

Infrastructure 06, Isle of Anglesey County Council

Senedd Cymru | Welsh Parliament

Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith | Climate Change, Environment, and Infrastructure Committee

Bil Seilwaith (Cymru) | Infrastructure (Wales) Bill

Ymateb gan Cyngor Sir Ynys Môn | Evidence from Isle of Anglesey County Council

General principles

What are your views on the general principles of the Bill, and is there a need for legislation to deliver the stated policy intention?

The Isle of Anglesey County Council (the IACC) welcomes the Infrastructure (Wales) Bill and its Infrastructure Consent (IC) regime as it intends to provide a 'one stop shop' approach for consenting major infrastructure in Wales and will remove a range of existing consenting regimes, which can at times cause delays in the timely delivery of crucial infrastructure for Wales.

Wales has confirmed its commitment to decarbonisation and aligns with UK Gov ambition and therefore crucial that the consenting process are effective, clear and provide certainty as to delivery of major infrastructure projects.

The Energy Island Programme has been in place within the Council for over a decade and aims to ensure that the Island can be an exemplar in the transition to a prosperous and resilient low carbon economy.

We are therefore experienced and actively engaged with the several consenting regimes that apply to major energy projects in Wales which include the Town and Country Planning Act, Development of National Significance, Harbour Revisions Order, Transport and Works Act Order and Development Consent Order.

In terms of the current processes of consenting infrastructure in Wales, these are regularly proving lengthy and sometimes inefficient in terms of overlapping of the consents required which creates complexity and uncertainty in relating to both consenting requirements and the delivery of projects. The Council very much hopes that from both a developer and community perspective that the Bill will provide a consenting process that will provide certainty, consistency, require

applications of quality as well as require appropriate level of public/community engagement.

The Council welcomes the creation of a DCO equivalent regime for Wales including to the low water mark that currently falls outside DNS regime that also allows the inclusion of associated developments but feels that it is important that the process takes the best of both DCO and DNS process to create an effective Welsh consenting process.

It is noted that the Bill principally provides a framework and that the detail will be provided by secondary legislation, with that secondary legislation being key to ensuring that the Bill delivers the general principles outlines. The secondary legislation therefore needs to be in place in a timely manner in order to provide the clarity and guidance required to support the Bill.

Inclusion of Deemed Marine Licences is felt likely to offer significant advantages and provide certainty for developers in terms of timescales, compared to existing processes.

It is also critical to ensure that the statutory consultees have the adequate resource and capabilities to deal with the demands of the process of engaging with major development proposals which is intensive, complex and demanding.

Planning Performance Agreements have proven to be one means for the IACC to have the required resource and capabilities that it requires to engage with and provide comprehensive advice for major development proposals across all of their project phase including during pre-application, examination and discharge of conditions stages.

Having such agreements in place allows for the Council to call on external support on Framework Arrangement to provide additional resource, specialism and capability and also ensures that no additional pressure is out on the provision of existing Council services.

The IACC therefore confirms that it considers that it is important that all means of recognising and responding to resource demand are retained and if possible improved within the new regime with clear recognition provided as to the need to ensure and support statutory consultees to have the required resource and capacity it requires to fully engage in the demands of the process.

What are your views on the Bill's provisions (set out according to parts below), in particular are they workable and will they deliver the stated policy intention?

Part 1 - Significant infrastructure projects

The class of projects caught by the legislation is considered comprehensive in comparison with DCO process under the Planning Act 2008 allowing for the 350-megawatt limitation on electricity generating stations. IACC notes that a new gigawatt scale nuclear power station would still come within the PA08 but is proceeding on the assumption that a small modular reactor would come within the new IC regime.

Part 2 - Requirement for infrastructure consent

Clause 81 on specified consents (i.e. consent from a body such as IACC that would otherwise be dealing with a consent to be brought under the regime) is supported by IACC as representations upon them can be made within the IC regime avoiding in some instances duplication.

Part 3 - Applying for infrastructure consent

The consultation and response obligations on planning authorities are a significant area for IACC. Clauses 30 - pre-application consultation; 35 - local impact reports and 126(2) - the mandatory obligation to provide a substantial response to Welsh Government consultation on any matter, all will have significant resource implications on any affected local planning authority. There is no indication about recovery of costs so clarity is sought on this and recognition and that these will be imposing significant financial implications on the authority. This should include clear support for use of planning performance agreements, which have proven to be very effective for the IACC to have the required capacity and resource support that it requires to fully engage with major projects at all stages, including early pre-application engagement.

Part 4 - Examining applications

The IACC recommends that the best of the DNS and DCO examination arrangements are taken forward for the examination of applications under the new regime.

Part 5 - Deciding applications for infrastructure consent

The Clause 52 provision that allows for either the Welsh Minister or ExA to be the decision maker on an IC application is especially noted, as it marks a significant

departure from the Planning Act 2008 that is the closest comparator to the Bill. Clarification and then detailed guidance on how this discretion would be operated by Welsh Ministers is required. There should also be an opportunity for representation to be made should a local planning authority consider a decision on use of this power is inappropriate in any particular case.

Clauses 53 and 124 deal with policy. UpToDate, clear and appropriate and project specific policy is one of the most important things in any planning process and clear guidance is needed on how planning policy should operate within the IC regime. The reference to the NDF for Wales and marine plans are understood although the Council is unclear where the new Strategic Development Plan fits in.

As to content of such policy, up to date Welsh policy framework is key in particular for consenting SMRs that will be examined under new regime and in that area as well as other types of SIP, will infrastructure policy be a range of specific statements or just a single policy?

Clarification is also required as to when this policy framework will be in place in order to inform the examination of IC applications.

The reference to “any infrastructure policy” in Clause 53 is also unclear, despite there being some reassurance in Clause 124 that the policy has to be designated as such, it is not clear whether e.g. that could be a retrospective designation over an existing policy.

In contributing to policy development by Welsh Government, councils such as IACC would need to know in advance if they were dealing with a policy that ultimately may become as important as a Welsh infrastructure policy. That is also important because blight provisions can operate by virtue of such policy under section 96(2)(b).

Part 6 - Infrastructure consent orders

Clause 87(5) on variation processes requires comment. IACC believes that variation powers should be sufficient to ensure that repeating of consenting processes should be required only in the most limited circumstances to avoid duplication of assessment work that still remains valid. Additionally, decisions on principle taken within consenting processes should not be capable of being reopened within something properly considered as a variation.

Part 7 - Enforcement

The provisions on enforcement are accepted as necessarily involving the relevant local planning authority as the enforcing body for complying with an IC or any of

its terms. Compliance with terms of this type of consent is very important and extends potentially over considerable time. This raises considerable resourcing issues as it could involve very significant and complicated management regimes secured under consent requirements that could need significant technical input for the Council to be able to take effective steps to ensure compliance or remedial action by a developer or subsequent operator.

Part 8 - Supplementary functions

No further comment.

Part 9 - General provisions

No further comment.

What are the potential barriers to the implementation of the Bill's provisions and how does the Bill take account of them?

No further comment.

How appropriate are the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum)?

(insert response)

Are any unintended consequences likely to arise from the Bill?

No further comment.

What are your views on the Welsh Government's assessment of the financial implications of the Bill as set out in Part 2 of the Explanatory Memorandum?

In addition to the references elsewhere in this response on resource issues faced by local planning authorities, the inclusion of deemed marine licences as part of regime is important but will only prove effective if NRW has the capacity and resource to respond effectively and promptly as part of the process. NRW has a crucial role and influence in terms of the consenting process but can only operate effectively if they are adequately resourced.

Are there any other issues that you would like to raise about the Bill and the accompanying Explanatory Memorandum or any related matters?

Community and cultural benefit and local ownership are of particular concern to the Council given the major effects on communities that can be involved in construction and operation of a SIP. Present systems could improve on making

community involvement and benefit a material issue rather than something operating on the fringe of the consenting process. Strong encouragement is needed from the Welsh Government on community benefit, building on the existing content in documents such as Future Wales.

Clarity is also needed on transitional arrangements, including timescales applicable when the DNS process stops. This is important for development promoters and affected communities to ensure that the pre-application work being undertaken will be valid for the new process.
