Infrastructure 36, Bute Energy

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 Bute Energy | Evidence from Bute Energy

Consultation: Infrastructure (Wales) Bill
Climate Change, Environment, and Infrastructure Committee
Welsh Parliament
Cardiff Bay
Cardiff
CF99 1SN

11th August 2023

By email only to: **SeneddClimate@senedd.wales**

Dear Sir or Madam

Welsh Government Consultation: Infrastructure (Wales) Bill

We refer to the above consultation as part of the Climate Change, Environment, and Infrastructure Committee's Stage 1 scrutiny of the general principles of the Infrastructure (Wales) Bill ("the Bill"). Bute Energy's response to the consultation is set out below.

Introduction

At Bute Energy, we are making the Welsh weather work for Wales, developing onshore wind projects that will generate clean, green energy, supporting the Welsh Government's target for electricity to be 100% renewable by 2035.

We are an independent renewable energy company combining experience with innovation. Headquartered in Cardiff, we have a vision of a healthier, wealthier Wales that uses energy generation as a positive power for the world, for Wales, for local communities – for this and future generations.

We plan to build wind and solar energy parks – and the grid infrastructure to support them – across Wales that will help achieve Welsh and UK Government Net Zero targets for 2030 and 2050, reduce reliance on imported energy and bring down energy bills.

Our portfolio could deliver over 2GW of generating capacity and represents a £3bn capital investment into Wales. Building on best practice of previous developers, our aim is to keep as

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much of this investment as possible within Wales. Combined, our sites will generate enough clean, green electricity to offset more than 2.6 million tonnes of Carbon Dioxide emissions a year – equivalent to c.7% of Wales's total Greenhouse Gas emissions.

Onshore renewable energy in Wales will provide greater energy security, reducing reliance on imported fossil fuels. Onshore wind offers the most cost-effective choice for new electricity in the UK – cheaper than gas, nuclear, coal and other renewables. And critically, it can be delivered in the short term. We have developed our portfolio with deliverability at its core and expect that all our sites will be operational, generating clean, green energy by the end of the decade.

Alongside our wind and solar projects Green GEN Cymru, part of the Bute Energy group, is taking forward a strategic grid solution that will support the development of renewable energy and could increase capacity on existing constrained electricity distribution networks – like in Mid Wales.

Green GEN Cymru has applied to OFGEM for an Independent Distribution Network Operator (IDNO) license. Once this in place, Green GEN Cymru will become an independent business that will deliver and operate new grid lines in Wales that could connect renewable generation to the National Grid (both Bute energy projects and those by other developers) and connect electricity demand, like new commercial, residential or industrial users, reducing pressure on the existing electricity network.

The recent IPCC report highlights the urgent need to take swift, effective, practical action against climate change at a much faster pace and at a far greater scale to limit global warming to 1.5°C. The deep, rapid and sustained cuts in greenhouse gas emissions which the report says are essential to avert a climate catastrophe can only be achieved if we accelerate the transition to clean power and bring forward new clean energy projects as soon as possible. It is evident that commitment from Welsh Government to renewable energy deployment targets will drive investor confidence, secure projects in Wales for Wales and also create significant export opportunities, in energy, expertise and economic terms. In this context, it is our view that focus must now shift to delivery: a rapid response from industry and other stakeholders is required if we're to meet this target – and future Carbon Budgets.

We are also faced with a nature emergency, a cost-of-living crisis and significant threats to our energy security.

But, as the recent Climate Change Committee's Progress Report on reducing emissions in Wales outlines, the roll-out of renewables in Wales has slowed since 2016 and now new energy infrastructure must be taken forward at pace. A rapid response from industry and other stakeholders is required if we're to meet future Carbon Budgets, and 2035 renewable electricity targets.

In light of these challenges, it is imperative that Wales has a consenting regime which unifies existing consenting regimes and delivers against the key objectives of consistency, certainty, chances of success, and quality, and reduces confusion and complexity within the planning process. We wholeheartedly support these objectives and the benefits they will bring to investors, developers, communities and stakeholders, and welcome the Welsh Government's proposals to introduce a unified consenting process for infrastructure projects. However, we do feel that there are a number of areas where further refinement and clarity is required to avoid any unintended consequences and to give developers and investors confidence when making investment decisions.

Additionally, while we see the introduction of the new consenting regime as a hugely positive step, if the system is to function effectively, adequate resourcing will be critical to the proposed regime's success. It is essential that organisations like Natural Resources Wales (NRW) and Planning and Environment Decisions Wales (PEDW), alongside local planning authorities (LPA's), are suitably resourced to deal with work required to deliver Net Zero infrastructure. Only then will we be able to deliver the consenting step-change needed to accelerate deployment of development that will help address the climate emergency, the nature emergency and the cost-of-living crisis.

Thank you for the opportunity to respond to this consultation, please find the detail of our response to the consultation questions below. If you require any additional information, please don't hesitate to contact us.

Question 1: What are your views on the general principles of the Bill, and is there a need for legislation to deliver the stated policy intention?

We welcome the overarching aim of the Bill to create a unified consenting process for infrastructure projects in Wales which will deliver a new form of consent known as "Infrastructure Consent" ("IC") in relation to projects which are prescribed as "Significant Infrastructure Projects" ("SIP").

In overall terms, we see the introduction of the new consenting regime as a hugely positive step, support its general principles and strongly agree that a unified consenting regime is required to bring forward the development needed to address the climate and nature emergencies and the cost-of-living crisis. We also fully support the objectives set out in the Explanatory Memorandum to deliver high levels of consistency, certainty, chances of success, and quality, and to reduce confusion and complexity within the planning process.

We do however feel that one of the Bill's key failings is the level of detail that has been excluded from the face of the Bill and reserved for subsequent secondary legislation and guidance. Whilst we recognise that the Bill has been drafted as a high-level framework in order to provide flexibility, and that detail of how it will operate and be implemented in practical terms will follow, as an investor and developer we consider that the balance between flexibility

and certainty is not right. We believe that too much detail has been reserved for subsequent regulations and that this creates a risk of inconsistencies and misunderstandings.

To allow respondents to make meaningful comments, the Bill needs to be able to be read as a whole, together with all supplementary regulations and guidance. Clarity on the timescales for publishing this secondary legislation and the consultation process to allow for comments would be welcomed, as would the ability to comment further on the Bill itself once secondary legislation and guidance is issued for consultation.

As a member of Renewable UK, we have also contributed to the consultation response prepared by RenewableUK Cymru (RUKC) and endorse its comments. We share RUKC's concerns over the lack of clarity in the following areas:

- The need for specific **statutory timescales** on the face of the Bill to provide a clear expectation for applicants, consultees and Welsh Minsters about the time period allocated for examining and determining SIPs. As drafted, the Bill creates an expectation that timescales can be extended and provides no framework for the circumstances under which this could occur. This creates uncertainty for all those involved in the process and the potential for significant delays to decisions which cannot be quantified or planned for at the outset. This will undermine confidence in the system and the second objective of the Bill which is outlined in Chapter 3 of the Explanatory Memorandum: "*Certainty – To provide certainty in terms of timescales for all involved, so that the public are clear on when decisions are made, and proceedings are not unnecessarily prolonged, and to enable developers to plan projects with more accuracy".*
- The importance and content of **Infrastructure Policy Statements (IPSs)** to provide policy certainty for the determination of SIP applications and how priorities should be balanced in making consenting decisions.
- The need for clarity on how **10-50MW** onshore renewable energy schemes will be consented once the Bill is in place.
- The requirement for detail on how **cross-border projects** (particularly electricity transmission and distribution infrastructure) will be consented and how the consenting regimes on each side of administrative borders will interact;
- The significant lack of detail on **transitional arrangements** for projects currently proceeding through the DNS process. Information is needed on how these arrangements will work and when they will come in to effect to allow developers to forecast project timescales, programmes and investment decisions.
- Overall, the need for a clear arrangement on how **planning authorities and statutory consultees will be sufficiently resourced** to implement and manage the new process to ensure the objectives are delivered effectively.

We have serious concerns that the lack of detail in the areas highlighted above may undermine the Welsh Government's ambitions for a new regime to provide the consistency and certainty needed to encourage investment in Wales.

The Planning Act 2008 (PA 2008) introduced the consenting regime for Nationally Significant Infrastructure Projects (NSIPs) in Wales and England as a 'one-stop shop' consenting process. The PA2008 included (on the face of the Act) statutory timeframes for all stages of the NSIP process and was accompanied by designated National Policy Statements (NPSs). This brought policy, timescales and decision-making certainty to developers.

Since the introduction of PA2008, over 90% of NSIP applications have been approved and the vast majority of those within statutory timescales. The regime has been widely acclaimed as successful, a fact which is evidenced by the fact that the first round of major reforms to the process have occurred almost 15 years after it came into effect.

It is imperative that the Welsh Government and the Climate Change, Environment, and Infrastructure Committee reflect on what has made the NSIP regime so successful and ensure the Infrastructure Consents regime delivers the same quality and certainty. Lessons also must be learnt from the current DNS regime which only has a 60% success rate, and where less than 30% of applications have been determined on time – statistics which have undermined any certainty the DNS regime was designed to deliver.

For developers investing in Wales, it is vital that the consenting regime gives clarity and confidence to support that investment. Greater clarity on what the process will look like and how it will work will support such confidence and also developers to make critical decisions on long lead procurement items, which in turn will help speed up the delivery of these projects overall. We therefore await further detail on specific aspects which will be set out in secondary legislation and guidance, as without this it is difficult to comprehensively comment on the proposed Bill. This detail will shape day to day consenting processes and procedures. Therefore, it is vital that the aim of the Bill to provide '*simplified and efficient consenting arrangements'* remains at the core of this secondary legislation.

As a Welsh renewables developer with extensive experience in our team of both the DNS and PA2008 NSIP regimes, we would welcome the ability to provide further comments as the Bill is progressed and to engage directly with the Climate Change, Environment, and Infrastructure Committee and the Welsh Government's Planning Division.

Question 2: 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?

Question 2.i) Part 1 - Significant infrastructure projects

We recognise the principal designation of Significant Infrastructure Projects (SIPs) will be through the Infrastructure Act and welcome the comprehensive suite of project types listed under Part 1.

However, we note there is an absence of emerging and future technologies such as hydrogen infrastructure and related activities within the definition of SIPs. Whilst there are provisions under Section 17 that grant powers to Welsh Ministers to add, vary or remove types of SIPs, it is disappointing that this is not accounted for in the current document. We would welcome this addition given the Welsh Government's push to develop a hydrogen strategy as part of the pathway for net zero.

Additionally, while battery energy storage projects are currently exempt from the DNS regime; it is not clear if these projects will also be excluded from the SIP regime under the Bill. Clarification on this point would be welcome.

In section 2: Electricity infrastructure, installed capacity is defined as '*the maximum capacity of electricity generation (in MW) at which that generating station would be operated for a sustained period without damage being caused to it (assuming the source of energy used is available without interruption)*'. We would welcome clarity on whether this definition applies to AC or DC capacity and whether different definitions will be used for different types of generating technology (for example, solar), and hybrid 'energy park' developments.

The consenting route for 132kV grid projects less than 2km long, grid projects less than 132kV and/or overhead lines not associated with a SIP generating station needs further clarification, particularly on whether the intention is that consent will come through the IC regime, Section 37 of the Electricity Act or the Town and Country Planning Act. We would welcome further definition on what 'associated' with a SIP generating station means for the purposes of new overhead grid lines (OHLs).

The current DNS regime includes onshore wind projects above 10MW. It is noted that both onshore and offshore generating stations above 50MW will be SIPs through the IC regime. Clarity is needed on why projects between 10 and 50MW have been excluded from the SIP regime and what is the intention for their consenting – either by Local Planning Authorities through the Town and Country Planning Act (T&CPA) or within the new regime. We note that mandatory thresholds (>50MW energy projects) as they apply to generating stations and overhead grid connections are included. However, the optional thresholds (<50MW energy projects) will be subject to a Direction being issued by Welsh Ministers confirming that the project is a SIP and should be subject to the SIP regime. Clarity would be welcomed on whether projects can 'opt-in' to the SIP process (as was suggested in the 2018 consultation)

or whether Welsh Ministers could refuse a request. If the intention is the latter, further guidance on this aspect on matters such as the criteria to be met for a positive direction to be made and the timescales for that decision, is required to provide certainty to developers and other stakeholders.

In **Section 18: Cross-border Projects**, further clarity and detail will be crucial for onshore, offshore and grid projects on how they should be consented and how provisions interface with the PA2008. Clarity is particularly needed on cross-border OHL projects. The current provisions are too vague (see PA2008 provisions for English/Scottish border projects as an example of what is required). Further detail is needed on how the provisions dove-tail with the PA2008 which requires a DCO for new OHLs of 132kV and above which are partly in England and partly in Wales. There is an opportunity through the Bill to clarify this position that is otherwise not clear and make it easier for developers to determine the correct consenting route and give confidence that a future consenting decision would be free from risk of legal challenge.

Question 2.ii) Part 2 - Requirement for infrastructure consent

We welcome the flexibility of the provisions under sections 22 and 24. Section 22 which enables Welsh Ministers to give a direction specifying a development project that does not qualify as a SIP to be treated as such and on the reverse, section 24 allows projects to not be treated as SIPs. This reflects the power provided under s.35 of the PA2008, although differs in that projects can be directed as SIPs if a planning application has already been made. In this section, there is no indication as to what would be considered '*of national significance*' and is not limited to categories in section 1. Furthermore, on the face of the Bill there is no timeframe for determining requests, or information on the form of request required. These are critical elements of the direction process which needs to run efficiently so as not to delay projects that are already in progress.

Developers need clarity on when the new infrastructure consent process is likely to take effect as soon as possible (assuming the Bill is enacted) and, more importantly, **transitional arrangements** including how any existing DNS or s36 (Electricity Act) applications are proposed to be treated once the infrastructure consent mechanism enters into force. This will allow developers to plan ahead and to ensure that any consultation undertaken prior to submission is in line with the requirements of either the existing DNS regime or the incoming IC regime. How these arrangements would work and when they will come into effect will be vital to provide certainty and avoid projects being put on hold until this is clear.

Question 2.iii) Part 3 - Applying for infrastructure consent

The process for applying for infrastructure consent is relatively clear bar the following comments. We look forward to reviewing the regulations that will provide further detail on the timescales and content of pre-application procedures and consultation.

Section 28 on obtaining information about interests in land is welcomed and reflects similar provisions in the PA2008. The Bill as drafted introduces a currently undefined statutory pre-application consultation requirement (section 30(1)) and proposes to disregard any consultation undertaken before notice of proposed application is confirmed by virtue of section 29 (section 30 (4)). This is concerning for prospective projects currently at pre-application stage intending to obtain a DNS or s.36 consent and already undertaking related engagement. Should the DNS and s.36 consent routes be removed as an option for developers, and sections 30(1) and 30(4) be applied as drafted, there is potential that engagement up to that point in time will be largely in vain in terms of its value in support of a consent application, with potentially significant impacts on project timelines. This reinforces the point made earlier on the need for clarity and early publication of transitional arrangements.

If existing engagement can't be counted against the statutory requirements, even where broadly compliant with the yet to be defined statutory requirements in terms of its nature and substance, then effort will need to be duplicated at significant resource and programme cost to developers. The statutory pre-application requirements in other consenting regimes are largely defined upfront in primary legislation, e.g. Part 5, Chapter 2 of the PA2008. An upfront approach whereby requirements are given a level of definition in the proposed Bill itself would provide greater confidence to promoters about what is proposed and allow them to make informed decisions and plan accordingly.

Section 32(1) notes that Welsh Ministers have power to determine whether or not to accept applications and must give notice of their decision. However, there is no information on what criteria will be applied or the timescales involved. The lack of statutory timescales may lead to delays in validation which risks undermining the overall objective of '*timely and effective delivery of major infrastructure and low cardon development*'. It is also critical that further incentive and resource is provided so PEDW can validate applications in a timely manner in line with the above objective.

Section 33(7) allows Welsh Ministers to extend the deadline for receiving representations in response to an application for an IC and also allows this to occur more than once. Whilst we acknowledge there is a need for this to take place under certain circumstances, we believe there should be sufficient justification that should accompany these extensions if required. Extensions should be the exception rather than the norm. Again, allowing such a broad mechanism for extending consultation periods compromises the overall objective for timeliness and efficiency of the Bill. Given current concerns regarding resourcing levels at PEDW there is significant risk that extensions to deadlines could occur repeatedly. The ability to extend the deadline is an example of a lack of firm timetable for examination and decision which undermines the '*certainty'* objective. One of the key reasons the PA2008 has been successful is that it was made clear from the outset that Examination timetables would not be extended under any circumstances – this forced all parties involved to be disciplined and ensure they were fully engaged in the process.

Section 35 outlines the requirements for Local Impact Reports (LIR). LPAs, where development is located, 'must' provide a LIR while community councils and other LPAs 'may' submit a LIR. These reports are important in the examination of SIPs and must be taken into account in determining the applications. It is, however, critical that there is sufficient resource at LPA level to engage properly with this and participate fully in the SIP examination (which is not routinely happening in either DNS or NSIP examinations). It also states that a LIR should give details of the impact of a proposed development on the area or part of the area and must comply with regulations about its form and content. This appears to be a more specific and detailed requirement compared with that set out in the DNS Guidance (Appendix 5) for an objective view of the positive, neutral and negative effects. It would also be helpful to understand whether the potential for an extension would apply to the submission of a Local Impact Report or a Marine Impact Report. We look forward to further detail being provided in the regulations to ensure all parties involved in the process have a good understanding of their roles and what a LIR is expected to cover.

We welcome the key additional feature to the Bill in section 37 whereby it grants the ability to apply for compulsory acquisition powers for a SIP (akin to the NSIP process for England and Wales). We look forward to further detail in the regulations.

In addition, please see our response to Part 1 and 2, where we seek further clarifications for projects applying for IC (transitional arrangements, consenting route for sites between 10-50MW and cross-border projects depending on the size of the capacity of the part in Wales or Welsh waters).

Question 2.iv) Part 4 - Examining applications

A proposed timetable for deciding applications for infrastructure consent before the end of 52 weeks is supported. However, further clarity is necessary to understand the provisions of section 56(1)(a). Detail of how an examination will be carried out within the 52-week window is lacking (including the circumstances when an Inquiry may be called) and developers need to have early sight of the proposals for how this period will be divided up. Section 50 notes that Welsh Ministers have the power to direct the Examining Authority to re-open the examination in accordance with the requirements of the direction. This is of concern as there is no timescale specified and no indication as to how this would fit within the overall 52-week period in s56(1) – this undermines the '*certainty'* objective of the proposed Bill.

In our view, it is critical that details regarding the examination procedure, and most importantly timescales, are set out on the face of the Bill.

As is already the case with the current DNS regime (which includes statutory determination timescales), lack of resources and expertise in the public sector (WG departments, PEDW, LPAs, NRW, other statutory consultees) is a key barrier to the timely delivery of projects. The public sector needs to be adequately resourced to support the delivery of projects at all stages: at pre-application to flush out key issues and help shape and refine proposals; at examination;

and post-consent to discharge conditions prior to the commencement of construction and the monitoring of the development. A lack of resources too often seems to prevent consultees from being able to meet with us during the preparation of an application or makes it difficult for them to provide specific advice on the issues facing a project. This has had a significant impact on the operation of the DNS regime and must be addressed if the IC regime is to deliver on its objectives.

We recognise that it is difficult to retain experienced employees, to continuously train new staff and to have enough personnel to process these applications across organisations. To address this issue and avoid delays in delivering the IC regime, we propose that a **Welsh Government central resource**, essentially a 'pool of experts' could be established to support the delivery of projects that would be available to WG, LPAs, PEDW, NRW and developers to utilise. It is not realistic to expect all 22 LPAs to have in-house expertise on all topics of relevance to the planning system and, where they do, they may not be fully utilised. A pool of experts operating on full cost recovery basis providing advice to all stakeholders would potentially be a more cost-effective option. We would be happy to discuss this further with WG, including funding options.

We again look forward to early sight of further Examination procedure (assuming timescales are added to the face of the Bill) to be set out in the regulations – and the opportunity to comment further at that time.

Question 2.v) Part 5 - Deciding applications for infrastructure consent

Section 53 sets out that Welsh Ministers must decide on the application in accordance with statutory policies i.e., any Infrastructure Policy Statement (IPS) that has effect, the National Development Framework (Future Wales: the national plan to 2040) and any Marine Plan. Where there is conflict, IPSs will take precedence. IPSs are incredibly important in decision making and therefore, it will be critical for Welsh Ministers to put them in place alongside the SIP regime. There are currently no details available on form, content or timing of IPS or the process for introducing a policy statement and we understand that there is currently no proposal for these to be brought forward with the Bill or the regulations.

The introduction of IPSs to guide the decision-making process for SIPs is a key opportunity for Wales to positively influence the direction of travel – much like the NPSs under the NSIP regime. To support a simplified and efficient consenting process, all national policy (and guidance) documents must be aligned. The IPSs must be produced alongside the Bill.

As highlighted in in our response to Part 4, the proposed commitment to determine applications for infrastructure consent in 52 weeks from acceptance of valid applications is also very positive and highly welcomed (section 56(1)). However, we are disappointed to note that the 52-week determination commitment at section 56(1) is essentially immediately undermined by virtue of section 56(2) which gives Welsh Ministers unconstrained scope to

extend this period. We would like to see some checks and balances added to 56(2) to limit its application in practice. Developer's build whole project programmes around key consent milestones and certainty around decision making timeframes is essential.

We note that the equivalent scope of the SoS to extend the deadline for determining DCO applications following receipt of an Inspector's report includes a requirement for SoS to make a statement to Parliament announcing the new deadline (see PA2008 section 107(7)). This gives elected representatives an opportunity to scrutinise such decisions and hold the Government to account. This is not fully replicated by the proposed annual Senedd Cymru reporting requirement of section 56(5).

More generally, we note that the PA2008 includes a statutory timetable for the majority of discrete elements of the determination process as part of the primary legislation itself (sections 55(2) and 98 of that Act). This level of detail is currently lacking in the proposed Bill, with details generally deferred to definition through future regulations. We would welcome clarity on how the 52-week period is to be broken down in terms of period for examination, reporting and decision-making.

The 52-week period is shorter than under the PA2008 which has a 16 month timeframe including acceptance (the Examination itself lasts 12 months and commences with a Preliminary Meeting (on average 3-4 months after acceptance)). It is not currently clear whether Welsh Ministers direction extending period can only be made with the consent of an applicant. In reality, if Welsh Ministers request an extension, the applicant will be concerned about refusal if they do not agree. We would like to see greater commitment to statutory timeframes and extensions of time being an exception.

Section 57(6), which allows Welsh Ministers to grant consent for a '*materially different'* proposal raises concerns as currently worded. Again, the regulatory provisions for this will be key to understanding how this mechanism is to work and in what context. The current wording suggests that applicants could potentially receive consent for a '*materially different'* proposal. This would undoubtedly give rise to objections from statutory consultees who may have not been afforded the opportunity to comment on the alternative proposal. It could also raise opportunity for legal challenge of decisions (e.g. if the materially different proposal falls outside the scope of that assessed through the submitted EIA). Currently, there is no clarity in terms of the possible circumstances where the Examining Authority would remain as the determining authority and whether the examination would need to be reopened to consider the '*materially different'* proposal.

We welcome the provision of 'associated development' in section 58. It is an important concept for SIPs to enable comprehensive developments to be brought forward. This is frequently optimised by NSIPs under the PA2008 regime. We suggest that guidance should be provided on what would constitute associated development for SIPs as is in place for NSIPs.

Question 2.vi) Part 6 - Infrastructure Consent Orders

As highlighted in Part 3, a key additional feature of the Bill that is not available under the current DNS regime is the ability to apply for compulsory acquisition powers (akin to the NSIP process that applies to certain projects in England and Wales). Clarity would be welcomed on whether post-application consultation on compulsory acquisition (s38) is intended to be a full statutory consultation stage or focused only on landowners affected by the compulsory acquisition request.

In sections 65 to 68, several references are made to '*special Senedd procedure'* but no clarity is provided as to what this may entail or whether it runs to the same timescale as the IC regime. If outside the IC regime, this could result in even longer timescales for a development to proceed (which again undermines the objectives of consistency and certainty).

Section 81 states that an IC may remove a requirement for specific consent or deem consent to have been granted. This will require consent or non-refusal of consenting authority within a specified period. Detail of what can be disapplied will be set out in the regulations; this will be important to scrutinise as secondary consents can significantly hold up developments. The non-refusal provisions are welcomed.

Section 84, which grant powers to correct errors in decision documents is a welcome initiative that will be effective in making the post determination process efficient.

Section 87 notes that IC Orders can be changed or revoked by Order. These provisions are much broader than under the PA2008 and are not limited to making non-material changes – where neither the SoS nor the Local Planning Authority has the power to request changes or revoke a DCO. All detail for the procedure for changing and revoking ICOs in section 88 will be set out in regulation. The change procedure under the PA2008 is important but has not been effective given the lack of statutory timeframes. There is an opportunity for the Bill and regulations to address this by specifying a timeframe for the determination of applications to change SIP consents which would provide welcome clarity and certainty.

Question 2.vii) Part 7 – Enforcement

We have no comments to make on this part of the Bill at this time.

Question 2.viii) Part 8 - Supplementary functions

Section 121 allows 'specified' public authorities (those identified in regulations) to charge fees. The detail of specified authorities and fees payable for SIP participation will be important.

Furthermore, no timescales are given for the procedures under section 122 which are needed. Section 126 notes that Welsh Ministers or the Examining Authority have power to consult a specified public authority. We would stress that a consulted authority 'must' give a substantive response. The list of specified authorities, timescales and procedure will be set out in

regulations. Under section 127, Welsh Ministers may give a direction requiring a public authority (LPA / NRW / a devolved Welsh authority specified in regulations) to which this section applies to do things in relation to an application. However, there is no detail on what the Welsh Ministers may direct an authority to do. Timescales, procedure and cost recovery will be set out in regulations where again we would welcome the opportunity to comment.

Question 2.ix) Part 9 - General provisions

We have no comments to make on this part of the Bill at this time.

Question 3. What are the potential barriers to the implementation of the Bill's provisions and how does the Bill take account of them?

In terms of the content of Bill itself, further procedural detail around the implementation is required. As highlighted in Question 1:

- Further detail is required regarding the transitional arrangements e.g. DNS to SIP. This is fundamental to provide certainty to all stakeholders involved in the process, and to avoid duplication of effort and abortive costs.
- Lack of specific statutory timescales and those that are included are in context of being able to extend.
- Too much detail reserved for regulations (which have yet to be published) and risks of inconsistencies and misunderstandings with different sets of regulations.
- Importance and content of Infrastructure Policy Statements.
- Lack of clarity on the consenting route for how 10-50MW onshore wind schemes will be consented.
- Lack of clarity around cross-border projects and s2(1)(e) for above ground electric lines

However, the biggest barrier in terms of the implementation of the Bill and the objectives set out in the Explanatory Memorandum is the **resourcing of public authorities and statutory consultees**. We desperately need to increase the flow of people and resources to our planning authorities, PEDW and NRW. We are already seeing considerable and costly delays which will only worsen with the significant number of projects in the pipeline. Please see further detail in our response to question 2, part 4.

Crucially, if the system is able to function effectively, it could deliver the consenting step-change needed to accelerate deployment of development that will help address the climate emergency, the nature emergency and the cost-of-living crisis. However, this will simply not be achieved without an accompanying step change in the way the system is resourced.

Question 4. 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)?

We have no comments to make on this part of the Bill at this time.

Question 5. Are any unintended consequences likely to arise from the Bill?

The IC regime is proposed at a time when PEDW and statutory consultees have struggled to effectively operate or engage with the current DNS regime - less than 30% of DNS decisions to date have been issued in line with target timescales as a result of on-going resource constraints. This statistic would be improved if statutory stakeholders had the resource to engage during pre-application – a move that would bring more certainty and confidence to the regime and to developing renewable energy projects in Wales. Given that the IC regime may increase the workload requirements for these bodies, it is imperative that the resourcing constraints are addressed and resolved. Without this, the IC regime will simply not deliver on its objectives.

Question 6. 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?

As we understand it, Welsh Government and PEDW will operate on full cost recovery basis whereas LPAs will only get costs associated with LIRs reimbursed (but not other costs such as preparing for and participating at Public Inquiries). We would welcome further understanding on why LPAs will not be reimbursed all costs and given the current resourcing situation, we suggest this position be revisited.

The Explanatory Memorandum derives the financial appraisal of each of the options from an Arup review of data related to infrastructure applications (DNS, TCPA and other infrastructure types) submitted between April 2013 and February 2019 (with more recent costs information collated by PEDW). Given the relatively ineffective operation of the DNS regime to date, we question whether this historic data provides a reliable basis for the costs of running a timely and effective regime (as it may be based on LPAs engaging ineffectively due to resourcing constraints).

Question 7. Are there any other issues that you would like to raise about the Bill and the accompanying Explanatory Memorandum or any related matters?

We have no comments to make at this time.

Many thanks for the opportunity to respond to this consultation. We would be pleased to engage in further dialogue with the Climate Change, Environment, and Infrastructure Committee on the matters raised in our response, and in future stages of the Bill, so if you require any additional information, please don't hesitate to contact us.

Yours faithfully

Project Director
Bute Energy