**Proposal for the introduction of charges for discretionary planning advice (DPA)**

1. **Background**

NRW is a statutory consultee in the development planning system. In this capacity, we advise both decision makers and developers on the likely environmental impacts of planning policies and development proposals at specific points in the planning process.

Developers often want us to be involved at a level which goes beyond our statutory duties, particularly at the early pre-application stage. We value the importance of early and effective engagement and the benefits this can bring to both our customers and the environment. It is however increasingly challenging to balance the resourcing of this discretionary advice with our statutory work.

To ensure we can continue to meet the needs of our customers and deliver a consistent service across Wales, we are proposing to introduce charges for those aspects of our ‘planning’ advice which are discretionary, i.e. where there is no statutory duty or requirement for NRW to provide the advice.

NRW has previously consulted on the principle of charging for discretionary planning advice. The responses to those earlier consultations indicated that there is general support for such a scheme. The proposal outlined in this paper has been informed by the responses NRW received to these earlier consultations, and it sets out more detail about how the scheme will work in practice.

1. **Definition of advice covered by this scheme**

The discretionary planning advice (DPA) service will be offered in cases where:

* There is no statutory duty on, or responsibility for, NRW to provide the advice that is requested by the applicant
* The proposed development meets at least one of the criteria on NRW’s priority checklist for engagement (Annex 1)

NRW proposes to offer the DPA for all development proposals, regardless of size, as long as these meet the criteria set out above. This will apply to both marine and terrestrial developments as well as developments that are dealt with under non-planning legislation, such as the Harbours Act or section 36 of the Electricity Act.

The service will be offered on a voluntary basis and there will be no obligation on the developer to enter into a contract with NRW for the provision of this advice.

**2.1 NRW’s core service**

To inform the development of the DPA scheme NRW has carried out a review of its duties and responsibilities and has assessed which parts of NRW’s advice ought to form part of a free ‘core service’.

Annex 2 provides more detail on how NRW has defined this core service, which consists of a mixture of statutory and non-statutory advice. This core service will continue to be provided for free unless legislation indicates NRW may apply a charge for the provision of information. Annex 2 also provides examples of the types of services that fall within the scope of the charged DPA service.

**2.2 Priority checklist**

Annex 1 sets out NRW’s priority checklist for engagement. This list is kept under review and is regularly updated in response to changes in legislation or Welsh Government guidance. NRW does not provide detailed advice on matters which fall outside of this Priority Checklist to decision makers, such as Local Authorities. For that reason we are also proposing to limit the charged service to cases which meet at least one of the criteria on the Checklist.

The most up to date version of our Checklist can be accessed on our website:

<https://naturalresources.wales/media/5271/150302-natural-resources-wales-and-planning-consultations-final-eng.pdf>

 **2.3** **Limitations to the discretionary charged service**

The DPA Service will not be a consultancy service and NRW will therefore only offer advice that is in line with our role as an advisor in the planning process. NRW will not be involved in preparing reports for developers or undertaking assessments. The table in Annex 2 provides examples of the types of services NRW can offer.

1. **Benefits of providing discretionary advice**

Although there is no duty on NRW to provide the DPA service, we consider that there are significant benefits that can be achieved from providing a service that goes beyond the statutory minimum. This service can benefit both developers and the environment in the following ways:

* Discretionary advice can help to provide the developer with greater clarity on the issues that may affect their proposal at an early stage in the planning process. This should reduce the potential of conflict and delay during later stages of the planning process.
* By getting involved at an earlier stage in the planning process, NRW is often able to ensure that environmental considerations inform the layout and design of a scheme from the start. In cases where developers approach NRW at a later stage in the process, most major decisions have already been made and NRW’s ability to influence, and help deliver a scheme which ensures optimal environmental outcomes is more limited.

Over the past few years NRW has already entered into a number of scheme-specific charging arrangements. However, these have been set up on an ad-hoc basis and only cover particularly large and complex cases. The introduction of the DPA scheme will make it possible for NRW to offer this service on a more consistent basis.

1. **The proposal**

Natural Resources Wales proposes to offer three levels of ‘planning’ service to developers, which are set out below. The first two levels of service will continue to be provided for free, with only the third level of service being charged:

* **NRW’s core service to developers**, this will cover any advice that is provided as part of NRW’s statutory role as well as any other planning related advice that is considered to be essential for NRW to fulfil its duties. More detail on what falls under this standard service is set out in Annex 2. This advice will continue to be provided free of charge for all development types unless legislation indicates NRW may apply a charge for the provision of information.
* **NRW’s preliminary advice**. In addition to NRW’s core service, NRW will offer developers free preliminary advice on request. This service will provide developers with an indicative view of potential issues related to the development proposal, “showstoppers”, and advice on potential mitigation measures. NRW will also provide an indication of the related consents that the developer may require.
* **NRW’s charged discretionary planning advice (DPA) service**. The free preliminary opinion will only provide developers with an indicative view of issues. If the developer wants a level of service which goes beyond what can be offered as part of this free service, NRW will charge for this advice.
1. **Rates & charging options**

NRW proposes to use two charging options for the DPA service. The first option is to charge the advice on an hourly basis and this will be used as the default option for this scheme.

NRW has assessed the costs that are associated with providing this service. Based on this, we have set the rate at £125/hr per person. This rate is based on staff costs, overheads and other costs which will be incurred by NRW in the delivery of this discretionary service.

In exceptional circumstances NRW may offer developers the option to pay for the employment of dedicated staff within NRW. This option will only be used in cases where offering the charged service could negatively affect NRW’s overall service, for example because providing the requested service would result in NRW having to take staff offline for an extended period of time.

Concerns were raised in response to the 2016-17 consultation about the extent to which introducing charges for discretionary advice would create a hurdle for smaller developers. In response, NRW has explored whether it would be feasible to charge a lower hourly rate for smaller developments and carried out a three month time recording exercise to inform this work. This highlighted that the mix of staff grades involved in providing advice on smaller and larger schemes is similar. It would therefore not be appropriate to charge different rates for different developments as it would result in some developers effectively subsidising the work of others.

Other options for charging were considered in the development of this proposal, in particular the option of setting fixed rates for particular services. The findings of the time recording exercise that NRW undertook to support this work demonstrated that there are significant variations in the level of service that is requested by different developers. Setting an average fixed rate is therefore likely to result in some developers being over- or undercharged, which goes against the principles set out in Managing Welsh Public Money, which NRW must follow in the development of this service. Based on these findings it was concluded that the two charging options that are put forward as part of this consultation most fairly reflect the costs incurred by NRW is providing the service.

1. **Roll out of the scheme**

We intend to start implementing the DPA scheme in April 2017. To facilitate its delivery we will:

* Prepare and publish guidance on our website which will explain to developers how the free preliminary opinion and DPA service can be requested. We will ensure that developers are clear on what information they should provide to enable a meaningful discussion with NRW about their proposal.
* Review the standard advice and guidance we currently provide on our website. We will aim to improve access for all developers to our information and guidance which will be made available free of charge.

**Annex 1: NRW’s Priority Checklist**

Natural Resources Wales will comment on development proposals:

1. Within or likely to affect European sites: Special Areas of Conservation (SAC) (designated and candidate), Special Protection Areas (SPA) (classified and potential) and Ramsar sites (designated and proposed).

2. Within or likely to affect a site of special scientific interest; or is within a consultation area around a SSSI notified to the LPA by NRW.

3. In or likely to affect National Nature Reserves (NNR), Marine Nature Reserves (MNR) and Geological Conservation Review (GCR) sites.

4. Likely to affect European Protected Species, when the need for a survey has been identified, a survey has been undertaken and LPA need further advice.

5. Likely to affect nationally fully protected species protected under the Wildlife & Countryside Act, when the need for a survey has been identified, a survey has been undertaken and LPA need further advice.

6. Requiring Environmental Impact Assessment (EIA) including the scoping stage and applications accompanied by an Environmental Statement but excluding screening (unless the consultation is from Welsh Government to allow them to issue a screening direction in relation to an appeal or call in).

7. Likely to affect the purposes of National Parks or Areas of Outstanding Natural Beauty.

8. Likely to have a more than local impact on a historic landscape listed in the Register of Landscapes of Historic Interest in Wales (CADW/CCW).

9. Likely to affect a watercourse including:

a. Carrying out of works or operations in the bed of or on the banks of a river or stream, including discharge to a watercourse;

b. Development on, or under to any flood bank, sea defence, or other flow control structure; or

c. Culverting or control of flow of any river or stream, including piping; or

d. Development within 7m of a Main River.

10. Relating to the use of land as a cemetery, including extensions.

11. For intensive animal facilities including fish farming, fisheries, poultry and pigs.

12. Located in flood zones C1 and C2 as defined by the Welsh Government Development Advice Maps; and/or Natural Resources Wales flood maps (Zone 2 and 3), excluding extensions up to 250m2.

13. Involving groundworks and/or non-mains foul or surface water disposal within Source Protection Zones, Nitrate Vulnerable Zones or defined water protection zones.

14. For new establishments; or modifications to existing establishments which could have significant repercussions on major accident hazards; or within 250m, where the siting or development is such as to increase the risk or consequences of a major accident.

15. On potentially contaminated land which may pollute controlled waters.

16. Involving the use of land for the deposit of refuse or waste.

17. Involving groundworks upon historic closed landfills or within 250m of an active open landfill.

18. Involving or including mining operations.

19. For the purpose of refining or storing mineral oils and their derivatives.

20. Relating to the retention, treatment or disposal of sewage, trade-waste, slurry or sludge (other than the laying of sewers, the construction of pump houses in a line of sewers, the construction of septic tanks and cesspools serving single dwelling houses or single caravans or single buildings in which not more than ten people will normally reside, work or congregate, and works ancillary thereto).

**Annex 2: Outline of NRW’s core service and proposed preliminary advice and DPA service**

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|  | **Core service provided by NRW to developers**  | **Discretionary advice** |
| **Free preliminary advice to the applicant** | **Charged service** (examples) |
| Nationally Significant Infrastructure Project (NSIP) | Provision of information under Regulation 9 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009[[1]](#footnote-1) Planning Act 2008 Section 42 consultation response | NRW to provide: * An indicative view of likely issues and potential “show stoppers”
* Advice on potential mitigation measures
* An indication of the NRW related consents that the developer will need to consider as part of the application
* An outline of what the charged service can offer

Any additional discretionary advice that is requested by the developer will be subject to a charge. To assist with the process of providing preliminary advice the developer will be asked to provide sufficient information to facilitate a meaningful assessment.  | Advice on Environmental Impact AssessmentsAdvice on Habitat Regulations Assessments,Advice on draft Development Consent Orders, Advice on habitat and species surveys, Advice on Flood Consequence AssessmentAdvice on voluntary remediationDetailed advice on constraints, opportunities and mitigation measures. |
| Developments of National Significance (DNSs) | Provision of a single substantive response to the applicant at the pre-application stageProvision of information under Regulation 15 of the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2016  |
| Major development | Provision of a single substantive response to the applicant at the pre-application stageProvision of information under Regulation 15 of the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2016  |
| Other developments  | Provision of information under Regulation 15 of the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2016  |

1. Regulation 9(5) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 makes provision for NRW to apply a reasonable charge for making the relevant information available. [↑](#footnote-ref-1)