

<b>ISLE OF ANGLESEY COUNTY COUNCIL</b>	
<b>Report to:</b>	<b>Executive &amp; Full Council</b>
<b>Date:</b>	<b>27 November, 2017 (executive)</b> <b>12 December, 2017 (Full Council)</b>
<b>Subject:</b>	<b>Delegations required for the Council's participation in the examination of Nationally Significant Infrastructure Project (Wylfa Newydd and North Wales Connection project) applications under the Planning Act 2008</b>
<b>Portfolio Holder(s):</b>	<b>Cllr. Carwyn Elias Jones</b> <b>Cllr. Richard Dew</b>
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<b>Local Members:</b>	

<b>A –Recommendation/s and reason/s</b>
<p>That the Executive and the full Council endorse and approve the following:-</p> <ol style="list-style-type: none"> <li>1. To delegate to the Assistant Chief Executive (Partnership, Community and Service Improvement) authority to carry out all non-statutory community benefit negotiations and, where (in her opinion) time is of the essence, to make any and all decisions relevant to such negotiations in connection with, or arising from, either or both of the National Grid North Wales Connection Project and the Wylfa Newydd Nuclear New Build Project;</li> <li>2. To depart from the bilingual policy for documents, representations, and submissions made as part of the Development Consent Order process where it is important or impossible for Officers to comply with the Council's Welsh Language Policy and where the Chief Executive approves such a departure.</li> </ol>

3. To delegate to the Head of Regulation and Economic Development the carrying out all the statutory functions of the Council under the Planning Act 2008 as both Local Authority and Planning Authority in connection with or arising from either or both of the National Grid North Wales Connection Project and the Wylfa Newydd Nuclear New Build Project;

4. Both the delegations proposed at paragraphs 1 and 3 above and any action to be taken under them may be further delegated to any officer of the Council by the officers to whom the powers are delegated.

Over the next 10-15 years, the Isle of Anglesey is set to benefit from a potential investment in excess of £10bn, which has the potential to transform the economy and communities of Anglesey. This potential investment will in the main be as a result Horizon Nuclear Power (HNP) Wylfa Newydd New Nuclear Build and the National Grid North Wales Connection Project, both of which are Nationally Significant Infrastructure Projects (NSIP) which will require a Development Consent Order (DCO) from the Secretary of State for Business, Energy and Industrial Strategy on the recommendation of the Planning Inspectorate.

HNP's Wylfa Newydd Nuclear New Build proposed development can be split into two areas; the onsite development and the off-site associated developments. Horizon propose to construct two UK Advanced Boiling Water Reactors (supplied by Hitachi-GE) on the site supported by facilities including a Marine Off-loading Facility, buildings and plant structures. Whilst their proposed offsite associated developments include a temporary park and ride facility, highway improvements and alternative emergency control centre.

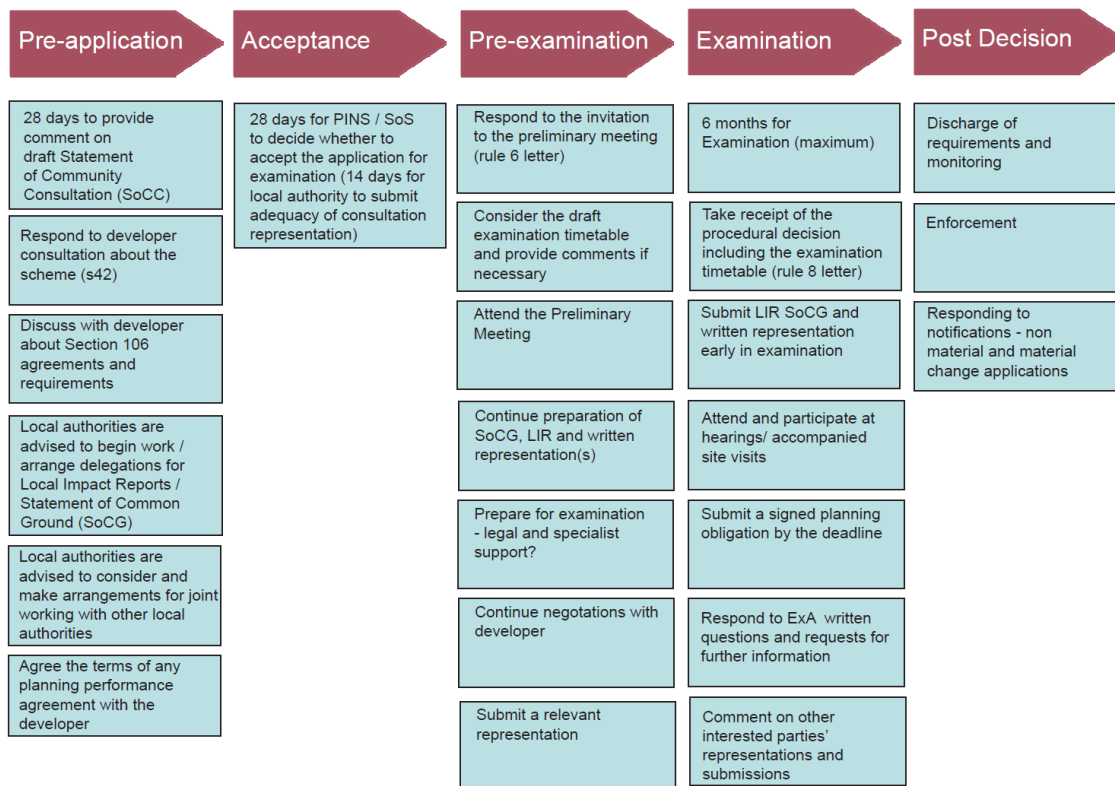
As a result of the proposed New Nuclear Build at Wylfa the National Grid are proposing a second connection to the grid. At present the National Grid are proposing an overhead line between Wylfa and Pentir with a section of undergrounding (tunnelling) across the Menai Straits.

In order to ensure that the IACC is able to fully participate in the DCO process it is essential to agree an approach to authorising the documents and representations that are involved. This will include putting in place the delegations required to enable the IACC to respond to the challenging deadlines. Due to changes in the structure and personnel of the Council as well as increased clarity on the scope of the applications it is recommended that the existing delegations be amended to reflect current circumstances and ensure that the appropriate delegation are in place ahead of the start of the DCO processes. Both HNP and the National Grid have recently undertaken their final pre-application consultations prior to their DCO submissions. It is anticipated that both DCO's will be submitted to the Planning Inspectorate during 2018, HNP's Wylfa Newydd in August and the National Grid North Wales Connection project in October.

The Planning Act 2008 created a new consenting process for large scale developments which fall within the definition of Nationally Significant Infrastructure Projects. Such projects can apply for a Development Consent Order ("DCO") from the Secretary of State.

A DCO replaces the need for planning permission and various other consents and can include matters normally considered under other regimes such as powers of compulsory purchase. The process is intended to provide a streamlined consenting regime allowing major projects to obtain multiple consents within a set timetable.

Fig. 1 below summarises the Role of the Local Authority in the DCO process:



Members were advised on 19 November 2012 of the need to separate the Council's statutory functions in the DCO process from discussions, negotiations and decisions on non-statutory community benefit contributions in connection with the proposed new nuclear power station at Wylfa. At that time measures were put in place to ensure Officer and Member responsibilities in relation to the Council's consenting functions were kept separate from discussions, negotiations and decisions on non-statutory community benefit contributions. The [Council] approved delegations to the Chief Executive to discuss and negotiate the non-statutory proposals with the developer of Wylfa and to the Director of Sustainable Development to carry out the statutory functions of the Council.

Both the Wylfa Newydd and National Grid North Wales Connection projects are now nearing the end of the pre-application period. Upon submission of the DCOs we will enter the acceptance period of 28 days. Following this period we will then enter the pre-examination, examination, decision and finally the post decision periods.

Given the progression of the projects towards submission of the DCOs the delegations in

place to deal with these have been reviewed. To date in responding to key pre-application consultations IACC has presented final drafts to the Full Council and subject to Elected Member endorsement has requested that delegated authority is given to the Chief Executive to carry out any minor amendments, variations or corrections which were identified and reasonably necessary prior to the formal issues of the response. This approach has been effective during the pre-application stages but the timetable leading up to and during formal examination for the development consent order process will not leave sufficient time for this approach to approvals to be taken. The majority of submissions during the examination have to be provided within days to meet the examination timetable.

Many of the deadlines in the DCO examination process are imposed on the Examining Authority (a panel of Inspectors appointed to examine the applications) and the Authority does not have the power to amend them, even if requested to do so by either the applicant of the IACC. Further, even deadlines set at the Examining Authority's discretion are rarely amended and for this reason PINS guidance states that a local authority must assume that the examination timetable cannot be structured to fit with its committee cycle ( The Planning Inspectorate, Advice Note Two: The role of local authorities in the development consent process).

It is recommended that the Executive put in place a delegation to the Assistant Chief Executive [(..)] to carry out any non-statutory community benefits negotiations and a second delegation to the Head of Regulation and Economic Development to carry out all the statutory functions of the Council under the Planning Act 2008 as both Local Authority and Planning Authority. Both delegations will be exercised under the continuing strategic overview of the Chief Executive. This will allow Members' approval of the policies and principles to be adopted with the finalisation of the details in accordance with those policies and principles and submission of documents to be delegated to the appropriate senior officers. The proposed delegations retain the split between the statutory and non-statutory roles of the Council but allows for the changes in roles and personnel that have taken place since the previous report as well as addressing the need to put in place delegations for the National Grid DCO as well as Wylfa and to respond fully during the process.

The delegations proposed and any action to be taken under them may be further delegated to any officer of the Council by the appointed officer. The ability to further delegate is required to allow officers to effectively represent the Council at hearings and agree matters in such hearings.

The personnel to whom delegations are proposed in this report have previously been involved in the projects for which DCOs will be sought in different roles in relation to the statutory and non-statutory considerations Officers exercising these delegations, particularly on the statutory side should make clear in their decision what advice and information they have had regard to and how that has been given weight in making the decisions in order both to ensure transparency and to assist in ensuring that decisions are legally robust by setting out the relevant material considerations to which regard has been

had. This mirrors the normal requirements for making of many decisions under statutory powers and should not impose any unreasonable burden on officers. Provided that officers set out their reasoning and have not taken account of immaterial factors then the movement of any officer from the non-statutory side to the statutory side or vice-versa is not considered to present a risk of successful challenge to later decision making.

In addition to the delegations it is recommended that the Executive approve the flexibility, where necessary and as approved by the Chief Executive, to depart from the Council's bilingual policy for documents produced by the Council as part of the development consent order examination process as set out in Appendix A to this report.

**B – What other options did you consider and why did you reject them and/or opt for this option?**

At present not all functions of the Council under the Planning Act 2008 are delegated and are therefore reserved to Full Council; some form of delegation is required to allow the Council to effectively meet the timescales of the examination process. The delegations sought are considered to represent an appropriate balance between seeking Member approval on the key principles and policy decisions required throughout the process and then allowing Officers to approve final documents to ensure that responses can be submitted in accordance with the timetable. Further delegation from the named post holders to other Officers is also required in order to allow officers be able to represent the Council effectively in the process, for example at oral hearings.

**C – Why is this a decision for the Executive?**

**CH – Is this decision consistent with policy approved by the full Council?**

**D – Is this decision within the budget approved by the Council?**

**DD – Who did you consult?**

**What did they say?**

1	<b>Chief Executive / Senior Leadership Team (SLT)</b>	
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	(mandatory)	
2	<b>Finance / Section 151</b> (mandatory)	
3	<b>Legal / Monitoring Officer</b> (mandatory)	
4	<b>Human Resources (HR)</b>	
5	<b>Property</b>	
6	<b>Information Communication Technology (ICT)</b>	
7	<b>Procurement</b>	
8	<b>Scrutiny</b>	
9	<b>Local Members</b>	
10	<b>Any external bodies / other/s</b>	

<b>E – Risks and any mitigation (if relevant)</b>		
1	<b>Economic</b>	
2	<b>Anti-poverty</b>	
3	<b>Crime and Disorder</b>	
4	<b>Environmental</b>	
5	<b>Equalities</b>	
6	<b>Outcome Agreements</b>	
7	<b>Other</b>	

<b>F - Appendices:</b>
A – Application of the bilingual policy

<b>FF - Background papers (please contact the author of the Report for any further information):</b>

## **Appendix A -**

### **1 STATUTORY REQUIREMENTS**

- 1.1 The Council as a Welsh public authority is required to comply with the Welsh Language measure and the standards issued to it by the Welsh Language Commissioner in the compliance notice dated 30 September 2015. There is no standard in the compliance notice which requires the Council to produce its responses to the DCO process in Welsh.
- 1.2 Translation facilities and bilingual publication of documents will be the responsibility of the Examining Authority through the Planning Inspectorate (PINs) and they will facilitate the participation of the public in the process through the medium of Welsh.
- 1.3 As PINs is the body running the process on behalf of the Secretary of State the obligations to ensure that any applicable Welsh language requirements are met lies with it not the Council. Translation facilities and bilingual publication of documents will be the responsibility of the Examining Authority (through PINS) and they will facilitate the participation of the public in the process through the medium of Welsh. PINS are currently compiling a list of hearing venues where suitable translation services can be provided for public meetings and will maintain a Welsh version of the examination website (although this version of the website will be quite limited and the document library will simply link to the English language documents).

### **2 PLANNING INSPECTORATE APPROACH AND ADVICE**

- 2.1 PINS advice is that where bilingual documents are to be submitted they should be submitted together in order to prevent confusion, that means that providing Welsh versions following submission of the English version is not desirable. Translation of documents post submission, in addition to requiring a large amount of specialist resources (especially given the technical nature of much of this process), will, result in Welsh language documents being submitted following the response to that document having been produced, ie the Welsh version will end up being several steps behind the process and out of sync with the discussions and changes. This will not assist anyone to meaningfully participate.
- 2.2 The Council cannot compel the applicants to provide bilingual documents and it is probable that many submissions to which the Council is required to respond will not be available in Welsh. PINS are producing a list of the documents which the applicant will be expected to produce in Welsh, this list will assist the Council in anticipating practical difficulties in responding in Welsh (for example where there are documents which only exist in English then the standard use of tracked changes to suggest alternative drafting is unlikely to be practical).

### **3 LIKELY LEVEL OF DEMAND AND TIMESCALES**

- 3.1 The DCO process includes pre-application, application, acceptance, pre-examination, examination and decision stages. All stages post application have target timescales

attached which PINs will be under pressure to meet. The examination stage of the process should take a maximum of 6 months and various deadlines will be set within that period. It is common for deadlines to be set at two-week intervals which can compress to one week towards the end of the examination stage. The Examining Authority can extend the six month examination period but is likely to be under pressure (including potentially from Horizon) not to do so. The Examining Authority will not take into account any submissions made after the close of the examination period although these will be sent to the Secretary of State.

- 3.2 Many of the Council's main submissions such as the Local Impact Report and its representations can be front-loaded and drafting and translation of these can begin before the application is made. The more difficult period will be during the examination where responses are required within weeks or even days. In addition to responding to the previous deadline's submission at the next deadline as a matter of course, the Examining Authority will also issue formal sets of questions which have to be answered, usually within 2 weeks. The quantity and scope of these questions can vary incredibly and cannot be predicted in advance. Both wide high level questions which required substantial answers and sets of detailed questions numbering into the hundreds have been issued in DCO examinations. It is normal (and Horizon will have) staff resource designed to react to this high demand, that will include lots of staff working outside of office hours and over weekends to respond to such requests timeously. The Council will be expected to match that pace despite its different resources.
- 3.3 The volume of documentation produced for the Hinkley examination is referred to as a guide of potential demand. Of the 1,068 documents in the document library for that consent<sup>1</sup>, the application accounts for 308 documents and a further 599 of the total are documents created during the 6 month examination phase<sup>2</sup>. The various Councils submitted or are credited as authors or partial authors of 115 documents. Of those around 80 are from the District and County Councils and are therefore representative of the level of involvement by the Councils covering the functions which IACC has as a unitary authority. This number on its own does not give an indication of the varying size and complexity of those documents or that demand will not be evenly spread throughout the process but it does give an indication of the level of resourcing required overall.
- 3.4 Our experience of DCOs is that documents are amended right up to the submission deadline (which is commonly midnight or midday) and it is normal for changes to be finalised on the day of submission. This is partly because documents tend to be interlinked and responses from one have to be carried over to others, for example responses on technical topics may have to be reflected in responses on the DCO requirements and then incorporated into updates of the Statement of Common Ground.

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<sup>1</sup> As at 08 August 2017, ongoing post consent processes will increase this figure.

<sup>2</sup> The figures break down by stage as Application 308; Pre-examination 38, Examination 599; Decision 50; Post decision 72. The Hinkley application was smaller than some others, for example Tidal Lagoon Swansea had 548 application documents, none of which are in Welsh. We expect a higher number of documents for Wylfa and potentially less for National Grid.



It is also partly due to the nature of the process and the need to take technical advice in order to be able to respond which can take some time to obtain. In the background changes also have to be carried through to documents such as any section 106 agreement which creates an ongoing background demand on the same resources as are preparing responses.

- 3.5 Given the tight timescales involved during the examination stage to have all of the documents and responses translated into Welsh prior to submission would require translation to be considerably quicker than at present; essentially documents would have to be being translated as they are progressed in English. Given how little time is allowed to produce the substance of responses it is not likely to be practical to close drafting of documents days in advance to facilitate the normal translation approach. This means that in practical terms a suitably qualified and briefed translation resource needs to be a core part of the document team and resourced to meet substantial peaks of demand at short notice. This will be particularly true of technical and legal input where specialist translation would be required in very short timeframes. It is accordingly anticipated that the Council will not be able to comply with its policy on the Welsh Language at every deadline simply due to pressure of time.

#### **4 VALUE OF WELSH TRANSLATIONS IN AN ENGLISH LANGUAGE DOMINATED PROCESS**

- 4.1 There is also a concern that translations of some submissions will lack value. For example there will be detailed and lengthy consideration of the DCO drafting and in particular the requirements but the source DCO drafts are unlikely to be produced and updated in Welsh. It is not clear how Welsh translations of discussions of the precise wording of the English language DCO will add value to those wishing to participate in the process as without a Welsh language DCO their ability to meaningfully contribute in Welsh will be limited. It is not known if a Welsh version of questions would be issued however it would be unusual; experience<sup>3</sup> of Welsh DCOs to date has not included bilingual questions. It is normal practice where a large number of questions are issued by the ExA for these to be responded to in a question and answer format and not as standalone submissions, without questions in Welsh it is questioned what value translating the answers would have in that format.
- 4.2 Translation of legal submissions will be required by the bilingual policy. In addition to being highly specialised legal translation always runs the risk that two slightly different positions are created. For example the difference in meaning between ‘can’, ‘will’, ‘may’ and ‘shall’ has been the subject of various judicial decisions and there are multiple European court decisions where differing translations of the same directive has led to different requirements under what should have been the same legal position. Any translation of legal submission would therefore have to be subject to a caveat that the English version takes primacy in the event of any discrepancy.

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<sup>3</sup> There are 11 decided Welsh DCOs as at 08 August 2017, the first questions for all of these have been reviewed. While some Examining Authorities provided the covering letters in Welsh (for example Brechfa Forest Connection, North Wales Wind Farms connection, Glyn Rhonwy) the questions themselves were issued in English only.

It remains the Council's intention to comply with the bilingual policy in so far as is practical and the authorisation is only sought to allow departure where that is necessary in the circumstances.

**Recommendation:** That the Executive approve the departure from the bilingual policy for documents, representations, and submissions made as part of the Development Consent Order process where it is impractical or impossible for Officers to comply and where the Chief Executive approves such departure.