

## Infrastructure 07, Newport City Council

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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 Cyngor Dinas Casnewydd | Evidence from Newport City Council

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### General principles

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

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Overall views are positive with the intentions to have a unified consenting process and streamlining the system. Understand the aim is to provide flexibility and responsiveness on key infrastructure projects.

There is a clear need for new legislation to reflect the changes sought and it is imperative that the Bill does provide sufficient flexibility going forward.

**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?**

#### **Part 1 - Significant infrastructure projects**

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In general terms, the inclusion of specified projects are workable, though it would be helpful if energy storage was explicitly excluded from the definition of electricity infrastructure for the avoidance of doubt as to "energy generation".

The increase in threshold to 50MW for all developments is welcomed.

It is queried why pipelines (included in the 2008 Planning Act) are omitted from this legislation.

#### **Part 2 - Requirement for infrastructure consent**

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No comment.

#### **Part 3 - Applying for infrastructure consent**

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No response.

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## **Part 4 - Examining applications**

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It is vital that Local Authorities are fully resourced to provide statutory pre-application advice in an appropriate manner on what could be significantly complex schemes requiring significant input and advice at the start of the process to enable local views and experience to be inputted early on to shape developments. Fees need to be realistic relative to the work required to comment on a scheme.

Similarly, as with the DNS procedure (the LIR fee is low), the fee for Authorities to provide Local Impact Reports needs to reflect the amount of time, effort and work that goes into preparing them. The submission of large infrastructure applications takes fees away from Local Planning Authorities in the first instance and yet requires significant impact from them.

## **Part 5 - Deciding applications for infrastructure consent**

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No comment.

## **Part 6 - Infrastructure consent orders**

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S92: The definition of “material operation” is meaningless without a definition of what an “operation” is. The Bill is completely silent on this which is fatal to the definition. Would cutting a tree be an operation?

Section 56(4) of TCPA1990 specifies what it considers to be a “material operation” giving example and clarification is needed in the primary legislation before assessing materiality of that operation.

Allied to this, it is unclear what happens in the event that pre-commencement a “Requirement” or “Term” has not been discharged. Would this render any such operation unlawful until such a time the consent has been provided. It is appreciated they could be charged (S101) but this is a separate point. The LPA would suggest that any operations are unlawful until such a time as the necessary consents are in place, providing they are also approved within the prescribed timeframe of the Order.

The Swansea Tidal Lagoon had issues over whether development had begun in this regard and lessons should be learnt to ensure this is clear on the face of it.

## **Part 7 - Enforcement**

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This section appears to be unworkable at present.

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Sections 100 and 101 are silent on who would bring such a charge (LPA or Welsh Ministers or anybody).

S102 refers to time limits for enforcement but it is unclear why there is only a 4-year period if there has been a breach of requirement/ task, as opposed to 10 as there would be for a breach of condition which may not come to light as readily. For ease of understanding, and to ensure LPAs do not miss out, these should be consistent with the TCPA1990.

S110 only applies after a person is found guilty of an offence. Therefore, someone has to be charged with an offence (see comment above about who charges), and then found guilty of that offence before Notice of Unauthorised Development can be served. This could take a significant period of time to bring and charge someone and is also reliant on the courts understanding the breach and making a timely decision.

S114-116: A temporary stop notice can only be served for a 28 day period. In light of the above, and time taken to investigate and charge somebody, the temporary stop notice is ineffective as an Authority cannot serve a Stop Notice at all seemingly. It is presumed the intention is to allow this once a S110 Notice is in place but this could be a long way down the line.

There doesn't appear to be provision to appeal such a notice, though this may be because someone has already been found guilty of an offence in the first place before such a notice is served.

All enforcement powers relate to the Local Planning Authority or Welsh Ministers (or is silent). It is unclear what powers the Local Authority (as a whole) has in the event that enforcement is required with regards to a PROW or a highway, watercourse etc or impact on EPS. Need to consider wide remit of consents included and who the enforcing body would be.

## **Part 8 - Supplementary functions**

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Fees also need to be prescribed for the subsequent discharge of Terms/ Requirements/ Conditions or anything else and can't be left to the Order itself or the assumption that a developer will fund a Planning Performance Agreement. Fees should also be provided for discharging other requirements under the terms of this Order.

## **Part 9 - General provisions**

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No comment.

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

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No comment.

**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)?**

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No comment.

**Are any unintended consequences likely to arise from the Bill?**

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Potential for operations to start without discharging requirements/ terms/ conditions and being lawful.

Potential enforcement issues as noted above – Bill appears slow to respond to enforcement issues and only relates to LPAs.

**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?**

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Resources are a significant issue facing Local Authorities and the overall costs received from a development are insignificant to a developer but highly significant in terms of the Local Authority providing a high-quality demand responsive service.

It is imperative that funding is in place to ensure Local Authorities can provide the necessary services to support sustainable development from pre-app stage through to post consent discharge, monitoring and enforcement.

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

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Resources are a significant issue facing Local Authorities and the overall costs received from a development are insignificant to a developer but highly significant in terms of the Local Authority providing a high-quality demand responsive service.

It is imperative that funding is in place to ensure Local Authorities can provide the necessary services to support sustainable development from pre-app stage through to post consent discharge, monitoring and enforcement. The Authority does not have the resources to proactively monitor development sites as they progress and this needs to be addressed if this is the intention.

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At a recent POSW meeting, Welsh Government Officers were advising that they had sought to learn lessons from the DCO process and more importantly the DNS process, which is encouraging. A comment was made that the latter process was more straightforward.

I have heard anecdotal evidence that the English DCO system is more flexible than the Welsh DNS system in terms of permitting changes and it would be useful to seek the views of those developers/ agents who have submitted both (or even just DCO applications) for their views, especially if they are located outside of Wales.

The premise of the Bill is welcomed, but it's important to ensure that the Bill delivers on what it intends.

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