

<b>Isle of Anglesey County Council</b>	
Report to:	Executive / Full Council
Date:	12 July 2021 / 7 September 2021
Subject:	<p>Request for changes to the Constitution to provide delegated powers to the Head of Regulation and Economic Development in relation to the statutory functions of the Council in connection with any development that constitutes a Development of National Significance (DNS) and developments which require Special Development Orders (SDO).</p> <p>In addition request for provision of delegated powers to the Deputy Chief Executive in relation to the negotiation and approval of non-statutory community benefits for a Development that constitutes a Development of National Significance (DNS).</p>
Portfolio Holder(s):	Cllr. Carwyn Elias Jones Cllr. Richard Dew
Head of Service / Director:	Christian Branch Head of Service Regulation and Economic Development
Report Author: Tel: E-mail:	<p>Annwen Morgan Chief Executive <a href="mailto:AnnwenMorgan2@ynysmon.gov.uk">AnnwenMorgan2@ynysmon.gov.uk</a></p> <p>Dylan J Williams Deputy Chief Executive <a href="mailto:DylanWilliams@ynysmon.gov.uk">DylanWilliams@ynysmon.gov.uk</a></p>
Local Members:	All members

#### **A –Recommendation/s and reason/s**

##### **Recommendations**

1. That full Council delegate to the Head of Regulation and Economic Development the carrying out of all statutory functions of the Council in connection with any development that constitutes a Development of National Significance (DNS) as defined under Planning (Wales) Act 2015, which amends the Town and County Planning Act 1990 (“the Act”), and the Developments of National Significance (Wales) Regulations 2016 (as amended) and subsequent Regulations as both Local Authority, Local Planning Authority and Local Highway Authority.
2. That full Council delegate to the Head of Regulation and Economic Development the carrying out of all statutory functions of the Council in connection with any development that constitutes a Special Development

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Order (e.g. Border Control) under section 59(3) of the Town and Country Planning Act 1990.

3. That the Executive delegate to the Deputy Chief Executive authority to carry out all non statutory community benefit negotiations and to make all decisions relevant to such negotiations in connection with, or arising from a development that constitutes Development of National Significance (DNS) in consultation with the Chief Executive and the Leader of the Council.
  
4. To update section 3.5.3 of the Constitution to reflect the above delegations.

### **Reasons**

#### ***Development Of National Significance***

The statutory basis for the Development of National Significance (“DNS”) process is provided by the Planning (Wales) Act 2015, which amends the Town and Country Planning Act 1990 (“the Act”), and the Developments of National Significance (Wales) Regulations 2016 (as amended) and subsequent Regulations.

The purpose of the Development of National Significance (DNS) process is to ensure timely decisions are made on those planning applications that are of the greatest significance to Wales, because of their potential benefits and impacts.

Under the Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) (Wales) Regulations 2016 (as amended) precise details of the criteria related to various projects can be found. Under the criteria, all energy generation projects of between 10MW and 350MW generating station are captured by the DNS thresholds.

Any DNS application is submitted to the Planning Inspectorate Wales (PINS) for consideration by an appointed Inspector. The appointed Inspector will consider evidence from the applicant, the Local Planning Authority (LPA) and other statutory consultees and interested parties. Following consideration of the evidence, the Inspector will write a report to the Welsh Ministers, setting out their conclusions and making a recommendation as to whether or not the application should be granted planning permission. The relevant Welsh Minister then decides whether or not to grant permission.

The Council through its Energy Island Programme (EIP) is currently engaging with a range of developers that are in the process of preparing applications for Solar Farm on the Island. Any Solar Farm with a generating capacity of between 10MW and 350MW would constitute a Development of National Significance (DNS).

Any DNS application for an energy generation development will be led by the Councils Energy Island Programme (EIP) which sits within the Regulation and

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Economic Development Service (REDS). This ensure that the Council can provide the specialist resources required to respond to the requirements of the process in a timely manner. The EIP led on the Council's responses to the Wylfa Newydd Development which was National Significant Infrastructure Project (NSIP) and has also recently led on the Councils response to the Morlais project which was an application for a Transport and Works Act Order (TWAO).

For a DNS, as the Local Planning Authority for the proposed scheme we would be identified as a special consultee in accordance with the Act.

The determination period for the Welsh Ministers to make a decision on a DNS application is 36 weeks from the date of acceptance of a valid application. The representation period, lasting for 5 weeks from the date of validation of a DNS application, is an opportunity for relevant public bodies to submit representations regarding the merits of the scheme. If the examination requires a Hearing, this must be held within 10 weeks of the end of the representation period (by week 15). If an Inquiry is necessary, this must be held within 13 weeks of the end of the representation period (by week 18). The process therefore involves a number of tight and rigid deadlines, which are confirmed by PINS, for the Council as special consultee to provide representations and evidence into the examination.

This evidence includes the formal requirement of the DNS process that any relevant LPA must submit a Local Impact Report (LIR). The LIR is a written report detailing the likely impact of the proposed development on any part of the LPA's area, based on their existing body of local knowledge and robust evidence of local issues, and should list the impacts and their relative importance. The Inspectorate will inform the relevant LPAs when an application is received. Once they are notified, LPAs have 5 weeks to submit their LIR.

The diagram in Appendix 1 confirms the different stages of the DNS process.

The process of managing the Councils input and involvement into the DNS process and ensuring the timely submission of representations and evidence by the prescribed deadline confirmed by PINS, will need to include the requirement to include adequate time for translation to take place to ensure that a bilingual version of the submission is made to PINS by the deadline.

As identified above the DNS process involves a number of deadlines where the Council will need to submit different forms of evidence into the examination process as well as potentially taking part in a hearing or inquiry (or combination of both). The process in terms of its nature and demands will not allow the approval of the Councils representations into the Examination to be considered and approved by a form of Committee. It is therefore recommended that in order to ensure that the IACC is able to fully participate in the DNS process it is essential to agree an approach for authorising the Councils representations and submissions into the examination (including but not limited to the Local Impact Report (LIR) and Statement of Common Ground (SoCG)) to be made by delegated authority. As the Council will respond in its capacity as the LPA then that is a function retained by full Council and not given to the Executive.

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***It is therefore recommended that the full Council (on recommendation of the Executive) puts in place a delegation that allows the Head of Regulation and Economic Development to carry out of all the statutory functions of the Council in connection with any development that constitutes a Development of National Significance (DNS) as defined under Planning (Wales) Act 2015, which amends the Town and County Planning Act 1990 (“the Act”), and the Developments of National Significance (Wales) Regulations 2016 (as amended) and subsequent Regulations as both Local Authority, Local Planning Authority and Local Highway Authority.***

***This includes a delegation to the Director of Function (Council Business)/ Monitoring Officer in consultation with the Head of Service (Regulation and Economic Development) to update section 3.5.3.10 of the IACC’s Constitution to allow the Head of Regulation and Economic Development to carry out of all statutory functions of the Council in connection with any development that constitutes a Development of National Significance (DNS) as defined under Planning (Wales) Act 2015,***

As part of the process of the EIP dealing with other significant major projects, including Wylfa Newydd and Morlais, there are a number of effective processes already in place to ensure that the Leader of the Council, Elected Members and the Senior Leadership Team are constantly kept up to date with regards to the Councils’ involvement and position in relation to these major projects.

These include the regular Level 2 Meetings which involve the Leader of the Council and the Service’s Portfolio Holders. In addition, with regards to all major projects, the EIP is familiar with arranging Member Briefing Sessions which allows Officers and the developers to engage directly with the relevant Elected Members and for the Members to be afforded the opportunity to ask questions directly to the developer. These have proven as a very effective means of direct engagement in the past for other major projects. The intention is to carry on with these arrangements in terms of those projects that constitute Development of National Significance.

The EIP will report to Members on how the delegated authority has been used in relation to Development of National Significance and will report on progress and outcomes as necessary throughout the DNS process. This will be done through written updates to the Planning Committee and/or through Members Briefing Sessions as necessary.

### ***Special Development Orders***

Section 59(3) of the Town and Country Planning Act 1990 : ‘Development orders: general’, states that:

(1) The Secretary of State shall by order (in this Act referred to as a “development order”) provide for the granting of planning permission.

(2) A development order may either—

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- a) itself grant planning permission for development specified in the order or for development of any class specified; or
- b) in respect of development for which planning permission is not granted by the order itself, provide for the granting of planning permission by the local planning authority (or, in the cases provided in the following provisions, by the Secretary of State [or the Welsh Ministers]) on application to the authority [(or, in the cases provided in the following provisions, on application to the Secretary of State [or the Welsh Ministers])] in accordance with the provisions of the order.

(3) A development order may be made either—

- a) as a general order applicable, except so far as the order otherwise provides, to all land, or
- b) as a special order applicable only to such land or descriptions of land as may be specified in the order.

This provision enables the Welsh Ministers to make a special development order. Unlike a general development order that will normally apply to all land, a special development order grants planning permission only for the development of the land specified in the order. Generally, the power is used sparingly and in exercising these powers the Welsh Government will undertake necessary technical assessments to support the application.

A ministerial decision will be made on the proposal for each site based on a review of the supporting evidence provided. If consent is obtained by the relevant Welsh minister for a site, a SDO would be laid before the Senedd to permit and enable the proposed development.

As with Developments of National Significance, there may be tight statutory timescales for the IACC to respond to SDOs in its capacity as LPA (e.g. Border Control in Holyhead).

***It is therefore recommended that the full Council (on the recommendation of the Executive) puts in place a scheme of delegation that allows the Head of Regulation and Economic Development to carry out of all statutory functions of the Council in connection with any development that constitutes a Special Development Order under section 59(3) of the Town and Country Planning Act 1990; and that it be delegated to the Director of Function (Council Business) / Monitoring Officer (in consultation with the Head of Service (Regulation and Economic Development)) to include provisions for such delegation in section 3.5.3.10 of the IACC's Constitution.***

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### ***Voluntary Community Benefits***

In order to ensure that the residents of Anglesey are able to fully capitalise upon the anticipated positive impacts of major development, the Council has prepared a voluntary Community Benefit Contributions Strategy and will be asking potential developers to consider providing an element of community benefit as part of their major development on a voluntary basis.

Planning Policy Wales (paragraph 5.9.26) confirms that '*experience has shown that there are significant opportunities to achieve local benefits through renewable energy developments. Some benefits can be justified as mitigation of development impacts through the planning process. In addition, developers may offer benefits not directly related to the planning process. Local authorities, where practical, should facilitate and encourage such proposals*'.

For other major energy schemes, through engagement with the Council, developers have agreed to provide voluntary community benefit including the provision of a community benefit fund that allows those local communities located nearest and impacted by the development to apply for monies through the fund in order to undertake projects that can make a positive difference to its residents and surrounding environment.

Experience has shown that these discussions, including ensuring that an appropriate legal mechanism is agreed between the developer and the Council to secure the benefit appropriately take place during the examination of the DNS application and therefore time is of the essence in terms of ensuring that favourable conclusions are reached within the prescribed examination deadline.

***It is therefore recommended that the Executive put in place a further delegation to the Deputy Chief Executive to carry out any non-statutory community benefits negotiations on behalf of the Council and the Communities of Anglesey. This includes a delegation to the Director of Function (Council Business)/ Monitoring Officer (in consultation with the Deputy Chief Executive) to updating section 3.5.3.2 of the IACC's Constitution to reflect this delegation. Progress on these community benefit discussions and outcomes will be reported back to the Executive as necessary.***

Both delegations will be exercised under the continuing strategic overview of the Chief Executive. The voluntary community benefits delegation will be exercised in consultation with the Leader and the Portfolio Holder (Major Projects and Economic Development). 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.

Officers to whom delegations are proposed in this report have previously been

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involved in major projects including Wylfa Newydd and Morlais and have been involved in relation to both the statutory and non-statutory considerations.

Officers exercising these delegations, particularly on the statutory side should make clear in their representations what advice and information they have had regard to and how that has been given weight in informing the Councils representations/position. This will ensure transparency and assist in ensuring that representations 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.

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

The delegations sought are considered to represent an appropriate balance between seeking Member engagement in DNS applications and allowing Officers to approve final documents to ensure that responses can be submitted in accordance with the timetable as set out by the Planning Inspectorate.

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.

The other option considered was not to seek this delegation which would mean that all decisions / reports in relation to DNS would need to be approved by the Executive and / or the Full Council. This option was rejected as the IACC would not be able to participate in the DNS process as the timescales would not allow.

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

This is a decision for the Executive directly in respect of community benefits and indirectly as a consultee on changes to the scheme of delegation in the IACC's constitution. The decisions are also for full Council, directly in respect of the DNS and SDO matters and also in respect of changes to the scheme of delegation to officers in the Constitution.

### Ch – Is this decision consistent with policy approved by the full Council?

Yes. The Full Council has already delegated this authority to respond to Nationally Significant Infrastructure Projects (NSIP) (i.e. Wylfa Newydd). This decision would allow the same delegation but to deal with DNS applications in Wales.

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

Yes.

### Dd – Assessing the potential impact (if relevant):

1	How does this decision impact on our long term needs as an Island?	This decision will allow the Council to fully contribute in the examination of any development that constitutes a Development of National Significance in a timely manner.
2	Is this a decision which it is envisaged will prevent future costs / dependencies on the Authority? If so, how?	N/A
3	Have we been working collaboratively with other organisations to come to this decision? If so, please advise whom.	N/A
4	Have Anglesey citizens played a part in drafting this way forward, including those directly affected by the decision? Please explain how.	No
5	Note any potential impact that this decision would have on the groups protected under the Equality Act 2010.	N/A
6	If this is a strategic decision, note any potential impact that the decision would have on those	Yes – community benefits would provide a positive impact on those



**Dd – Assessing the potential impact (if relevant):**

	experiencing socio-economic disadvantage.	experiencing socio-economic disadvantage.
7	Note any potential impact that this decision would have on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.	This decision would ensure that the representations of the Council into the examination of any DNS application is submitted bilingually

**E – Who did you consult?****What did they say?**

1	Chief Executive / Senior Leadership Team (SLT) (mandatory)	
2	Finance / Section 151 (mandatory)	
3	Legal / Monitoring Officer (mandatory)	
4	Human Resources (HR)	-
5	Property	-
6	Information Communication Technology (ICT)	-
7	Procurement	-
8	Scrutiny	
9	Local Members	Cllr Richard Dew –  Cllr Carwyn Jones -

**F - Appendices:**

Appendix 1 – Flow chart describing stages in DNS process.

**Ff - Background papers (please contact the author of the Report for any further information):**

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## Appendix 1

