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Welsh Government

## Consultation – summary of response

Infrastructure (Wales) Bill

Requirements for pre-application consultation and methods of  
engaging stakeholders and local communities

September 2024

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.  
This document is also available in Welsh.

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## Introduction

1. The *'Infrastructure (Wales) Bill – Requirements for pre-application consultation and methods of engaging stakeholders and local communities'* consultation document was launched on 13 May 2024 and was open for responses until 22 July 2024.
2. A total of 4 specific questions were set out in the consultation document, with a standard form provided for ease of response. Comments were also made outside of the standard questions.
3. This document details a summary of responses to the consultation, the Welsh Government's response and the next steps. It is separated into two further sections.
4. Section 2 provides an overall statistical summary of the consultation and provides details of how the consultation was conducted.
5. Section 3 provides a summary of all responses received. This includes:
  - A summary of the key findings under each consultation question;
  - A statistical analysis of the views expressed on each consultation question, where statistics could be extracted;
  - A summary and analysis of the key themes generated for each question;
  - The Welsh Government's response to that analysis; and
  - An explanation of what the Welsh Government will do following the response to each question.
6. In considering the responses we recognise a number of these provided emotive responses on individual schemes and personal or community impact. However in analysing and summarising the response to this consultation, this report will not address the following:
  - **Clarifications sought to matters of detail:** Further consultation will shortly be undertaken where further clarification has been provided. It is the intention that, when in force, the new process will be supplemented by guidance. That guidance will also clarify matters of detail raised as part of this consultation;
  - **Comments on individual cases or decisions before or made by the Welsh Ministers:** Given the statutory role of the Welsh Ministers in the planning process it is not possible for them, or anyone else within the Welsh Government, to comment on a decision to which they are, or may be, party. To do so could prejudice the position of the Welsh Government.

- **Matters outside the scope of the consultation:** Where comments have been made that are relevant to this consultation but were made in relation to matters outside of the scope of the question, efforts have been made to summarise under the correct question. However, comments outside of the remit of this consultation have not been addressed; and
- **Comments which incorrectly interpret the proposed policy and existing legislation:** Responses have been received which request changes to policy which, in fact, either reflect the intentions set out in the consultation paper or reflect existing legislation which is to be unchanged.

## Responses

7. On 13 May 2024 over 200 stakeholders, including individuals and organisations were notified by email of the publication of the consultation paper. These were drawn from the core consultation list held by the Planning Directorate of the Welsh Government, as well as a specific consultation list held by the Infrastructure Consenting Bill Team. This included all local authorities in Wales, public bodies, special interest groups and other groups. The consultation was made available on the Welsh Government's consultation website.
8. The consultation generated 83 responses and we are grateful to all those who responded. All the consultation responses have been read and considered as part of this analysis.
9. Questions were provided as an annex to the consultation document and separately as a consultation response form on the Welsh Government's consultation website. Respondents were asked to assign themselves to one of six broad respondent categories. Table 1 below shows the breakdown of respondents.

<b>Table 1 – Breakdown of Respondents</b>		
<b>Category</b>	<b>Number</b>	<b>% of total</b>
Business / Planning Consultants	12	14%
Local Authorities (including National Park Authorities)	3	3%
Government Agency / Other Public Sector	5	6%
Professional Bodies / Interest Groups	7	9%
Voluntary Sector	12	15%
Others (other groups not listed)	44	53%
<b>Total</b>	<b>83</b>	

10. Consultation questions 1 and 2 posed policy-specific questions, with questions 3 and 4 relating specifically to the potential impact (either positive or negative) the proposals may have on the Welsh language.
11. An overview of the responses is presented as part of the analysis to each question in section 3 of this document. Where respondents did not specify a particular question, these were considered and recorded against the most appropriate question.

<b>Table 2: Consultation Questions</b>	
<b>Q1</b>	What requirements should be set out in subordinate legislation to ensure enhanced community involvement in the consenting process, whilst ensuring proportionate consultation for all development types captured by the Bill?
<b>Q2</b>	Do you have any other comments to make, or evidence to put forward in relation to how community and stakeholder involvement in the infrastructure consenting process can be improved, or any suggestions for improvements?
<b>Q3</b>	We would like to know your views on the effects that pre-application consultation requirements as part of the proposed infrastructure consenting process would have on the Welsh language, specifically, on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effect do you think there would be? How could positive effects be increased, or negative effects be mitigated?
<b>Q4</b>	Please also explain how you believe the proposed policy for pre-application consultation requirements as part of the Infrastructure (Wales) Bill could be formulated or changed as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

## Summary of responses

<b>Q1</b>	What requirements should be set out in subordinate legislation to ensure enhanced community involvement in the consenting process, whilst ensuring proportionate consultation for all development types captured by the Bill?
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### Summary of responses

12. Overall, the sentiment expressed by respondents is that any consultations undertaken as part of the infrastructure consenting process need to be genuine and meaningful. Currently, it appears to be a process of developers telling and informing communities and stakeholders, rather than listening and taking on board representations expressed during consultation events.
13. Similarly, a respondent from the voluntary sector expressed that more needs to be done to encourage engagement and consultation which goes beyond any statutory minimum requirements.

### Timing of consultation and engagement

14. Some concerns were raised by respondents that consultation and engagement often occur too late in the process, particularly where developers consult on full, draft applications. As a result, it was noted that proposed schemes are too far progressed when the time comes for consultation and developers are reluctant to make changes.
15. However, alternative views were also put forward by some respondents to state that consultations should include all elements of a proposal and be as detailed as possible to ensure communities can understand the full impacts.
16. Several respondents also commented that consultations should begin earlier in the consenting process and that they should be iterative so that communities have more opportunities to engage and can play a more active role in forming development proposals.

### Who should be consulted

17. The consultation generated a number of responses from various sectors regarding who pre-application consultations should aim to engage with.
18. Two respondents commented that participation in consultations should be open to all of Wales, whilst a further two respondents from the business section suggested that engagement and consultation activities should also

involve relevant MSs, MPs and local councillors to help advertise consultation events and disseminate information to their communities.

19. A number of respondents also suggested a more enhanced role for LPAs in the consultation process, highlighting that dedicated officers could be assigned to a particular development to ensure continuous and consistent dialogue with applicants.

#### Use of digital technologies

20. A number of respondents across all sectors highlighted that developers should seek to adopt modern approaches to consultation and engagement, such as using social media to attract local community groups and facilitate diverse participation.
21. One respondent also noted that by extending engagement strategies which include digital communication channels, this would allow individuals to register their interest and receive notifications of relevant consultation events via email and text message.
22. Similarly, another respondent from the business sector commented that the use of such technologies could improve engagement among younger people, as well as introducing consultations and exhibitions in local schools.
23. However, it was acknowledged that more traditional methods of publicity and notification, such as site notices and notices published in local newspapers still hold value, although a hybrid approach could be more effective and lead to greater engagement in consultations.

#### Legislating for pre-application consultation requirements

24. Four respondents commented that pre-application consultation should be subject to certain minimum requirements, such as those specified in the DNS and NSIP regimes.
25. However, it was also noted by respondents from the business sector and a professional body that any requirements placed on pre-application consultation should not be too prescriptive to allow for flexibility and to utilise best practice examples via guidance.
26. There were also calls to introduce a requirement for developers to produce a statement of community consultation, similar to the Planning Act 2008, which would provide clarity for communities and other stakeholders. However, one respondent felt this is too formal and expressed a preference for a more informal consultation plan.



## Specific recommendations

27. Responses to the consultation generated several specific recommendations relating to how community engagement and consultations should be undertaken and what methods could be utilised to ensure events are publicised. These included:
- Introducing a requirement to notify all people within a specified radius of a proposed development (2km was suggested);
  - Developers should be required to include pre-approved consultation questions to avoid vague or loaded questions designed to collect positive views;
  - A requirement for developers to hold at least one in-person event;
  - Using the PEDW portal to advertise consultation events and allow the public to register for notifications of events near them;
  - Ensuring legislation specifies developers must obey the majority view;
  - Developers being required to produce a community impact statement and collaborative benefits report;
  - Distributing individual or household questionnaires to ensure wider community awareness;
  - Holding multiple in-person events where a proposed development covers a large area to aid accessibility; and
  - Ensuring developers evidence how communities have been engaged in a meaningful way.

## Other comments

28. The consultation also generated a large number of responses regarding how engagement and consultation was undertaken on a specific development project and how it could be improved. The responses included comments such as:
- Local communities should have the right to refuse a proposed development if it will be detrimental to the area, have the ability to insist mitigating measures are incorporated, or insist on the use of specific technologies or methodologies;
  - A requirement for LPAs, NRW, local councillors and communities to be included in the decision-making process;
  - Local communities having the ability to insist on not having local habitats and biodiversity impacted by developments;
  - Community consultations should ensure full compliance with the 'gunning principles' and not just be a 'tick box' exercise; and
  - Developers should not undertake their own consultation to remove any bias.

<b>Q2</b>	Do you have any other comments to make, or evidence to put forward in relation to how community and stakeholder involvement in the infrastructure consenting process can be improved, or any suggestions for improvements?
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Who should be consulted

29. There was general consensus among respondents that pre-application consultation and engagement with communities and other stakeholders should aim to capture as many people as possible.
30. Specifically, one LPA suggested that consultation must not be restricted to Wales and should also include those outside the Welsh border where communities are potentially affected by a proposed development.
31. A respondent from the business sector also commented that developers should incorporate targeted outreach efforts to engage underrepresented groups, with a variety of engagement methods utilised to acknowledge diverse preferences.
32. Similarly, two respondents explained that developers should have greater engagement with LPAs and community councils to identify local community groups as they have valuable insight into the communities they serve. This would help towards achieving a more complete approach to consultation and engagement.

Information to be consulted on

33. Several respondents from a variety of sectors suggested that there are specific elements which should be consulted on, where relevant. These included:
  - Any ecological assessments which have or will take place;
  - A navigational risk assessment;
  - A deemed marine licence; and
  - A full, draft application.
34. In addition, a respondent from the voluntary sector explained that more needs to be done to ensure supporting information and documentation being consulted on is adequate. Similarly, three other respondents commented that consultation materials should be user-friendly and non-technical to help aid understanding among communities.
35. An individual also commented that developers should not focus consultations on one development option but consult on all potential options which have

been fully costed. This would allow communities and other stakeholders to choose which proposed development would be most suitable for their area.

36. Furthermore, another respondent suggested consultations with communities should be focused on a complete, proposed finalised development rather than a partial idea as this will provide greater certainty to local communities.

### Use of digital technologies

37. One business commented on the effectiveness of a hybrid approach to consultation, including the use of virtual exhibitions which could attract greater numbers of participants.
38. Similarly, a professional body suggested there are opportunities for digital technology to be used in identifying potentially affected individuals where development is proposed and that these methods would be compliant with data protection legislation.
39. A number of comments were also submitted specifically relating to websites set up by developers as part of their pre-application engagement. One business commented that websites should be more user-friendly, while a professional body stated that webpages should include an interactive map.
40. Similarly, it was suggested by a respondent from the voluntary sector that a national register should be introduced for the consenting process which provides links to project websites.

### Guidance

41. A number of respondents supported the notion of introducing clear guidance to help support developers when undertaking pre-application consultation. This will help encourage developers to go beyond any statutory minimum requirements which may be specified for consultation activities.

### Specific recommendations and observations

42. Responses to the consultation question generated several specific recommendations and observations. These included:
  - Concerns current consenting processes bypass scrutiny of strategic planning processes and consultations on proposed developments can only extend to trivial details;
  - With communication techniques constantly evolving, it may not be appropriate to specify particular consultation requirements in legislation;
  - Effective engagement can only be achieved with the resources and skills to support it;

- Communities and other stakeholders should have the opportunity to report unethical or illegal activities by developers;
- Establishing thematic interest groups to allow knowledge sharing and expertise;
- Limiting design changes once applications are submitted to encourage such changes at the pre-application stage;
- Developers should be required to have senior representatives present at public events; and
- Requiring developers to have a telephone number and email address specifically relating to a development.

### Other comments

43. Similar to question 1, this consultation question generated a large number of responses regarding how engagement and consultation was undertaken on a specific development project and how it could be improved. The responses included the following comments:

- More needs to be done to ensure community representations are heard and taken into account, rather than consultation being treated as a 'tick box' exercise;
- Communities should not have to suffer economic decline as a result of infrastructure projects; and
- Placing a requirement on developers to respond positively to local wishes, unless they can produce detailed and compelling evidence as to why that would not be possible.

### **Government response**

44. We acknowledge the concerns raised by respondents in questions 1 and 2 regarding existing arrangements for pre-application consultation and agree that consultation should occur at an early stage, engage as many people as possible and utilise a variety of methods and techniques to reach a wide audience.

45. There were a number of responses which provided recommendations for statutory minimum requirements relating to pre-application consultation activities and could potentially be carried forward via subordinate legislation. For example, specifying the requirement for developers to hold a minimum of one in-person event.

46. We will consider these in greater detail to determine whether they would be appropriate and proportionate for all potential developments captured by the Infrastructure (Wales) Act 2024.

47. However, we are minded to only take forward suggestions or proposals for minimum requirements relating to pre-application consultation which are

suitable to be delivered through legislation. Certain ideas can be put into guidance as best practice, enabling them to be more tailored to the size, scale and impact of the particular project.

### Next steps

48. These suggestions have been valuable and proposals for pre-application consultation influenced by these responses will be included in a consultation paper timetabled to be published in the Autumn.

<b>Q3</b>	We would like to know your views on the effects that pre-application consultation requirements as part of the proposed infrastructure consenting process would have on the Welsh language, specifically, on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effect do you think there would be? How could positive effects be increased, or negative effects be mitigated?
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### Overview

49. The majority of respondents did not answer the consultation question. Of those who responded, the consensus was that pre-application consultation should be undertaken bi-lingually in both Welsh and English. This included methods used to publicise consultation events, any documentation used as part of a consultation exercise (with the exception of technical documents) and ensuring developers provide a Welsh-speaking representative at consultation meetings.
50. A number of respondents also suggested that guidance was made available to developers to provide clarity on what materials should be translated as part of their pre-application consultation activities.
51. Overall, it was determined that there would be little to no effect on the Welsh language if both Welsh and English are provided as options for communities and other stakeholders to engage in consultation events and activities.

<b>Q4</b>	Please also explain how you believe the proposed policy for pre-application consultation requirements as part of the Infrastructure (Wales) Bill could be formulated or changed as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.
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### Overview

52. Similar to question 3 of the consultation paper, the majority of respondents did not provide any comments in relation to this question.
53. Of those who responded, comments were largely similar to those submitted to question 3, such as ensuring that the Welsh language is treated no less favourably than English and providing information and documentation in both languages.
54. However, three respondents commented that although the use of Welsh should be encouraged, it should not be mandated. Rather, more guidance and promotion of best practice around the use of the Welsh language should be made available, whilst recognising the need for pragmatism and flexibility where needed.
55. Similarly, another respondent suggested developers should research and get to know the community they are seeking to engage with to determine general numbers of Welsh speakers in the area and tailor their consultation activities accordingly.

### **Government response**

56. In response to questions 3 and 4, we agree the Welsh language should be treated no less favourably than English and that communities and other stakeholders should have the ability to engage in the process in Welsh, if that is their preferred language.
57. However, rather than mandating Welsh language requirements in legislation for how developers must undertake pre-application consultation activities, we consider it more appropriate and proportionate to provide more detail in guidance.
58. This will provide developers with the flexibility to tailor their engagement based on the communities and stakeholders they consult with in a more pragmatic way.

## **Next steps**

59. We will consider how guidance can be used to ensure best practice of utilising the Welsh language to engage with communities and other stakeholders at the pre-application stage as part of the implementation of the Infrastructure (Wales) Act 2024.