

## **Developments of National Significance**

### **Explanatory Memorandum to:**

- 1. The Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) (Wales) Regulations 2016**
- 2. The Developments of National Significance (Fees) (Wales) Regulations 2016**
- 3. The Developments of National Significance (Procedure) (Wales) Order 2016**
- 4. The Developments of National Significance (Wales) Regulations 2016**
- 5. Developments of National Significance (Application of Enactments) (Wales) Order 2016**

**This Explanatory Memorandum and Regulatory Impact Assessment has been prepared by the Department for Natural Resources of the Welsh Government and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.**

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of:

1. The Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) (Wales) Regulations 2016
2. The Developments of National Significance (Fees) (Wales) Regulations 2016
3. The Developments of National Significance (Procedure) (Wales) Order 2016
4. The Developments of National Significance (Wales) Regulations 2016
5. Developments of National Significance (Application of Enactments) (Wales) Order 2016

I am satisfied that the benefits outweigh any costs

Carl Sargeant AM  
Minister for Natural Resources  
1 February 2016

## 1 Description

- 1.1 The Planning (Wales) Act 2015 makes provision, amongst others, to establish a new category of development eponymously named Developments of National Significance (“DNS”). The statutory instruments which are subject of this Explanatory Memorandum prescribe what development constitutes DNS, fees for DNS applications, which secondary consents may be applied for to the Welsh Ministers alongside applications for DNS, and the procedure for determining DNS applications and associated secondary consents.

## 2 Matters of Special Interest to the Constitutional and Legislative Affairs Committee

- 2.1 This Explanatory Memorandum covers five separate Statutory Instruments; two subject to the affirmative procedure and three which are subject to the negative procedure. The below statutory instruments are to be produced and the relevant procedures are specified below:

Subordinate Legislation	Procedure
The Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) (Wales) Regulations 2016	Affirmative
The Developments of National Significance (Fees) (Wales) Regulations 2016	Affirmative
The Developments of National Significance (Procedure) (Wales) Order 2016	Negative
The Developments of National Significance (Wales) Regulations 2016	Negative
The Developments of National Significance (Application of Enactments) (Wales) Order 2016	Negative

- 2.2 These statutory instruments prescribe what a DNS is, the entire procedure for DNS applications and the fees that such applications will attract. All of the above Statutory Instruments are reliant on each other and are interlinked through various references. It would not be possible to interpret the individual impacts of each Statutory Instrument in isolation without explaining the wider legislative context. Thus, a composite Explanatory Memorandum and Regulatory Impact Assessment has been prepared to describe these Statutory Instruments.

### **3 Legislative Background**

- 3.1 Section 17 of the Planning (Wales) Act 2015 inserts Section 61Z (Wales: requirement to carry out pre-application consultation) into the Town and Country Planning Act 1990 (“the 1990 Act”) and modifies Section 62 (applications for planning permission) in relation to pre-application consultation procedures.
- 3.2 Section 18 of the Planning (Wales) Act 2015 inserts section 61Z1 (Wales: pre-application services) and section 61Z2 (Pre-application services: records and statements of services) into the 1990 Act. Section 61Z1 provides for the Welsh Ministers to make, by regulations, provision for, and in connection with, the provision of pre-application services (by a local planning authority in Wales or the Welsh Ministers). Section 61Z2 provides for the Welsh Ministers to make, by regulations, provisions for records to be kept and statements of pre-application services to be published.
- 3.3 Section 19 of the Planning (Wales) Act 2015 inserts section 62D (Developments of National Significance: applications to be made to Welsh Ministers) and section 62E (Notification of proposed application under section 62D) into the 1990 Act. Section 62D makes provision for applications for Development of National Significance to be made directly to the Welsh Ministers rather than to a local planning authority. Section 62E requires a developer to notify the Welsh Ministers of a proposed application for DNS. Notification of a proposed application under section 62D may be required to include information relating to secondary consents required in relation to the proposed development.
- 3.4 Section 20 of the Planning (Wales) Act 2015 inserts section 62F (Developments of national significance: secondary consents), section 62G (Developments of national significance: supplementary provision about secondary consents), and section 62H (Developments of national significance: meaning of secondary consent) into the 1990 Act. Section 62F allows for the Welsh Ministers to determine secondary consents which would otherwise be determined by another person, alongside an application under section 62D where:
  - (a) the consent is required in order for the development to which the section 62D application relates to be carried out,
  - (b) the consent would facilitate the carrying out of that development, or
  - (c) the consent would facilitate any redevelopment or improvement, or the achievement of any other purpose, carried out on or in relation to land in connection with that development.
- 3.5 Section 62G sets out supplementary provisions for determination of secondary consents. Section 62H defines a “secondary consent”.
- 3.6 Section 21 of the Planning (Wales) Act 2015 inserts section 62I (Requirement to submit local impact report), section 62J (Duty to have regard to local impact report), and section 62K (Local impact report: supplementary) into the 1990

Act. Section 62I sets out the requirements on the Welsh Ministers and local planning authorities for the production of Local Impact Reports (“LIRs”). Section 62J requires the Welsh Ministers to have regard to any Local Impact Report submitted as part of an application for DNS. Section 62K requires that the LIR should meet the requirements specified in a development order.

- 3.7 Section 22 of the Planning (Wales) Act 2015 inserts section 62L (Timetable for determining applications) into the 1990 Act. Section 62L places the Welsh Ministers under a duty to determine an application for DNS, and make any decision about a secondary consent that is connected to it, before the end of a period of 36 weeks (starting on the date the application is accepted by the Welsh Ministers). Section 62L also enables the Welsh Ministers to suspend the determination period in a particular case and sets out who should be notified in such circumstances.
- 3.8 Section 24 of the Planning (Wales) Act 2015 inserts sections 62P (Applications to the Welsh Ministers: supplementary) and 62Q (Notifying community councils of applications made to the Welsh Ministers) into the 1990 Act. Section 62P sets out that a decision of the Welsh Ministers on an application made to them under section 62D (Developments of national significance: applications to be made to Welsh Ministers) is final, meaning that there is no right of appeal. It also gives the Welsh Ministers the power to direct a local planning authority to do things in relation to an application under section 62D that would otherwise be made to them. Section 62Q imposes a duty on the Welsh Ministers to notify a community council of applications made under s62D and s62F (Developments of national significance: secondary consents) where the application relates to land in the community council’s area (and where the community council has previously asked their local planning authority to be notified of application submitted to that authority).
- 3.9 Section 25 of the Planning (Wales) Act 2015 inserts section 62R (Power to make provision by development order in respect of applications to Welsh Ministers) into the 1990 Act. This allows the Welsh Ministers to make provision in a development order<sup>1</sup> about the way in which DNS applications are dealt with (including provisions related to consultation to be carried out and the variation of an application).
- 3.10 Section 26 of the Planning (Wales) Act 2015 inserts section 62S (Exercise of functions by appointed person) into the 1990 Act. Section 62S inserts a new schedule 4D into the 1990 Act, allowing persons appointed by the Welsh Ministers<sup>2</sup> to exercise functions in respect of DNS applications and secondary consents on their behalf.
- 3.11 Section 27 of the Planning (Wales) Act 2015 introduces Schedule 4 (Applications to Welsh Ministers: Further Amendments) of that Act. The schedule amends the 1990 Act in relation to applications (including

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<sup>1</sup> The Developments of National Significance (Procedure) (Wales) Order 2016

<sup>2</sup> For Developments of National Significance this will be the Planning Inspectorate.

applications for DNS and secondary consents) made to the Welsh Ministers. Schedule 4 amends the 1990 Act to:

- (a) enable the Welsh Ministers to apply, by means of a development order<sup>3</sup>, and with or without modifications, any relevant provisions or requirements imposed by legislation to applications that can be made directly to the Welsh Ministers;
- (b) extinguish any right of appeal against refusal of 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 the provision of pre-application services);
- (d) require the Welsh Ministers to determine the procedure by which an application for DNS or a secondary consent is to be determined;
- (e) provide rights of entry for the Welsh Ministers to enter land which is subject to a DNS application or a secondary consent.

3.12 Section 33 of the Planning (Wales) Act 2015 inserts section 71ZA into the 1990 Act. This enables the Welsh Ministers by development order to specify the form that notices of decisions on applications for planning permission should take, the manner in which they are to be given, and the particulars to be contained in them. It also requires a decision notice to specify any plans or other documents that form part of the planning permission. Section 71ZA also requires the local planning authority to issue a revised version of the decision notice where consents are given or conditions changed. The revised version of the decision notice must contain matters specified in a development order, which might include a requirement to state whether a condition has been discharged or approved and, if it has, the date of the approval and reference number relating to the details submitted.

3.13 Section 34 of the Planning (Wales) Act 2015 inserts section 71ZB into the 1990 Act. This places a requirement on developers to notify the local planning authority of the date on which the development is to begin, the details of the planning permission to be implemented and any other matters specified in a development order. The new provision requires a developer to display on or near the development site a notice of the decision to grant planning permission for that development. The notice must be displayed throughout the development period. It also enables the Welsh Ministers by a development order to specify the categories of planning permission to which the requirement; the form and content of such notices; and how a copy of the grant of planning permission must be displayed.

3.14 Section 49 of the Planning (Wales) Act 2015 inserts section 322C (Costs: Wales) into the 1990 Act. The section allows Welsh Ministers to recover the entire administrative costs they incur, including general staff costs and

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<sup>3</sup> The Developments of National Significance (Procedure) (Wales) Order 2016

overheads, for applications for DNS (and any related secondary consent). This section also allows the Welsh Ministers to prescribe a standard daily rate.

- 3.15 Section 50 of the Planning (Wales) Act 2015 inserts s323A (Procedure for certain proceedings: Wales) into the 1990 Act. Section 323A allows the Welsh Ministers to make regulations setting out the procedures for planning determinations, whether they proceed by way of written representations, hearing or inquiry.
- 3.16 Section 51 of the Planning (Wales) Act 2015 introduces Schedule 5 of that Act. Schedule 5 (Costs and procedure on appeals etc: further amendments) makes consequential, technical amendments to various Acts.
- 3.17 Section 303 of the 1990 Act (as amended by Schedule 4) confers powers on the Welsh Government to make regulations in respect of fees for applications for Developments of National Significance.
- 3.18 Being applications for planning permission, DNS applications will be subject to the provisions contained in the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. These are intended to be replaced by the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2016 which, as well as transposing recent EU directives, will include provisions applying the Environmental Impact Assessment process to DNS applications. These regulations will be the subject of a separate Explanatory Memorandum and Regulatory Impact Assessment.
- 3.19 The above powers, amongst other functions, enable the making of secondary legislation.

#### **4 Purpose and intended effect of the provisions**

- 4.1 Evidence suggests that the existing consenting regime is not effective in terms of producing quality decisions in a timely manner<sup>4</sup> for planning applications for proposed infrastructure development. Our evidence<sup>5</sup>, focussed particularly on development for renewable and low-carbon technologies, identifies a number of “constraining factors in the decision-making process”<sup>6</sup>. These include a lack of resources and technical expertise within LPAs, and the time taken by statutory consultees to respond and participate in the application process. The consequence is that infrastructure development is delayed, resulting in a negative impact on the economy and slow progress towards establishing a low-carbon economy through the building of renewable energy schemes.

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<sup>4</sup> [Towards a Welsh Planning Act: Ensuring the Planning System Delivers, Report to the Welsh Government \(June 2012\) Page: 47](#)

<sup>5</sup> [Evaluation of consenting performance of renewable energy schemes in Wales \(January 2013\) Page: iv-vi](#)

<sup>6</sup> [Towards a Welsh Planning Act: Ensuring the Planning System Delivers, Report to the Welsh Government \(June 2012\) Page: 81, para 7.3.25](#)

- 4.2 To address the above issue, a new category of development called Developments of National Significance (“DNS”) was established in the Planning (Wales) Act 2015 (“the Act”). The Act established a framework for a system which may determine prescribed types of development as well as development identified as of national significance in a National Development Framework (“NDF”). The detailed procedure of the system is contained in statutory instruments, which are the subject of this explanatory memorandum.
- 4.3 The Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) (Wales) Regulations 2016 specify the criteria for development to be of national significance for the purposes of Section 62D of the 1990 Act. Regulation 3 specifies the types of development which could be of national significance. The types of development where applications for planning permission are to be determined under this process are those which are of greatest significance to Wales in terms of their potential impacts. These are (broadly):
- (a) Generating stations;
  - (b) Underground gas storage facilities;
  - (c) Facilities for Liquid Natural Gas (“LNG”);
  - (d) Gas reception facilities;
  - (e) Airports;
  - (f) Railways;
  - (g) Rail freight interchanges;
  - (h) Dams and reservoirs;
  - (i) Transfer of water resources;
  - (j) Waste water treatment plants; and
  - (k) Hazardous waste facilities.
- 4.4 A concern raised by the community and development industry related to the number of separate consents required to enable a development to proceed. To minimise the number of separate applications required to enable a DNS to proceed and to provide greater clarity for all parties, an applicant 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.
- 4.5 The Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) (Wales) Regulations 2016 prescribe secondary consents for the purposes of sections 62E to 62H of the 1990 Act. The effect of being prescribed by these Regulations is that the consent can be considered by the Welsh Ministers alongside an application made to them for planning permission for DNS. Those consents listed within the regulations are those which:
- (a) are a necessary part of the DNS application, rather than a detailed operational consent that could be obtained at a later stage;

- (b) are 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) are a devolved matter normally consented by the Welsh Ministers or other Welsh bodies.
- 4.6 Our evidence<sup>7 8</sup> identified a number of issues with the current process for consenting nationally significant schemes, where planning permission is required from the local planning authority. The main criticism is the quality and timing of decisions, which in many instances take over 100 weeks to determine. The Developments of National Significance (Procedure) (Wales) Order 2016 (“the Order”) and Developments of National Significance (Wales) Regulations 2016 (“the Regulations”) between them make provision for the manner in which DNS applications and secondary consents are to be dealt with by the Welsh Ministers to ensure that decisions are made within the statutory time limit of 36 weeks, as required by Section 62L of the 1990 Act.
- 4.7 The provisions in the Regulations and the Order variously prescribe or provide for:
- (a) details relating to notification of a proposed DNS application to the Welsh Ministers. This measure is to ensure that the Welsh Ministers may allocate the relevant resources to ensure timely determination of the application and to ensure that the applicant undertakes statutory consultation on the same or similar information as that later submitted with the DNS application (the Order);
  - (b) details relating to pre-application services provided by the local planning authority and the Welsh Ministers, including the services offered and within which period those services are to be provided. This is to ensure that any advice by public bodies is of use to the developer in preparing an application for DNS (the Regulations);
  - (c) details relating to pre-application publicity and consultation including the documentation required to consult and the details of the pre-application consultation report. These measures will ensure that applicants consult on draft planning applications and that all comments received are documented (the Order);
  - (d) requirements related to the making of an application and the procedure for acceptance of the application. These measures will ensure that an application is made with full information (the Order);
  - (e) publicity requirements on the developer, Welsh Ministers and local planning authority prior to and following the making of an application.

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<sup>7</sup> [Evaluation of consenting performance of renewable energy schemes in Wales \(January 2013\) Page: iv-vi](#)

<sup>8</sup> [Towards a Welsh Planning Act: Ensuring the Planning System Delivers, Report to the Welsh Government \(June 2012\) Page: 81, para 7.3.25](#)



These measures will ensure that the public and statutory consultees are apprised of the application (the Order and the Regulations);

- (f) detailed provisions relating to LIRs, including how they are presented, by when and what information must be contained within them. This will ensure that an LIR is submitted in a timely manner and that its content is of use to the Welsh Ministers (the Order);
- (g) amendments to applications for DNS. This provision limits the circumstances and timing of amendments to ensure that decisions can be made in a timely manner and for the same or similar application to be examined throughout the application process (the Order);
- (h) the procedure for examining an application for DNS, which will be either by way of written representations, hearing, inquiry or a mixture of any of those methods. These provisions are to ensure that the application for DNS is considered in an open and transparent way while still remaining structured to ensure that the examination concludes in a timely manner (the Regulations);
- (i) functions of the Welsh Ministers to be exercised by an appointed person on their behalf. The appointed person will be the Planning Inspectorate, who will undertake the administration and examination of the application for DNS on behalf of the Welsh Ministers (the Regulations);
- (j) how secondary consents will tie in to the DNS process. This is to ensure that they follow the same procedure as the principal DNS application (the Regulations);
- (k) how decisions are to be made by the Welsh Ministers upon recommendation by the appointed person (the Regulations and the Order).

4.8 The Developments of National Significance (Fees) (Wales) Regulations 2016 provide for the payment of fees in respect of the activities undertaken in relation to processing and determining DNS applications. They provide for fees in respect of:

- (a) pre-application services provided by the Welsh Ministers and local planning authorities under Part 2 of the Regulations;
- (b) notification of a proposed application for DNS under Section 62D of the 1990 Act;
- (c) applications for DNS under Section 62D of the 1990 Act, including fees for LIRs submitted by local planning authorities under Section 61I of the 1990 Act.

4.9 The Regulations also prescribe the circumstances in which:

- (a) Part of the initial fees paid to the Welsh Ministers is to be refunded to applicants; and
  - (b) Fees paid to the Welsh Ministers for local impact reports are to be remitted to local planning authorities or refunded to applicants.
- 4.10 The policy intention for fees is that they are related to the costs incurred in providing a service, examining an application or carrying out any other work required in relation to an application for DNS. The Welsh Ministers intend to use a mixture of fixed and variable fees for different elements of the DNS process with the aim of achieving full cost recovery. It is the intention that fixed fees as well as the provision of an estimate of the number of days examination of the application is likely to take will offer a clearer picture to developers as to the likely cost of an application for DNS.
- 4.11 The Developments of National Significance (Application of Enactments) (Wales) Order 2016 will apply relevant sections of the 1990 Act to DNS applications. This order also modifies those enactments where appropriate to do so to ensure consistency with the procedure for planning applications made to local planning authorities.
- 4.12 The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2016 will contain provisions in relation to Developments of National Significance and will be the subject of a separate Explanatory Memorandum and Regulatory Impact Assessment.

## **5 Consultation**

- 5.1 Comments received in response to the “Positive Planning: proposals to reform the planning system in Wales” consultation, which ran from 4 December 2013 to 26 February 2014, established overall agreement on the establishment of a new category of nationally significant development. These principles were approved by the National Assembly for Wales, in passing into Law the Planning (Wales) Act 2015.
- 5.2 The “Developments of National Significance” consultation paper was launched on 20 May 2015 and was open for responses until 12 August 2015. The paper set out detailed proposals for a system to administer and determine this category of planning application. It contained the detail that was intended to be prescribed in supporting regulations and orders. Questions 1-20 of that consultation document asked specific questions in relation to the proposals with a further question seeking any further comments on the DNS process. The consultation was not intended to revisit the principles for DNS set out in the Planning (Wales) Act 2015.
- 5.3 500 stakeholders most likely to be impacted by the proposals, including both individuals and organisations, were consulted. The list included all local planning authorities in Wales, public bodies, and special interest groups. Stakeholders from industry and other interest groups with specialist knowledge of the subject area were also notified including a number of

operators in the fields of rail, telecommunications, energy, gas, airports and ports. Consultees were asked to assign themselves to one of six broad categories indicated in the table below, which shows the breakdown of responses by category. The consultation generated 69 responses. A summary of the consultation and a government response to it is published alongside this Explanatory Memorandum and Regulatory Impact Assessment.

<b>Table 1 - Breakdown of Respondents</b>		
<b>Category</b>	<b>Number</b>	<b>% of total</b>
Businesses / Planning Consultants	10	14
Local Authorities (including National Park Authorities)	16	23
Government Agency/Other Public Sector	8	12
Professional Bodies/Interest Groups	17	25
Voluntary Sector	8	12
Others (other groups not listed)	10	14
<b>TOTAL</b>	<b>69</b>	

- 5.4 Overall there was clear support for the proposals, with each of the 20 specific questions receiving a greater number of positive responses (either “Yes” or “Yes (subject to comments)”) than negative. The responses identified some areas where amendments to the proposals were deemed necessary and we have taken steps to address these in the secondary legislation. Additionally, comprehensive guidance on the DNS process was sought. This is currently being prepared to support the legislation. The Summary and Government Response to the consultation covers these issues in more detail<sup>9</sup>.

<sup>9</sup> <http://gov.wales/consultations/planning/developments-of-national-significance/?lang=en>

## **6 Regulatory Impact Assessment**

- 6.1 Figures and assumptions contained within this Regulatory Impact Assessment (“RIA”) have been derived following extensive evidence gathering both during the passage of the Planning (Wales) Act 2015 and following its enactment. Further evidence has since been gathered as the process for determining an application for DNS has been defined and refined through the production of statutory instruments. Evidence has included that provided in response to the “Developments of National Significance” consultation which ran between 20 May 2015 and 12 August 2015 (see section 5) and from stakeholders engaged by the Welsh Government, including local planning authorities, the Planning Inspectorate and the development industry. The figures will therefore differ from those contained within the RIA accompanying the Planning (Wales) Act 2015.
- 6.2 This RIA addresses the impacts of the introduction of a suite of Statutory Instruments, which implement the DNS system as a whole. The impacts identified in this RIA have not been divided by individual Statutory Instruments as all DNS Instruments are interdependent on each other. It would not be possible to interpret the individual impacts of each Statutory Instrument in isolation without it being placed in its wider context.

### **Options**

- 6.3 There are associated difficulties in assessing the impacts relating to procedure for DNS applications. As the procedure is largely tied to the provisions inserted into the Town and Country Planning Act 1990, there is very little scope for variations to the procedure to be assessed. There is also no scope to assess the impacts of varied fee structures. Fees are in place to cover the entire administrative cost of a process. If fee structures were to be altered, the overall amount charged will remain the same as the cost is linked to the cost of the process.
- 6.4 DNS will have one main variable, which is the power to prescribe certain project types as DNS. It is for the Welsh Ministers to prescribe such projects, and they may assign DNS status to as few or as many projects as they consider nationally significant to Wales. In addition to those prescribed project types, the Welsh Ministers may specify development that constitutes DNS in the National Development Framework for Wales (“NDF”). Projects in the NDF are not necessarily those which are in the prescribed list of projects.
- 6.5 Three options have been considered:
- Option 1- Do nothing, do not prescribe which types of applications for DNS will be submitted to the Welsh Ministers and enable only applications for development which is specified as of national significance in the National Development Framework (“NDF”) to be DNS applications.
  - Option 2 – Prescribe thresholds and criteria for DNS development in regulations, to include:

- Energy Generating stations (Between 25MW and 50MW);
  - Underground gas storage facilities;
  - LNG;
  - Gas reception facilities;
  - Airports;
  - Railways;
  - Rail freight interchanges;
  - Dams and reservoirs;
  - Transfer of water resources;
  - Waste water treatment plants; and
  - Hazardous waste facilities.
- Option 3 – As Option 2, but revise the threshold for energy generating stations to capture those between 10MW and 50MW.

Options 2 and 3 will additionally allow developers to submit applications for certain connected applications, licences, orders, notices and consents as Secondary Consents to the Welsh Ministers at the same time, and following the same process as the main application for DNS.

## **Option 1 – Do Nothing**

### **Description**

- 6.6 Currently, planning applications are submitted to the relevant local planning authority (“LPA”), which should decide them within 8 weeks, or 16 weeks where an Environmental Impact Assessment is required. Applicants can appeal to the Welsh Ministers against a local planning authority’s decision to refuse an application for planning permission or against non-determination if a decision is not made within 8 or 16 weeks.
- 6.7 The Welsh Ministers have powers to call in an application for determination, or to recover an appeal. Call-in cases and recovered appeals are processed by an appointed person (the Planning Inspectorate), with the appointed person making a report to the Welsh Ministers. While there are no statutory targets within which the Welsh Ministers must issue a decision, officials aim to submit advice to the Minister within 12 weeks of receipt of a recommendation from the Planning Inspectorate.
- 6.8 Under this option, no criteria for DNS will be prescribed. Only those projects that are specified in the NDF, when it is prepared and published which is anticipated before 2020, would be DNS applications. In the medium-term and in the assessed period of 2016/17, no applications for DNS will be made until that time and applications for infrastructure projects in the list at paragraph 6.5 will continue to be made to the LPA.

### **Cost**

- 6.10 This option maintains the status quo and does not create additional costs. Recent research estimated that an average of 5.9 applications for

infrastructure development per year in Wales will be affected by the proposals set out in this section of the Impact Assessment<sup>10</sup>. The costs and benefits of each option will refer only to these applications.

### Welsh Government

- 6.11 Developers can submit appeals against local planning authority decisions to the Welsh Ministers. It is assumed that appeals arising from the 5.9 planning applications for infrastructure development will be determined using the local inquiry procedure. It costs around £14,500 to process and determine a local inquiry appeal<sup>11</sup>. It is estimated that there will be 1.5 appeals per year on average, with an average annual cost therefore of £21,750.
- 6.12 The Welsh Ministers also call in planning applications<sup>12</sup>. It is estimated that the element of the call-in process undertaken by the Planning Inspectorate on behalf of the Welsh Ministers costs £14,500 per case, and the Welsh Ministers element costs £9,500. It is estimated that 0.1 infrastructure applications are called in on average per year, at a cost therefore of £2,400 per annum.
- 6.13 The costs for the Welsh Government for appeals and applications that are called in are estimated to be £24,150 on average per year.
- 6.14 In measuring delays to the process, the current system requires developers of infrastructure schemes to use the planning system to secure planning permission for a proposed scheme primarily through the LPAs which represent the communities in which the development will be undertaken. Balance in the planning system is maintained via the appeal process, which ensures that an impartial decision on the planning merits of a proposed scheme is given where a local authority refuses planning permission and the developer appeals. However, delays in development caused by slow decision-making undermine Ministerial aims of encouraging economic recovery and building a sustainable and low-carbon economy.

### Local Planning Authorities

- 6.15 LPAs receive and validate applications for planning permission, carry out consultations, and make decisions which are either delegated to a planning officer or made by a committee. It is this final element of the application process that influences the cost of the application.

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<sup>10</sup> [Quantification of Infrastructure and Business/Commercial Planning Applications Submitted in Wales – Final Report \(2014\)](#) pp15-16 - Data used excludes applications that were withdrawn or are on-going & applications determined by the Planning Inspectorate since 2010 as part of the Development Consent Order regime introduced by the Planning Act 2008.

<sup>11</sup> The Welsh Ministers can determine appeals using the Written Representations, Hearing, or Local Inquiry procedures. Appeals related to major development do not have to proceed via the Inquiry procedure, but the evidence gathered for the [ARUP Report 2014](#), confirms that they normally do.

<sup>12</sup> The circumstances required to trigger a call-in or recovery of an appeal are often set out in published criteria.

- 6.16 The current system requires that developers pay a planning application fee in most cases when they submit an application to an LPA. It is estimated that the average fee for applications for proposed infrastructure development is £44,750<sup>13</sup>. It is estimated that the income generated from the payment of application fees for the 5.9 infrastructure planning applications is £264,025 on average per year.
- 6.17 It is assumed that the 5.9 applications are determined by Committee, rather than delegated to a planning officer. Existing figures and evidence for the cost of processing and deciding a planning application<sup>14</sup> are estimated to be too low<sup>15</sup>, given the level of involvement required by the local planning authority and inadequacy of available evidence. It is reasonable to assume that the cost of determining an application for major infrastructure reflects the cost of the associated fee. This is estimated to be an annual cost of £264,025 (£44,750 per application) to LPAs.
- 6.18 Some of these applications may be called in by Welsh Ministers. Of the 5.9 applications being considered, it is estimated that 0.1 are called in on average per year, and cost LPAs an extra £180 on average per year.
- 6.19 LPAs find it difficult to administer and determine infrastructure planning applications due to their relative scarcity. Authorities may not be able to develop and maintain appropriate expertise for this type of development, resulting in slow decision-making<sup>16</sup>. This impacts both on the reputation of the local planning authority and also increases costs due to decisions being appealed by developers.
- 6.20 It is estimated that 1.5 appeals will be made after the 5.9 applications for planning permission have been determined by the LPA. It costs the LPA an average of £1,740 to participate in an appeal<sup>17</sup>. Therefore, it costs an average of £2,610 per year to participate in the appeal process.
- 6.21 Under this option, the total net cost to LPAs is £2,790.

### Development Industry

- 6.22 Developers bear the cost of preparing their proposed scheme and using the planning system to obtain planning permission. Planning applications normally require the payment of a fee to a local planning authority.

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<sup>13</sup> From data for [Quantification of Infrastructure and Business/Commercial Planning Applications Submitted in Wales – Final Report \(2014\)](#). It should be noted that the actual fees paid varied significantly.

<sup>14</sup> Planning Service Benchmarking Club 2011: Barchester City Council, PAS/CIPFA Report, February 2012, p12 (hereafter referred to as PAS/CIPFA Report 2012).

<sup>15</sup> This figure is estimated at £1,188. It is formed of an average of all types of planning applications. This includes householder development ranging to major developments. All DNS applications are likely to have a cost on the higher end of the spectrum, given their complexity and scale. This is not reflected in the figure.

<sup>16</sup> [Towards a Welsh Planning Act: Ensuring the Planning System Delivers, Report to the Welsh Government \(June 2012\) Page: 81](#)

<sup>17</sup> PAS/CIPFA Report 2012, p13.

- 6.23 Developer<sup>18</sup> costs vary according to the size of the development. It is estimated that the cost of preparing an application is £128,700 as well as a planning fee (the average cost of which is £44,750). Thus, the total cost for making an application for infrastructure development is on average £173,450 per application. This includes developing the proposed scheme and putting it through the planning application process (including an average application fee for this type of development). Therefore, the cost of making 5.9 applications per year is estimated to be approximately £1,023,355<sup>19</sup>.
- 6.24 Some planning applications are called in by the Welsh Ministers, due to the significance and/or impact of the proposed scheme. An application can be called in at any point during the application process. Once called in it is processed on behalf of the Welsh Ministers by the Planning Inspectorate which provides a report to the Welsh Ministers, who will then issue their decision<sup>20</sup>. Of the 5.9 applications being considered, it is estimated that 0.1 are called in on average per year, and cost developers an extra £480 on average per year.
- 6.25 When a local planning authority refuses planning permission, or grants it subject to conditions, or fails to issue a decision within the statutory timescale, the developer can submit an appeal to the Welsh Ministers. It is estimated that there are 1.5 planning appeals per year that result from the 5.9 planning applications. It is assumed that, due to the complexity of planning merits involved, these appeals will follow the local inquiry procedure. This is estimated to cost developers £4,800 per appeal<sup>21</sup>. Therefore, the cost for developers of making 1.5 appeals is estimated to be £7,200 on average per year.
- 6.26 The total cost for developers is estimated to be £1,031,035 on average per year.

### The Community

- 6.27 The community and interested parties are able to review and comment on proposed schemes submitted to their local planning authority. They have a similar opportunity to make their views known when an appeal is submitted. There is a time cost to interested parties and the general public in participating in the planning process, but the ability of interested parties/the general public to participate is unchanged in each of the options.

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<sup>18</sup> "Developer" means a person or organisation wishing to develop land (in this case specifically with infrastructure development).

<sup>19</sup> [Benchmarking the costs to applicants of submitting a planning application \(July 2009\)](#) Page: 21 (hereafter referred to as ARUP Report 2009). This also includes application fee data from ARUP Report 2014.

<sup>20</sup> It should be noted that the Welsh Ministers can issue a decision which is not in accordance with the recommendation of the Inspector.

<sup>21</sup> [Improving the Appeal Process in the Planning System – making it proportionate, customer focused, efficient and well resourced](#) ( May 2007) Page: 44 (hereafter referred to as *Planning Reform Consultation 2007*).



## **Benefits**

### Welsh Government

6.28 Under this option, nationally significant development would still be decided at the local level. This may not necessarily be the correct level. Under this option, however, the Welsh Government will continue to have the benefit of managing some development in Wales through the provision of an appeal function and a call-in mechanism. This would ensure that decisions are made at the appropriate level and involve the communities affected by proposed infrastructure schemes.

### Local Planning Authorities

6.29 In undertaking this option, LPAs would be able to manage and influence development of national significance within their area through the planning system, ensuring that it is appropriate and that communities are able to have their say in the consideration of an application. LPAs receive a fee to enable them to carry out this function.

### Development Industry

6.30 Under this option if developers gain consent to develop land, this increases the value of the land on which development is planned. Developers are also able to challenge decisions that refuse permission, impose conditions, or where a decision is not made. This provides the benefit of being able to receive an independent and fair reconsideration of the merits of a case. However, this process can be costly to the development industry.

6.31 Planning authorities are expected to decide planning applications within 8 or 16 weeks. However, evidence shows that applications (and appeals) for infrastructure development can take significantly longer than this. The average consenting time for applications for renewable energy schemes over 5MW between 2005 and 2012 was 57 weeks. For appeals, the average was 36 weeks<sup>22</sup>. Whilst it is difficult to estimate the exact cost, it is apparent that delayed planning decisions place a significant financial burden on developers and the Welsh economy.

### The community

6.32 Currently the community and interested parties have an opportunity to make their views known on development which is intended to be built in their communities. They are able to participate in the planning process and influence consideration of the planning merits of a proposed scheme. Under this option, this arrangement will remain.

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<sup>22</sup> [Towards a Welsh Planning Act: Ensuring the Planning System Delivers, Report to the Welsh Government \(June 2012\) Page: 54-55.](#)

## **Option 2 – Prescribe thresholds and criteria for DNS development in regulations to include those projects listed at paragraph 6.5.**

### **Description**

- 6.33 This option implements an IAG recommendation and research undertaken by Hyder in prescribing projects which are DNS. It would provide a system with improved certainty and rigour in the application process, and allow for more timely decisions<sup>23</sup>.
- 6.34 An application for planning permission will become a DNS application if it falls within thresholds and meets criteria set out in the relevant secondary legislation<sup>24</sup>. Those thresholds include energy projects between 25MW and 50MW, as was consulted upon as part of the Development of National Significance consultation paper, and a list of projects which match certain of the infrastructure projects which in England are of national significance by virtue of the Planning Act 2008. The full list of projects is at Paragraph 6.5. The proposed NDF will also identify development which will be classified as DNS. Certain secondary consents may also be submitted alongside development identified as being of national significance. The ability to submit applications for secondary consents is optional and at the discretion of the developer. There is no obligation for developers to submit applications for secondary consents directly to the Welsh Ministers.
- 6.36 The Planning (Wales) Act 2015 amends the 1990 Act to set out that a DNS application is to be made to the Welsh Ministers.

### **Cost**

- 6.37 This option requires a new route for the consideration of applications for planning permission for infrastructure projects alongside applications for related secondary consents (where submitted by developers). This will generate new or changed costs, including the fee to be paid for DNS applications, and the cost of new casework dealt with by the Welsh Ministers. The impacts on the year 2016/17 is assessed below.

### **Welsh Government**

- 6.38 The Welsh Government will be subject to new costs. 3.4 DNS applications per year will be made to the Welsh Ministers for determination (with a further 2.5 infrastructure projects for onshore energy generation between 10 MW and 25 MW being determined by LPAs). A developer may also submit applications for related secondary consents alongside the application for DNS which will follow the same process<sup>25</sup>. For the sake of brevity, DNS applications will be taken to include applications for secondary consents,

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<sup>23</sup> [Towards a Welsh Planning Act: Ensuring the Planning System Delivers, Report to the Welsh Government \(June 2012\), pp 46-49](#)

<sup>24</sup> The Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) (Wales) Regulations 2016

<sup>25</sup> See paragraph 4.4-4.5

unless otherwise specified. The Welsh Ministers' appointed person will process the application and present a report to the Welsh Ministers. The Welsh Ministers will make a decision on the DNS application following consideration of the report. The Planning Inspectorate will be appointed to carry out this work. Therefore, for the purposes of this assessment, the cost of processing and providing a report for the Welsh Ministers will be based on the work being carried out by the Planning Inspectorate.

- 6.39 The cost to the Planning Inspectorate will vary depending on the procedure<sup>26</sup>. Each DNS application will include tasks which will be performed by either administrative staff<sup>27</sup> or Inspectors. Additionally, administrative staff perform a support function for Inspectors in performing their duties. This support will be less for the written representations procedure and slightly higher for hearings and Inquiries, resulting in differing daily rates.
- 6.40 Each DNS application will consist of sections of work that are the same regardless of procedure and therefore represent a fixed average cost. The total cost to the Planning Inspectorate of dealing with a DNS application will be the costs associated with this standard work plus the relevant daily rate (multiplied by the number of days required to undertake this variable work). It is anticipated that an application proceeding via the inquiry procedure will require more work to process than one proceeding by the written representations or hearing procedures. It is assumed that applications proceeding by written representations or a hearing will require a minimum of 8 days' work, and those proceeding by Inquiry will require a minimum of 12 days' work.
- 6.41 Any application for secondary consent submitted by the developer to the Welsh Ministers will be processed and determined alongside the main application for DNS, using the same procedure. The ability to submit applications for secondary consents is optional for the developer. Inclusion of secondary consents alongside the main application for DNS may increase the number of days' work associated with determining the DNS application, though fixed costs will remain the same. As it is optional for a developer to submit applications for secondary consent alongside an application for DNS, and the number of secondary consents relevant to an application for DNS will vary, there are no existing trends and it is not possible to accurately predict any additional costs. Table 2 therefore indicates the estimated minimum costs of determining an application for DNS along with any secondary consents.

<b>Table 2 - Estimated minimum costs (excluding pre-application services) for each procedure</b>			
Procedure	Written Representations	Hearing	Inquiry

<sup>26</sup> This will be written representations, Hearing, or Inquiry, or a combination. 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.

<sup>27</sup> This term encapsulates all non-Inspector staff, including Planning Officers

Notification	£580	£580	£580
Validation, Representations and Publicity, Determination of procedure	£15,350	£15,350	£15,350
Daily Costs <sup>28</sup>	£6,960	£7,360	£11,040
Advertising (Actual)	£0	£400	£400
Venue Hire (Actual)	£0	£1,400	£2,100
Welsh Ministers	£14,700	£14,700	£14,700
<b>TOTAL</b>	<b>£37,590</b>	<b>£39,210</b>	<b>£43,590</b>

- 6.42 Along with the standard and variable costs related to work undertaken by the Planning Inspectorate, and the fixed costs of the Welsh Ministers, there may be actual (external) costs. Actual costs may be for advertising or venue hire, or for legal services, appointment of an assessor or commissioning of reports from external sources<sup>29</sup>. Other than the estimated costs for advertising and venue hire (included in Table 2, above), it is not possible to quantify these for DNS applications. Fees will be levied on developers on the basis of full cost recovery to include these actual costs.
- 6.43 There will be estimated set-up costs of £1,800, consisting of the cost of providing furniture and workstations. There will also be the cost of recruiting additional members of staff. This is estimated to be £12,300. It is estimated that these one-off set-up costs, including recruitment, would amount to £14,100. This cost would be incurred in 2016-17.
- 6.44 On the basis of the costs in Table 2 and assuming 3.4 DNS applications per year on average, the estimated cost to the Welsh Government will, on average, vary from £127,806<sup>30</sup> to £148,206<sup>31</sup> per year, with one-off set up costs of £14,100, dependent on procedure and excluding any actual costs (beyond venue hire or advertising).
- 6.45 There will be additional costs to the Planning Inspectorate in providing pre-application services. Pre-application services may be given at any stage prior to submission of an application for DNS and may be provided on more than one occasion (in a form set out in secondary legislation). The nature and

<sup>28</sup> Estimated days: Written Representations/Hearing = 8; Inquiry = 12. Daily Rate: Written Representations = £870; Hearing/Inquiry = £920

<sup>29</sup> Where applications for Secondary Consent are submitted alongside the main application the need for reports and input from subject matter experts (for example in relation to Hazardous Substance or Ancient Monuments) may increase.

<sup>30</sup> All applications proceeding by the Written Representations procedure

<sup>31</sup> All applications proceeding by the Inquiry procedure

extent of the advice requested may differ considerably from application to application and is likely to involve desk-based assessments and site visits (where appropriate). It is not possible to estimate the costs of this part of the process. The cost to the Planning Inspectorate of providing pre-application services will be assessed at an hourly rate of £55 per hour (excluding VAT) with charges levied on developers for provision of these services on the basis of full cost recovery.

- 6.47 Developers will pay an application fee for their DNS application. The fee that will be paid has been defined, following consultation, within the Developments of National Significance (Fees) (Wales) Regulations 2016. The total fee to be paid to the Welsh Ministers (or their appointed representative, the Planning Inspectorate) will be made up of fixed fees, a daily rate dependent on procedure, and any actual costs, with the goal of full cost recovery. The estimated minimum fee payable by a developer (excluding actual costs beyond those estimated for advertising and venue hire and fees for pre-application services) for each procedure is set out in Table 2.
- 6.48 2.5 applications for onshore energy generating stations between 10 and 25 MW per year will be determined by LPAs, and there will be costs arising from appeals. Based on existing trends, 0.6 of these applications will be subject to appeal. The cost of the Welsh Government's participation in an appeal is approximately £14,500. It will cost an average of £8,700 to participate in the appeal process. There will be a negligible number of call ins, based on existing trends. £8,700 is estimated to be the total annual cost (2016/17) to the Welsh Ministers under this option.
- 6.49 Given the model for full cost recovery as far as possible, the total additional annual cost to the Welsh Government is estimated to be £8,700, along with £14,100 by way of one-off set-up costs.

#### Local Planning Authorities

- 6.50 For LPAs this option will generate new work resulting from engaging with the DNS application process. This will primarily be the production of a Local Impact Report ("LIR"). Tasks such as updating the Planning Register, putting up site notices and attending hearings or inquiries which are currently undertaken for applications and appeals will also attract further costs for the LPA. It is estimated that for the production of an LIR, and for putting up the site notices, the cost to LPAs will be £26,350 for 3.4 DNS applications on average per year. DNS applications to vary or remove conditions associated with a previously granted consent will have lower costs<sup>32</sup> as it will only be necessary for the LPA to update a previously produced LIR.
- 6.51 Developers will be required to pay a fee to LPAs for the DNS application work they are required to carry out. For illustrative purposes it is assumed that this fee will be equivalent to the estimated cost of carrying out the work in

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<sup>32</sup> Costs for the production of LIR and erection of site notices for s73 DNS application estimated to be £2,350

producing the LIR and erecting site notices, which is £7,750<sup>33</sup> per application. Therefore, LPAs will receive an estimated income of £26,350 on average per year for the DNS application work. This means that, in effect, the new DNS application function that LPAs will have will be cost neutral.

- 6.52 As indicated previously, there may be additional costs associated with participation in the DNS application process, though these are not unique to DNS. These may include attendance at a hearing or inquiry (should the LPA choose to do so), updating the planning register, or submitting comments<sup>34</sup> on the merits of a DNS application. It is not possible to quantify these.
- 6.53 There will be a further cost associated with the provision of pre-application advice to the applicant. This advice will take a form set out in legislation<sup>35</sup>. There will be a fee associated with provision by LPAs of pre-application advice payable direct to LPAs. The fee is intended to cover the costs of the LPA in providing this advice.
- 6.54 As 2.5 applications for infrastructure development will remain to be determined by LPAs, there will still be some costs and income. As identified in option 1, it is estimated that the average fee for applications for proposed infrastructure development is £44,750<sup>36</sup>. This will result in a cost of £111,875 per year, to be offset by planning fees. Based on existing trends, 0.6 applications will be subject to appeal. The cost of participating in an appeal is approximately £1,740. It will cost an average of £1,050 to participate in the appeal process. There will be a negligible amount of call ins, based on existing trends. £1,050 will be the total cost to the LPA under this option.
- 6.55 LPAs would ordinarily determine a number of the applications for consent which, under Options 2 and 3, may be determined by the Welsh Ministers as applications for secondary consent alongside an application for DNS. LPAs may continue to receive applications of this type, or the developer may decide to submit to the Welsh Ministers. For any such applications made to the Welsh Ministers, the costs and income to the LPA associated with this work will be removed.

### Development Industry

- 6.56 Developers seeking planning permission for infrastructure development which is identified as DNS (3.4 applications per year) will submit their applications to the Welsh Ministers rather than to their local authority. However, for energy projects between 10MW and 25MW, planning permission will continue to be sought from the LPA (2.5 applications per year). The cost to the developer of

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<sup>33</sup> For s73 DNS applications, this will be £2,350

<sup>34</sup> The LIR is not intended to be used in a way which expresses political views, recommendations, or a balancing exercise on the acceptability of an application for DNS. It is open to the Council to express their views separately.

<sup>35</sup> The Developments of National Significance (Wales) Regulations 2016

<sup>36</sup> From data for [Quantification of Infrastructure and Business/Commercial Planning Applications Submitted in Wales – Final Report \(2014\)](#). It should be noted that the actual fees paid varied significantly.

preparing a scheme under either process is expected to remain the same as in the 'Do Nothing' option, at £128,700. This will be a cost of £759,330 per year for 5.9 applications.

- 6.57 For DNS development, the developer will be required to pay a fee to the Welsh Ministers, part of which will be paid on to the local planning authority to cover the costs of producing the LIR (provided the LIR is adequate and is received on time). Fees to the Welsh Ministers will vary between £37,590 and £43,590, as specified in Table 2. There shall also be the additional cost for of the production of the LIR of £7,750, unless an application to vary or removed conditions on a previously granted consent under s73 Town and Country Planning Act 1990 (where a fee of £2,350 will apply). The total fee may vary between £39,940 at its cheapest and £51,340 at its most expensive. For 3.4 applications per year, the application fees may vary between approximately £135,800 and £174,560 per year.
- 6.58 There may be additional costs for pre-application advice requested from the Planning Inspectorate, the LPA or both. Pre-application advice provided by the LPA for a DNS application will take a form set out in legislation and will be subject to a fixed fee<sup>37</sup>. Pre-application services provided by the Planning Inspectorate on behalf of the Welsh Government will, given its more varied nature, be subject to an hourly rate fee. There is no requirement for the applicant to request pre-application advice from either the LPA or the Welsh Ministers, though they may request advice from either or both, and may make requests on more than one occasion to the Welsh Ministers. Given the variable nature of the advice that will be provided on behalf of the Welsh Ministers by the Planning Inspectorate, it is not possible to quantify the likely cost to developers.
- 6.59 It is assumed that most application sites will be located within one LPA, though it is possible, particularly for linear schemes, that development may be located within more than one LPA area. In such circumstances, an LIR fee will be payable to each LPA. Developers will also be required to pay a fee to the relevant local planning authority to cover the costs of their involvement in the DNS application process (specifically the production of the LIR and the cost of putting up site notices). This will be £7,750 in most cases (and £2,350 in the case of applications to vary or remove conditions associated with a previous consent).
- 6.60 For energy projects between 10MW and 25MW, not prescribed as DNS, the applicant will make an application to the LPA. The application fee to the LPA is the same as Option 1 (£44,750 per application). For 2.5 applications per year, this is £111,875. There shall also be a cost in participating in any subsequent appeal. For 0.6 appeals per year, the cost to developers is £2,880 (Based on £4,800 per appeal). There will be a negligible amount of call-ins, based on existing trends. £114,755 will be the total average yearly cost of making an application to the LPA under this option.

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<sup>37</sup> £1,500

- 6.61 With an estimated 3.4 applications being made per year to the Welsh Ministers and 2.5 being made to the LPA, the average annual cost of option 2 for developers is estimated to be between £1,009,885 and £1,048,645.

### The Community

- 6.62 The role of the public and interested parties in the new development management system defined will remain unaltered from their role in the current system, as described in option 1. Therefore, there will be no new costs for interested parties and the general public.
- 6.63 There is provision which enables community councils to submit a voluntary Local Impact Report for infrastructure projects (excluding energy projects between 10MW and 25MW). Where they consider it necessary to do so, community councils will require time to compile and submit such a report. However, members and volunteers of such councils are generally non-salaried. Thus, this impact is not financially quantifiable.

### **Benefits**

#### Welsh Government

- 6.64 The main benefits for the Welsh Government result from the achievement of policy objectives and the retention of accountability for a significant proportion of infrastructure development in Wales. By prescribing certain thresholds and criteria for DNS, the Welsh Ministers will be able to speed up the planning process for a number of infrastructure projects (largely expected to be renewable energy schemes). This will contribute to Ministerial aims of encouraging economic growth and to achieving low carbon and sustainable energy aspirations. By establishing criteria and thresholds for development to be considered as nationally significant, any speculative infrastructure projects brought forward in advance of the publication of the NDF, or which are not specified within the NDF, can be captured by the DNS process and dealt with in the most effective and timely manner, reflecting their importance to Wales.
- 6.65 This option does not, however, capture energy generation projects which have a generating capacity of less than 25MW. Applications for this type of development would continue be determined by LPAs under the Town and Country Planning Act 1990. A separate application route for such infrastructure development, which is amongst the most significant affecting Wales, with applications determined at LPA level, would undermine the Welsh Government's ability to achieve policy objectives and retain accountability for infrastructure development in Wales. This would result in a negative impact, particularly with regard to the delivery of the Welsh Government's low carbon and sustainable energy aspirations.
- 6.66 Ministers will also ensure that they retain active management of development in Wales.



## Local Planning Authorities

- 6.67 This option provides LPAs with the ability to focus more of their resources on more frequent and regular casework by removing a large part of the irregular but complex infrastructure casework they undertake, although they will have responsibility for determining applications for smaller energy generation projects. Infrastructure applications, particularly that relating to energy generation, require specialist knowledge which LPAs may not be able to develop and retain due to the low volume of these applications. Therefore, prescribing that many of these applications follow a different route will enable LPAs to dedicate more resources to more regular applications for planning permission. These benefits consist of cost savings arising from fewer applications and appeals, and fees received for work related to DNS applications.
- 6.68 LPAs will also retain a role within the DNS application process for prescribed projects. This will enable them to ensure their views on the merits of the application are taken into account by the decision-makers. The LPAs will receive a fee for this work. They will be able to dedicate appropriate resources to their role in the DNS application process without reducing resources for other application casework.

## Development Industry

- 6.69 Developers can expect to receive a quicker decision on applications for infrastructure development classified as DNS, increasing certainty in the application process. This option additionally allows for the submission of applications for certain secondary consents alongside the main application for DNS. This optional route will allow developers to receive a decision on their application and associated consents at the same time reducing delays and uncertainty. Where applications for secondary consents are submitted alongside the DNS application, the developer will need to deal with fewer decision bodies working to different timescales to obtain all the necessary permissions and consents to bring forward infrastructure projects.
- 6.70 As previously documented, smaller scale energy generation (generating capacity of less than 25MW) will be determined by LPAs unless called in by the Welsh Ministers. Excluding such development from the DNS process will increase uncertainty for delivery of important infrastructure development both in terms of delays, but also through potential confusion for developers in needing to utilise two different planning regimes for similar development.

## The Community

- 6.71 The role of the public and interested parties will be different from their role in the current system, as described in option 1. There will be the additional ability for community councils to submit a Local Impact Report should they choose to do so. This formally documents the perceived impacts of the DNS on the local area. This will benefit the community through the availability of another avenue within which to offer an assessment on DNS proposals. The

inclusion of the option to submit secondary consents alongside the main DNS application will increase transparency for communities as, where the developer adopts this approach, the community will be consulted on the secondary consents also.

### **Option 3 – As Option 2, but including onshore energy generation where generating capacity is between 10 and 50 MW.**

#### **Description**

- 6.72 Similar to Option 2, this option captures the list of infrastructure development likely to arise in Wales, but revises the threshold for energy generating stations to capture those between 10MW and 50MW generating capacity.
- 6.74 As with Option 2 certain secondary consents may also be submitted alongside development identified as being of national significance. The ability to submit applications for secondary consents is optional and at the discretion of the developer. There is no obligation for developers to submit applications for secondary consents directly to the Welsh Ministers.

#### **Cost**

- 6.75 This option lowers the entry point for energy generating schemes to become DNS to a generating capacity of 10MW. This option will use the route set out in Option 2, whereby the Welsh Ministers' appointed person (the Planning Inspectorate) will process the application(s) and present a report to the Welsh Ministers. The Welsh Ministers will make a decision on the application and any application(s) for secondary consent following consideration of the report. The impacts on the year 2016/17 is assessed below.

#### Welsh Government

- 6.76 Although the additional DNS applications captured by Option 3 will be for smaller-scale projects, the process for determining them will be the same as for Option 2 and the considerations will be broadly similar to those for DNS applications for the generation of energy between 25MW and 50MW. This means that the costs for determining such an application will not necessarily be lower for these projects. A smaller scheme will not necessarily require an inquiry, and the model of determining DNS applications by written representations, with a hearing or inquiry scheduled, where it is necessary to explore particular issues, will continue to apply.
- 6.77 As specified in Table 2 of option 2, the cost of determining an application for DNS will vary between £37,590 and £43,590. This option will require additional one-off set up costs and these will remain as £14,100. This cost will be incurred in 2016-17. The cost of optional pre-application services will remain at an hourly rate of £55 per hour (excluding VAT).
- 6.78 The inclusion of energy generation projects between 10MW and 25MW being included as DNS will result in 5.9 applications per year being made to the

Welsh Ministers, an additional 2.5 applications per year (compared to Option 2). The estimated cost to the Welsh Government will, on average, vary from £221,781<sup>38</sup> to £257,181<sup>39</sup> per year.

- 6.79 As with Option 2, developers will pay an application fee for their DNS application, based on actual costs. Given the model for full cost recovery as far as possible, the total additional cost to the Welsh Government is estimated to be £14,100, by way of one-off set-up costs.

### Local Planning Authorities

- 6.80 LPAs will have the same roles and responsibilities as with Option 2 concerning applications made to the Welsh Ministers, and would not be subject to the costs specified in Option 1. Compared to Option 2, the total number of DNS applications will increase by an additional 2.5 applications<sup>40</sup> to 5.9 per year. Based on the estimated cost of £7,750 per application (as per Option 2), it is estimated that the cost to LPAs will be approximately £45,725 per year. On the basis that the fees will cover the estimated cost of carrying out the work, LPAs will receive an estimated income of £7,750<sup>41</sup> per application, which will cover their costs per year.

- 6.81 There will, as with Option 2, be a further cost associated with the provision of pre-application advice to the applicant. This advice will take a form set out in legislation<sup>42</sup>. There will be a fee associated with provision by LPAs of pre-application advice payable direct to LPAs. The fee is intended to cover the costs of the LPA in providing this advice.

### Development Industry

- 6.82 Developers seeking planning permission for infrastructure development which is identified as DNS will submit their applications to the Welsh Ministers rather than to their local authority. This cost per application will be the same as Option 2, which stated that the average cost of preparing an application is estimated as £128,700 and fees per application may range between £39,940 and £51,340 per application with the potential for additional costs for pre-application services. For 5.9 applications per year, the application fees may vary between £235,646 and £302,906 per year. With the cost of preparation and participation (£759,330 per year), the average annual cost of option 3 for developers is estimated to be between £994,976 and £1,062,236.

### The Community

- 6.83 The role of the public and interested parties in the new development management system defined will remain unaltered from their role in the

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<sup>38</sup> All applications proceeding by the Written Representations procedure

<sup>39</sup> All applications proceeding by the Inquiry procedure

<sup>40</sup> These are the 0.43 (on average) on shore wind applications which would have been determined by the LPA under Option 2.

<sup>41</sup> For s73 DNS applications, this will be £2,350

<sup>42</sup> The Developments of National Significance (Wales) Regulations 2016

current system, as described in options 1 and 2. Therefore, there will be no new costs for interested parties and the general public.

## **Benefits**

### Welsh Government

6.84 The main benefits for the Welsh Government result from the achievement of policy objectives and the retention of accountability for infrastructure development in Wales. By prescribing project types as DNS, the Welsh Ministers will be able to speed up the planning process for infrastructure projects (largely expected to be renewable energy schemes). This will contribute to Ministerial aims of encouraging economic growth and to achieving low carbon and sustainable energy aspirations. Inclusion of all energy generation which is within competence and greater than 10MW in generating capacity ensures that the largest of these schemes are determined at an appropriate level, in a timely manner supporting these aims.

### Local Planning Authorities

6.85 This option provides LPAs with the ability to focus their resources on more frequent and regular casework by removing the irregular but complex infrastructure casework. Infrastructure applications require specialist knowledge which LPAs may not be able to develop and retain due to the low volume of these applications. Creating a different application route for the majority of infrastructure schemes will enable LPAs to dedicate more resources to more regular applications for planning permission. These benefits consist of cost savings arising from fewer applications and appeals, and fees received for work related to DNS applications.

6.86 LPAs will also retain a role within the DNS application process. This will enable them to ensure their views on the merits of the application are taken into account by the decision-makers. The LPAs will receive a fee for this work. They will be able to dedicate appropriate resources to their role in the DNS application process without reducing resources for other application casework.

### Development Industry

6.87 Developers can expect to receive a quicker decision on applications for infrastructure development prescribed as DNS, including the largest onshore wind generating stations, increasing certainty in the application process.

### The Community

6.88 The role of the public and interested parties will be different from their role in the current system, as described in option 1. There will be the additional ability for community councils to submit an LIR should they choose to do so. This formally documents the perceived impacts of the DNS on the local area.

This will benefit the community through the availability of another avenue within which to offer an assessment on DNS proposals.

### **Summary and Preferred Option**

- 6.89 Under Option 1 developers seeking to bring forward infrastructure development face delays in obtaining a decision from the relevant local planning authority and, where necessary, through making an appeal to the Welsh Ministers. Where no DNS projects are prescribed, this will not change in the short term.
- 6.90 The Welsh Ministers propose that these barriers can be overcome by introducing criteria and thresholds for DNS, which is decided by a body or person other than LPAs. While limited in number, these applications are likely to be technically complex and may be controversial locally. Whilst DNS will be identified in a future NDF, capturing speculative infrastructure development that may come forward in advance of the NDF being prepared and published within new legislation will ensure that development that is of most significance to Wales will be determined in a timely manner, reducing delays which affect infrastructure investment.
- 6.91 The preferred option, Option 3, proposes that DNS will be specified in criteria and thresholds contained within legislation. As set out in the Planning (Wales) Act 2015, applications for infrastructure development classified as DNS should be determined by the Welsh Ministers. The main benefits of the preferred option are that:
- Decisions on infrastructure schemes will be made more quickly than at present in a more certain timeframe, and on more schemes. This will contribute to Ministerial aims of encouraging economic growth and to achieving low carbon and sustainable energy aspirations;
  - There will be a lower average cost to participating in the system for the developer and less administrative cost to the Welsh Ministers through the provision of proportionate application fees;
  - Democratic accountability will be retained in decisions being made by the Welsh Ministers;
  - LPAs will be able to focus their resources on more frequent and regular casework by not having to deal with the irregular but complex infrastructure casework, while retaining some revenue for the work undertaken and the ability to give their views on the proposed development; and
  - Nationally significant development will be determined at the national level.
- 6.92 While option 2 offers similar benefits for the development that is captured by the process, crucially it will not capture energy generating schemes between 10MW and 25MW, which have been proven not to be determined in a timely manner by LPAs, and offer a key contribution to Wales' energy mix. The disadvantages of having such projects determined by LPAs, namely timeliness and the lack of experience in dealing with such infrastructure projects, outweigh any costs.

6.93 Table 3 presents a comparison of the on-going costs incurred by Welsh Government, LPAs and developers under each of the 3 options. These costs are expected to be incurred from 2016-17. The running costs of Option 3 are considered proportionate as the resources required to carry out the work will relate entirely to those needed to process and determine the applications. In addition to the on-going costs, there will be relatively low set up costs of £14,100 for Welsh Government (this applies to Options 2 and 3).

6.94 Option 3 is the preferred option.

<b>Table 3 - Costs and savings per year</b>				
	Option 1	Option 2	Option 3	<b>OPTION 3 SAVING ON OPTION 1</b>
Welsh Government	£24,150	£8,700 <sup>43*</sup>	£0 <sup>44*</sup>	<b>£24,150</b>
Local Planning Authority	£2,790	£1,050 <sup>45</sup>	£0 <sup>46</sup>	<b>£2,790</b>
Development Industry	£1,031,035	Between £1,009,885 and £1,048,645	Between £994,976 and £1,062,236.	<b>Between £36,059 and -£31,201</b>

\*Not including set-up costs of £14,100.

<sup>43</sup> The model for DNS is for full cost recovery for work undertaken by the Welsh Government in deciding applications. The process is therefore expected to be cost-neutral and this is reflected in the figures for option 2

<sup>44</sup> As above

<sup>45</sup> The LPA will receive a fee for production of a Local Impact Report and costs associated with erecting site notices. There may be other costs associated with participation in a DNS application, though these are not unique to DNS. These may include attendance at a hearing or inquiry (should the LPA choose to do so), updating the planning register, or submitting comments on the merits of a DNS application. It is not possible to quantify these.

<sup>46</sup> As above

## Appendix 1 Competition Filter

The competition filter test	
Question	Answer yes or no
<b>Q1:</b> In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
<b>Q2:</b> In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
<b>Q3:</b> In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
<b>Q4:</b> Would the costs of the regulation affect some firms substantially more than others?	No
<b>Q5:</b> Is the regulation likely to affect the market structure, changing the number or size of firms?	No
<b>Q6:</b> Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q7:</b> Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q8:</b> Is the sector categorised by rapid technological change?	No
<b>Q9:</b> Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No