proposal;
  - (c) A summary of the all issues raised by respondents through the publicity process and an indication of whether the scheme has been amended to take account of these issues. In addressing these issues, the developer will not be required to address each individual comment made by respondents but would instead provide a summary of the issues raised; and
  - (d) Copies of responses from consultees. The report must indicate how the comments of statutory consultees, if any, have been taken into account. If the developer chooses not to amend the scheme in light of comments from consultees, the report must explain why.

### **Consultation questions**

- Q5:** Do you agree with the minimum requirements for the notification of a DNS? If not, why not?

- Q6:** Is 12 months from the date of acceptance of the notification to the submission of the application for DNS a sufficient period in which the notification of a DNS remains valid? If not, why not?
- Q7:** Do you agree with the publicity and consultation requirements that developers must undertake prior to the submission of an application for DNS? If not, why not?

### **Enabling powers in the Planning (Wales) Bill**

- 4.34 Section 18 of the Planning (Wales) Bill inserts sections 61Z1 and 61Z2 into the Town and Country Planning Act 1990.
- 4.35 Section 61Z1 gives the Welsh Ministers the power to make regulations about the provision of pre-application services by local planning authorities or the Welsh Ministers. The regulations may set out when pre-application services are required to be provided; the nature of the services to be provided; and requirements for publishing information and documents relating to the provision of the services.
- 4.36 Section 61Z2 confers power on the Welsh Ministers to make regulations that require LPAs and the Welsh Ministers to keep records of pre-application services, and to publish information on the type of pre-application services provided.
- 4.37 Section 19 of the Planning (Wales) Bill inserts section 62E into the Town and Country Planning Act 1990. It requires a person who proposes to make a DNS application to notify the Welsh Ministers. The Welsh Ministers may make provision, in a development order, as to the form and content of notification, information that is to accompany the notification, and the way and time in which the notification is to be given. This section also requires the Welsh Ministers, on receiving notification, to give notice to the person proposing the application that the notification has been accepted, and enables them to prescribe how this notice is given.
- 4.38 The Planning (Wales) Bill at section 16 inserts section 61Z into the Town and Country Planning Act 1990. Section 61Z requires pre-application consultation to be carried out by those intending to apply for permission for development of a type specified in a development order made by the Welsh Ministers. The section requires the proposed application to be publicised in a way that brings the proposal to the attention of neighbours (persons who own or occupy premises in the vicinity of the development site) and specify those who must be consulted by the applicant about the proposed application.
- 4.39 Section 61Z confers power on the Welsh Ministers to make further provisions in a development order about the consultation process, including the form and content of consultation documents; information and other materials that are to be provided to neighbours and specified

consultees; and timescales. The section also enables the Welsh Ministers to require specified consultees to respond to the consultation in a particular manner and within a particular time, and to report to the Welsh Ministers on their compliance with any such requirements.

- 4.40 This provision also provides that the Welsh Ministers must require in a development order that a consultation report accompanies planning applications where the applicant has been required to carry out pre-application consultation and the particulars that must be contained in the report.



## 5. The application process

### Overview

- 5.1 The response received to the Positive Planning consultation paper clearly indicated that the Planning Inspectorate Wales is the most appropriate body to undertake the processing of applications for DNS. It will undertake all processing and outward-facing functions relating to an application for DNS. The decision-making function will be reserved for the Welsh Ministers.
- 5.2 Responses to that consultation paper also agreed that the application should follow a similar process to that proposed for appeals and call-ins. It is our intention to develop a set of dedicated procedure regulations and orders addressing applications for DNS. Our proposals will reflect existing processes used by LPAs and the Inspectorate as much as possible. A flow diagram of the proposed process is set out at *Annex C*.

### Our policy proposals

#### Form and content of an application

- 5.3 An application form for DNS will be provided by the Welsh Ministers. The applicant will be required to submit the form, along with a range of documents prescribed on the form. We consider that the requirements below are appropriate to supplement an application for DNS:
- The notice of acceptance issued by the Welsh Ministers following notification under section 62E of the 1990 Act;
  - A plan that identifies the land to which the application relates;
  - Any other plans, drawings and information necessary to describe the development which is the subject of the application;
  - A report relating to the statutory consultation which has been carried out (see *paragraphs 4.21-4.33*);
  - A Design and access statement;
  - A section 106 statement detailing the progress made in drafting and agreeing planning obligations (see *paragraphs 5.8-5.16*);
  - An environmental statement or a screening direction indicating that EIA is not required;
  - A full submission of the details of any secondary consents that the developer has submitted to the Welsh Ministers;
  - The identification of any other secondary consents the applicant is intending to apply for to the normal consenting authority;
  - Confirmation that a hard copy of the above information has been issued to the LPA(s) within which the development is located; and
  - The appropriate fee (see *section 7*).

- 5.4 Reflecting existing provisions for local validation lists for planning permission, applicants for DNS will also be required to supply documents or information identified on a list published by the Welsh Ministers. We expect that the Ministerial validation list will include specific differentiated information required for each category of project under the DNS regime.

#### Validation

- 5.5 We intend to introduce a requirement for PINS to determine the validity of an application and formally issue a notice of that determination to the applicant and LPA. For applications determined to be valid, the date of the notice will act as the starting point for the statutory period for determination of the application (see paragraphs 5.54-5.60). The advantage of this approach is that it will provide certainty for all parties as to the start date for the application for DNS.
- 5.6 Upon submission of an application, PINS will be required to issue an acknowledgement and specify that the application will be validated within the prescribed period. This period will be 28 days for non-EIA development and 42 days for EIA development. The prescribed period may be extended by PINS where they have issued written notice to do so. PINS will consider the completeness of the information that has been submitted by the developer against the minimum information requirements and the adequacy of the content of certain documents supplied such as the Environmental Statement and Statement of Statutory Consultation.
- 5.7 It will be a requirement for the Welsh Ministers to issue the validation notice when they are content that the validation requirements have been met. Where an application is determined to be invalid, PINS will give reasons for their decision. These requirements do not prevent PINS from asking for further information during the application process.

#### Planning obligations

- 5.8 It is anticipated that the majority of decisions on applications for DNS will require a legal agreement under section 106 of the 1990 Act to ensure that the development is acceptable in planning terms. A section 106 agreement may be required to implement mitigation measures as well as to address any required developer contributions. It may be in the form of an agreement between the LPA and the applicant or a unilateral undertaking issued by the applicants. These are both enforceable by the LPA, although the latter may not necessarily bind them to undertake works.
- 5.9 We have received evidence which suggests that legal undertakings relating to section 106 are not always completed in a timely manner. This issue can add considerable delay and cost to projects and cause decisions on applications to be delayed. Reasons for such delays include unrealistic expectations by one or both parties causing no

agreement to be struck or where agreements have been of a poor and unenforceable standard.

- 5.10 The timing of the Section 106 negotiations can often cause delays to the issue of a decision on an application. An agreement is usually completed at a late stage in the application process, often following a resolution to grant an application. We are aware that in some instances, negotiations do not commence until the application has progressed a significant way through the process. This can introduce uncertainty in the process for all parties involved.
- 5.11 To remedy this, we will seek to encourage early negotiations between the applicant and LPA through the requirement to submit a 'section 106 statement' alongside an application for DNS and this will be a validation requirement. The statement will document the measures that have been undertaken by the applicant in addressing planning obligations up to the point of submission of the application for DNS. It must include a declaration that the LPA has been contacted regarding the need for a section 106 agreement and the response of the LPA, if one is given. If a section 106 is not required by the LPA or the LPA is content for the developer to proceed by way of a unilateral undertaking, the evidence supporting this should form part of the section 106 statement. If a section 106 agreement is considered to be necessary, an indication of the requirements of the LPA should be provided, along with a declaration of what the applicant is intending to provide in response to this statement. There will be no duty to provide commercially confidential financial details.
- 5.12 The requirement to submit the section 106 statement is intended to encourage all parties to think about and discuss section 106 requirements at an early stage which will reduce the risk of delay later in the application process. It is our aim that substantial matters relating to section 106 will be resolved prior to the examination of a DNS. The statement aims to ensure that the issues which are relevant to the application are explored prior to the submission of an application through discussion.
- 5.13 For a section 106 statement to be submitted as part of a scheme, we will require associated negotiations to fall within the ambit of 'pre-application services' which the LPA is under a duty to provide (see *paragraphs 4.4-4.14*). Such a measure will place a duty on the LPA to liaise with the developer on this matter when requested. Applicants will be encouraged to use this mechanism to commence negotiations with the LPA where it has not been possible prior to the formal pre-application stage. We consider the section 106 statement could also be used to document discussions relating to planning conditions and Statements of Common Ground ("SoCG") (See *paragraphs 5.17-5.20*).

- 5.14 In the interests of flexibility, we will expect the submission of a section 106 statement as a minimum, although applicants may also submit a fully agreed section 106, heads of terms or a unilateral undertaking as part of the DNS application, should they so wish. We will seek to supplement the above requirements with guidance addressing the roles and responsibilities of parties to ensure timely section 106 agreements.
- 5.15 Through practical experience of the called-in planning applications process, there are occasions where the Welsh Ministers have become involved in the process of facilitating the negotiation of a section 106 agreement. This has necessitated the Welsh Ministers seeking their own legal advice on the soundness and enforceability of the agreement. In some cases this has proven to be costly and time-consuming with no provision for the Welsh Ministers to recover those costs.
- 5.16 We are proposing that the Welsh Ministers or PINS may recover any costs incurred in facilitating a section 106 agreement or unilateral undertaking.

#### Statements of common ground

- 5.17 Written statements prepared jointly by the applicant and any interested party that contain agreed factual information about the application (SoCG) can aid the efficiency of an application process. The benefit of such statements is that they set out matters that are agreed between parties and need not be revisited during the examination of an application. This can be beneficial in ensuring that an examination is focussed on the matters of dispute, enabling decisions to be made in a timely manner.
- 5.18 Conversely, we acknowledge that the production of a SoCG can place pressure on LPAs, statutory consultees and the applicant. We have received evidence from users of other planning regimes which highlights the difficulty in achieving agreement between parties on such matters. The evidence suggests that, on occasion, the requirement to submit a SoCG places burden on the process rather than ensuring speedy resolution.
- 5.19 Due to the associated difficulties in achieving agreements and the potential delay that a requirement for a SoCG may cause, we will not be seeking to place a statutory requirement or deadline on such statements for all DNS applications. For those instances where SoCG may be appropriate, we will encourage developers and LPAs to proactively seek resolution of disputed issues. We will also give developers the option of documenting the status of discussions relating to common ground within their section 106 statement.

- 5.20 It is our intention to produce guidance which addresses SoCG. This guidance will specify that where a SoCG is initiated, it should be submitted within 5 weeks of the notice of validation of a DNS application. This is to inform the procedure for examination of the DNS application (see *paragraphs 5.41-5.50*). Later statements may be submitted where helpful to the examining Inspector. We consider this approach strikes the right balance due to the individual nature of each DNS application.

#### Consultation and publicity

- 5.21 Whilst it is the intention that all issues relating to an application for DNS are resolved prior to formal submission, its content may have changed from the proposed scheme of development considered as part of the statutory pre-application consultation and publicity stage. Statutory consultees, Town or Community Councils and third parties will have provided comments to influence the application at the pre-application stage. However, it is necessary and fair for those parties to have an opportunity to comment on a formal application for DNS in the same way they would for a planning application to the LPA.
- 5.22 It is the intention that the post-submission consultation and publicity arrangements will give those with an interest in the application an opportunity to provide a final view on the formally registered application, which PINS and the Welsh Ministers will consider. This will also provide those parties with an opportunity to comment on the content and conclusions of the applicant's pre-application consultation report (see *paragraphs 4.21-4.33*).
- 5.23 Formal consultation and publicity on an application for DNS will be administered by the Inspectorate. This is to ensure transparency of process, including ensuring that all responses and other documentation relating to the application held by PINS is made publicly available. However, we acknowledge that the PINS do not possess the local knowledge and information to be able to carry out such a consultation. The LPA(s) within which the proposed DNS is located remain best placed to guide how publicity is undertaken. Guidance and advice will be required from the LPA to ensure that the correct stakeholders are reached. This is likely to be obtained by PINS prior to the submission of an application. PINS may direct that LPAs provide them with the required information in relation to consultation where it is not supplied in the first instance. We propose a partnership approach in targeting publicity in the correct way and we have set out in table A where we consider responsibility for publicity of the application should lie:

**Table A: Proposed publicity arrangements for DNS applications.**

Responsible authority	Publicity or consultation requirement
The Planning Inspectorate	Letters to statutory consultees.
	Maintenance of application website.
	Informing LPA of the requirement to submit a 'Local Impact Report' (See section X)
The Planning Inspectorate, with input from LPA.	Neighbour notification letters.
	Letters to interested parties and organisations.
	Notification to Town and Community Councils.
	The placement of notices in the local press.
The LPA	The erection of site notices (copies supplied by the Inspectorate).

- 5.24 When consulting with the relevant stakeholders all comments must be submitted to PINS within 5 weeks of the notice confirming that the application for DNS is valid. This is longer than the 21 days required for major planning applications to reflect the fact that DNS projects are likely to be of greater complexity. We consider that this timescale strikes the right balance as all interested parties will be in full knowledge of an application either as a result of pre-application consultation or at the point of submission of the application for DNS. This timescale is also consistent with the requirement to submit a Local Impact Report (“LIR”) by LPAs (see paragraphs 6.10-6.23).
- 5.25 There are occasions where, by no fault of the representor, responses to applications may be received outside the 5 week window for representations. PINS will be able to exercise discretion in considering whether to accept such representations.
- 5.26 In inviting representations from third parties and requiring responses from statutory consultees, it will be expected that respondents submit all the comments they wish to make in relation to the application. This should also include any comments in relation to the proposed procedure for determining the application for DNS. Effectively, the comments received are to be the respondent’s full statement of case either in support of or against the application. It is our intention that following the receipt of all comments and representations at this stage, the Inspector will have sufficient information to be able to determine the application for DNS.
- 5.27 As specified in the ‘Frontloading the Development Management System’ consultation paper, statutory consultees will be expected to provide a ‘substantive response’ to consultation at the pre-application stage and as part of any consultation following the submission of an

application. It will be open to developers and statutory consultees to enter into a Planning Performance Agreement as is the case with applications that are made to an LPA, should they consider it appropriate.

5.28 The IAG Report<sup>8</sup> highlights the significant influence that statutory consultees have in the development management system, and the need to ensure that consultees adopt a positive role in helping to find solutions to enable developments to proceed. Statutory consultees will, therefore, be required to provide a 'substantive response' within the specified 5 week timeframe for planning applications for DNS. We propose to adopt a similar definition of 'substantive response' for the purposes of applications for DNS to that used in the IAG report. To clarify, a 'substantive response' will be one which:

- (a) States that the consultee has no comment to make;
- (b) States that the consultee has no objection to the proposed development and refers the consultor to current standing advice by the consultee on the subject of the consultation;
- (c) Advises the consultor of any concerns identified in relation to the proposed development and how these concerns can be addressed by the applicant; or
- (d) Advises that the consultee objects to the proposed development and sets out the reasons for the objection.

5.29 Statutory consultees will be required to document their compliance with requirements placed upon them in a 'performance report', as per the proposals contained in the 'Frontloading of the Development Management System' consultation paper.

#### Amendments to DNS schemes

5.30 The 'Positive Planning' consultation paper set out our proposals in relation to post-submission amendments to schemes for DNS. That paper sets out that there will be a single opportunity for the applicant to submit amendments to a scheme for DNS once a formal application has been registered. Amendments are only those which are accepted by the Inspectorate as minor. The rationale behind this is that sufficient opportunity has been provided at the pre-application stage for major issues to be identified, raised and addressed. We received a mixed response to this proposal.

5.31 We have given consideration to the comments received and propose some adjustments.

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<sup>8</sup> Report to the Welsh Government by the Independent Advisory Group: 'Towards a Welsh Planning Act: Ensuring the Planning System Delivers' (June, 2012)



- 5.32 Overall, we will seek to discourage amendments to a scheme following the submission of an application for DNS. We consider that the pre-application stage is the most appropriate stage at which to make any major alterations to a scheme. However, it is accepted that, following post-submission consultation on an application for DNS, there may be occasions where new information arises requiring amendment to the scheme. Such an occasion may arise where amendments have been made to a scheme as a result of pre-application consultation, but those amendments bring new impacts. Accordingly, whilst retaining the principle of there being only one opportunity for the applicant to proactively make an amendment to a scheme we will allow PINS take a flexible approach to enable developers to react to any adverse comments while also allowing a scheme to progress in a timely manner.
- 5.33 Following the completion of consultation and publicity of an application for DNS, we propose a window of 10 working days which starts from the closing date of consultation within which a developer may express an intention to make an amendment to a scheme for DNS. The notice of intent to make amendments will include the details of the proposed change and a requested timescale within which to make the amendment. PINS will come to a view whether to accept the proposed amendment. If PINS agree to an amendment, it will be subject to a timescale issued by them. Any statutory timescale relating to the determination of an application for DNS will pause until that amendment has been submitted (see *paragraphs 5.54-5.60*). PINS may still reject an amendment if it is outside the scope of the agreed notice of intent.
- 5.34 We propose a short timescale within which an applicant may express an intention to make an amendment as they will have sufficient opportunity to view any representations submitted through an online portal maintained by PINS. Finalised plans are still required prior to the examination of the scheme.
- 5.35 Originally, it was our intention that only minor or non-material amendments be accepted at this point as the applicant will have resolved major issues relating to the scheme during the pre-application process. However, we accept that occasions may arise where amendments which are more than minor or non-material in nature would resolve adverse comments made by statutory consultees and third parties and result in a more acceptable overall scheme. Those amendments may also reduce environmental impacts and improve public confidence in a scheme.
- 5.36 Ultimately, we consider that the acceptance of amendments should be the discretion of the Inspector examining the application for DNS. Depending on the full extent of the amendments, the Inspectorate may also decide whether additional consultation is required and the extent of that consultation.



- 5.37 We consider the latter provision to be appropriate as some amendments may have little or no impact on all or some stakeholders. No further amendments to the scheme will be permitted following this stage, even following additional consultation, as we are seeking to avoid creating a circular process for making amendments. We propose notifying interested parties of any amendment accepted by the Inspectorate to a scheme for DNS.
- 5.38 Decisions on the acceptance of an amendment are to be supported by guidance produced by the Welsh Ministers. The guidance will be made publically available in the interests of transparency. As a general rule, any amendment which produces greater impacts than those contained within the applicant's environmental statement is unlikely to be accepted, although the developer may work within the envelope of assessed impacts.
- 5.39 Circumstances may also arise where drawing errors or inconsistencies may come to the attention of the Inspector or where minor changes are required as a result of further information from consultees. We consider it appropriate for Inspectors to be able to allow an applicant to make certain minor amendments prior to and during the examination of an application for DNS.
- 5.40 It is our view that these proposals strike the correct balance. We consider that developers would not be restricted by these proposals as they are not required to make amendments to a scheme for DNS, once submitted. However, making reactive amendments to representations received from the public and statutory consultees would aid in reducing the impact of a proposed scheme, and thus make it more acceptable to third parties and statutory consultees.

#### Examination

- 5.41 We received encouraging responses to our proposals in the Positive Planning consultation paper for the examination of an application for DNS. Responses indicated an overall agreement that examination of a DNS should follow a similar procedure to that proposed for call-ins and appeals.
- 5.42 The Planning (Wales) Bill places responsibility on the Welsh Ministers (and PINS on their behalf) to determine the most appropriate method for the examination of an application for DNS. Where it is possible, examination will proceed by way of written representations although specific issues, because of their complexity, may require examination through a hearing or more formal inquiry procedure. A new set of procedures, merging the methods outlined above, would enable flexibility of being able to transfer between those different procedures for examination, allowing the most appropriate procedure to be used for each issue according to its complexity.

- 5.43 Following the completion of consultation on the application, PINS will make a decision on the basis of the information before them whether further exploration by way of written representations, a hearing or inquiry is required. As explained in *paragraph 5.26*, it is expected that respondents submit their full statements of case and grounds for making representations, as well as any comments that they may have on the procedure for determining an application for DNS. This should give the Inspector the necessary information to make a determination as to the areas which require further exploration by written representations, a hearing or inquiry. Response forms will indicate whether the person would like to be heard at a hearing or inquiry, if requested.
- 5.44 The Inspector will be required to assess the evidence submitted and, if the written information provided is not sufficient to determine the scheme, identify which issues will need to be examined further by way of written representations, hearing or local inquiry. This determination of procedure will occur in the 10 working days following the closure of the consultation and publicity periods and will be undertaken in accordance with published criteria<sup>9</sup>. The Inspector may decide to alter the procedure at any point thereafter, for example, where further amendments are made to a scheme. PINS are required to notify the LPA and applicant and other parties they consider appropriate of the determination of procedure and any consequent change of procedure.
- 5.45 The Inspector may require the submission of further evidence on certain issues by any of the parties at the same time as the determination of procedure, and it should be submitted within a 4 week period.
- 5.46 The further submissions will be subject to a word limit. We consider this appropriate as the information requested will be specific and focussed on one issue. Furthermore, representors will have already submitted their full statement of case as part of the 5 week representation period. The word limit would apply to each issue for which the Inspector invites evidence. We consider that a word limit of 3,000 words per issue strikes the right balance. Any text beyond the word limit will be discounted. The Inspectorate may instead of, or supplemental to, those written statements ask specific written questions to the parties, where considered necessary and appropriate.
- 5.47 It is proposed that parties will participate in hearings or inquiries by invitation of the Inspector only. This will enable the Inspector to focus on the elements of the issues he or she needs to explore further and minimise discussion of those issues where sufficient written information has already been provided on which to form conclusions. PINS will monitor which issues are raised and by whom throughout the DNS application process. The Inspector will have discretion to permit other

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<sup>9</sup> Planning Inspectorate Wales: 'Criteria for the determination of procedure for appeals and call-ins'  
[http://www.planningportal.gov.uk/uploads/pins/criteria\\_determining\\_procedure\\_engwel.pdf](http://www.planningportal.gov.uk/uploads/pins/criteria_determining_procedure_engwel.pdf)

parties at any time during the examination period to participate in the hearing and/or inquiry who had not previously been specifically invited to attend.

- 5.48 We do not wish to remove the ability for anybody to attend or observe hearings or inquiries, and these will remain open to members of the public. However, only those persons specifically invited to participate in a hearing and/or inquiry by the Inspector will be able to do so.
- 5.49 Where it is determined that an application for DNS requires a hearing or inquiry on a specific issue, the Inspectorate will be responsible for setting the date for the hearing and/or inquiry, booking a venue and publicising the details of the hearing and/or inquiry. We anticipate that hearings should be fixed within 8 weeks after the determination of procedure (before week 15) and for inquiries to be fixed within 11 weeks (before week 18), with an expectation that the earliest date possible will be chosen. We consider this to be sufficient notice for all parties to prepare appropriately. However, PINS will have power to vary this date under exceptional circumstances once it has been fixed. Factors such as unavailability of preferred counsel or expert witnesses will not be considered as exceptional circumstances.
- 5.50 Publicity for any hearing and/or inquiry will be undertaken in the same way as publicity for the post-submission consultation.

### Decisions

- 5.51 Once the examination of an application has been completed, PINS will compile a report for the consideration of the Welsh Ministers, who will determine the application. This will operate in a similar way to recovered appeals.
- 5.52 When making a decision on an application for DNS, the matters to be taken into account are:
- The application and associated information;
  - The local impact report;
  - Any voluntary local impact reports submitted in accordance with provisions of the Act;
  - National planning policy, such as the NDF;
  - The statutory development plans;
  - Representations received during the 5 week representation period;
  - Responses from statutory consultees during the same 5 week period; and
  - Written and oral evidence requested by the Inspector.
- 5.53 For ease of reference, the decision letter will include a determination on the DNS application and any other secondary consent applications which have been made directly to the Welsh Ministers or called in by them. Whilst these decisions are contained on the same letter,

individual decisions on secondary consents may differ from the primary DNS application and may include separate requirements or conditions.

- 5.54 The Planning (Wales) Bill introduces a provision requiring decisions on applications for DNS and associated secondary consents to be made within 36 weeks. A statutory deadline provides greater confidence and certainty for applicants and will place the Welsh Ministers on the same footing as LPAs.
- 5.55 The timeframe for a decision will start on the day on which the application for DNS and its associated secondary consents is considered valid by the Inspectorate following the issue of a notice of validation (see *paragraphs 5.5-5.7*). The notice will leave no room for doubt as to the start date of the application. Similar provisions are used for appeals and call-ins.
- 5.56 The Welsh Ministers or PINS will have the ability to pause the timeframe within which an application for DNS must be determined. There may be unforeseen occasions, outside the influence of the Welsh Ministers or the Inspectorate, where the DNS application process may require a suspension. It is our intention to have the ability to pause the timetable for determination of a DNS under certain circumstances.
- 5.57 Those circumstances may be, but are not exclusive to:
- Where there is a significant change or review of national or local policy, such as the local development plan, strategic development plan or NDF;
  - Where an applicant requests to make an amendment to the scheme following the submission of an application for DNS; or
  - Where essential parties fail to attend a hearing or inquiry without notice, or where there is significant delay in the receipt of important representations.
- 5.58 Where such a pause in proceedings is required, the Welsh Ministers or PINS may issue a suspension notice. This is to contain an end-date on which the suspension is lifted, and that end-date may be extended or quashed by a further notice.
- 5.59 To ensure that the suspension notice reaches the relevant parties, we will require this notice to be issued to the applicant, the LPA, statutory consultees and those who have made representations on the scheme.
- 5.60 To demonstrate our compliance with the requirement to make a decision within the 36 week period, an annual monitoring report will be produced by the Welsh Ministers. Such a report will afford the National Assembly for Wales and interested parties the opportunity to scrutinise the performance of the Welsh Ministers in a more structured way. The report will detail any use of a suspension notice and reasons for its use.

## Electronic working

- 5.61 We have received evidence which suggests that the process for NSIPs can produce a significant amount of paperwork by the examining authority, developers, LPAs and third parties alike. We are also aware that printing can be very costly and time-consuming for a developer, particularly where there are requirements to furnish various parties with paper copies of an application. PINS have continued to explore ways to make the NSIP process as paperless as possible.
- 5.62 We will make a commitment to encourage electronic communications, where possible, with particular emphasis placed on this method of communication. We consider that using electronic methods will decrease the time taken to exchange information and enable further transparency in the DNS process.
- 5.63 In addition to placing a requirement on applicants to maintain a website during the pre-application period (see *paragraphs 4.26-4.27*), PINS will also be expected to maintain a website during the DNS application processing period. The website will include all plans and supporting information relating to the application for DNS as well as all information received during the consultation and publicity of an application for DNS. Applicants and representors will be encouraged to use electronic communications for these purposes. Notices or correspondence issued by the Planning Inspectorate will also be published online.
- 5.64 We have received evidence which suggests that the public rarely takes the opportunity to view plans relating to a NSIP application at Council offices or deposit locations, with the majority choosing to view applications online. However, there are groups in society who are unable to access the internet, and we will continue to provide for them by placing a requirement on the applicant to deposit a physical copy of an application for DNS with the LPA(s) and the Planning Inspectorate. Any placement of copies in other public deposit locations will be entirely at the discretion of the applicant, as they consider appropriate.

## **Consultation questions**

- Q8:** Do you agree with our proposals for the advertisement of an application for DNS? If not, why not?
- Q9:** Do you agree with our proposals regarding statements of common ground? If not, why not?
- Q10:** Do you consider that 5 weeks is an appropriate period within which statutory consultees and third parties must submit their full representations in response to an application for DNS? If not, please specify an alternative timeframe?
- Q11:** Do you agree with our proposals for the amendment of schemes for DNS? If not, why not?

- Q12:** Do you agree that 10 working days following the closure of the representation period is an appropriate time in which the Planning Inspectorate must determine the appropriate procedure to examine an application for DNS? If not, please specify an alternative timeframe.
- Q13:** Do you agree that further representations required as part of the examination of an application for DNS should be subject to a word limit of 3,000 words per topic? If not, why not?
- Q14:** Do you agree that the applicant is only required to submit paper copies of applications for DNS to the Planning Inspectorate and LPA(s) within which the DNS is located? If not, why not?

### **Enabling powers in the Planning (Wales) Bill**

- 5.65 Section 24 of the Planning (Wales) Bill inserts sections 62P and 62Q into the 1990 Act.
- 5.66 Section 62Q imposes a duty on the Welsh Ministers to notify a community council of applications made directly to them where they relate to land in the community council's area (and where the community council have previously asked their local planning authority to be notified of applications submitted to that authority). It also requires a local planning authority, if requested to do so by the Welsh Ministers, to let the Welsh Minister know which community councils have asked to be notified.
- 5.67 Section 25 of the Planning (Wales) Bill inserts Section 62R into the 1990 Act. It enables the Welsh Ministers to make provision in a development order about the way in which applications made directly to them are to be dealt with. This includes making provisions about consultation by the Welsh Ministers and variation of applications.
- 5.68 Section 26 of the Planning (Wales) Bill inserts section 62S into the 1990 Act. Section 62S states that Schedule 4D of the 1990 Act (as inserted by Schedule 3 of the Planning (Wales) Bill) has effect with respect to the exercise of functions by an appointed person in connection with DNS. The schedule provides that, unless the Welsh Ministers direct otherwise in a particular case, a 'specified function' in respect of an application a person proposes to make for DNS, an actual DNS application, or a secondary consent is to be exercised by a person appointed by the Welsh Ministers. Regulations made under Schedule 4D will prescribe those specified functions to be exercised by an appointed person.
- 5.69 Section 27 of the Planning (Wales) Bill inserts Schedule 4, which makes a series of consequential amendments to the 1990 Act. In relation to DNS, those amendments:

- (a) Enable the Welsh Ministers by means of development order to apply, with or without modifications, any provisions or requirements imposed by legislation, to applications that can be made directly to the Welsh Ministers;
- (b) Extinguish any right of appeal against a secondary consent, unless that appeal may be made to a person other than the Welsh Ministers;
- (c) Allow fees to be charged for applications made to the Welsh Ministers (including for any pre-application services provided);
- (d) require the Welsh Ministers to determine the procedure by which an application for DNS is to be determined. That determination of procedure may be varied. The procedure will be by way of a local inquiry, a hearing or representations in writing, or a combination of those procedures. The Welsh Ministers must publish the criteria that are to be applied in making a determination as to the procedure; and
- (e) Provide rights of entry for the Welsh Ministers to enter land which is subject to a DNS application or a connected application.

## 6. The role of local planning authorities

### Overview

- 6.1 Whilst the function of making decisions on nationally significant projects will be transferred to the Welsh Ministers, the contribution of LPAs cannot be underestimated and they will continue to play an important role throughout the process. The Welsh Ministers will be under a duty to consider any local impacts arising from a DNS identified by LPAs
- 6.2 LPAs will also be required to advertise applications for DNS, respond to certain pre-application queries, undertake the majority of planning functions following the determination of an application for DNS, and be party to agreements for planning obligations where necessary.
- 6.3 We do not expect local planning authorities to fulfil these duties without fair contribution in terms of resources and support.

### Our policy proposals

#### Pre-application services

- 6.4 Our pre-application services proposals (see *section 4*) are similar to proposals contained in the ‘frontloading of the development management system’ consultation paper. LPAs will be expected to respond to any requests for pre-application services in the same way they would for applications made to them. We have specified types of services that LPAs would be expected to provide, and LPAs may charge for such advice in accordance with a national fee structure.
- 6.5 There will be an expectation on LPAs to cooperate in the pre-application process to ensure that applications for DNS are as complete and as informed as possible, enabling those applications to proceed in a timely manner. We will seek to make clear in guidance that cooperation in this manner should not be interpreted as support for a scheme.

#### Register of applications

- 6.6 LPAs are required to keep a register of all planning applications within their respective areas, along with associated documentation<sup>10</sup>. There will be a similar duty for the purpose of applications for DNS as introducing a second, separate register for applications for DNS would cause confusion to users of the planning system.

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<sup>10</sup> The Town and Country Planning (Development Management Procedure) (Wales) Order 2012; Article 29.



- 6.7 While providing a useful administrative reference to the LPA, we consider that this arrangement will enable the public at large to access information relating to an application for DNS in the same way as they would for other planning proposals, such as through weekly planning lists and through contact with the LPA, should they not be aware of the process. PINS will maintain a website containing the application details should a physical visit to the offices of a LPA not be possible or practical.
- 6.8 PINS will be required to notify the relevant LPA(s) of receipt of an application for DNS and inform them that the application is valid and require the application to be put on the planning register. In practice, this registration requirement will be included in the notice of a valid application (see *paragraphs 5.5-5.7*). Any outcome of the application must also be placed on the planning register.
- 6.9 Applicants will be required to provide the relevant LPA(s) with a hard copy of the application documents as submitted to PINS. They will also be required to provide hard copies of any subsequent documents that are required to make the application a valid one. This is to ensure consistency between the information provided to the Welsh Ministers and LPAs.

#### Local Impact Reports

- 6.10 Once PINS have formally validated an application for DNS, the LPA(s) within which the development is situated will be required to prepare and submit a Local Impact Report ("LIR"). The LPA's input into the DNS process is important as certain local information and impacts may be overlooked without their input, hence this will be a requirement.
- 6.11 The LIR will be the LPA's opportunity to give details of the likely impact of the proposed development on the authority's area. The report will be used by LPAs as the means by which their existing body of local knowledge and evidence on local issues can be fully and robustly reported to PINS. The LIR is intended to inform the Inspector and the Welsh Ministers of any relevant potential impacts on the locality and will be a material consideration in the decision-making process.
- 6.12 Neighbouring LPAs and Town and Community Councils are not required to submit a LIR, although they may wish to submit a voluntary LIR should the proposal impact upon their area. A voluntary LIR will not be treated differently by the Inspectorate from a required LIR. As part of our wider agenda to encourage joint working between LPAs, we will encourage the submission of joint LIRs where a DNS affects a wider area, regardless of whether it is a requirement or is voluntary. Town and Community Councils may also submit joint reports.

- 6.13 The LIR is intended to be a technical and factual document which contains information relating to the development and its impact on the area it is situated in. It must provide the minimum prescribed information. We do not intend for the LIR to be used in a way which expresses political views, recommendations or a balancing exercise on the acceptability of a DNS. Whilst this is the case, we also do not intend to restrict the ability of a LPA to make representations on their views of a proposal. It is open to Council or individual Councillors to express their views separately as representations in response to third party consultation, and will be treated as such.
- 6.14 For such a report to qualify as a LIR, the Welsh Ministers will require the following information, as a minimum:
- The planning history of the site in question;
  - Any details of local site designations;
  - An explanation of the local planning policy framework;
  - A topic based technical assessment of the impacts that the development will likely have on the local area;
  - Any draft conditions or obligations which may mitigate the impacts arising from the proposal, should the Welsh Ministers choose to grant permission for the application for DNS;
  - Evidence that the application has been advertised in accordance with requirements (see *paragraphs 5.21-5.29*);
- 6.15 There will be different requirements for voluntary LIRs.
- 6.16 Where there is a requirement for a topic based technical assessment, the topics which are to be covered are at the discretion of the LPA, as they are best placed to decide the types of local impact that a DNS may bring. The types of impact that LPAs may wish to explore include cultural heritage, ecology, landscape, local highways, public health or Welsh language. We will seek to produce guidance on the production of LIRs for LPAs.
- 6.17 In compiling a LIR, we do not intend to place a requirement on LPAs to consult with the public, as they will be given the opportunity to make representations as part of the application process.
- 6.18 The Planning (Wales) Bill introduces the requirement for the Welsh Ministers to issue a notice in writing to each relevant LPA requiring them to submit a LIR. The notice must specify the deadline for receipt of the LIR, and a relevant local planning authority must comply with the notice.
- 6.19 Where the Inspectorate gives notice that an application for DNS is considered valid, they will also issue notice to the LPA(s) within whose area the proposed DNS is situated. The notice will specify a deadline of 5 weeks within which a LIR must be submitted.

- 6.20 In light of the importance attributed to the LIR, and the potential consequences related to the late or incomplete provision of a required LIR, we believe that it is in the best interests of a LPA to produce a quality LIR in a timely manner. It is intended to put in place measures to ensure that these are submitted by LPAs within the prescribed deadline. We do not expect local planning authorities to fulfil this duty without fair contribution in terms of resources and support.
- 6.21 It is therefore intended that the LPA receives a portion of the application fee in meeting the statutory requirement to provide a LIR (this will not apply in the case of voluntary LIRs). We expect this fee to cover other requirements associated with an application for DNS such as the costs associated with their role in publicising the application and administering the planning register. The payment of a fee will turn on the submission of an appropriate LIR in a timely manner. In circumstances where a LPA does not comply with the notice to provide a LIR within the deadline given, or the LIR does not meet all the minimum requirements, it is proposed that LPAs do not receive their portion of the application fee (see *section 7*). The authority will still be expected to meet the requirement to provide a LIR as soon as possible, although the Inspectorate may still proceed with examining an application for DNS without one.
- 6.22 In setting the level of this fee, we are continuing to seek evidence from LPAs which have produced a similar report in response to DCOs determined by the UK Government, and to quantify their involvement in that process. We would welcome any additional evidence from LPAs to aid us in setting a fair fee which is reflective of the work required to participate in the application process for DNS.
- 6.23 As mentioned above, a LIR may be submitted voluntarily by neighbouring LPAs or any Town and Community Council which considers the proposed DNS to impact upon their area. Such LIRs will be subject to similar requirements and timescales for submission as a required LIR, although there will be no requirement to document the site history or evidence of advertisement. Where a voluntary LIR is submitted, the relevant Council will do so at its own cost and will not receive a fee for their participation in the process. Voluntary LIRs that do not comply with minimum requirements will be treated as individual representations.

#### Planning functions following the determination of a DNS

- 6.24 Positive Planning outlined the responsibilities of the Welsh Ministers and LPAs following the determination of an application for DNS. LPAs are best placed to monitor approved schemes due to their presence in the local community. Internal processes for the purposes of enforcement, discharge and variation of conditions and minor material or non-material amendments have already been set up by LPAs.

- 6.25 That consultation paper outlined that, following the determination of an application for DNS, the LPA will retain responsibility for any subsequent actions or changes which materially impact upon any consent, but do not address the principle of development. This proposal received an overall positive response.
- 6.26 Local judgement will be important when considering the context and, more importantly, the result of a proposed change to a consent for DNS. Changes to conditions or those which are no more than minor material in nature do not require the reconsideration of the principle of a development. We consider it to be illogical and disproportionate to prescribe a formal process through which the Welsh Ministers or appointed persons must approve such changes.
- 6.27 Should the Welsh Ministers give consent to a development qualifying as DNS, the LPA will handle applications for;
- The removal or variation of conditions (which are not related to the extension of time limit or renewal of a permission);
  - Minor material amendments;
  - Non-material amendments; and
  - The discharge of conditions.
- 6.28 The form, content and timescale for such applications are to be in line with those requirements for other applications made to LPAs. No additional requirements are proposed for applications to vary consents which were originally made directly to and consented by the Welsh Ministers. LPAs will receive the relevant fee for such applications, where one applies<sup>11</sup>.
- 6.29 As the LPA is to remain the determining authority for applications to vary a DNS consent, there shall remain a right of appeal to the Welsh Ministers should such an application be refused or not determined within the prescribed timescale.
- 6.30 Where a post-determination amendment is more than minor material, there will be the requirement to submit an entirely new application for DNS to the Welsh Ministers. Applicants will be encouraged to put those amendments before the LPA in the first instance. Where the LPA considers an amendment to be more than minor material, it will ultimately be for PINS, on behalf of the Welsh Ministers, to determine whether an amendment warrants an entirely new application or can be dealt with by the LPA. In cases where the Welsh Ministers consider that applications to amend a DNS permission are of more than local importance<sup>12</sup>, they may exercise powers to call in the application.

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<sup>11</sup> Welsh Government consultation paper: 'Review of Planning Application Fees' (6 October 2014).

<sup>12</sup> Welsh Government: Planning Policy Wales (Edition 7), Chapter 3: Making and Enforcing Planning Decisions (July 2014).

- 6.31 We propose that LPAs retain responsibility for the enforcement of schemes for Development of National Significance. Hence, upon approval of a DNS application, developers will be required give notice of the commencement of development to the LPA. We consider that the LPA is best placed to undertake any enforcement. There is a logistical advantage to retaining the enforcement function within the LPA as they have the necessary skills and local knowledge to ascertain whether any breaches have occurred.

### **Consultation questions**

- Q15:** Do you agree with the minimum requirements for Local Impact Reports? If not, why not?
- Q16:** Would you consider 5 weeks an appropriate timescale within which to provide a local impact report? If not, please suggest appropriate timescales.

### **Enabling powers in the Planning (Wales) Bill**

- 6.32 Section 21 of the Planning (Wales) Bill inserts sections 62I, 62J and 62K into the Town and Country Planning Act 1990.
- 6.33 Section 62I makes provision about the submission of a LIR in relation to applications under section 62D. The Welsh Ministers must give notice to each relevant local planning authority requiring a local impact report in respect of the application in question. An authority to which notice is given must comply with it. A local planning authority is a 'relevant local planning authority' if all or part of the land to which the application relates is in the authority's area.
- 6.34 Section 62J places a duty on the Welsh Ministers to have regard to the contents of any local impact report submitted to them by a relevant local planning authority. It also enables a local planning authority that is not a relevant local planning authority to submit a voluntary local impact report in respect of an application. The Welsh Ministers must similarly have regard to such a report in dealing with an application. A power is conferred upon the Welsh Ministers to make provision in a development order about the submission of voluntary local impact reports.
- 6.35 Section 62K provides that a local impact report is a report in writing that gives details of the likely impact of the proposed DNS and secondary consents on the area of the authority. The report must comply with any requirements specified in a development order.
- 6.36 Section 24 of the Planning (Wales) Bill inserts sections 62P and 62Q into the Town and Country Planning Act 1990.

6.37 Section 62P states that a decision of the Welsh Ministers on an application made direct to them under will be final (resulting in no right of appeal to the Welsh Ministers). It also enables Welsh Ministers to direct a local planning authority or hazardous substances authority to do things in relation to an application made under those sections.

## 7. Fees and costs

### Overview

- 7.1 The Welsh Ministers propose to use a mixture of fixed and variable fees for different elements of the DNS process with the aim of achieving full cost recovery.
- 7.2 The majority of functions of the DNS application process will be carried out by PINS and the fees charged will be related to their costs incurred in carrying out this work. The Welsh Ministers will determine the application, and this element of the application process will also be included in the fee regime. We propose that fees will consist of staff costs and overheads and, when applicable, venue costs and legal costs.

### Our policy proposals

#### General principles

- 7.3 LPAs are able to charge a fee for planning applications made to them, with the fee structure based around the size and type of development proposed. This fee structure is set out in secondary legislation.
- 7.4 The fees charged for DNS pre-application and application work will not replicate the model used by LPAs for planning applications. We propose a fee structure based on the recovery of costs incurred when carrying out the work to which the fee applies. This enables the Welsh Ministers to comply with HM Treasury rules, in particular that the cost of the work should be recovered through the fee charged.
- 7.5 At this point in the development of our DNS procedures it is not appropriate to identify what each proposed fee will be. This is due to the potential for the processes to change as a result of the consultation process. However, the fee structure will be a mixture of fixed and variable fees with the intention of full cost recovery. Fixed fees will be used where the work is of a standard nature and the effort required will be the same, on average, each time that piece of work is carried out. Where the work is likely to be more varied we will apply an hourly or daily rate and invoice the applicant appropriately. This approach provides developers with a high level of certainty regarding the cost of development, whilst retaining the flexibility to charge an appropriate fee that reflects the variable nature of the DNS application process.

#### Pre-application services

- 7.6 The Welsh Ministers will be required to provide pre-application advice in relation to DNS applications upon request. There will be a charge to the developer for the provision of this service.



- 7.7 This function will be delegated by the Welsh Ministers to the appointed person, PINS. We propose that the fee for this work should be charged at an hourly rate, with the majority of the work undertaken by planning officers. Where an Inspector is required, or requested, a different hourly rate will be applied for their input into providing pre-application advice. The Planning Inspectorate will invoice the developer once the advice has been provided. However, as this is intended to be an iterative process, invoices for work carried out may be issued at regular intervals as advice is requested.

#### Notification of intention to submit a DNS application

- 7.8 Developers will be required to submit a notification of intent to make a DNS application to the Welsh Ministers (see *paragraphs 4.15-4.20*). It will be PINS who will review this notification and respond with a notice of acceptance, which acts as a trigger for other statutory actions the developer must carry out before submitting their DNS application.
- 7.9 As this will be a standardised process, and for simplicity, we propose that developers pay a fixed fee for the submission of a notification. A notification will not be valid if the fee is not paid.
- 7.10 There may be instances where the notification is not accepted by PINS. This could be because the development does not meet the criteria for a DNS application, or the notification may not contain all the information and documents required. We propose that we will not refund the fee when a notification is submitted which is not accepted. This is because the work required to confirm that a notice of acceptance should not be issued is likely to be equivalent to the work which would lead to the notice being issued.

#### Application fees

- 7.11 An applicant submitting a DNS application will be required to pay a fee. This fee will be for the whole cost of determining the application, which will include the costs incurred by the Welsh Ministers' appointed person, PINS, and those incurred by the Welsh Government itself.
- 7.12 The DNS application process consists of standard and variable sections of work that will require a mixed approach to the fee structure, using a combination of fixed fees and daily rates. This approach will facilitate the recovery of the costs of the process at appropriate points. It will provide certainty of costs where possible, and a clear fee structure with clear points in the process where fee payments will be required.
- 7.13 The applicant will be required to pay a portion of the fee when they submit their application. This will be a validation requirement. This portion of fee will be fixed as it is intended to cover standard sections of work within the DNS application process that are the same for all applications submitted. Examples of these standard elements include



the validation process and the first five weeks of the DNS application process. The fixed fee will be derived from a standardised cost of carrying out the work.

- 7.14 The variable elements of the application process will be subject to a daily rate fee. This daily rate will be derived from the cost of Inspector time, support functions to an Inspector, administrator time, support functions to them, and other overheads. The daily rate will be charged in half and full day increments.
- 7.15 The variable nature of a DNS application stems from the different types of procedure used to consider the application. An application can be considered using one or all of the following procedures – written representations, hearing, and local inquiry (see *paragraphs 5.41-5.50*). The written representations procedure generally requires the lowest Inspector and administrator resource while local inquiries require the highest. PINS will determine the application procedure in accordance with published criteria after the representation period has finished. The choice of procedure will be determined by what is the best course for examining the relevant issues to the DNS application. It will not be influenced by financial considerations. This determination of procedure is expected to take place between week five and week seven of the application process.
- 7.16 At the point where the Inspector provides a report and recommendation to the Welsh Ministers, PINS will send an invoice to the applicant for payment of the remaining application fee for their portion of the process. The applicant will be expected to pay the remaining fee within two weeks of receipt of the invoice. It is possible that PINS may issue more frequent invoices during the course of the consideration of the application, especially for the longer hearing and local inquiry procedures, with a final invoice being issued when the report is sent to the Welsh Ministers.

#### LPA costs

- 7.17 The relevant LPA(s) for a DNS application will be required to produce and submit a LIR which meets minimum requirements and within a set timescale. This will be a statutory duty and is intended to provide the decision-maker with relevant technical information on the impact of the proposed development.
- 7.18 We propose that the LPA should receive payment for carrying out this statutory duty and other functions, such as updating the Planning Register and publicity actions. This payment is intended to provide the LPA with the resources to produce the report in good time and to the expected quality, and to carry out the other functions expected of them. Without this payment the LPA would have to draw on existing resources, which may have an unintended and negative impact on other planning work carried out the LPA.

- 7.19 Given the importance of the LIR, we propose that the amount of payment that the LPA receives should be dependent on their meeting minimum requirements for the content of the LIR, as well as providing the report within the relevant timescale. We propose that the LPA should receive the full payment if they meet the minimum requirements and timescale for submission. If they miss the timescale without good reason they may only receive part of the fee or no fee at all.
- 7.20 We propose that the payment for the LIR should be part of the fixed fee which is paid by the applicant when they submit their application. This fixed fee will be based on the average cost of producing the LIR and carrying out their other functions. PINS will pass on the relevant fee to the LPA as soon as the LIR has been provided in accordance with the requirements. The level of fee will depend on the LPA's performance in providing the LIR. Any part of the fee that is not paid to the LPA, due to late submission or not meeting the minimum prescribed requirements, will be refunded to the applicant. LPAs will be able to dedicate appropriate resources to the development of the LIR and carrying out other functions in the knowledge that, providing they meet the timescale and minimum requirements, they will receive a known fixed amount.
- 7.21 This payment will only apply to relevant LPAs. Other parties wishing to submit a voluntary LIR, such as a neighbouring LPA or a Town or Community Council, will do so at their own cost.

#### Other Costs

- 7.22 PINS may encounter additional costs which could not appropriately be included in the fixed fee or daily rates. These additional costs include venue costs for the hearing and local inquiry procedures; legal costs; and assessor costs. These costs are too case specific and variable to be included in the fees that are charged to all applicants.
- 7.23 We propose that these costs, when they are incurred, should be charged to the applicant and included in the final invoice issued when the Inspector provides the report to the Welsh Ministers. In this way the costs of the application are met, but are only paid when they are incurred.

#### Refunds

- 7.24 The fees paid by the applicant, particularly the fixed fee that is required when the application is submitted, covers work which will be carried out by PINS after receipt of the application. There may be occasions where this work will not happen because the application is invalid, or the applicant withdraws the application. When an application is submitted, PINS will allocate resources to an application. These resources are not easily re-allocated if the application is withdrawn.

- 7.25 Where an application is invalid we do not consider it to be appropriate for PINS to retain the entire fee paid by the applicant. However, the Inspectorate will have incurred costs through processing the application documents and reaching the point where the application is confirmed to be invalid. These costs should be met by the applicant.
- 7.26 We propose that the applicant should receive a refund of a proportion of the fixed fee, paid when the application is submitted, if the application is found to be invalid and no further work will be dedicated to it. The exact percentage to be retained will be set out in secondary legislation. The fee will reflect the amount of work carried out during the validation stage of the application process.

#### The Welsh Ministers' costs

- 7.27 The decision on a DNS application is to be made by the Welsh Ministers and will be based on the information gathered during the consideration of the application by PINS, including the recommendation of the Planning Inspector.
- 7.28 We propose that the Welsh Ministers' role in the application process should also be included in the fee paid by the applicant. We propose that this part of the fee should be based on a daily rate, charged in half day and full day increments. The Welsh Ministers will invoice the applicant prior to the issue of a decision. The Welsh Ministers may require the applicant to pay any remaining fee prior to the issue of a decision on a DNS application.
- 7.29 The Welsh Ministers may also incur additional costs which cannot be included in the daily rate. These are most likely to be legal costs incurred during consideration of any Section 106 Agreements. These additional costs will be included in the final invoice issued by Welsh Ministers.

#### Non-payment of application fees

- 7.30 There are several points in the DNS application process where the applicant is required to pay a fee. There is potential, therefore, for the fee not to be paid. If the applicant does not pay the fixed fee at the start of the process, when they submit their application, then the application will be invalid and no further work (and, therefore, cost) will be given to the application. At this stage the statutory timescale for the determination of the application will not have begun.
- 7.31 In situations where PINS or the Welsh Ministers issue an invoice based on the daily rate element of the fee, the applicant will be required to pay the fee within a specific time after the invoice is issued. Failure to pay the fee could lead to PINS or the Welsh Ministers taking debt recovery action through the Courts.

## Costs

7.32 The Costs regime will be applied to the DNS application process. This will enable the parties involved in the process to claim for their costs where they consider unreasonable behaviour has led to them incurring avoidable costs. The Planning Inspector will also be able to initiate awards of costs where he or she considers this to be appropriate. In this way, the behaviour of the parties during the DNS application process will be regulated, with unreasonable behaviour being subject to an award of costs to those affected.

### **Consultation questions**

**Q17:** Do you agree that the DNS fee structure should consist of fixed and daily or hourly rate fees that recover the Welsh Ministers' (and the appointed person, the Planning Inspectorate) costs in carrying out the work? If not, why not?

**Q18:** Do you agree that the relevant LPA should receive a fixed fee for producing a Local Impact Report? If not, why not?

**Q19:** Do you agree that the LPA should receive a reduced payment, or no payment, if they do not submit the Local Impact Report within the timescale and minimum requirements? If not, why not?

**Q20:** Do you agree that the applicant should not receive a full refund if their application is invalid? If not, why not?

### **Enabling powers in the Planning (Wales) Bill / the 1990 Act**

7.33 Section 27 of the Planning (Wales) Bill introduces Schedule 4. The Schedule makes a number of consequential amendments to the 1990 Act, including section 303 (fees). Relevant to these proposals, it allows the Welsh Ministers by regulations to make provision for payment of a fee or charge to the Welsh Ministers in respect of the performance by the Welsh Ministers of any function they have in respect of applications made to the Welsh Ministers (including for any pre-application services provided).

7.34 Section 49 of the Planning (Wales) Bill also inserts section 322C into the 1990 Act which contains provisions concerning payment of costs incurred by the Welsh Ministers in relation to any application to them, whether it is considered at an inquiry or hearing or on the basis of written representations.

7.35 Section 303(1) of the 1990 Act provides that the Welsh Ministers may by regulations make provision for the payment of a charge or fee to a local planning authority in respect of the performance by the local planning authority of any function they have.

## Annex A: Proposed list of DNS thresholds.

Type of Development	Proposed Threshold
<p>The carrying out of operations for the purpose of creating underground gas storage facilities for the storage of gas underground in cavities or in porous strata;</p> <p>The development is starting to use underground gas storage facilities by a gas transporter, for the storage of gas underground other than in natural porous strata; or</p> <p>The development is starting to use underground gas storage facilities by a developer which is not a gas transporter for the storage of gas underground in natural porous strata.</p>	<p>The facility has a working capacity of at least 43 million standard cubic metres or a maximum flow rate of at least 4.5 million standard cubic metres per day.</p>
<p>The alteration of underground gas storage facilities for the storage of gas underground in cavities or in porous strata.</p>	<p>The effect of the alteration is expected to increase the working capacity by at least 43 million standard cubic metres or to increase the maximum flow rate by at least 4.5 million standard cubic metres per day.</p>
<p>Liquefied natural gas ("LNG") facilities</p>	<p><b>New LNG facilities:</b></p> <p>The storage capacity is expected to be at least 43 million standard cubic metres or have a maximum flow rate of at least 4.5 million standard cubic metres per day; or</p> <p><b>The alteration of existing LNG facilities:</b></p> <p>The existing storage capacity is expected to increase by at least 43 million standard cubic metres or by a maximum flow rate of at least 4.5 million standard cubic metres more per day.</p>
<p>Gas reception facilities</p>	<p><b>New gas reception facilities:</b></p> <p>The maximum flow rate of the facility is expected to exceed 4.5 million standard cubic metres per day; or</p> <p><b>The alteration of existing gas reception facilities:</b></p> <p>The maximum flow rate of the existing facility is expected to increase by at least 4.5 million standard cubic metres per day.</p>

<p>Airport related development and construction</p>	<p><b>New airports:</b></p> <p>The development of a new airport with a capacity of at least 1 million passengers per annum or at least 5,000 air transport movements of freight per annum.</p> <p><b>The alteration of existing airports:</b></p> <p>The development of an existing airport to increase the capacity by at least 1 million passengers per annum or at least 5,000 air transport movements of freight per annum.</p>
<p>Railways</p>	<p>The construction of a railway which, when constructed, will include a stretch of track that is a continuous length of more than 2km, or the alteration of a railway which will include laying a stretch of track that is a continuous length of more than 2 km and which, in both cases, is not on land that was either operational land of a railway undertaker immediately before the works began or is on land that was acquired at an earlier date for the purpose of the works.</p> <p>Construction and alteration of a railway does not fall within this category if it takes place on the operational land of a railway undertaker unless that land was acquired for the purpose of those works.</p>
<p>Rail freight interchanges</p>	<p>Following the alteration of an existing, or construction of a new, rail freight interchange, the interchange is capable of handling at least 2 goods trains per day.</p>
<p>Dams and reservoirs.</p>	<p><b>New dams and reservoirs:</b></p> <p>The volume of water to be held back by the dam or stored in the reservoir is expected to exceed 10 million cubic metres of water.</p> <p><b>The alteration of existing dams and reservoirs:</b></p> <p>The additional volume of water to be held back by the dam or stored in the reservoir as a result of the alteration is expected to exceed 10 million cubic metres.</p>

Transfer of water resources	<p>The volume of water to be transferred as a result of the development is expected to exceed 100 million cubic metres per year between:</p> <ul style="list-style-type: none"> <li>• River basins in Wales;</li> <li>• Water undertakers' areas in Wales; or</li> <li>• A river basin in Wales and a water undertaker's area in Wales.</li> </ul> <p>The development does not relate to the transfer of drinking water.</p>
Waste water treatment plant.	<p><b>New waste water treatment plants:</b></p> <p>The plant is expected to have a capacity exceeding a population equivalent of 500,000.</p> <p><b>The alteration of existing waste water treatment plants:</b></p> <p>The effect of the alteration is expected to increase the capacity of the plant by more than a population equivalent of 500,000.</p>
Hazardous waste facilities	<p><b>New hazardous waste facilities:</b></p> <p>Land fills or deep storage facilities which have a capacity of more than 100,000 tonnes per annum. In any other case, facilities able to handle more than 30,000 tonnes per annum.</p> <p><b>The alteration of existing hazardous waste facilities:</b></p> <p>The effect of the alteration to a land fill or deep storage facility is expected to increase the capacity by more than 100,000 tonnes. In any other case, the capacity of the facility is expected to increase by 30,000 tonnes per annum.</p>
<p>Pipelines not constructed by a gas transporter; or</p> <p>Overground pipelines constructed by a gas transporter.</p>	<p>The construction of a new pipeline (including the extension or diversion of an existing pipeline) over 2km and less than 16.093km (10 miles) in length wholly or partly in Wales.</p>
Onshore energy generating stations.	<p>The generating station has the capacity to generate energy at a rate of between 25MW and 50MW.</p>

## Annex B: List of secondary consents

Legislation	Consent	Comments
Acquisition of Land Act 1981 – Section 19, and Section 28 and Schedule 3.	<p>Section 19: Exchange of land certificate– open space land or common land.</p> <p>Section 28 and Schedule 3: deals with the acquisition of rights by compulsory purchase and certification.</p>	Where a Compulsory Purchase Order involves common land, allotments or open space or rights over such land, certificates are required under s.19 (land) or s.28 (rights) otherwise the Order has to be subject of special Assembly procedures. This consent is relevant as it is our intention to prescribe powers for the compulsory purchase of land.
Ancient Monuments and Archaeological Areas Act 1979 - Section 2.	Control of works affecting scheduled monuments, grant of scheduled monuments consent.	This consent is relevant in view of the nature and location of ancient monuments and their wide geographical spread.
Commons Act 2006 - Section 38	Works on common land.	This consent is relevant as DNS proposals in rural areas may impact on common land.
Commons Act 2006 - Sections 16 and 17	Exchange of Common Land.	This consent is relevant as DNS proposals in rural areas may impact on common land.
Highways Act 1980 - Section 178	Restriction on placing rails, beams etc. over highway (consent).	This includes pipes, wires and cables and is commonly used for linear projects.
Planning (Hazardous Substances) Act 1990 - Sections 4, 13 and 17	<p>Section 4 - application for hazardous substance consent;</p> <p>Section 13 - applications for consent without condition attached to previous consent;</p> <p>Section 17 - application to continue consent on change of control of land.</p>	Section 3 of this Act defines the hazardous substances authority in special cases. The Welsh Ministers should be the hazardous substances authority for DNS applications, and these consents are therefore relevant.
Planning (Listed Buildings and Conservations Areas) Act 1990 - Section 8	Authorisation of work, listed building consent.	An on-site listed building could arise in any DNS application, hence it is relevant.
Planning (Listed Buildings and Conservation Areas) Act 1990 - Section 74	Control of demolition in conservation areas.	Some application sites may be located in wider landscape-based conservation areas.



Town and Country Planning Act 1990 - Sections 57 and 58	Requirement for planning permission and grant of planning permission.	Associated development for which additional planning permission is required may form part of a scheme for DNS.
Town and Country Planning Act 1990 - Section 226	Compulsory Purchase Order acquisition of land for development.	Some land forming part of the proposal may not be under the ownership of the applicant. Powers are required to enable that land to be acquired on behalf of the developer to facilitate the implementation of the DNS scheme.
Town and Country Planning Act 1990 - Section 247	Stopping up or diversion of highway.	May be required as part of a DNS project.
Town and Country Planning Act 1990 - Section 248	Highways crossing or entering route of proposed new highway.	May be required as part of a DNS project.
Town and Country Planning Act 1990 - Section 251	Extinguishment of rights of way over land held for planning purposes.	May be required as part of a DNS project.
Town and Country Planning Act 1990 - Section 254	Acquisition of land in connection with highways.	May be required as part of a DNS project.
Town and Country Planning Act 1990 - Section 257	Order - footpaths, bridleways or restricted byways affected by development.	May be required as part of a DNS project in a rural area.

**Annex C: Flow diagram of proposed DNS process**

