



Annex A – Cyfoeth Naturiol Cymru / Natural Resources Wales

Introduction

Planning Inspectorate Advice Note 11 'Working with Public Bodies in the Infrastructure Planning Process' covers the generic aspects of the Planning Inspectorate's involvement with other public bodies in the national infrastructure planning process, both in relation to such bodies' roles as consultees on proposed development consent order applications and where such bodies have parallel consenting powers.

This Annex explains the role of Natural Resources Wales in the consideration of proposals for Nationally Significant Infrastructure Projects (NSIPs), both as a consultee and in relation to permits, consents and licences that Natural Resources Wales has power to issue but that may be required in addition to a Development Consent Order (DCO) for an NSIP.

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

Natural Resources Wales' Purpose

The general purpose of Natural Resources Wales is set out in Article 4 of the Natural Resources Body for Wales Establishment Order as amended by the Environment (Wales) Act 2016. Natural Resources Wales must:

- a) pursue sustainable management of natural resources in relation to Wales, and
- b) apply the principles of sustainable management of natural resources,

in the exercise of its functions, so far as consistent with their proper exercise.

Natural Resources Wales also has obligations under Section 6 of the Environment (Wales) Act 2016 to maintain and enhance biodiversity in the exercise of functions in relation to Wales, and in so doing promote the resilience of ecosystems, so far as consistent with the proper exercise of those functions.

The Well-being of Future Generations Act (Wales) 2015 also sets out five ways of working needed for public bodies (including Natural Resources Wales) to achieve the seven well-being goals, in accordance with the sustainable development principle.

Sources of Information

Information on the open access data that Natural Resources Wales holds, including restrictions on its use, can be found on Natural Resources Wales website:

<https://naturalresources.wales/evidence-and-data/access-our-data/?lang=en>.

Natural Resources Wales is also subject to the provisions of the Environmental Information Regulations 2004, the Data Protection Act 2018, the General Data Protection Regulation 2018 and the Freedom of Information Act 2000.

Role of Natural Resources Wales under the Planning Act 2008

The role of Natural Resources Wales in the NSIP process derives from the Planning Act (2008) (as amended) and secondary legislation made under that Act. Natural Resources Wales is both:

- a prescribed consultee; and
- a consenting / licensing authority;

Natural Resources Wales is also a statutory party in respect of the examination of applications and has other roles of relevance which are described later, for example as a landowner.

These roles are considered in turn below.

1. Prescribed Consultee

The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009¹ (as amended) require that Natural Resources Wales is consulted on any prospective NSIP applications within the geographical extent of Wales or otherwise likely to affect land in Wales.

Natural Resources Wales, like all prescribed consultees, has an important role to play in the pre-application process. Natural Resources Wales encourages applicants to begin pre-application discussions prior to

¹ SI 2009/2264

submitting a scoping request to the Planning Inspectorate by making use of Natural Resources Wales' Discretionary Advice Service (DAS):

<https://naturalresources.wales/guidance-and-advice/business-sectors/planning-and-development/advice-for-developers/our-service-to-developers/?lang=en>.

There is no obligation on applicants to use this service, it is offered as an option to allow access to more detailed advice at an early stage of the NSIP process. Early consultation with Natural Resources Wales is important because it helps ensure clear understanding of the environmental issues involved in respect of the NSIP at the outset. It enables applicants to give consideration to the environmental effects of an NSIP, consider any consequential changes in design or layout or approach as the project details evolve and ensure that all relevant assessments are undertaken.

The applicant has a statutory duty to have regard to any consultation responses it receives under sections 42, 47 and 48 of the 2008 Act.

Table 1 below sets out the service Natural Resources Wales can offer during pre-application stage of NSIPs.

Table 1: The service offered by Natural Resources Wales in pre-application

Pre application – Preliminary Opinion

Natural Resources Wales offers a free preliminary opinion for NSIPs, as part of which Natural Resources Wales will aim to provide:

- An indicative view of the constraints identified in Natural Resources Wales' consultation topics list that may be affected by a scheme and its associated development (if applicable);
- A high-level outline of the assessments that may be required to support the NSIP application.

Details of how to access this service and limitations to the advice that is provided at this stage can be found in section 4 of the Natural Resources Wales 'Guide to pre-application service for development planning'. This can be found on Natural Resources Wales' website:

<https://naturalresources.wales/media/682371/guide-to-pre-app-service-final-english.pdf>.

This service is provided on a once per scheme basis. Any advice provided should also be considered alongside the guidance that is available on Natural Resources Wales' website:

<https://naturalresources.wales/guidance-and-advice/business-sectors/planning-and-development/advice-for-developers/nationally-significant-infrastructure-projects/?lang=en>

Natural Resources Wales will not seek to duplicate this guidance in its advice to you at this stage. Also, there are sources of information Natural Resources Wales holds that may assist applicants during preparation of application documents.

This can be found at:

<https://naturalresources.wales/guidance-and-advice/business-sectors/planning-and-development/our-role-in-planning-and-development/our-role-in-planning-and-development/?lang=en>

This contains details of where to check the environmental constraints relevant to a DCO application.

Pre application – Discretionary Advice Service (DAS)

If advice is required from Natural Resources Wales in addition to that which is provided as part of the preliminary opinion, or that which is provided as part of our statutory duties, applicants can request this through Natural Resources Wales' DAS. Natural Resources Wales charge a fee for the use of this service.

The DAS is set up for advice in relation to NSIPs including advice on Environmental Impact Assessments, Habitats Regulations Assessments and species surveys. See section 5 of the Natural Resources Wales 'Guide to pre-application service for development planning' for further information on our fees and what can be provided as part of our service:

<https://naturalresources.wales/media/682371/guide-to-pre-app-service-final-english.pdf>.

Pre application – Section 42

Advice that Natural Resources Wales provide during a Section 42 (Planning Act 2008) consultation is provided free of charge under Natural Resources Wales' statutory duties and responsibilities in the development planning system.

At the statutory pre-application (section 42) stage Natural Resources Wales would expect to see enough detail to enable a meaningful consultation and for Natural Resources Wales to provide a comprehensive response which can in turn better inform the design of the proposed development in going forward. Wherever possible information should include the draft or shadow assessments to meet the requirements of the Conservation of Habitats and Species

Regulations 2017²(the Habitats Regulations) and the 'worst case' scenario parameters and details of proposed mitigation and compensation measures as applicable.

Pre application – Prior to submission

Applicants are strongly advised to develop Statements of Common Ground with us during the pre-application process and for these to be agreed prior to the start of the Examination stage. The key to achieving this is that issues highlighted by Natural Resources Wales early in pre-application discussions are addressed by the applicant as comprehensively as possible and systematically captured in the application documents. A clear audit trail should be maintained as this is essential to help with the drafting of Statements of Common Ground.

We strongly encourage applicants to consider the timely submission of planning applications, applications for authorisations, licences and consents so that any issues arising can be considered at the same time as the DCO submission. For this purpose, applicants should refer to the attached table of authorisations, licences and consents that Natural Resources Wales are responsible for:

<https://cdn.naturalresources.wales/media/681698/eng-nrw-consents-table.pdf?mode=pad&rnd=13150386068000000>

Natural Resources Wales as a Consultation Body under the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017

Natural Resources Wales is a consultation body under the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017³ (the EIA Regulations).

Natural Resources Wales as a Consultation Body under the Habitats Regulations

Natural Resources Wales is the 'appropriate nature conservation body' as defined by the Habitats Regulations in relation to Wales.

Where Development Consent Order (DCO) applications have implications for 'European sites'⁴ in Wales and its waters, the Secretary of State as 'competent authority' under the Regulations must consult Natural Resources Wales as the appropriate nature conservation body and have regard to any representations made by it. Natural Resources Wales should also be consulted regarding the assessment of projects located outside

² [SI 2017/1012](#)

³ [SI 2017/572](#)

⁴ See Planning Inspectorate Advice Note 10 as to the meaning of 'European site' in this context.

Wales but which may have potential significant effects for European Sites wholly or partially within Wales.

Geographical Extent of Natural Resources Wales as Prescribed Consultee

Natural Resources Wales role as a prescribed consultee is dependent on the context and will respond to consultation as follows:

- Proposals in the terrestrial area of Wales, including cross border impacts from developments outside Wales;
- Proposals that have the potential to have impacts on the marine area within 12 nautical miles of the Welsh coastline. Natural Resources Wales will also advise on the effects of any development outside Welsh or offshore waters that would, if built, be sited in England/English and/or Ireland/Irish waters but would affect natural beauty and/or natural heritage and the environment of Wales. Natural Resources Wales now determines Marine Licences on behalf of Welsh Government and Natural Resources Wales' Permitting Service should also be consulted about any proposals that may require a marine licence;
- Under the Offshore Marine Habitats and Species Regulations 2017, the Joint Nature Conservation Committee (JNCC) acts as the Statutory Nature Conservation Body for matters beyond 12 nautical miles. Natural Resources Wales may also be consulted for nature conservation advice on proposals beyond 12 nautical miles where these have the potential to affect natural beauty and/or natural heritage and environment inside 12 nm and Natural Resources Wales will coordinate with JNCC wherever that is appropriate.
- There may also be circumstances where, dependent on the nature and location of the proposal, Natural Resources Wales will have a joint duty with Natural England and/or the Environment Agency, primarily in respect of cross-border European sites including both the Dee and Severn Estuaries, the River Dee and the River Wye.

2. Consenting / Licensing Authority

Section 150 of the Planning Act 2008 enables a DCO to include provision the effect of which is to remove a requirement for some consents to be separately granted, but only if the relevant consenting body permits this ("prescribed consents"). The Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015⁵ give effect to this section. Part 1 of Schedule 2 sets out consents that are prescribed in both England and Wales; Part 2 of Schedule 2 identifies additional consents

⁵ SI 2015/462

that are only prescribed in Wales. Unless a particular consent is prescribed in Part 1 or Part 2, a DCO may remove the need for that consent to be granted by the authorising body.

If Natural Resources Wales does not agree to the inclusion of a prescribed consent in a DCO, a separate application for that consent must be submitted to Natural Resources Wales.

Marine Licences

Natural Resources Wales determines Marine Licences for licensable activities seaward of the mean high-water spring tide mark out to the median line. Section 149A of the Planning Act 2008 (which enables a DCO to include provision deeming a marine licence) does not apply to projects that are in Welsh territorial waters (Mean High Water Springs to 12 nautical miles).

A Marine Licence is required under Part 4 of the Marine and Coastal Access Act 2009, before carrying out any 'licensable marine activity' in Welsh waters. Section 66 of the Marine and Coastal Access Act 2009 lists the licensable activities (subject to certain exceptions and exemptions). An application for a licence must be made to Natural Resources Wales.

When assessing a Marine Licence application, Natural Resources Wales must have regard to matters set out in sections 69(1), 69(2) and 69(3) of the 2009 Act. Natural Resources Wales must also take full account of additional legislative requirements including:

- Marine Works (Environmental Impact Assessment) Regulations 2007 (as amended);
- Conservation of Habitats and Species Regulations 2017; and
- Water Framework Directive.

Applicants should work closely with Natural Resources Wales prior to submitting their Marine Licence application.

Applicants are encouraged to co-ordinate submission of their applications for a Marine Licence as closely as possible with submission of the DCO application so that the applications can be considered in parallel with consistent information.

Enforcement functions under Part 4 of the 2009 Act have not been delegated to Natural Resources Wales and remain with Welsh Government.

More information about marine licensing in Wales can be found: <https://naturalresourceswales.gov.uk/permits-and-permissions/marine-licensing/?lang=en>

Environmental Permitting

The consolidated Environmental Permitting Regulations 2016⁶ (EPR 16) require operators of certain facilities, which could harm the environment or human health, to obtain permits from Natural Resources Wales. Guidance on how to apply for and comply with an environmental permit, can be found at:

<https://naturalresources.wales/permits-and-permissions/environmental-permits/?lang=en>.

It is the responsibility of applicants to identify whether an environmental permit is required, in addition to a DCO, before works granted by a Development Consent Order can be constructed or operated. Operating without an environmental permit or in contravention of conditions attached to an environmental permit where one is required is an offence.

Applicants are encouraged to co-ordinate the timing of their environmental permit applications with their DCO application to facilitate timely decision-making.

The Examining Authority's report to the Secretary of State on the DCO application will need to advise the Secretary of State on the prospects of an environmental permit being issued for the project in the form for which DCO authorisation is being sought.

Early engagement with Natural Resources Wales on environmental permitting matters will assist in identifying complex permitting issues and minimise the risk to the implementation of the proposed project. Early consultation should help to avoid conditions under permitting conflicting with the works authorised by the DCO (e.g. a power station stack of greater height than that authorised by the DCO could be required).

Natural Resources Wales as Competent Authority under the Habitats Regulations

Natural Resources Wales is also the competent authority under the Habitats Regulations wherever it is responsible for issuing a permit, consent or licence separately from the DCO. It will consult internally as part of the process of determining applications for permits, consents or licences.

Licensing of European Protected Species under the Habitats Regulations

The Habitats Regulations and Conservation of Offshore Marine Habitats and Species Regulations 2017⁷ transpose the EU Habitats Directive into UK law,

⁶ SI 2016/1154

⁷ SI No.2017/1013

and include protection for a number of plants and animals, which are referred to as European Protected Species (EPS). These include all bat species, otters, dormouse, whales, dolphins, porpoises, turtles, fen orchid and early gentian. Full details can be obtained from:

<https://naturalresources.wales/guidance-and-advice/environmental-topics/wildlife-and-biodiversity/european-protected-species/?lang=en>.

The Regulations prohibit the deliberate capture, injury, killing or disturbance of any EPS. Developments likely to disturb, injure or kill these species will require an EPS licence from Natural Resources Wales (for offshore proposals beyond the median line, DEFRA are the EPS licencing body), which will be subject to certain criteria, including that there is no satisfactory alternative, and that there is no likely detriment to the favourable conservation status (FCS) of the species in its natural range.

Where proposals are likely to affect EPS the environmental statement (ES) should include comprehensive details of the mitigation measures that will be put in place to avoid, reduce or compensate the impacts to ensure that the FCS of the population(s) concerned is maintained in its natural range.

3. Other Roles of Natural Resources Wales

SSSI Notifications

In relation to applications where there may be significant impacts upon Sites of Special Scientific Interest (SSSIs). Natural Resources Wales has duties under the Wildlife and Countryside Act 1981 (as amended) (W&C Act).

Under Section 28I of the W&C Act, the Secretary of State or Minister must notify Natural Resources Wales before authorising operations likely to damage the special interest features of a SSSI. If Natural Resources Wales notifies the Secretary of State or Minister to allow 28 days prior to issuing a decision, the Secretary of State or Minister must allow 28 days to have elapsed before deciding whether to grant consent and the Secretary of State must take into account any advice received from Natural Resources Wales, including advice on attaching conditions to the consent.

Natural Resources Wales can give specific advice on the effects of a proposal on the special interest features of any affected SSSIs when all the relevant information is provided by the applicant. It can also provide advice on any surveys that may be necessary and on any other related requirements. Applicants should discuss mitigation measures for the protection of the SSSI with Natural Resources Wales prior to the application being submitted to the Planning Inspectorate. Mitigation measures should be secured through appropriately worded DCO requirements that have been agreed with Natural Resources Wales.

Water Framework Directive

In Wales, the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (the Regulations) implement (in part) the Water Framework Directive (WFD). The WFD implications should be considered at the pre-application stage of the DCO. Responsibilities are shared between the applicant, Natural Resources Wales (an appropriate agency under the Regulations) and the National Assembly for Wales (the appropriate authority). Natural Resources Wales must, in the exercise of its relevant functions, ensure compliance with the WFD environmental objectives. The applicant should provide an assessment to the Examining Authority about the potential impacts of the proposed activity against the environmental objectives. Natural Resources Wales will review the submitted assessment and provide its advice to the Examining Authority.

A proposed development may only proceed if the criteria under Article 4(7) are satisfied. This requires the applicant to submit information to support the assessment under Article 4(7). Natural Resources Wales may review the applicant's submission and will advise the Examining Authority on the basis of the information available, if the criteria for a derogation under Article 4(7) (other than matters relating to human health or safety), have been met. Natural Resources Wales may provide additional information where applicable to enable the Examining authority to determine whether the Art4(7) criteria have been satisfied.

Managed Estate and Land Manager /Owner Role

Natural Resources Wales is a landowner and the former assets of the Countryside Council for Wales, Environment Agency Wales and Forestry Commission Wales (except the Welsh Government's Woodland Estate) rest with Natural Resources Wales.

Natural Resources Wales also manages National Nature Reserves and areas for biodiversity which include extensive recreation areas. Natural Resources Wales also manages flood defences. If a DCO application has any such land included in a DCO application boundary, then Natural Resources Wales will need to be notified, as a land owner, and notice served on Natural Resources Wales as part of the DCO application. This should be done prior to the DCO application being submitted and at least 28 days allowed from the date of the notice to allow Natural Resources Wales to respond.

Development on the Welsh Government Woodland Estate

The Welsh Government woodland estate is around 126,000 hectares and amounts to about 40% of the total woodland area in Wales. Natural Resources Wales manages this estate (rather than owns) on behalf of the Welsh Government. It is managed for multiple purposes (including commercial timber, nature conservation, recreation, renewable energy

generation etc). As a land manager Natural Resources Wales can encourage economic development directly or on behalf of Welsh Government as it is within Welsh Government powers to direct Natural Resources Wales to do so.

Where a DCO development is proposed on the Welsh Government woodland estate, Natural Resources Wales acts as an agent for Welsh Government and will work with applicants to ensure that Natural Resources Wales' statutory duties as land manager/owner are taken into account within the DCO application. For DCO projects on the woodland estate, it is advisable for an applicant to contact Natural Resources Wales (contact point details below) prior to submitting a scoping request to the Planning Inspectorate to ascertain whether any land included within the project area is on Natural Resources Wales managed land. At least 28 days should be allowed for a response. Also, for DCO applications on land managed by Natural Resources Wales, Natural Resources Wales are required to obtain Welsh Government Cabinet approval for releasing any interest in the land for projects over a value of £250,000.

Contact with Natural Resources Wales is important as involvement in Natural Resources Wales' role as land manager and owner can take the form of negotiating Option Agreements with the applicant to ensure that the DCO application takes account of any ownership and land management issues.

Contact Points

In the first instance applicants should contact the Natural Resources Wales's Customer Care Centre:

- by calling 0300 065 3000 (Mon-Fri 8am -6pm)
- by e-mail at: enquiries@cyfoethnaturiolcymru.gov.uk / enquiries@naturalresourceswales.gov.uk
- Natural Resources Wales website: www.cyfoethnaturiolcymru.gov.uk / www.naturalresourceswales.gov.uk
- by mail at: Natural Resources Wales, Ty Cambria, 29 Newport Road, Cardiff, CF24 0TP.

Applicants should remember to provide contact details so that Natural Resources Wales can reply promptly.