

CABINET

Date of Meeting	Tuesday, 17 th October 2023
Report Subject	To seek amendments to the Scheme of Delegation to include Developments of National Significance (DNS) and Nationally Significant Infrastructure Projects (NSIP) Projects under Delegated Powers.
Cabinet Member	Cabinet Member for Planning, Public Health and Public Protection
Report Author	Chief Officer (Planning, Environment and Economy)
Type of Report	Operational

EXECUTIVE SUMMARY

To delegate all matters and Council responses associated with Developments of National Significance (DNS) and Nationally Significant Infrastructure Projects (NSIP), to the Chief Officer (Planning, Environment and Economy)

The changes to the Scheme of Delegation sought is as set out below and covers all steps in respect of both types of applications.

Deal with matters relating to Nationally Significant Infrastructure Projects (NSIPs) and Developments of National Significance (DNS)

- *To submit observations on behalf of the Council*
- *Responding to the relevant Decision-Making Body on environmental impact assessment screening and scoping opinion consultations.*
- *Responding to the developer's consultation on the Statement of Community Consultation.*
- *Responding to the Decision-Making Body's consultation on the adequacy of the developer's consultation.*
- *To provide any formal and informal response to the developer's non-statutory and statutory pre-application consultation*
- *To provide any formal response to the relevant Decision-Making Body on NSIP/DNS application consultations include the drafting of a Local Impact Report, which shall be submitted following notification of the proposal to the Local Ward Member and with final agreement of the content of the Local Impact Report with the Cabinet Member for Planning, Public Health and Public Protection*
- *To agree to enter into Planning Performance Agreements with developers.*
- *To agree Statements of Common Ground.*

- *To represent the Council at Examination Hearing Sessions/Public Inquiries and make verbal/written representations during the examination*
- *To approve details submitted to the Local Planning Authority in accordance with requirements contained in NSIP Development Consent Orders*

RECOMMENDATIONS

1	To endorse the proposed changes to the Scheme of Delegation as set out in the Executive Summary.
2	To endorse the proposed changes to be actioned under Delegated Powers to the Leader of the Council as set out in the Appendix to this report.

REPORT DETAILS

1.00	BACKGROUND
1.01	The consenting process is different for a Nationally Significant Infrastructure Project (NSIP) and a Development of National Significance (DNS) compared to a traditional planning application for development which would be sought under the Town and Country Planning Act which the Local Planning Authority would determine. An application for a Development Consent Order (DCO) for a NSIP is made to the Secretary of State under the Planning Act 2008. An application for a DNS proposals is made in accordance with the Development of National Significance (Wales) Regulations 2016 made directly to Planning Environment Decisions Wales (PEDW). The Council is a stakeholder which has a role to play in the consideration of these types of development, however the Council is not the decision maker.
1.02	The Council's response on matters related to the Planning Act 2008, and the Development of National Significance (Wales) Regulations 2016 are an executive function, and are not a delegated function as stated within the Council's Scheme of Delegation.
1.03	There is a need to update the Council's Scheme of Delegation set out in the Council's Constitution to reflect new legislation and regulations as the Scheme of Delegation has not been updated with respects to these matters since this legislation has come into force.
1.04	Amongst other things, the Council are asked to produce a Local Impact Report for these types of proposals to inform the decision maker on the local issues associated with the proposal. In producing a Local Impact Report, the Local Authority is not required to carry out its own consultation with the local community. The report should consist of a statement of positive, neutral, and negative local impacts, but it does not need to contain a balancing exercise between positives and negatives; nor does it need to take the form of a formal Committee Report.
1.05	The Examining Authority (the Planning Inspectorate, England) in the instance of NSIPs, and PEDW in the instance of DNS proposals will carry

	<p>out a balancing exercise of relevant impacts when considering and assessing the proposals, and these will include taking into account of those local impacts specifically reported in the Local Impact Report produced by the Local Planning Authority. The Local Impact Report is a matter of fact and is an object report. The Local Planning Authority is not the decision maker, and there is no statutory requirement for the Local Authority to consult the Local Ward Member, Community/Town Council or local affected community, or communities.</p>
1.06	<p>Local Ward Members and locally affected communities are invited to provide their views on the NSIP and DNS proposal when they would be consulted at various stages of the non-statutory and statutory developer led pre-application consultation for these projects. Local Ward Members and locally affected communities also have an opportunity to engage in the examination when the applications have been submitted by submitting representation directly to PINS or PEDW.</p>
1.07	<p>In the cases of DNS proposals (examples include energy generation such as solar farms and combined heat and power plants between 10MW and 350MW installed capacity) there are various stages of engagement and consultation for the Local Ward Member and affected communities to engage and share their views on the proposal. This includes opportunities during the pre-application period, the application and consultation stage, and then finally during the consideration of the application at the examination stage.</p>
1.08	<p>At the pre-application engagement and consultation stage, the developer publicises draft proposals, engages with affected communities including Local Ward Members at the non-statutory preapplication stage, and then again during the statutory pre-application consultation stage.</p>
1.09	<p>Once the DNS application has been submitted and made valid, the statutory five-week representation period starts. During this period, relevant consultation and publicity will be carried out by PEDW. This stage gives Local Members, Community Council's and affected communities the opportunity to provide representation on the DNS application direct to PEDW (within the statutory time periods set). The application details are published on PEDW's website, and a press notice is published in the local paper. Neighbours are notified by PEDW, along with notification to Community Councils. The Local Planning Authority is responsible for erecting site notices providing notification of application which provides details of the proposal and how to respond during the representation period. The detail of the proposal is also placed on the planning register via the Citizen Portal on FCC's planning website. More details of how to engage in the process can be found on the Welsh Government website within 'An Accessible Guide to Engaging with the Process'.¹</p>
1.10	<p>Nationally significant infrastructure projects (NSIP) are large scale projects falling into five general categories (Energy; Transport; Water; Waste Water and Waste). Examples include electricity generating projects such as large</p>

¹ <https://www.gov.wales/sites/default/files/publications/2019-07/developments-of-national-significance-dns-engaging-with-the-process.pdf>

	scale off-shore windfarms, rail freight interchanges, reservoirs, hazardous waste facilities and pipelines.
1.11	Before submitting an application for a NSIP, applicants have a statutory duty to carry out consultation. At the pre-examination stage, the public, including Local Ward Members, Community/Town Councils and members of the public are able to register with the Planning Inspectorate to become an Interested Party by making a Relevant Representation to summarise their view on the application in writing. Interested Parties are then invited to attend the Preliminary Meeting, and then during the examination, Interested Parties who have registered by making a Relevant Representation are invited to provide more details of their views in writing. Careful consideration is given by the Examining Authority to all the important and relevant matters including the representations of all Interested Parties, any supporting evidence submitted, and answers provided to the Examining Authority's questions set out in writing or posed at hearings. More information on how to engage in the process can be found on the National Infrastructure Planning website. ²
1.12	At present as responses to these NSIP and DNS applications are an Executive Function of the Council, any response made by the Local Planning Authority associated with the Planning Act 2008 and the Development of National Significance (Wales) Regulations 2016 would need to be agreed with the Council's Cabinet. The time limits associated with providing representations for both NSIP and DNS proposals are prescribed within the legislation and regulations. The Planning Authority does not have the authority to change the deadlines associated with a proposal applied for under these regulations. In the past Officers have sought delegated powers to be able provide a response in accordance with the deadlines set by PEDW and PINS, so that the prescribed deadlines can be met. However, the timescales and deadlines are very short and rigid, which often do not fit with the timings of scheduled Cabinet meetings. Therefore, delegated authority is sought to respond to these types of projects to ensure that the Local Planning Authority can engage in the planning project in a timely manner without the need to seek Cabinet approval.
1.13	It is important to note that responses that the Local Planning Authority is requested to provide are of a factual and technical nature and are objective. It is proposed that any responses in associated with these types of development are delegated to the Chief Officer for Planning, Environment and Economy. The Local Ward Member would be notified on the receipt of the consultation from PEDW or PINS to make them aware of the project. This would give them an opportunity to seek further information from the case officer and they would be advised then how to respond directly to the decision maker on the proposal.
1.14	The submission of a Local Impact Report would also be delegated to the Chief Officer (Planning, Environment and Economy) in consultation with the Cabinet member for Planning, Public Health and Public Protection.

² <https://infrastructure.planninginspectorate.gov.uk/application-process/participating-in-the-process/>

2.00	RESOURCE IMPLICATIONS
2.01	<p>Revenue: there are no implications for the approved revenue budget for the planning service for either the current financial year or for future financial years.</p> <p>Capital: there are no implications for the approved capital programme for either the current financial year or for future financial years</p> <p>Human Resources: Officers will have more capacity to respond directly to various stages of the DNS/NSIP proposal as time won't be spent in drafting Cabinet Papers to seek delegated powers on a case-by-case basis each time this is required</p>
3.00	IMPACT ASSESSMENT AND RISK MANAGEMENT
3.01	N/A
4.00	CONSULTATIONS REQUIRED/CARRIED OUT
4.01	None required.
5.00	APPENDICES
5.01	Appendix 1: Draft Delegation Form for Actions Taken Under Delegated Powers
6.00	CONTACT OFFICER DETAILS
6.01	<p>Contact Officer: Hannah Parish, Minerals and Waste Planning Manager Telephone: 01352 703253 E-mail: hannah.parish@flintshire.gov.uk</p>
7.00	GLOSSARY OF TERMS
7.01	<p>DCO (Development Consent Order) DNS (Development of National Significance) ExA (Examining Authority) LIR (Local Impact Report) NSIP (Nationally Strategic Infrastructure Project) PEDW (Planning Environment Decisions Wales) PINS (Planning Inspectorate (England))</p>