

ISLE OF ANGLESEY COUNTY COUNCIL	
Report to:	Executive Committee
Date:	14th July, 2014
Subject:	Planning Performance Agreement (PPA) Charter
Portfolio Holder(s):	Councillor John Arwel Roberts
Head of Service:	Jim Woodcock
Report Author: Tel: E-mail:	E.Gwyndaf Jones, Chief Planning Officer 2403 egjpl@anglesey.gov.uk
Local Members:	Relevant to all Members

A –Recommendation/s and reason/s

To support and formally adopt the Planning Performance Agreement (PPA) Charter and the draft Planning Performance Agreement (PPA).

These documents will provide the basis to generate resources in order to enable Officers to deal, when appropriate, with planning applications for major developments as well as consultations on developments which will impact upon the Island.

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

In April, 2010 the Executive adopted a Charter setting out how the Authority would work with developers, the community and other key stakeholders to ensure that complex developments are carefully considered in a constructive, collaborative and open manner. Such an approach is considered to be the best way of developing planned schemes that will meet the vision and objectives of the Authority.

A Planning Performance Agreement (PPA) is a framework document agreed between the Authority and an applicant for the management of complex development proposals within the planning or other statutory process. The mechanics of the Agreement is such that defined 'Work Packages' or 'Activity Orders' are agreed in advance between the Authority and applicant. As a precursor to the signing of a PPA the Authority may request an applicant to agree to a Memorandum of Understanding (MoU) in order to cover Officer costs when pre-application advice is given in advance of a PPA being signed.

A PPA is also a collaborative project management process for dealing large scale developments and consultations. The Agreement embraces the planning process from pre-application advice through to the submission of a planning application for large scale developments on which a decision may be made by the Planning Inspectorate (PINS). There are no statutory provisions relating to PPAs. It is an informal process implemented only through voluntary agreement between the Authority and prospective Developers. The Agreement will set out timescales for handling the various tasks involved in consideration and refinement of the proposals and bringing the proposals to decision.

A PPA does not commit the Authority to act in any other way other than in accordance with its statutory powers and duties.

The use of PPAs has substantial benefits in that it enables the parties to focus resources on projects with the potential to generate significant benefits such as the delivery of major energy developments. A collaborative approach between the Authority and Developer, as opposed to a reactive response to proposals can help to improve the quality of schemes and combine efforts towards resolving issues.

To date the Authority has signed 3 PPAs with Horizon, National Grid and Centrica. These were signed on 25.10.11, 10.12.12 and 29.4.13 respectively.

Over the coming years the Authority expects submission of planning applications for developments for, and associated with major developments to increase at a time where cuts are made to Service budgets. In light of this it is vitally important that the Authority is able to effectively deal with applications at the pre-application stage in order to ensure that applications are 'fit for purpose'.

The Planning Service presently charge for pre-planning advice on certain applications. However, it is considered that in some instances where an application is complex or is large scale, significant, strategic, sensitive and above the thresholds of current pre-planning advice then such projects should be subject to a PPA. Notwithstanding Nationally Significant Infrastructure Projects (NSIPs) where the Authority expect developers to enter into a PPAs other developments will be assessed on a 'case by case' basis. It is not considered pertinent to adopt a 'threshold' trigger for these developments as some developments which may fall below an indicative threshold could involve as much, if not more, work for Officers than those above a specific threshold. However, if an Environmental Impact Assessment (EIA) is required as part of an application this would usually trigger the need for a PPA. EIA's are mandatory for some form of developments e.g. nuclear power stations, waste disposal installations, waste water treatment plants above in certain thresholds etc. These are defined as Schedule 1 developments under the Regulations, whilst Schedule 2 developments, comprising of quarries, wind turbines etc. are normally screened for EIA requirements or otherwise. A departmental protocol will be developed to decide as to when

a PPA would be appropriate. However, Members should be aware that PPAs are voluntary and that the Authority cannot mandate a developer to enter into such an Agreement.

Appendix 1 sets out the Authority's PPA Charter

Appendix 2 is a generic draft template of a PPA which the Authority expects Developers to sign up to if they agree to the voluntary Agreement

C – Why is this a decision for the Executive?

This is a matter which falls within the remit of the Executive. Given the expectation for new planned developments and consultations over the coming years it is important that the decision of the Executive made in April, 2010 to adopt the PPA Charter is updated and appropriately revised in order to reflect Officer experiences of dealing with pre-application discussions over the past 4 years and since the signing of PPAs with 3 of the major energy developers.

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

Yes

DD – Is this decision within the budget approved by the Council?

Yes. Income derived from PPAs is accounted for within the Planning Service budget

E – Who did you consult?		What did they say?
1	Chief Executive / Strategic Leadership Team (SLT) (mandatory)	
2	Finance / Section 151 (mandatory)	Concerns received regarding budgetary implications of entering into PPAs, income receipt against 'actuals' together with debt recovery issues
3	Legal / Monitoring Officer (mandatory)	<ul style="list-style-type: none"> The report states that indicative thresholds (above which a PPA is requested) will not be set. But the report then goes on to set an indicative threshold by stating that an application which requires an EIA will usually trigger the need for a PPA. Whilst I accept that you don't want to set indicative thresholds, some guidance of the sort of application that requires a PPA would be useful for those reading the report. An application that requires an EIA could be for a relatively small (or

		commonplace) development.
5	Human Resources (HR)	
6	Property	
7	Information Communication Technology (ICT)	
8	Scrutiny	
9	Local Members	
10	Any external bodies / other/s	

F – Risks and any mitigation (if relevant)		
1	Economic	The PPA Charter and draft Agreement has been prepared with support from Burges Salmon so as to ensure that the documents are lawful. The PPA will allow Officers to deal with developments in a robust manner and in order to maximise economic benefits for the Island
2	Anti-poverty	
3	Crime and Disorder	
4	Environmental	A PPA is a voluntary and recognised legitimate means of securing additional capacity and resources to facilitate the consenting process for major and complex infrastructure project. By entering into a PPA, the Council does not commit itself to act in any other way than in accordance with its statutory powers and duties. For example implications for the Council's statutory duties under the Countryside and Rights of Way (CROW) Act, 2000 and the National Resources and Rural Communities (NERC) Act, 2006 will be considered as projects are developed
5	Equalities	
6	Outcome Agreements	
7	Other	

FF - Appendices:
Appendix 1 – Isle of Anglesey County Council Planning Performance Agreement Charter Appendix 2 – Draft Planning Performance Agreement

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

Executive Committee Report 27.4.10 – Anglesey County Council Planning Performance Charter
Executive Committee Report 17.3.14 – Community Benefits Contribution Strategy:

<http://democracy.anglesey.gov.uk/documents/s500000684/Cyfraniadau%20Budd%20Cymunedol.pdf?LLL=0>

Fees for Pre-Planning Advice on Planning Applications

**ISLE OF ANGLESEY COUNTY COUNCIL PLANNING PERFORMANCE AGREEMENT
CHARTER**

As an Authority:

- "The Isle of Anglesey County Council is committed to encouraging new investment of the highest quality that contributes to the well-being of existing and future communities".
- The Isle of Anglesey County Council recognises that successful delivery of significant major developments requires commitment to partnership working, sound project management and effective communications with developers, the community and other agencies.
- The Isle of Anglesey County Council recognises that it is important to reduce delays and uncertainty for developers and local communities in bringing forward proposals for major sustainable developments.

In order for the Authority to aspire to these aims and deal with large planning applications or major infrastructure works it expects developers to sign up to a voluntary Planning Performance Agreement (PPA).

A PPA is a framework agreed between the Authority and an applicant for the management of complex development proposals within the planning or other statutory process. A PPA allows both the developer and the Authority to agree a project plan and programme which will include the appropriate financial resources necessary to determine the application to a firm timetable through Activity Orders or Work Packages. Such agreements are designed so as to embrace the planning process from pre-application advice through to the submission of an application and, where planning permission is granted, post submission matters such as reserved matters applications or discharge of planning conditions.

A PPA is a recognised and legitimate means of securing additional capacity and resources to facilitate the consenting process for major and complex infrastructure projects. By entering into a PPA, the County Council does not commit itself to act in any way other than in accordance with its statutory powers and duties.

The benefits of a PPA are that it will deliver clarity, speed and certainty. It will also provide the Authority with the necessary financial resources, which would not otherwise be at its disposal, to deal with major planning projects.

As an Authority we will:

- Arrange an Inception Meeting to agree a joint vision, discuss key issues and draft an initial project plan.
- Set up a Project Team to manage the pre-application process.
- Agree a detailed project plan setting out stages and milestones.
- Provide professional advice and guidance throughout the term period of the agreement in order to facilitate a valid planning application.
- Advise on and facilitate internal and external consultation including the statutory consultees.
- Advise on community engagement.
- Advise on likely s.106 requirements.

As an Authority we expect the developer to:

- Engage with the Project Team in an open, collaborative and creative manner.
- Employ staff/consultants with sound professional expertise in the appropriate areas of development.
- Fully commit to the process and recognise that adequate time needs to be allowed for preparation of essential information, community engagement and assessments of proposals.
- Resource the Authority so as to enable it to provide professional collaboration throughout the process.
- Submit a completed application with all the relevant supporting information as agreed, including the draft legal agreements when appropriate.
- Demonstrate a commitment to the long term delivery of the project.

Inclusion of a Project in the PPA process will be determined by its complexity and scale. Where a Project is large scale, significant, strategic, sensitive or complex, the Authority will expect a Developer to enter into a PPA. If an Environmental Impact Assessment (EIA) is required as part of the Application, this would usually indicate a PPA is suitable. The Authority will also be looking for developers to enter into PPAs in instances when it is required to respond to consultations e.g. on applications for consent by the Secretary of State for developments covered under Sections 36 and 37 of the Electricity Act, 1989. The Authority currently receives no statutory fees for dealing with these consultations.

By signing a PPA and working together the vision and objectives of the Authority will be achieved to the benefit of the people of Anglesey.

It should be noted that a PPA applies to the statutory planning process. It is separate and distinct from any arrangements made in relation to non-statutory community benefit. In this regard it should be noted that if the development is of a size which warrants a PPA, it is also likely to be of a type where the Authority would expect discussions to take place on non-statutory community benefits the development may offer. Developers are referred to Executive Committee Report dated 17th March, 2014 (Appendix B) entitled 'Community Benefit Contributions Strategy' which outlines the Authority's expectations.

The Authority has produced a template PPA which outlines the expected format, The precise content however is subject to agreement between the Authority and the Developer and will be determined by the complexity of each individual project.

A 'Schedule of Costs' to cover the time expended by Officers will be made available to the Developer. A PPA is a nationally recognised process which is based on actual work undertaken and not 'for profit'.

For further information and guidance regarding the PPA process, please contact the Planning Service on Isle of Anglesey County Council, Planning Department, Council Offices, Llangefni, Anglesey, LL77 7TW, tel no: 01248 752428 or by e-mail on planning@anglesey.gov.uk .

Isle of Anglesey County Council – June 2014.

Dated _____

2014

Planning Performance Agreement

Pursuant to the Town and Country Planning Act 1990,
Section 111 of the Local Government Act 1972,
and Section 93 of the Local Government Act 2003
in relation to application for *[insert description of development]*
on land at *[insert address]*

[_____] (1)

and

The Isle of Anglesey County Council (2)

THIS PLANNING PERFORMANCE AGREEMENT is made the day of 20[]

BETWEEN:-

- (1) [] of [*insert address*] (Company No. []) (the "**Developer**")
- (2) **ISLE OF ANGLESEY COUNTY COUNCIL** of Council Offices, Llangefni, Ynys Mon LL77 7TW (the "**Council**")

1 DEFINITIONS

1.1 In this Agreement unless the context otherwise requires the following words shall have the following meanings:-

"**Agreement**" means this Planning Performance Agreement;

"**Application**" means the application for Planning Permission to be made by the Developer in respect of the Project;

"**Contribution**" means the sum of [£XXXX] including any increase secured under clause 6 which is to be paid by the Developer in relation to the Application on completion of this Agreement

"**EIA Consultants**" means external advisors appointed to advise the Council in respect of the environmental impacts of the Project;]

"**EIA Regulations**" means the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (as amended);]

"**Legal Consultants**" means external advisors appointed to advise the Council in respect of any legal issues which might arise in relation to the Project

"**Parties**" means the Council and the Developer and shall include their successors and assigns from time to time and "Party" shall be construed accordingly;

"**Planning Permission**" means any permission that may be granted for the Project under Part III of the Town and Country Planning Act 1990;

"**Project**" means the [*insert project details*];

"**Project Timescale**" means the programme for delivery of the Project as set out in Appendix 1

"**Vision**" means the vision set out in Clause 4.

2 PURPOSE OF THE AGREEMENT

- 2.1 The Project lies within the administrative area of the Council and as such, the Council is the local planning authority for the Application
- 2.2 The purpose of this Agreement is to provide a framework and additional resource to enable the Council to respond to and manage the anticipated demand for resources which will result from the Application/Consultation (due to the size and nature of the Application) and to provide a service which would not ordinarily be possible by way of the application fee.
- 2.3 The Council has powers under the Town and Country Planning Act 1990, Section 111 of the Local Government Act 1972 and Section 93 of the Local Government Act 2003 to charge (at cost including overheads) for activities and services where such activities are not otherwise covered by application fees or where such activities are of a discretionary nature.
- 2.4 Nothing in this Agreement shall predetermine or prejudice the proper consideration and determination of any consent or approval or override or fetter the statutory powers, duties or responsibilities of any Party.
- 2.5 This Agreement does not oblige the Developer to apply for any specific planning permission or other consent required for the Project.

3 BACKGROUND

- 3.1 [*Project name*] is a [*project description*] to be located at [].
- 3.2 [The Project will be accompanied by an environmental impact assessment pursuant to the EIA Regulations.]
- 3.3 The Parties wish to establish a framework for timely consultation, review and comment during the pre-application process for the Project.

4 VISION

- 4.1 The Parties agree that the Project to be considered under this Agreement should achieve the following:
- (a) contribute to [*description of any national need to which the project may contribute*] by ensuring the delivery of the Project;
 - (b) achieve appropriate high quality design with the minimisation of environmental impacts through management and mitigation;
 - (c) comply with operational safety and security requirements;

- (d) provide proper assessment and scrutiny of environmental, social and economic impacts supported by robust evidence.

4.2 In endorsing this Vision, it is acknowledged that the Council cannot act in any way other than in accordance with its statutory powers and duties.

5 THE TEAM

5.1 The principal contacts for each Party under this Agreement are as follows:

- (a) The Council

[insert name, title, dd telephone number and email address for the principal point of contact and then, where relevant, individual points of contact for specific issues such as ecology, landscape, hydrology, cultural heritage/archaeology, noise, transport]

- (b) The Developer

[insert name, title, dd telephone number and email address for the principal point of contact and then, where relevant, individual points of contact for specific issues such as ecology, landscape, hydrology, cultural heritage/archaeology, noise, transport]

6 THE CONTRIBUTION

6.1 The Parties agree that the Contribution shall only be used for the following purposes:

- (a) to fund one or more Council officers' time spent undertaking work in connection with the Project in compliance with the Council's obligations under this Agreement;
- (b) to fund any other additional Council staff resources directly related to the Council's obligations under this Agreement; and
- (c) [to pay EIA consultants appointed by the Council for the purposes of complying with its obligations under this Agreement.]

6.2 It is agreed between the Parties that the Contribution shall not be used to pay any Legal Consultants.

6.3 In the event that the Council consider it reasonably necessary to secure external legal advice in respect of any matter which arises or may arise as a result of the Application, the Council may make a written request to the Developer for such sum as is considered necessary for such legal advice and if it is considered by the Developer (acting reasonably) that such legal advice is required then the Developer shall pay to the Council the sum requested.

6.4 In the event that the Contribution is fully expended or it appears likely to the Council that it will be fully expended prior to the submission of the Application to the Council; the Council may make a written request for the Contribution to be increased.

6.5 A written request under Clause 6.4 must:

- (a) set out in the detail how the Contribution has been spent to date;
- (b) provide supporting evidence showing how it has been spent;
- (c) specify the amount by which the Council requests the Contribution to be increased; and
- (d) provide clear justification for that increase.

7 MUTUAL OBLIGATIONS

7.1 The Parties agree to:

- (a) a mutual commitment of resources to meet the Vision as set out at Clause 4 of this Agreement;
- (b) provide meaningful feedback in a timely manner to assist the application process;
- (c) mutual participation with any other relevant local authorities or other statutory or non-statutory consultees to enable progress to be monitored and considerations and potential issues common to the Project, including across administrative boundaries, to be identified, discussed and resolved wherever practicable;
- (d) generally act with all reasonable care and skill including responding to requests as soon as reasonably practicable in order to achieve the submission by the Developer of the Application for the Project according to the Project Timescale.

8 THE DEVELOPER'S OBLIGATIONS

8.1 The Developer agrees to:

- (a) pay the Contribution within 28 days of receipt of an invoice from the Council;
- (b) comply with the Mutual Obligations and to help facilitate the other Party's compliance with the Mutual Obligations;
- (c) respond substantively to all written communications and telephone calls with or from the Council within 5 working days of receipt and to respond to all other communications associated with this Agreement promptly and in any case

within 10 working days from receipt or in either case within such other time as may be agreed;

- (d) provide the Council with all substantive documents relating to meetings between the Parties not less than 5 working days prior to any such meeting or such time as may be agreed.

9 THE COUNCIL'S OBLIGATIONS

9.1 The Council agrees to:

- (a) comply with the Mutual Obligations and to help facilitate the other Party's compliance with the Mutual Obligations;
- (b) support communities to understand how and when they can engage in the Application process;
- (c) provide constructive input into pre-application discussions with the Developer;
- (d) procure external resources with due recognition of the need for probity and independence of advice and in compliance with the best value process, EU procurement directives and all relevant standing orders of the Council;
- (e) respond substantively to all written communications and telephone calls with or from the Developer within 5 working days of receipt and to respond to all other communications associated with this Agreement promptly and in any case within 10 working days from receipt or in either case within such other time as may be agreed;
- (f) notify the Developer no later than 10 working days prior to any Council, cabinet or committee meeting at which any report of matter relevant to the Project will be considered and to provide the Developer with the relevant minutes or action points arising within 10 working days; and
- (g) maintain clear records (including estimates and invoices, and logs of officer and other Council staff time) of the costs it incurs in compliance of its obligations under this Agreement.
- (h) **[Drafting note:** additional obligations to be considered]

10 PROJECT TIMESCALES

10.1 The Parties agree to use best endeavours to achieve the Project Timescale in Appendix 1 in respect of the Project [and to notify each other within 7 days of becoming aware of any requirement to alter the Project Timescale in respect of the Project or generally.]

11 DURATION AND TERMINATION

- 11.1 This Agreement is effective from the date of execution.
- 11.2 The Parties agree that this Agreement will initially cover the work required up to and including the submission of the Application to the Council.
- 11.3 The Agreement shall terminate upon the earlier of:
- (a) the date of submission of the Application to the Council; or
 - (b) any date on which the Parties agree in writing no further work is required to be carried out under the provisions of the Agreement; or
 - (c) the date specified in a notice served by the Developer on the Council terminating the Agreement which shall not be less than 10 working days after the date of the notice.

12 DISPUTES

- 12.1 In the event of any dispute or difference arising between the Parties concerning any matter arising out of this Agreement the Parties shall work together to endeavour to resolve the dispute or difference by mutual agreement. In the event the Parties are unable to resolve the dispute or difference within 20 working days of attempting to do so any Party to the dispute may refer it to an expert being an independent and fit person holding appropriate professional qualifications to be appointed (in the absence of agreement) by the President (or equivalent person) of the professional body chiefly relevant in Wales to such qualification.
- 12.2 Each Party should bear its own costs in relation to any dispute resolution.

13 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 13.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply and no person other than the Parties shall have any rights under or be able to enforce the provisions of this Agreement.

14 NOTICE

- 14.1 Any notice or notification under this Agreement shall be in writing and shall be served in accordance with the provisions of this Clause.
- 14.2 Any notice to terminate the Agreement shall be served on the following persons at the address set out below, or such other person as may be notified to the other Parties by the Party concerned:

Party	Person to whom notice should be sent
The Developer	<i>[to be completed]</i>
The Council	<i>[to be completed]</i>

14.3 Unless specifically agreed by the Developer or the Council a notice terminating this Agreement may not be sent by e-mail or other electronic form of communication.

14.4 Any notice terminating this Agreement sent by post shall not be deemed to have been served until it has been received by the Developer or the Council to whom it is addressed.

This agreement has been entered into on the date stated at the beginning of it.

Signed by:
.....

On behalf of the Developer

Signed by:
.....

On behalf of the Council

Appendix 1 – Project Timescale

Timescale	Stage of Process
[]	[Drafting note: process stages will be particular to a given application. It may be possible to identify particular stages common to all applications.]
[]	[]
[]	[]
[]	[]
[]	Submission of Application

DRAFT