

Consultation reference: WG25023

## Annex 1 - Consultation Response Form

### Developments of National Significance

We are seeking your views on detailed proposals to establish a new system for the Welsh Ministers to process 'Developments of National Significance' ("DNS"). This is a new category of planning applications.

***Please submit your comments by 12/08/2015.***

If you have any queries on this consultation, please email: [planconsultations-g@wales.gsi.gov.uk](mailto:planconsultations-g@wales.gsi.gov.uk) or telephone Lewis Thomas on 029 2082 3201.

#### Data Protection

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 If someone has asked for their name and address not to be published, that is an important fact we would take into account.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be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published.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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Developments of National Significance		
Date of consultation period: 20/05/2015 – 12/08/2015		
<b>Name</b>	Rhian Jardine	
<b>Organisation</b>	Cyfoeth Naturiol Cymru / Natural Resources Wales	
<b>Address</b>	Ty Cambria 29 Newport Road Cardiff	
<b>E-mail address</b>	rhian.jardine@cyfoethnaturiolcymru.gov.uk	
<b>Type</b> <i>(please select one from the following)</i>	Businesses/ Consultants	<input type="checkbox"/>
	Local Planning Authority	<input type="checkbox"/>
	Government Agency/Other Public Sector	<input checked="" type="checkbox"/>
	Professional Bodies/Interest Groups	<input type="checkbox"/>
	Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations)	<input type="checkbox"/>
	Other (other groups not listed above) or individual	<input type="checkbox"/>

Q1	Do you agree with the proposed thresholds and categories of development set out in the above table? If not, why not?	Yes	Yes (subject to comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p><b>Natural Resources Wales welcomes the proposed thresholds and categories of development. We recognise that additional categories of development may be included within the National Development Framework as it develops. We welcome the intention to keep the DNS application categories under review.</b></p> <p><b>However, we consider that geological disposal facilities for higher activity waste should be identified as a DNS application category now as this is a type of development that gives rise to issues of national importance.</b></p>				

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<b>Q2</b>	Do you agree with this proposed approach for determining secondary consents? If not, why not?	Yes	Yes (subject to comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments:

**Natural Resources Wales welcomes the approach for determining secondary consents.**

**We would welcome the provision of guidance regarding how applicants should approach the issue of Environmental Impact Assessment, Habitats Regulations Assessment and Water Framework Directive procedures arising from submission of connected consents at the same time as a DNS application. We believe that these processes should be considered for the whole project (the DNS application and related consents) where connected /related consents are inextricably linked to the main project.**

**For the EIA process, we consider that a main project should not be started without the effects of all of the associated development having been subject to a single EIA. Similarly, for the HRA process we consider that the in-combination tests should be applied for all consents related to the main DNS application.**

**We also consider that a clear process is required regarding the approach to the timetabling of related consents to a DNS application that Natural Resources Wales would determine. We also consider that applicants should be encouraged to parallel track the submission of related unconnected consents with the main DNS application. Natural Resources Wales would welcome the opportunity to support the development of guidance with Welsh Government in our role as a statutory consultee on these issues.**

<b>Q3</b>	Do you agree that the Inspector may determine procedure for secondary consents? If not, why not?	Yes	Yes (subject to comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments:

**Natural Resources Wales do not have any further comments to make on this issue.**

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<b>Q4</b>	Do you agree with the proposed list of secondary consents? If not, why not?	Yes	Yes (subject to comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>Natural Resources Wales do not have any further comments to make on this issue.</b>				

<b>Q5</b>	Do you agree with the minimum requirements for the notification of a DNS? If not, why not?	Yes	Yes (subject to comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: <b>We welcome the reference to Environmental Impact Assessment within the list of minimum requirements. However we recommend that the notification requirements should also require an applicant to notify the Planning Inspectorate when an application is near or within an European Site or impacts on a European Protected Species and/or whether it is near or within an SSSI. This added criteria would provide an early and clear indication to PINS whether an Environmental Impact Assessment and/or Appropriate Assessment and/or European Protected Species licence may be required.</b>				

<b>Q6</b>	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?	Yes	Yes (subject to comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Comments: <b>Whilst we do recognise it is helpful for all stakeholders to have a finite period for pre-application consultation, our experience with Nationally Significant Infrastructure Projects has been that evidence gathering has in some cases taken 3 or more years prior to a project being submitted to the Planning Inspectorate (PINS). We consider that the 12 month period for pre-application is adequate provided that guidance is prepared to provide clear advice to applicants that</b>				

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**pre-application discussions with statutory consultees should start prior to the notification stage.**  
**Natural Resources Wales will develop a pre-application prospectus for applicants setting out the service that we would offer during the pre-application stage and what information we would expect from applicants to enable us to provide a pre-application service to meet the DNS application timetable.**

<b>Q7</b>	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?	Yes	Yes (subject to comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Comments:**  
**Natural Resources Wales welcomes the principles of the pre-application publicity and consultation requirements. As indicated in our answer to Q6, Natural Resources Wales will develop a pre-application prospectus setting out what information we expect from applicants and the service that we would offer. Whilst paragraph 4.15 of the consultation document states that the applicant will not be able to carry out any formal pre-application discussions with statutory consultees prior to the notification stage, Natural Resources Wales do recognise that informal consultations should and can take place. Paragraph 4.11 states that requests for pre-application services may be made prior to the notification of an application. We consider that guidance should make it clear that applicants should be involved in discussions with Natural Resources Wales at the project inception stage. This will help identify potential issues at the earliest possible stage which provides an opportunity to identify solutions to enable the proposed development to proceed, together with instances where it is clear that there are significant adverse environmental impacts which cannot be mitigated or compensated for.**

**We welcome the proposed timescale of 28 days for statutory consultees to respond to pre-application consultation. However, as we highlighted in our response to the ‘Frontloading the Development Management System consultation’, we recommend that sufficient time will be required to enable full consideration of supporting technical information, which may include Environmental Reports. We therefore recommend that a minimum of 42 days response time is allowed where an EIA is submitted in support of a DNS application.**

**To ensure that consultees can maximise the time allowed to them for responding to consultations, all electronic versions of the applications and its supporting data should be available from day 1 of the consultation period. For large applications a number of hard copies of the supporting plans should also be made available to consultees at the start of the consultation period.**

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<b>Q8</b>	Do you agree with our proposals for the advertisement of an application for DNS? If not, why not?	Yes	Yes (subject to comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>We broadly welcome the proposals for the advertisement of an DNS application.</b>				

<b>Q9</b>	Do you agree with our proposals regarding statements of common ground? If not, why not?	Yes	Yes (subject to comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: <b>Natural Resources Wales welcome in principle the approach to Statements of Common Ground. The flexibility offered is helpful and by not having a mandatory requirement to submit a Statement of Common Ground within 5 weeks of validation it puts less pressure on interested parties to agree to a statement when they may not be in a position to do so.</b>  <b>We also welcome the emphasis on documenting the status of discussions with regard to common ground within the section 106 statement.</b>				

<b>Q10</b>	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?	Yes	Yes (subject to comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: <b>We recognise that the emphasis on front loading in the DNS application process should ensure that most issues will have been resolved prior to the post submission consultation stage. In these circumstances we consider that five weeks is sufficient for consultation responses. However, where an EIA is submitted in support of a DNS application, and where new information has been</b>				

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provided to address issues that have arisen during the pre-application stage, the Planning Inspectorate (Wales) should have more discretion to allow a longer timeframe for submission of full representations in these circumstances.

The amended 2014 European Parliament and Council amendments to the EU Directive 2011/92/EU - The assessment of the effects of certain public and private projects on the environment - which is required to be transposed into UK and Welsh legislation by 2017, will require a consultation period of 'no shorter than 30 days', we suggest that this timescale is used as a minimum for post submission consultation responses.

Q11	Do you agree with our proposals for the amendment of schemes for DNS? If not, why not?	Yes	Yes (subject to comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Comments:</p> <p><b>Our experience of the current arrangements for Nationally Significant Infrastructure Projects leads us to caution against one round of amendments to an application for DNS. Flexibility is required during the process to enable negotiation to identify solutions to ensure the optimisation of environmental, economic and social outcomes. Furthermore, we often have informal discussions with developers on major applications on issues such as flood risk between the formal submission of information and formal consultation. We believe that the proposals in the consultation should still allow for these types of discussions; developers should still be allowed to have informal discussions with ourselves between the two proposed points at which they can submit information and amendments to PINS (pre-application consultation and post submission consultation). This would help avoid unintended consequences. For example, a developer would be able to check with us that the redesign of a site layout based on the advice of others does not have negative implications for issues we advise on, such as flood risk or protected species.</b></p>				

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.	Yes	Yes (subject to comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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Comments:  
**We welcome the principle of 10 working days for the determination of the procedure following closure of consultations and publicity. We note, and broadly welcome, that the selection of procedure will be based on ‘Planning Inspectorate Wales: Criteria for the determination of procedure for appeals and call-in’.**  
**However, given that the workload associated with the DNS process is currently unknown we recommend that the timeframe is kept under review and amended as appropriate based on experience of operating the process.**

<b>Q13</b>	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?	Yes	Yes (subject to comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Comments:  
**We recognise the drive to keep representations as concise as possible. However, we do not support imposition of 3000 words per topic. For particularly complex issues this restriction places limitations on the matters that can be raised if an issue is unresolved. We consider that rather than an arbitrary limit being placed on the number of words used, which risks the omission of factual and key matters, we suggest that guidance should be provided to interested parties that representations should be kept as concise as possible and that representation up to 3000 words for each topic should be used as a guide only. In our role as a statutory consultee, we would welcome an opportunity to work with Welsh Government to develop guidance on this issue.**

<b>Q14</b>	Do you agree that the applicant is only required to submit paper copies of applications for DNS with the Planning Inspectorate and LPA(s) within which the DNS is located? If not, why not?	Yes	Yes (subject to comment)	No
		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>



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Comments:  
**We do not have any further comments to make on this issue.**

Q15	Do you agree with the minimum requirements for Local Impact Reports? If not, why not?	Yes	Yes (subject to comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: <b>We consider that the minimum requirements set out in paragraph 4.9 should add a criteria to require a LPA to consult Natural Resources Wales especially in relation to protected site designations and other environmental constraints. We do not consider that we should be directly involved with the preparation of a Local Impact Report. However, we do consider it would be helpful where there are overlaps between advice that Natural Resources Wales and an LPA provide, that guidance is issued to LPAs regarding what environmental information could be obtained from NRW during the evidence gathering stage of a Local Impact Report. This will help ensure a common evidence base and understanding of environmental impacts. We would welcome the opportunity to work with Welsh Government and LPAs regarding how these overlaps in environmental evidence gathering could be addressed during preparation of Local Impact Reports.</b>				

Q16	Would you consider 5 weeks an appropriate timescale within which to provide a local impact report? If not, please suggest appropriate timescales.	Yes	Yes (subject to comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>Natural Resources Wales has no further comments on this issue.</b>				

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 their appointed representative, the Planning Inspectorate) costs in carrying out the work? If not, why	Yes	Yes (subject to comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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not?			
Comments: <b>We do not have any comments to make in regard to this proposal.</b>			

<b>Q18</b>	Do you agree that the relevant LPA should receive a fixed fee for producing a Local Impact Report? If not, why not?	Yes	Yes (subject to comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: <b>Whilst we agree that an LPA should receive a fixed fee for producing a Local Impact Report, we consider that where we have provided advice to a LPA during the evidence gathering stage for a Local Impact Report, we would welcome provision to enable us to receive part of the fixed fee for providing our advice in this regard.</b>				

<b>Q19</b>	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?	Yes	Yes (subject to comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>We do not have any comments to make on this issue.</b>				

<b>Q20</b>	Do you agree that the applicant should not receive a full refund if their application is invalid? If not, why not?	Yes	Yes (subject to comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>We do not have any comments to make on this issue.</b>				

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<b>Q21</b>	Do you have any further comments to make in relation to our proposals for DNS?	Yes	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p><b>Natural Resources Wales welcomes the proposals contained in the DNS applications consultation. There are a few areas of the consultation document where we would welcome further discussion with Welsh Government, Planning Inspectorate (Wales) and other public bodies. These issues are:-</b></p> <p><b>That guidance should clearly encourage applicants to enter into early engagement with statutory consultees and provide a clear statement to applicants that pre-application with statutory consultees should start at project inception and in the lead up to the notification stage;</b></p> <p><b>Consideration of how EIA, HRA and WFD processes should be addressed in relation to intrinsically linked projects;</b></p> <p><b>Evaluation of validation criteria for a DNS application to ensure that a DNS application contains an adequate level of environmental information;</b></p> <p><b>Parallel tracking of related consents with main DNS application and processes;</b></p> <p><b>Clarification of circumstances where Natural Resources Wales may recover its costs in providing non-statutory advice to applicants. At present, no mechanism exists to enable NRW to recover any of its costs associated with consideration of a DNS application;</b></p> <p><b>Our role with regard to post- decision matters such as enforcement of planning conditions and section 106 agreements;</b></p> <p><b>Guidance for word limits in further representations;</b></p> <p><b>The role of Natural Resources Wales in the process of preparing Local Impact Reports, including provision of evidence;</b></p> <p><b>With regard to the list of secondary consents, we refer to the consents listed under the Acquisition of Land Act 1981 (sections 19, and 28). Please note that section 13 (Surrender and extinguishment of a right of common) and section 14 (Statutory dispositions) of the Common Act 2006 may also apply and would require amendments to the Register of Common Land to be made for the surrender/extinguishment of rights and deregistration / exchange of land to operate in law;</b></p> <p><b>We are unclear whether the intention is to prescribe powers under the Acquisition of Land Act 1981 for the compulsory acquisition of land in all cases. If not, a DNS application involving large upland commons (without compulsory purchase of land) would fall under sections 16 and 17 of the Commons Act 2006. Section 13 of the Commons Act 2006 may apply where common rights are purchased by a developer and then surrendered under a deed of release.</b></p>			

Annex 1 – Consultation Response Form  
Developments of National Significance

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I do not want my name/or address published with my response (please tick)

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## **How to Respond**

**Please submit your comments in any of the following ways:**

<b>Email</b>
<p>Please complete the consultation form and send it to : <a href="mailto:planconsultations-g@wales.gsi.gov.uk">planconsultations-g@wales.gsi.gov.uk</a> Please include 'Developments of National Significance - WG 25023' in the subject line.</p>
<b>Post</b>
<p>Please complete the consultation form and send it to: <b>Developments of National Significance Consultation Decisions Branch Planning Directorate Welsh Assembly Government Cathays Park Cardiff CF10 3NQ</b></p>
<b>Additional information</b>
<p>If you have any queries on this consultation, please: email: <a href="mailto:planconsultations-g@wales.gsi.gov.uk">planconsultations-g@wales.gsi.gov.uk</a> ; or telephone: Lewis Thomas on 029 2082 3201</p>