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2014 Review Team
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Dyddiad/Date: 22 January 2014

Annwyl Syr/Madam / Dear Sir/Madam

Reviewing the Nationally Significant Infrastructure Planning Regime

Thank you for consulting Cyfoeth Naturiol Cymru / Natural Resources Wales about the above.

In April 2013 Natural Resources Wales (NRW) brought together the work of the Countryside Council for Wales, Environment Agency Wales and Forestry Commission Wales, as well as some functions of Welsh Government. Our purpose is to ensure that the natural resources of Wales are sustainably maintained, used and enhanced, now and in the future. NRW's functions are set out in the Natural Resources Body for Wales (Functions) Order 2012 and include the requirement to exercise its functions so as to:

1. Promote nature conservation and enhancement of natural beauty and amenity, and
2. Promote the provision and improvement of opportunities for access to and enjoyment of the countryside and open spaces; open air recreation; and the study, understanding and enjoyment of the natural environment.

NRW welcomes the opportunity to comment on the UK Government's review of the nationally significant infrastructure planning (NSIP) regime. In Wales the NSIP regime covers less development types than in England, but of the 14 projects determined so far, one project that has been determined was situated wholly within Wales (Brechfa onshore windfarm) and a second was a cross-border project (Hinkley Point C New Nuclear Station). Furthermore NRW is currently engaged with three projects that are actively going through the Examination stage, as well as a number of projects that are in the pre-application stages of the process. Our experiences to date mean that we offer the following key points:

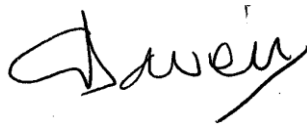
- We strongly support an improved and more structured role for the Planning Inspectorate in the pre-application phase. It is our view that the Planning

Inspectorate increasing its role in the pre application phase, the suggestion of the introduction of project management program or prospectus for this phase and key milestones the pre-application phase can be used in a more proactive and efficient way.

- We welcome the proposal to share particular examples of good practice and example documentation, especially relating to written representations and Statements of Common Ground. We appreciate the desire to not be overly prescriptive in providing templates for some of the documents but we strongly support any opportunities to learn from work undertaken on earlier projects.
- The pre application phase is essential in encouraging development which avoids negative impacts and is within environmental limits. We would like to see the review prioritise the pre application phase above later points in the process.

Our detailed response is contained in Annex 1 below. Please do not hesitate to contact Sarah Wood or Ian Gorton (contact details above) for further advice about this response.

Yours faithfully



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Annex 1

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Phone
Improving the pre-application phase and ensuring consultation requirements are proportionate
Do you agree with the explanation of the current issues that need to be addressed?
<p>Response:</p> <p>Yes, we broadly agree with the explanation of the current issues that need to be addressed.</p> <p>We particularly support the need for greater structure, facilitation and increased proactive oversight by the Planning Inspectorate in the pre-application phase.</p> <p>We suggest that the range of current issues should include the quality of assessment and information being submitted with an application at the end of the pre application phase. Our experience to date is that a great deal of further information is being submitted during the examination phase, particularly during hearing sessions which should have been considered in the pre application phase.</p> <p>We would also welcome the addition of the function, execution and timing of Statements of Common Ground (SOCG) to the topic areas. Our experience is that these documents are being developed far too late in the process resulted in competing demands at key points in the NSIP process.</p> <p>We do however question the inclusion of an issue that the pre application phase is taking too long or that some requirements are too onerous or prescriptive in relation to consultation.</p>
Do you agree with the possible ideas which have been put forward and are there other ideas you would like to be considered?
<p>Response:</p> <p>Yes we agree with the possible ideas put forward to be considered and again support the inclusion of an improved, more structured and transparent pre-application service offer from the Planning Inspectorate. We feel this involvement will enable greater emphasis on resolving issues before application</p> <p>Other ideas we would like to suggest for consideration either as additional ideas or as further points in the list identified so far are –</p> <ul style="list-style-type: none"> • The role of mechanisms such as Planning Performance Agreements between

the applicant and statutory consultees in the pre application phase.

- Recommended points or milestones in pre application at which agreement of things like who will undertake the role of the competent authority for Habitats Regulations Assessment should one be needed.
- Reasoning and implications of late/last minute submission of large amounts of additional information and possible mechanisms to deal with this.
- Application validation and what more can be done to ensure all relevant assessment information (including with respect to Habitats Regulations Assessment (HRA) and Water Framework Directive (WFD) compliance) is available before a project is accepted in order to avoid the need for lots of further information being submitted during the examination phase.
- The importance and continuation of current strategic but informal liaison with the Planning Inspectorate over the Nationally Significant Infrastructure process (e.g. Consenting Forum) as a way of improving the NSIP process, raising generic issues and sharing best practice.
- Clarification on how Habitats Regulations Assessment (HRA) and Water Framework Directive (WFD) assessment compliance will be handled when multiple consents and consenting authorities are involved for Welsh projects particularly in the context of having a lead competent authority and at what other consents are best applied for.
- The function, execution and timing of Statements of Common Ground (SOCG) and their benefits. These are being developed very late in pre application or even in pre examination when there are competing priorities. Early agreement of SOCGs would assist in focussing in on the matters still outstanding during written representations and Hearing sessions.

Do you agree that there are areas of the regime which could be streamlined and do you have any suggestions on how this could be achieved?

Response:

Yes, we agree with the suggested areas for streamlining bureaucracy and providing greater clarity around procedures and requirements. The suggestions around further improving the advice from the Planning Inspectorate and for improved, more structured and transparent pre application service offer are key in streamlining and providing greater clarity.

We consider that the potential role of mechanisms such as Planning Performance agreements to bring together the Local Planning Authority, developer and key stakeholders to work together in should be investigated as a mechanism to help guide positive pre-application collaborative working and give greater clarity.

What steps do you think could be taken to further streamline the pre-application stage and reduce the amount of time this stage takes?

Response:

We would be concerned that streamline was interpreted as short cuts in this stage. The pre application phase and early engagement is essential in encouraging development which avoids negative impacts and is within environmental limits.

More direct and earlier feedback from developers about how they have taken into account the advice we have provided, an increased role of the Planning Inspectorate during pre-application discussions and earlier development and agreement of Statements of Common Ground we consider would reduce the amount of time this stage takes and improve the clarity and further streamline this stage.

Would you support the proposal to make examples of documents available on the National Infrastructure website. If so, are there any types in particular?

Response:

Yes. In particular examples of good practice relating to written representations and Statements of Common Ground with short statements of what makes these are good examples. We appreciate the desire to not be overly prescriptive in providing templates for some of the documents but we strongly support any opportunities to learn from work undertaken on earlier projects.

Is this an area which the review should focus upon and are there any changes you would prioritise over others?

Response:

Yes, NRW would advise that the idea of an improved, more structured and transparent pre application service offer by the Planning Inspectorate should be prioritised with the development of a prospectus of what PINS could offer and what they expect from the developer and statutory consultees during this phase.

We would suggest that highlighting good practice and making examples of documents available would provide some 'quick wins'.

Improving pre-examination and examination phase

Would you support the suggestion that relevant representations should be published as soon as they are received by the Planning Inspectorate;

Response:

No we do not support the suggestion that relevant representations are published as soon as they are received. We feel this could give rise to lobbying and influencing.

We consider that the current system of registering by submission of a 'relevant representation' and submission of further detail in the form of 'written representations' should be retained. These two stages provide a valuable opportunity for the key issues to be identified at relevant representations stage and then further detail to be submitted during written representations enabling the Examining Authority to determine what the key issues are during the Examination stage.

NRW consider that both relevant and written submissions should be published as soon as possible after the deadline for receiving them not as soon as they are received.

Are there any other issues relating to the examinations process other than those already identified in this section which you think need to be addressed?

Response:

Yes. We would like to add the timing and notice given for hearing sessions to the list of issues. We would welcome earlier sight of agendas for hearing sessions. Our experience to date has been that we get these only a week prior to a hearing which can present problems for staff availability. If detailed agendas cannot be sent out sooner then at least an indication of the likely issues to be covered by the hearing would be helpful. Our experience of earlier projects was that we didn't get very detailed agendas although, this has improved in more recent projects and NRW welcome this.

Providing clear and detailed agendas will allow NRW to pool together relevant and necessary staff and resource in a timely fashion which is particularly relevant if projects are running in parallel.

Your views on the issues that have been raised and the ideas that have been put forward as possible changes for the examination process and other suggestions for improvement?

Response:

NRW welcomes the suggestions being put forward for more flexibility on the number of Inspectors and clearer guidance on early agreement of statements of common ground. NRW consider that the current arrangements regarding making changes to an application after it has been accepted are sufficient as any changes should always be within the scope of the parameters assessed in the submitted environmental information in line with the 'Rochdale envelope' approach.

Are there ways in which the information requirements which are placed on applicants at pre-examination and examination stages could be reduced?

Response:

Yes by ensuring that the Planning Inspectorate has a greater role in the pre application stage and that there is a clearer process for engagement by means of a publication of a prospectus/ program or equivalent.

Should making changes to the examinations process be a priority for this review and which change would you most like to see?

Response:

In our view the priority should be in reviewing the pre-application process rather than the Examination process.

Changes to Development Consent Orders after consent is granted

Do you agree with the idea of streamlining the current consultation and notification arrangements in cases where non-material changes to development consent orders are being made?

Response:

No. NRW consider that such changes could lead to unintended consequences, for example, recent technology changes and advances could result in impacts that have not previously been assessed as part of the submitted environmental information. Non-material changes can be made under the existing system provided that the changes are within the parameters assessed in the Environmental Statement. Amendments may be 'material changes' depending on the interest affected. NRW consider it would be helpful if there was a statutory definition of what constitutes a 'non-material' and 'material' change.

Do you think a distinction between minor and more significant material changes would provide a model for simplifying the process for changes to development consent orders?

Response:

No as any changes should be assessed by the appropriate authority in consultation with relevant statutory consultees and interested parties and scoped against the submitted Environment Statement and checked for compliance with HRA and EIA regulations and other legislative requirements as necessary.

Are there other ways to shorten or simplify or otherwise improve current processes for making changes to development consent orders?

Response:

NRW consider that the current arrangements are appropriate.

Should this be a priority area for the review?

Response:

No. In our view the priority should be in reviewing and improving the pre-application process.

Streamlining Consents

Has the government got the balance right in its approach to handling consents under the nationally significant infrastructure planning regime or is further streamlining required?

Response:

NRW would like to highlight the distinction between how the NSIP process operates in Wales and England. The Consents Service Unit does not operate in Wales. We would be keen to understand how successful this unit has been and what the key areas of success are to understand how best to build in the experience gained for future Welsh projects.

NRW are now the appropriate authority for determining Marine Licences in Welsh Waters. In relation to Habitats Regulations Assessment on Welsh NSIPs, NRW would welcome guidance from DCLG, PINS and DECC in consultation with Welsh Government regarding the extent to which the assessment can be shared between Marine Licence applications and NSIPs for projects.

Improving engagement with local communities, local authorities and Statutory Consultees

Do you agree with the views expressed to date about the issues faced by local authorities, communities and statutory consultees in engaging in the nationally significant infrastructure planning regime?

Response:

Yes in terms of sharing of lessons learnt.

Do you support the ideas for improvement which have been suggested so far for strengthening engagement are there any other ideas or solutions which you think should be considered?

Response:

NRW support new initiatives such as online videos regarding the NSIPs process. The new additions to the Planning Inspectorate website are very useful. We also want to acknowledge and thank the Planning Inspectorate for their direct help with respect to providing discussions and training for NRW staff (and previously the legacy Bodies CCW, EAW and FCW) regarding the NSIP process.

Should this be a priority area for the review?

Response:

NRW consider that this is not a priority for the review. We support the consideration of improvement in the pre applicant phase as the priority.