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Developments of National Significance

Guidance for Applicants

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Natural Resources Wales

Cambria House

29 Newport Road

Cardiff

CF24 0TP

0300 065 3000 (Mon-Fri 8am-6pm)

enquiries@naturalresourceswales.gov.uk

www.naturalresourceswales.gov.uk

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What is this document about?

This guidance sets out NRW's role as a specialist consultee in respect of applications for Developments of National Significance.

Who is this document for?

This guidance is for applicants and developers preparing an application for a Development of National Significance.

Contact for queries and feedback

Planning and Energy Team, Email address: EPP.Planning@cyfoethnaturiolcymru.gov.uk.

1 Introduction

1.1.1 This guidance is aimed at applicants and developers who wish to submit an application for Development of National Significance (DNS). It sets out our role as a specialist consultee in respect of applications for DNS applications and it should be referred to when preparing a DNS application. This guidance does not override legislative provisions and does not comprise legal advice. You should refer to the relevant legislation and seek independent legal advice if required.

1.1.2 We also set out details of the services we offer during the DNS process, and describe:-

- when it is best to consult us;
- the process for requesting this service, and
- charging for discretionary advice.

1.1.3 In addition to our role as a specialist consultee, we also determine consents that may be relevant to the DNS.

1.1.4 This guidance should be read alongside the Planning Inspectorate's (PINS's) guidance on:-

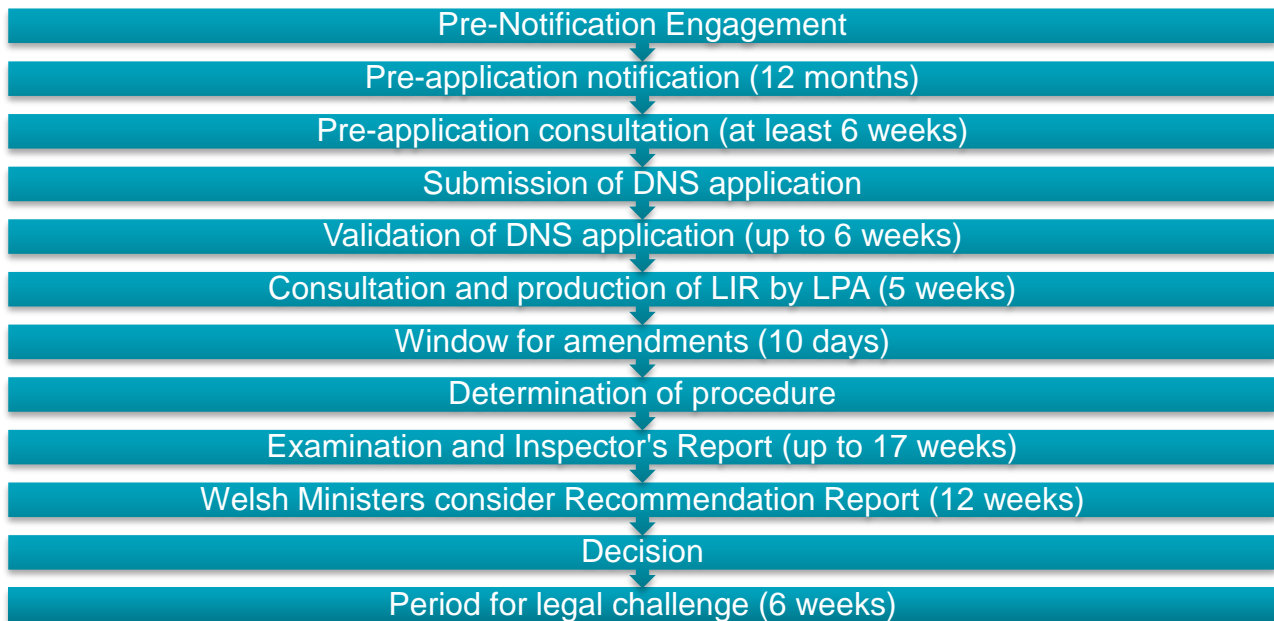
- [DNS](#) which explains the application process for DNS, the terminology used and includes guidance on Environment Impact Assessment and Habitats Regulations Assessment;
- The [Role of public bodies in the DNS process](#).

1.1.5 This guidance will be reviewed as necessary to ensure that it remains relevant and up to date.

1.2 The DNS Application Process

1.2.1 Flowchart 1 summarises the main stages in the process of deciding a DNS application:-

Flowchart 1 – The DNS Process



2 Natural Resources Wales's role as a specialist consultee

2.1.1 Under the Developments of National Significance (Procedure) (Wales) Order 2016 (2016 Order), Natural Resources Wales is a 'specialist consultee' in the application process for a DNS where the development falls within a category set out in the table in Schedule 5 of the 2016 Order and where Natural Resources Wales is named as specialist consultee for a particular category.

2.2 Pre Application – Statutory Advice

2.2.1 You are required to consult us prior to submitting your application to Welsh Ministers where the proposal meets one or more of the criteria prescribed in Schedule 5 of the Developments of National Significance (Procedure) (Wales) (Order) 2016 (2016 Order). These are:-

- Development involving or including mining operations;
- Development involving the carrying out of works or operations in the bed of or on the banks of a river or stream;
- Development for the purpose of refining or storing mineral oils and their derivatives;
- Development involving the use of land for the deposit of refuse or waste;
- Development relating to the retention, treatment or disposal of sewage, trade-waste, slurry or sludge (other than the laying of sewers, the construction of pumphouses in a line of sewers, the construction of septic tanks and cesspools serving single dwellinghouses or single caravans or single buildings in which not more than ten people will normally reside, work or congregate, and works ancillary thereto);
- Development affecting the use of land as a cemetery;
- Development i) in or likely to affect a site of special scientific interest; or(ii) within an area which has been notified to the Welsh Ministers by the Natural Resources Body for Wales and which is within two kilometres, of a site of special scientific interest, of which notification has been given, or has effect as if given, to the Welsh Ministers by

the Natural Resources Body for Wales, in accordance with section 28 of the Wildlife and Countryside Act 1981 (sites of special scientific interest);

- Development within 250 metres of land which— (i) is or has, at any time in the 30 years before the relevant application, been used for the deposit of refuse or waste; and (ii) has been notified to the Welsh Ministers by the Natural Resources Body for Wales for the purposes of this provision.

2.2.2 For statutory pre-application consultation under the 2016 Order you are required to comply with the publication requirements under article 8 and submit a notice to us under article 9 as prescribed in Schedule 2 of the 2016 Order or in a form substantially to the like effect. In addition, we would expect to be provided with all documents relevant to the scheme, including (but may not be limited to):-

- An Environmental Statement including proposed methodologies and mitigation to address significant environmental effects;
- A schedule of secondary consents applied for as part of the DNS application;
- Application forms and documents associated with secondary consents;
- A proposed timetable and schedule of associated Natural Resources Wales related consents being applied for together with all available documents;
- All plans and drawings needed to identify and describe the proposed development;
- A report on Likely Significant Effects under the Conservation of Habitats and Species Regulations 2010 (as amended).

2.2.3 NRW will provide a substantive response within 42 days beginning with the day on which the notice referred to in article 9 is given. We will provide a single substantive response to a particular DNS application. Where the applicant requires further pre-application advice, NRW may agree to provide this at its discretion in accordance with its standard terms and conditions under its charging scheme.

2.2.4 Our substantive response to a statutory pre-application consultation as a specialist consultee will comprise one of the following four responses contained in Table 1.

Table 1: Substantive Response Categories at Pre-application stage	
Category of Substantive Response	When used
States that the specialist consultee has no comment to make	We would use this category of response where a DNS does not meet any of the criteria on our checklist for engagement.
States that the specialist consultee has no objection to the proposed development and refers the applicant to current standing advice by the specialist consultee on the subject of the consultation	This category of response would be used where we consider that any effects on an environmental interest listed on our checklist for engagement are appropriately avoided or mitigated without any planning conditions being sought by us. We will refer to current Natural Resources Wales standing advice on the subject of the consultation.
	We would use this category of response where we consider the scheme is acceptable in principle and where:

<p>Advises the applicant of any concerns identified in relation to the proposed development and how those concerns can be addressed</p>	<ul style="list-style-type: none"> • Modifications are required to the proposed scheme to overcome unacceptable environmental effects; and/or, • Submitted information is deficient and where we cannot rule out potentially significant environmental effects and/or; • Where our concerns could be overcome by attaching conditions to any planning permission granted by Welsh Ministers. <p>We may also highlight when using this category of response, that where our concerns are not addressed and recommended actions not followed we would object to the scheme.</p>
<p>Advises the applicant that the specialist consultee has concerns and that it would object to an application for planning permission made in the same or substantially the same terms and sets out the reasons for those objections.</p>	<p>We would use this category of response where we consider:</p> <ul style="list-style-type: none"> • The proposal would have an unacceptable effect on the environment; • The effects could not be overcome without substantial changes to the scheme. <p>We would explain the reasons for our concerns and set out why we consider the scheme is unacceptable in its current form.</p>

2.2.5 The Planning (Wales) Act 2015 section 20 enables certain consents to be applied for as part of a DNS application. These are known as secondary consents to be determined by Welsh Ministers. Further information on secondary consents can be found [here](#).

2.2.6 We will reference substantive responses to secondary consents we comment on at pre-application stage, with our pre-application substantive response to a DNS application.

2.3 Pre Application – Discretionary Advice

2.3.1 We recognise the benefits of effective pre-application consultation between ourselves and the applicant. In addition to our statutory advice, we can offer applicants a preliminary opinion and access to our charged discretionary planning advice service (DPA Service). A free preliminary opinion is offered for all proposals which meet at least one of the criteria in our checklist for engagement. More information on what this service covers and how to access it can be found on our [website](#).

2.3.2 You can use the DPA service if you wish to access more extensive advice than we can provide as part of either our statutory advice or preliminary opinion. Examples of this include:-

- advice that is requested at the pre-notification stage of the DNS application process;

- meetings with applicants;
- site visits;
- advice on the issues an environmental statement should cover;
- advice on habitat survey requirements;
- mitigation requirements, and;
- detailed advice on constraints.

2.3.3. The DPA service is a charged service, but there is no obligation on you to make use of it. Full details of what is covered by this service, how to access it and the terms and conditions under which it is offered can be found on our website. If you are interested in making use of the DPA service, we will ask you or your consultants to set out what advice is required and if the request is extensive, provide us with a detailed programme of work. This document will help us to assess the short and long-term demands of the project and assess our capacity to deliver the advice. We will also use it to provide you with a cost estimate for the requested work.

2.3.4 If you decide to accept our quotation for the work, we will appoint an officer as a point of contact. If you require a significant level of input from us we will agree a protocol with you or your consultants, which will set out how we will work together. We will ask you or your consultants to ensure that sufficient and adequate information is provided to us to enable us to provide the requested advice to you.

2.3.5 We recommend that discussions on the use of the DPA Service start as early as possible to avoid delays during later stages of the DNS application process. This is particularly important if you are planning to request a significant amount of advice from NRW.

2.4 Post Application Submission Consultation – Statutory Advice

2.4.1 Welsh Ministers are statutorily required to consult us where a proposed DNS meets one or more of the criteria listed in Schedule 5 of the 2016 Order where we are listed as a specialist consultee unless we have advised Welsh Ministers that we do not wish to be consulted. We are required under Article 23 of the 2016 Order to provide a substantive response within 21 days of the date of the formal consultation being received. In accordance with Article 23 (as amended), if the application is accompanied by an environmental statement, we will provide a substantive response within 30 days of the date of the formal consultation being received. Where an extension of time is required, we will contact PINS as soon as possible to seek to agree a revised consultation deadline.

2.4.2 Where no pre-application consultation has taken place or where we have not given a response having been consulted at the pre-application stage, our substantive response to post application consultation will comprise one of the four categories of responses set out in Table 2.

Table 2: Substantive Response Categories Post Submission Consultation Stage (where we have not previously commented at pre-application stage).

Category of Substantive Response	When used
States that the specialist consultee has no comment to make	We would use this category of response where a DNS does not meet any of the criteria on our checklist for engagement.
States that the specialist consultee has no objection to the proposed development and refers the Welsh Ministers to current standing advice by the specialist consultee on the subject of the consultation	This category of response would be used where we consider that material effects on an environmental interest listed on our checklist for engagement are appropriately avoided or mitigated without any planning conditions being sought by us. We will refer to current Natural Resources Wales standing advice on the subject of the consultation.
Advises the Welsh Ministers of any concerns identified in relation to the proposed development and how those concerns can be addressed by the applicant	<p>We would use this category of response where we consider the scheme is acceptable in principle subject to:-</p> <ul style="list-style-type: none"> • Where the information is deficient and we cannot rule out potentially significant environmental effects, adequate information is provided to demonstrate that potential significant environmental effects will be appropriately mitigated or avoided, and/or, • Where our concerns could be overcome by imposing conditions to any planning permission granted by Welsh Ministers.
Advises that the specialist consultee objects to the proposed development and sets out the reasons for the objection	<p>We would use this category of response where we consider:</p> <ul style="list-style-type: none"> • The proposal would have an unacceptable effect on an environmental interest listed on our checklist for engagement; and, • The effects could not be overcome by less than substantial changes to the proposed development and • The effects could not be overcome by imposing planning conditions to any planning permission and/or with the provision of new information.

2.4.3 Where there are secondary consents being applied for and we have not previously commented on them, we will use a category of substantive response set out in table 2 for our responses to each secondary consent we respond to. We will reference substantive responses to secondary consents we comment on, with our post-submission substantive response to a DNS application.

2.4.4 **Where we have previously commented** at pre-application stage, our substantive response to PINS will use one of the three response categories set out in Table 3.

Table 3: Substantive Response Categories Post Submission Consultation Stage (where we have previously commented at pre-application stage).	
Category of Substantive Response	When used
States that the specialist consultee has no further comment to make in respect of the proposed development and confirms that any comments made under article 10 remain relevant	We would use this category of response where we are satisfied that our previous comments remain valid.
Advises the Welsh Ministers of any new concerns identified in relation to the proposed development, why the concerns were not identified in the response given in accordance with article 10 and how concerns can be addressed by the applicant	<p>We would use this category of response where:-</p> <ul style="list-style-type: none"> • We have become aware of new information (for example where further information has been submitted to us by the applicant) since our pre-application substantive response was made, our advice has changed and; • We consider in principle that the proposal could still proceed in substantially the same form: <ul style="list-style-type: none"> – Where the application is deficient, preventing us from assessing potentially significant environmental effects, that adequate information is provided to demonstrate that potential significant environmental effects will be appropriately avoided or mitigated, and/or – Where our further concerns could be overcome by attaching conditions to any planning permission granted by Welsh Ministers.

<p>Advises the Welsh Ministers of any new concerns identified in relation to the proposed development, why the concerns were not identified in the response given in accordance with article 10 and that the specialist consultee objects to the proposed development and sets out the reasons for the objection</p>	<p>We would use this category of response where our advice has changed because:</p> <ul style="list-style-type: none"> • We have become aware of new information (for example where further information has been submitted to us by the applicant since our pre-application consultation response was made) that would result in the scheme having an unacceptable effect on an environmental interest listed on our checklist for engagement; and, • We consider that our concerns cannot be overcome without substantial changes being made to the application and; • We do not consider that our concerns could be overcome by imposing planning conditions on any planning permission and/or with the provision of new information.
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2.4.5 Where there are secondary consents being applied for and we have previously commented on them at pre-application stage, we will also use one of our categories of substantive response set out in table 3 for our responses to each secondary consent. We will reference substantive responses to secondary consents we comment on, with our post-submission substantive response to a DNS application.

2.5 Statements of Common Ground

2.5.1 Where we are consulted on a Statement of Common Ground (SOCG) we will consider them on a case by case basis. PINS’s procedural guidance on SOCGs can be found [here](#).

2.6 Section 106 Agreements

2.6.1 Where there are section 106 obligations and we have a legal interest in the land, we should be consulted. The contents of the agreement should be approved by us prior to the section 106 agreement being signed. The obligations should also meet the advice given in Circular 13/97 ‘Planning Obligations’ and the Community Infrastructure Levy Regulations 2010.

2.7 Examination

2.7.1 We will participate in the examination process whenever we consider that it is appropriate and/or necessary to do so.

2.8 Town and Country Planning (Environment Impact Assessment) (Wales) Regulations 2016: Natural Resources Wales as a consultee

2.8.1 We are a consultee under the [Town and Country Planning \(Environmental Impact Assessment\) \(Wales\) Regulations 2016¹](#) (the EIA Regulations). Please refer to PINS's guidance on [Environmental Impact Assessment](#).

2.9 Conservation of Habitats and Species Regulations 2010 (as amended): Natural Resources Wales as a Consultation Body

2.9.1 In respect of DNS applications, we are the 'appropriate nature conservation body' under the [Conservation of Habitats and Species Regulations 2010²](#) (as amended) (the Habitats Regulations) in relation to Wales. PINS's guidance on Habitats Regulation Assessment can be found [here](#).

2.9.2 Welsh Ministers as the 'competent authority' for DNS under the Regulations must consult us as the appropriate nature conservation body for the purposes of the assessment and have regard to any representations made by us.

2.10 Flood Consequences Assessment (FCA)

2.10.1 Flood risk, whether inland or from the sea is a material planning consideration. DNS proposals in areas defined as being at risk of flooding will need to meet the requirements of Planning Policy Wales and Technical Advice Note 15 (Development and Flood Risk). For proposals in areas of high flood risk (zone C) the sequential tests outlined in sections 6 of TAN15 will apply. Any proposal where flood risk has been identified as a concern will require a Flood Consequences Assessment (FCA) to be submitted in support of the application. The FCA will need to demonstrate that it meets the technical requirements of TAN15, including an allowance for climate change.

2.11 Water Framework Directive (WFD)

2.11.1 In Wales, the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003 as amended (the Regulations), implement (in part) the Water Framework Directive (the Directive). The applicant must assess whether objectives of WFD are likely to be compromised.

2.12 Contact Points

2.12.1 Our contact points can be found [here](#).

2.12.2 You should remember to provide contact details so that we can reply promptly.

3 Natural Resources Wales Related Consents

3.1.1 The wider and principal land ownership, regulatory, licensing and advisory powers and duties which apply to Natural Resources Wales derive from various Acts, Regulations and

¹ SI 2016 no.58 (W. 28)

² SI 2010/490

European legislation and International Conventions. Any consents required, that we determine will need to be applied for separately from the DNS application.

3.1.2 We encourage you to co-ordinate submission of your applications for Natural Resources Wales consents with the submission of the DNS planning application. It is for you to be aware of what other consents are required and it is your responsibility to submit the applications in a timely manner and you should refer to the [table on NRW Consents, Registration, Permits and Authorizations](#) for this purpose.