BSW Timber Response to Consultation on the Natural Resources Body for Wales (additional consultation)

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Consultation questions

Question 1: Do you agree with our proposal for the duties of the body in respect of conservation and natural beauty?

Yes /Mainly/Not at all

Question 2: Do you agree with the proposals in respect of public access and recreation duties?

Yes/ Mainly/Not at all

If not how would you change it?:

BSW Timber is the UK's largest domestic sawmilling group, processing around fifteen per cent of the UK timber harvest. The group has an annual turnover in excess of £175m, directly employing over 900 people; indirect employment in timber harvesting and haulage accounts for another 2,500 jobs. The company has six mills in the UK (and one in Latvia), including one in Newbridge-on-Wye. It has been involved in sawmilling since 1848.

The company is currently implementing a five-year capital investment programme, worth £52m, in modernising the mills and expanding capacity to produce more than 1.3 million m3. As such it is one of the largest buyers of timber in the UK. BSW has invested £6m in the Newbridge mill over the past five years. This has allowed for an extension of working hours and the creation of 29 full-time jobs in addition to the 140 full-time staff already employed at the mill.

BSW is supportive of the Welsh Government's efforts to streamline environmental management in Wales through the creation of a single delivery body. The company has previously set out its concerns about the inclusion of the Forestry Commission Wales (FCW) in the body, particularly regarding the potential for the loss of FCW's commercial forestry function. Some of these concerns have been addressed by the Welsh Government, however it is important that they continue to be given full consideration as the new Natural Resources Body for Wales is developed.

BSW supports the Welsh Government's proposal that the body will be subject to the FC's 'balancing duty' in regards to forestry work. It is important that the 'development of afforestation, the management of forests and the production and supply of timber' are given the focus they need

within the body to support the commercial forestry sector. The alternative approach of removing the balancing duty and only maintaining 'the duty to have regard to the desirability of nature conservation' would potentially damage the necessary commercial functions of the body regarding forestry. It is important that there is a statutory duty for the body to develop those commercial forestry aspects so that the forestry sector remains confident in continuing to invest in Wales. By maintaining the balancing duty the Welsh Government will help to provide that confidence.

BSW also supports the proposal in the consultation document that 'In managing forestry the new body will continue to take account of the needs of both timber production and public access in much the same way as the FC does currently.' BSW is supportive of efforts to increase public access to forestry but it is important that the right balance is maintained between access for the public and access for commercial timber requirements. It is positive that the Welsh Government recognises this and will be looking to maintain this balance as it currently exists in FCW.

Although BSW appreciates that the Welsh Government will be maintaining the balance between public and commercial forestry access this is not specifically outlined in Box 3. This is implied by paragraph (2) (b) (i) 'applies only to the extent that it is consistent with any other duty imposed on the NRBW by an enactment', however there is no explicit mention of a duty to ensure the needs of commercial forestry in terms of timber production are taken into account as well as public access requirements. BSW believes that the forestry sector would feel more confident in the body if this point were made more specifically in the second order.

Question 3: Do you agree with these proposals for the high level forestry duties?

Yes/Mainly/ Not at all

If not how would you change them?:

It is positive that the Welsh Government recognises the importance of transferring the duty to promote forestry interests to the new body. Similarly BSW supports the transfer of management powers of the Welsh Ministers' woodland estate, the duty to promote woodland cover and, crucially, the 'support of forest industries through the management of forests and the harvesting of timber products'. These are all vital powers and duties for the forestry sector and therefore it is positive that current proposals are to ensure that they are maintained by the new body. However, what is unclear from the consultation document is if FCW's power to give unrestricted assistance or advice on the general planting/management to woodland and forest owners will also be transferred. It is important that this is also transferred so that woodland owners will continue to have consistent access to expert forestry advice and guidance.

Although the proposals for the high level forestry duties are generally positive BSW is concerned by the proposal to make the Welsh Ministers the competent authority for the protection of forest trees and timber from pests and diseases. This is a role currently held by FCW who provide significant research and key operational responses on pests and diseases. Although the new body will have 'explicit powers' to 'implement legal orders made by the competent authority' BSW is concerned that making decision making the responsibility of Welsh Ministers, rather than the forestry experts working for the body, may create bureaucracy that delays decisions and actions being implemented.

This could be costly for the forestry sector and Welsh woodlands as a whole. In order to provide the best response to pest and disease outbreaks and avoid any detrimental long-term impacts to Welsh forestry it would be better for the new body to take on the role of competent authority in the same way that it is taking on the rest of FCW's powers and duties.

Question 4: Do you agree with the general proposals for cross-border arrangements?

Yes/Mainly/ Not at all

If not what would you change?:

It is positive that the proposals recognise the need to have cross-border agreements for operational issues such as managing plant health and to ensure powers for FC to share data with the new body and vice versa. One of the crucial aspects of the work of FCW and the FC as a whole is on research and actions to eradicate forest diseases and pests. It is vital that this is not lost in the new body and that links are maintained with the wider FC to maintain the work that is currently undertaken in Welsh forests. This is a crucial matter for Welsh forestry and therefore BSW believes that a more specific proposal for addressing pests, diseases and forestry research across borders should be included in the second order.

In addition, it is also important that the Welsh Government bears in mind the need to protect any other existing UK wide arrangements within the wider FC. It is possible that merging FCW will result in the eventual dissolution of FC as a whole; in this event it will be essential that there is a UK wide body that has an overview of forestry at a national level in order to maintain the valuable national functions of the existing FC and ensure the best outcomes for Welsh and UK forestry in the longer term.

Question 5: Do you agree with the proposals for the statutory consultee role?

Yes/Mainly /Not at all

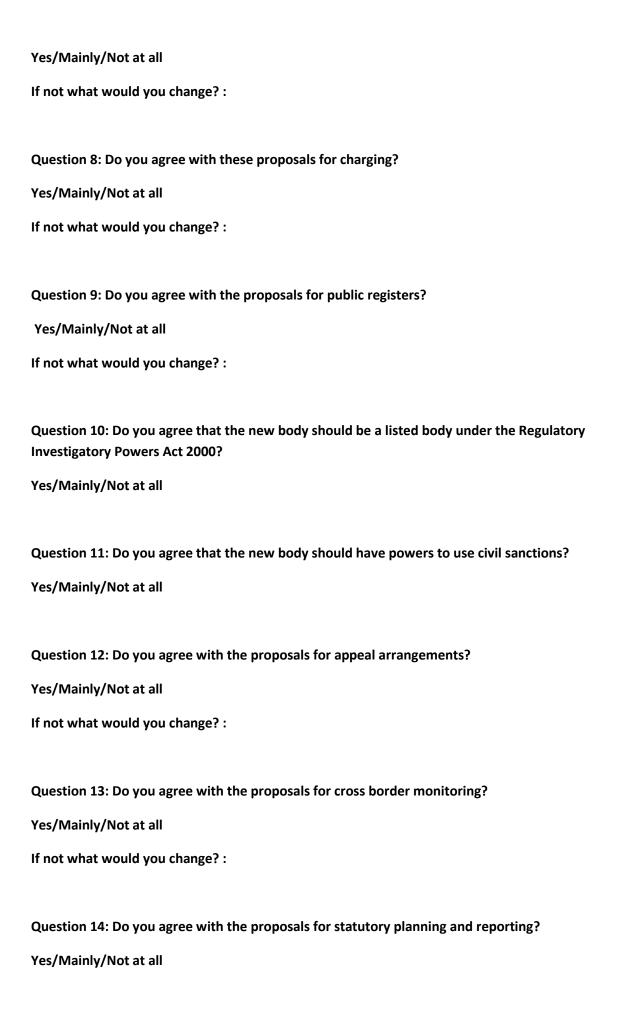
If not what would you change?:

Question 6: Do you agree with the proposals to provide internal separation of decision-making, improve transparency and ensure Welsh Ministers have the opportunity to call in significant issues?

Yes/Mainly/Not at all

If not what would you change?:

Question 7: Do you agree with the proposals for permitting?



If not what would you change?:
Question 15: Do you agree with the proposals for Civil Contingencies and Control of Major Accident Hazards (COMAH)?
Yes/Mainly/Not at all
If not what would you change? :
Question 16: Do you agree with the proposals for UK wide arrangements?
Yes/Mainly/Not at all
If not what would you change?:
Question 17: Do you agree with the proposals for transitional arrangements?
Yes/Mainly/Not at all
If not what would you change?:
Question 18: If you have any related issues which we have not specifically addressed, please use this space to report them :



INTRODUCTION

- 1. The Welsh Local Government Association (WLGA) represents the 22 local authorities in Wales, and the three national park authorities, the three fire and rescue authorities, and four police authorities are associate members.
- 2. It seeks to provide representation to local authorities within an emerging policy framework that satisfies the key priorities of our members and delivers a broad range of services that add value to Welsh Local Government and the communities they serve.
- 3. The WLGA welcomes this opportunity to comment on the additional consultation in respect of the establishment of the Natural Resources body for Wales.

Answers to questions

Q1: Do you agree with our proposal for the duties of the body in respect of conservation and natural beauty?

4. Yes.

Q2: Do you agree with the proposals in respect of public access and recreation duties?

5. Yes

Q3: Do you agree with these proposals for the high level forestry duties?

6. Mainly, subject to clarification over how the 'balancing duty' is to be applied. It could potentially be viewed as 'watering down' the nature conservation duties if is seen to apply to all of the bodies' functions as opposed to its forestry duties specifically.

Q4: Do you agree with the general proposals for cross-border arrangements?

7. Mainly. Local authorities have worked successfully with specialists from EA on occasions in the past and it is important that access to these specialist skills is not lost. There should be arrangements to tap in to specialists, as and when necessary, as part of the cross border arrangements. The duty to co-operate is a useful 'backstop' in this respect.

Q5: Do you agree with the proposals for the statutory consultee role?

- 8. Mainly. The consultation states that the second order will set out transitional arrangements. These arrangements, whether interim or permanent, need to be clearly communicated to local planning authorities (LPAs) at the earliest opportunity to ensure that the statutory consultee role on planning applications can continue unaffected by organisational change.
- 9. The recently published Independent Advisory Report on the Planning System includes recommendations relating to the role of statutory consultees. The report recommends that there is a duty placed on statutory consultees to contribute positively to the efficient and effective functioning of the planning system. In formulating the orders in relation to the NRB, it may be advisable to give consideration to these recommendations and the future Planning Bill.
- 10. In considering the arrangements for regulatory powers, it is suggested that these powers are only used where no other consent is given. That is, if a planning permission is required that the planning system could consider these matters and control the development through conditions. If no planning permission is needed then the NRB would be responsible for regulation and consenting.

Q6: Do you agree with the proposals to provide internal separation of decision-making, improve transparency and ensure Welsh Ministers have the opportunity to call in significant issues?

11. Yes, although the way this separation will work in practice needs to be set out clearly with no scope for one part of the body to apply pressure on another by 'pulling rank'.

Q7: Do you agree with the proposals for permitting?

12. Yes.

Q8: Do you agree with these proposals for charging?

13. Yes.

Q9: Do you agree with the proposals for public registers?

14. No strong views.

Q10: Do you agree that the new body should be a listed body under the Regulation of Investigatory Powers Act 2000?

15. Yes.

Q11: Do you agree that the new body should have powers to use civil sanctions?

16. Yes.

Q12: Do you agree with the proposals for appeal arrangements?

17. Yes.

Q13: Do you agree with the proposals for cross border monitoring?

18. Mainly. In terms of prioritisation and workload scheduling it may be more practical and efficient sometimes to allow cross border work by the Single Body into England or the EA into Wales.

Q14: Do you agree with the proposals for statutory planning and reporting?

19. Mainly. The consultation refers to the role of the NRB with regards to statutory planning, namely Water Resource Management Plans and Drought Plans. It does not make reference to the role of the NRB in relation to the preparation of Local

Development Plans and the relationship between NRB's statutory plans and those prepared by LPAs. Planning authorities will require a close and effective working relationship with the NRB to provide specialist input at the earliest stage of decision making, through LDP formulation and pre-application enquiry stages as well as through the processing of individual planning applications. There should also be a role for the NRB at a regional level should the recommendations of the Independent Advisory Report on Planning become enshrined in the legislation.

Q15: Do you agree with the proposals for Civil Contingencies and COMAH?

20. Yes.

Q16: Do you agree with the proposals for UK wide arrangements?

21. Yes, it makes sense to maximise economies in terms of administering these systems.

Q17: Do you agree with the proposals for transitional arrangements?

22. See response to Q.5 above. Also, in relation to transitional arrangements, it is vitally important that local authorities are able to resolve any issues and resolve any 'teething problems' swiftly. In discussions with senior EAW staff the suggestion was made that each local authority should have a designated senior officer in the Single Body who could be the first point of contact to sort out such issues as they arise. This was welcomed by WLGA as a sensible arrangement that would help to bring in new working relations smoothly.

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A Consultation Response by the National Trust to Natural Resources Body for Wales (additional consultation)

October 2012

Introduction

As Europe's largest conservation organisation the National Trust manage natural and historic heritage for conservation and public access. The charity owns over 50,000 hectares of land in Wales which it manages for the benefit of the nation.

For this reason the National Trust will be a major partner of, and deliverer for, the new body. We look forward to working with the Natural Resource Body Wales (NRBW) at every level. Perhaps most importantly, we can help the NRBW put people at the heart of its new approach, and ensure we look at the natural, cultural and historic environment in its entirety. If we can help people to understand the importance, and feel part of, the natural, historic and cultural environment and get them involved in caring for it, we will be better able to work together to deliver positive outcomes for Wales. With more than 100,000 members in Wales and more than 6 million visitors to our sites in Wales each year, the National Trust is well placed to assist Welsh Government and the NRBW with this vital engagement work.

The National Trust has been a supporter of the work of the Welsh Government in the creation of the NRBW throughout the process and we value the opportunity to take part in this important consultation. We wish to continue to converse with, support and advise the government on this issue throughout and beyond the creation of the new body.

1. Wider Context

1.1 We recognise that creation of the NRBW is the first of many stages in reforming management of the environment of Wales and that this process is constrained by a tight timescale and prevailing legal procedures. However, we feel that the current expression of the role and functions of the new body have been confined to the transferring and amalgamation of the approaches and processes which characterise the existing functions of the legacy bodies. As a result we feel that opportunities to take a fresh approach to the environment have been missed due to a

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Cadeirydd Cymru / Wales Chairman:
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backward-facing context, and in places the Order seems limited and lacking in ambition. We acknowledge that the forthcoming Environment Bill and Living Wales agenda will form the main context for fresh-thinking on the environment, however we feel the contents of this Order should set the context for that new agenda.

- 1.2 The National Trust also feels attempts should be made to better align and integrate emerging environmental policy areas. The most obvious instance being a reference to the link between the functions and of the new body and its role in the development and delivery of the Sustaining a Living Wales Agenda. We believe that the Order must include direct reference to the overarching role and responsibilities that the body will have for this area of work.
- 1.3 We would like to see specific recognition of the need for the NRBW to work and engage effectively with all external stakeholders and interested parties. There has been a lack of disclosure on how the NRBW will interact with environmental sector; further information would increase confidence among organisations and individuals.
- 1.4 Similarly, we would like to see stronger links drawn between the NRBW and the recent work on Sustainable Development, specifically the Sustainable Development. The body has the potential to be a powerful, creative, influential force in attaining sustainable development in Wales. It could serve as an ambassador for public bodies in implementing the sustainable development duty and lead the shift to a sustainable future. If the new body does not seek to deliver a sustainable environment, and express this clearly in its role and functions, it will work against the commitment of the Welsh Government to Sustainable Development and the new holistic approach.
- 1.5 As an organisation concerned with the conservation of natural and historic heritage we strongly welcome reference to buildings, sites and objects and also archaeological, architectural, engineering and historic interest (Box 2c). However, we are keen to hear plans to cross reference protection and management of the natural environment with that of the historic environment. This could be provided by outlining the relationship the NRBW will construct with bodies such as Cadw and by cross-referencing heritage legislation in new environmental legislation.
- 1.6 The role of Land Use Planning is to provide a framework for development and use of land taking into account economic, social and environmental uses. If the purpose of the body is to ensure that the environment and natural resources of Wales are sustainably maintained, sustainably enhanced and sustainably used we believe that this work should be fully integrated with the Welsh Land Use Planning system. The body should be charged with providing guidance on how the planning system should reflect the principles of integrated resource stewardship and how this system should be used as a means of protecting all of Wales' natural, historic and cultural assets. We were disappointed to receive no further details about how the above relationship will function in the latest consultation and wish to highlight the importance of integration with the planning system being a priority in the formation of the new body.

2. Contents

2.1 Definition of Environment

We suggest that the current definition of environment in the order is too narrow, and we are happy to see geological and physiographical features added to the definition. However we also feel the current definition fails to acknowledge the importance of cultural services of the environment. For this reason we would suggest that the definition be amended, and that Clause (2b) should read;

"Environment includes without limitation, living organisms, ecosystems and historic and cultural assets".

2.2 Landscape

The National Trust is that the NRBW will take an active role in the sustainable management and enhancement of ecosystems, and we are satisfied with the many of the roles and functions laid out for the new body. However, as an organisation concerned with the valuing and protection of Welsh landscapes we believe that landscape has not received the necessary attention in the roles, functions and scope of the work of the new body.

i) We believe that the principle role and responsibility of the NRBW should include a commitment to:

"The development and promotion of responsible landscape and seascape stewardship approaches which enable the sustainable management of these assets to enhance their values and increase the public benefits they provide."

- ii) The National Trust would like to see a firm written commitment that the NRBW will take responsibility for;
 - Ensuring that the principles of the European Landscape Convention are championed and implemented within the Welsh context.
 - Working with stakeholders to improve the quality, diversity and opportunities that Wales's landscapes and seascapes offer in enhancing public benefits and well being. This should be done in a unified and integrated manner we have come to expect from the new body.
 - Ensuring through planning, management and advice that the body acts to maintain the quality, functional integrity of Welsh land and seascapes are maintained and the range of environmental goods and services they offer are maintained and increased.
 - Designating Wales finest landscapes and seascapes and acting to ensure they are conserved and managed in a way which reflects their national and international importance.

2.3 Natural Beauty

We appreciate that a the enhancement of natural beauty has been a traditional consideration of both the Environment Agency and CCW. We also regard its inclusion in the duties of the new body as a welcome acknowledgement of services provided by our environment aside from supporting, provisioning and regulating services. However we feel that where 'natural beauty is a traditional term and we are unsure of its relevance today. We would be in favour of wording use which fully expresses an emotional response to all aspects of the landscape. With the implementation of an 'ecosystems approach' we think it would be beneficial to replace 'natural beauty' with 'recognition of the full range of cultural services' provided by our environment.

2.4 Forestry Balancing Duty

The National Trust views consistency of purpose and action across the NRWB as being of great importance for the holistic and sustainable management of our environment. While appreciating the aims of the "balancing duty" proposed for the Forestry role of the new body we remain unconvinced that this measure is sufficient to ensure the clarity of direction that is needed by the body. Whilst we accept that this part of the new body should continue to be able to undertake its commercial forestry activities as effectively as possible, we believe any forestry activities within the must be fulfilled to the highest possible environmental standards and in a manner which is consistent with the aims of the organisation as a whole.

For this reason the National Trust would disagree that there can be any flexibility or change in the "duty of care towards the environment" from one part of the body to another. This is the case as the whole organisation is collectively charged with ensuring that Wales's natural resources are used in an integrated, consistent and sustainable manner. Hence we believe that the balancing duty should be enhanced and replaced with the same duty which applies to the forestry interest and the rest of the organization.

2.5 Cross-Border Issues

The National Trust values the environmental work undertaken cross border by the legacy bodies and the Welsh Government and we are keen to see consistency in it. We note that the last sentence of page 18, which refers to anticipated continuation of cross-border working, is poorly worded and that stronger assurances are needed about the continuation of cross-border working.

2.6 Additional Clauses

The National Trust are concerned to see that the proposed 'conservation and enhancement duty' of the NRWB will be subject to four extra clauses as listed in Section A. While we recognise the need for compliance with the Water Framework Directive as in Clause iv) we are concerned that Clauses i) ii) and iii) are unnecessary and could constrain the nature conservation work of the body. We would be grateful if the necessity of these clauses were reconsidered, to make the work of the body as

unconstrained as possible to reflect the previous functioning of CCW which did not need to comply with such clauses.

2.7 Access

The National Trust welcomes the NRBW having a duty to further opportunities and facilities for access as in Box 3. However, rather than narrowly referring to the 'natural environment' we would like an acknowledgement that access to Wales' natural and historic environment, whether more or less shaped by man, is equally important. We would also like further detail on the specific part the NRBW plans to play in allowing enjoyment and connection of the Welsh public to the natural and historic environment.

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Glandŵr Cymru – Canal & River Trust in Wales' response to the Additional Consultation on the Natural Resources Body for Wales

Overview

- Glandŵr Cymru Canal & River Trust in Wales welcomes the opportunity to respond to the Welsh Government's consultation on the creation of the Natural Resources Body. The Canal & River Trust was formed in July 2012, taking over the responsibility as the guardian of the waterways, the waterways museums and archive in England and Wales from British Waterways and The Waterways Trust.
- 2. The Trust shares the Welsh Government's ambition for the sustainable management of Wales' natural resources and has pioneered approaches balancing the sometimes competing needs of people, place and prosperity; for example in the ground breaking 2005 Conservation Management Strategy for the Montgomery Canal.
- 3. Our canals are man-made but, having been built over 200 years ago, are now an integral part of our landscape and our cultural heritage and contribute to the character and distinctiveness that makes Wales special. The £10.6m to £18.8m annual value of eco systems services delivered rely equally upon that combination of natural and man-made resources.
- 4. In Wales much of our landscape has been shaped by people and consideration of the role that our architectural, engineering and historic buildings, structures, sites and objects play should be an integral part of the duties of the new body.
- 5. These remnants of our industrial past often provide the most easily accessible open space in some of the communities in greatest need. Experience across our four nations demonstrates that our industrial remnants also offer opportunities for changing perceptions, land values and for encouraging inward investment and jobs.
- 6. Glandŵr Cymru Canal & River Trust in Wales has been working with a range of partners across Wales, including the members of the Heritage Environment Group, to promote the ways in which the canals can be used to the advantage of the people of Wales. It is important that cultural services delivered by eco systems are considered concurrently with Regulating and Provisioning Services as they are often mutually dependent.
- 7. The three bodies comprising the Natural Resources Body have been active in undertaking primary research and monitoring and evaluation of existing programmes to develop an evidence base. It is vitally important that the new body continues to develop and promulgate evidence to support its own policy formulation but also that of like-minded bodies. Glandŵr Cymru Canal & River Trust in Wales has benefited from and contributed to this evidence base through its membership of the Countryside Recreation Network and similar bodies.

Question 1. Do you agree with our proposal for the duties of the body in respect of conservation and natural beauty? If not, how would you change it?

- 8. Mainly. The duties described in Article 4 Purpose of the Body should make explicit that the environment and natural resources includes the historic environment and landscape.
- 9. Much of our landscape has been shaped through the activities of the people living within it. The cross-cutting duties of the body described in paragraph 4 include conservation, recreation and landscape protection. The general duties of the Environment Agency in Annex 1 includes "having regard to the desirability of maintaining the availability to the public of any facility for visiting or inspecting any building, site or object of archaeological, engineering or historic interest and to take account any effect which the proposals would have on any such freedom of access or on the availability of any such facility". Equivalent words should be

included in the conservation duties of the Natural Resources Body to ensure the social and economic value of our built and cultural environment is not overlooked.

- 10. An example where these complex relationships exist is in the examination of the impacts that the 200 year old feed to the Monmouthshire & Brecon Canal from the recently designated River Usk Special Area of Conservation has upon those protected habitats as part of the Review of Consents process. As well as the habitats on and adjacent to the canal, the outcome of that Review has the potential to impact upon the cultural, social and economic value of the canal. Determining the appropriate balance between these competing interests should be a capability and function of the Body. Another example of balancing interests has been in the establishment of a 'buffer zone' to protect the setting of the 11 mile World Heritage Site on the historic Llangollen Canal. This demonstrates where there is a mutual benefit between the need to set the historic canal within its natural and cultural landscape and, due to this extra layer of protection, there are spin offs for nature conservation, resource management, the quality of the landscape and other historic features within the area.
- 11. The wording in the second order should include regard to social, *cultural* and economic interests in both *urban* and rural areas and we would suggest it should therefore be amended to read:
- (a) Ministers and the new body would be under a duty, in formulating or considering any proposals relating to any functions of the body other than its pollution control functions or its functions under the Forestry Acts 1967 to 1979, to exercise any power with respect to the proposals so as to further the conservation and enhancement of *cultural value*, natural beauty and the conservation of flora, fauna and geological, *historic* or physiographical features.

This duty would apply so far as it was consistent —

- (i) with the purposes of any enactment relating to the functions of the body,
- (ii) in the case of Ministers, with the objective of achieving sustainable development,
- (iii) in the case of the body, with any guidance under article 5 of the Natural Resources Body for Wales (Establishment) Order 2012 (quidance with respect to the body's purpose),
- (iv) in the case of Ministers, with their duties under section 2 of the Water Industry Act 1991.
- (b) Ministers and the new body would be under a duty, in formulating or considering any proposals relating to pollution control functions of the body, to have regard to the desirability of conserving and enhancing *cultural value*, natural beauty and of conserving flora, fauna and geological, *historic* or physiographical features.
- (c) Ministers and the new body would be under a duty, in formulating or considering any proposal relating to any functions of the body—
- (i) to have regard to the desirability of protecting and conserving buildings, sites and objects of archaeological, architectural, engineering, *cultural* or historic interest;
- (ii) to take into account any effect which the proposals would have on the beauty or amenity of any rural or urban area or on any such flora, fauna, features, buildings, sites or objects; and (iii) to have regard to any effect which the proposals would have on the economic and social well-being of local communities in *urban and* rural areas.
- 12. We understand that the second order may only make changes that are considered necessary as a consequence of the transfer of functions, or incidental or supplementary to such transfer. If, due to this constraint, our proposal cannot be included in the second order then we would like our proposal to be considered for inclusion in the second phase.

Question 2. Do you agree with the proposals in respect of public access and recreation duties? If not, how would you change it?

13. Yes. The duty to promote and facilitate public access to, and enjoyment of, the countryside and open spaces (in urban and rural areas) is strongly supported provided the open spaces

and natural environment is also taken to include the landscape, which has been largely shaped by the intervention of people, and historic or industrial remnants that have now become part of the landscape e.g. canals.

- 14. Similarly, the "sites of interest" should include cultural and historic features, places, structures and artefacts.
- 15. Again, if this cannot be achieved through the second order because of legal constraints we would like to see this included in the second phase.

Question 3. Do you agree with these proposals for the high level forestry duties? If not, how would you change them?

16. No comment.

Question 4. Do you agree with the general proposals for cross-border arrangements? If not what would you change?

- 17. In the most part. All three constituent bodies undertake original research and monitor and evaluate their programmes to create evidence to guide future work and policy. That evidence is promulgated through conferences, their web sites and bodies such as the Countryside Recreation Network. The Forestry Commission in particular has been at the forefront of work on the social benefits of access to the outdoors.
- 18. The Natural Resources Body needs to continue or expand this work and outwith its own borders (including Scotland, NI and the rest of Europe and internationally) to enable policy and practice to be continually based upon evidence and best practice to ensure optimum value for money over the long term in all that it (Wales) does. Wales has the potential to be world leading given the quality of our Universities and Research base that can help to inform decision making through a strong evidence base.

Question 5. Do you agree with the proposals for the statutory consultee role? If not what would you change?

19. Yes

Question 6. Do you agree with the proposals to provide internal separation of decision-making, improve transparency and ensure Welsh Ministers have the opportunity to call in significant issues? If not what would you change?

20. Yes

Question 7. Do you agree with the proposals for permitting? If not what would you change?

21. Yes

Question 8. Do you agree with these proposals for charging? If not what would you change?

22. Yes

Question 9. Do you agree with the proposals for public registers? If not what would you change?

23. Yes

Question 10. Do you agree that the new body should be a listed body under the Regulation of Investigatory Powers Act 2000?

24. Yes

Question 11. Do you agree that the new body should have powers to use civil sanctions?

25. Yes

Question 12. Do you agree with the proposals for appeal arrangements? If not what would you change?

26. Yes

Question 13. Do you agree with the proposals for cross border monitoring? If not what would you change?

27. Mainly. Monitoring and evaluation should include other activities of the Body where evidence can be developed for future policy and practice. See comments under **question 4**.

Question 14. Do you agree with the proposals for statutory planning and reporting? If not what would you change?

- 28. Yes. The Natural Resources Body needs to take the broader perspective set out in its duties. The Monmouthshire & Brecon Canal example cited under **question 1**, **paragraph 10** explains why wider the implications of decisions need to be taken into consideration and why a sound evidence base is created before recommendations are made.
- 29. Directions must be based upon evidence rather than a precautionary approach taken in an absence of evidence.

Question 15. Do you agree with the proposals for Civil Contingencies and COMAH? If not what would you change?

30. Yes

Question 16. Do you agree with the proposals for UK wide arrangements? If not what would you change?

31. No view

Question 17. Do you agree with the proposals for transitional arrangements? If not what would you change?

32. Yes. Glandŵr Cymru – Canal & River Trust in Wales has a close working relationship with the three bodies and is currently working in partnership with CCW in promoting access to the Countryside. We are also working with the EA(W) and CCW with Dŵr Cymru Welsh Water in exploring the impacts of abstractions from the River Usk. We support transitional arrangements that ensure the continuation of valuable existing partnership work of the three bodies. We would also expect that an Independent Advisory Panel will be established as part of the new body's governance arrangements, which should be in place from the inception of the new organisation.

Andrew Stumpf
Pennaeth Rhaglenni Cenedlaethol - Head of National Programmes
Glandŵr Cymru - Canal & River Trust in Wales
Andrew.Stumpf@canalrivertrust.org.uk

From: Communications **Sent:** 04 October 2012 19:05

To: SEB mailbox

Subject: Natural Resources Body for Wales (additional consultation) response form

Page used to send /consultations/forms/singlebodyresponse2/ this email:

Responses to consultations may be made public - on the internet or in a

report. If you would (Unchecked)

prefer your response

to be kept

confidential, please

tick here:

Your name: Peter Frost

Organisation (if applicable):

Urban Ecosystem Group of the Wales Biodiversity Partnership

Email / telephone

number:

01248 387378 / p.frost@ccw.gov.uk

Question 1: Do you agree with our proposal for the

duties of the body in Mainly

respect of conservation and

natural beauty?: The new body should have the function of promoting conservation and natural

beauty in all its operations including forestry and pollution control because this will create the greatest benefits for society. In urban areas Sutainable Urban Drainage Solutions (SUDS) are used as part of an integrated system to control surface water flooding and diffuse pollution and are mandated under the 2010 Flood and Water Management Act. However, SUDS achieve multiple benefits over and above pollution control if they are designed to enhance the natural beauty of the locality. This is demonstrated throughout Scandinavia, and especially in Augustenborg (a district of Malmo, Sweden) where the SUDS system drove environmental regeneration, business creation and social cohesion as well as eliminating flooding and pollution. This offers clear evidence that, rather than impeding pollution control, conservation of nature and natural beauty actually enhance the effectiveness of such measures. Sustainability seeks win-win-win solutions across environment, society and economy: it does not allow compromises for "efficiency" in one area because this undermines its delivery in the other two.

If not, how would you change it?:

Question 2: Do you agree with the proposals in respect Mainly of public access and recreation duties?:

The new body should have the duty to promote and facilitate public access to, and enjoyment of, the countryside and open spaces across Wales, and this duty should extend to cover its pollution control powers. Given that 80% of the electorate live in towns and cities, their daily contact with nature will come from recreation in urban green spaces, and that contact will be important to

If not, how would you change it?:

help develop their desire to conserve nature and natural resources. Therefore it must be made clear to the new body that its powers, functions and duties for recreation and access should apply equally throughout rural and urban Wales. As noted in our response to Question 1, expediency in relation to pollution control should be no excuse for lack of consideration of access and recreation. SUDS systems control diffuse pollution which conventional "hard" engineering has failed to control, and they work best where they are designed to enhance the natural environment and public access to it. The reed-bed filtration system at Parc Taff Bargoed treats highly acidic mine water, but is a feature of the park, with interpretation and opportunities to observe the wildlife which inhabits this pollution control system. Therefore there should be no derogation of the duty to promote access and recreation even when controlling pollution because these should be intelligently designed into, or around all operations of the new body to create win-win-win solutions.

Question 3: Do you agree with these proposals for the high level forestry duties?:

Mainly

If not, how would you change them?:

The "balancing duty" for forestry should be modified to make it consistent with the sustainable development duty applicable to the Welsh Government and all its agencies. Throughout the south Wales valleys commercial forestry is the backdrop to some of our country's most disadvantaged communities and could be used even more effectively to promote their regeneration through the application of sustainable development principles. Therefore the duties to promote nature conservation, natural beauty, access and recreation should be applied to the new body's forestry duty to achieve win-win-win solutions. The Valleys Regional Park seeks to accredit all major countryside recreation sites to the Green Flag Award standard in order to promote the area as the venue of choice for adventure breaks. Forestry sites will be crucial in this respect as hosts of some of Europe's best mountain bike facilities. If the new body is made to consider its duties for timber production alongside its duties to promote environmental and social well-being it will ensure that forests become integral to the creation of an attractive, wildlife rich environment where income from local tourism businesses supplements that created by timber harvesting by businesses based far from the forests.

Question 4: Do you agree with the general proposals for cross-border arrangements?:

If not what would you change?:

We have no specific comments on this topic.

Question 5: Do you agree with the proposals for the statutory consultee role?:

If not what would you change?:

We have no specific comments on this topic.

Question 6: Do you agree with the proposals to provide

internal separation of decision-making, improve transparency and ensure Welsh Ministers have the opportunity to call in significant issues?:

If not what would you change?:

We have no specific comments on this topic.

Question 7: Do you agree with the proposals for permitting?:

If not what would you change?:

We have no specific comments on this topic.

Question 8: Do you agree with these proposals for charging?:

If not what would you change?:

We have no specific comments on this topic.

Question 9: Do you agree with the proposals for public registers?:

If not what would you change?:

We have no specific comments on this topic.

Question 10: Do you agree that the new body should be a listed body under the Regulatory Investigatory Powers Act 2000?:

Question 11: Do you agree that the new body should have powers to use civil sanctions?:

Question 12: Do you agree with the proposals for appeal arrangements?:

If not what would you change?:

We have no specific comments on this topic.

Question 13: Do you agree with the proposals for cross border

monitoring?:

If not what would you change?:

We have no specific comments on this topic.

Question 14: Do you agree with the proposals for statutory planning and reporting?:

If not what would you change?:

We have no specific comments on this topic.

Question 15: Do you agree with the proposals for Civil Contingencies and Control of Major Accident Hazards (COMAH)?:

If not what would you change?:

We have no specific comments on this topic.

Question 16: Do you agree with the proposals for UK wide arrangements?:

If not what would you change?:

We have no specific comments on this topic.

Question 17: Do you agree with the proposals for transitional arrangements?:

If not what would you change?:

We have no specific comments on this topic.

Question 18: If you have any related issues which we have not specifically addressed, please use this space to report them:

Welsh Government Consultation on Natural Resources Body for Wales

Response from HSE, Hazardous Installations Directorate, Chemical Industries Policy

Thank you for consulting HSE on the Welsh Government's proposal for a new single body to manage natural resources in Wales.

This response focuses on some of the practical implications of moving to a single body, particularly in respect of the Control of Major Accident Hazards Regulations (COMAH) 1999 (as amended). :

- The competent authority (CA) is currently defined in the COMAH Regulations; the current definition includes the Environment Agency (EA). HSE will need to be informed about any legislative changes that will affect the COMAH Regulations.
- There are established arrangements in place that ensure HSE and our agency counterparts in Great Britain operate within a defined CA framework, which includes for example common processes. This helps industry to regard the CA as a single organisation and is likely to be further enhanced as a result of the Better Regulation Executive's Review of Enforcement.
- 3. The new body will be required to contribute to process improvement, operational strategy and be a member of the Competent Authority Strategic Management Group (CASMG), all of which will have resource implications.

We would be very happy to discuss these points further. If you think this would be useful you are welcome to contact us.



National Grid House Warwick Technology Park Gallows Hill, Warwick CV34 6DA

Carrie Moss
'A Living Wales' Programme Team
Department for Environment and Sustainable Development
Welsh Government
Cathays Park
CF10 3NQ

Submitted by email to SEB@wales.gsi.gov.uk

Dr Stefan Preuss MRTPI Strategic Policy Advisor Land & Development

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www.nationalgrid.com

5th October 2012

Dear Carrie,

Natural Resources Body for Wales (additional consultation) – Response by National Grid plc

I am writing in connection with the additional consultation on the establishment of the Natural Resources Body for Wales. National Grid welcomes this opportunity to provide further comments and I would like to submit the following comments on behalf of National Grid in response to a limited number of the consultation questions.

Question 4: Do you agree with the general proposals for cross-border arrangements?

We welcome the recognition of the need to address trans-border issues. The new body will need to work with, and seek to achieve consistency with, relevant bodies in England, including Natural England and the Environmental Agency in England. This is an important issue which was also highlighted in the report by the Environment and Sustainability Committee¹.

In our view, the duty should include the need to ensure consistency of data sets and information tools held by these bodies between England and Wales. Importantly, there also needs to be consistency in any advice given to, or any requirements placed, on developers, e.g. in respect of the information that developers are expected to provide as part of applications for schemes. This is particularly relevant in respect of development projects, such as trans-border energy transmission infrastructure proposals, that cross boundaries and/or that may have a cross-border dimension.

We support the proposal to place the new body and the Environment Agency under a duty to co-operate with each other and to co-ordinate activity on cross-border matters. However, this duty should also:-

- a. Cover cooperation and coordination on cross-border issues with other relevant bodies in England such as Natural England and the Marine Management Organisation; and
- b. Include a specific requirement on the new body to cooperate and coordinate activity on cross-border matters with these other relevant bodies in respect of giving advice in their roles as statutory consultees on development projects and/or as consenting

¹ National Assembly for Wales Environment and Sustainability Committee: Report - the business case for a single environment body, May 2012.

bodies in their own right. This should include coordination in respect of the information that developers are expected to provide as part of their applications.

We agree that the new body should also use appropriate mechanisms (such as Memoranda of Understanding that should be made public) to enable it to reach agreement with other bodies for dealing with, and aligning, such cross-border issues.

Question 5: Do you agree with the proposals for the statutory consultee role?

We agree that the new body will play an important role as a statutory consultee in planning and consenting processes (see also our response to Question 4). We welcome and support the recognition in the consultation document of the need for proportionality in performing this function.

In addition to the issues covered in the consultation document, it will be important that, in its role as a statutory consultee, the new body will be required to, and enabled to, provide the following:-

- Specific/local knowledge and advice: From our experience, the current bodies, particularly the Environment Agency (EA) in Wales and the Countryside Council for Wales (CCW)², often hold valuable local knowledge about the areas in which specific development projects are located. It will be important to ensure that such knowledge is retained in the new organisation to the benefit of stakeholders such as local authorities and developers;
- Clarity of requirements and advice: The new body will play an important role in relation to development projects, including Nationally Significant Infrastructure Projects (NSIPs). It is essential that the new body expresses any requirements on project promoters (e.g. information requirements when undertaking environmental assessments) clearly and at the earliest opportunity to avoid confusion, misinterpretation and delay. Similarly, any advice given by the new body to project promoters should be clear, timely and unambiguous;
- Proportionality of requirements and advice: From our experience to date, the current bodies, particularly the EA in Wales and CCW, generally take a proportionate view when it comes to the information and assessment requirements placed on project promoters. For example, it is generally recognised by those bodies that a different type/level of detail of information is appropriate at different stages of a development project. It is essential that this proportionate approach is retained under the new body;
- Consistency and coherence of advice: The new body will bring together the different duties and areas of expertise and responsibility of the present bodies (e.g. nature conservation, landscape, flood risk management etc.). This should be used as an opportunity to ensure that the inter-relationships and potential synergies or trade-offs are considered by the new body in a holistic and integrated manner. In its role as statutory consultee, the new body should be required to provide consistent and coherent advice across its areas of responsibility; and
- Cross-border working and alignment: The new body will need to work with, and seek to achieve consistency with, relevant bodies in England, including Natural England and the Environmental Agency in England. This should include ensuring consistency of data sets and information tools held by these bodies. There also needs to be consistency in any advice given to, or any requirements placed, on developers, e.g. in respect of the information that developers are expected to provide as part of applications. This is particularly relevant in respect of development projects that cross boundaries and/or that may have a cross-border dimension.

² National Grid does not have much experience of working with the Forestry Commission in Wales.

Question 8: Do you agree with these proposals for charging?

It would seem appropriate to enable a reasonable fee to be charged for permits, on the basis that a performance standard is established (including prescribed timescales for considering and determining applications), that any charging regime is fixed and transparent at the outset of the process and a means of redress is available to applicants should the new body not meet its obligations of the performance standard.

Question 17: Do you agree with the proposals for transitional arrangements?

We welcome the proposal that the second order will define the transitional arrangements which will ensure that decisions of the existing bodies, including any advice given, will continue to have effect and that permits, agreements, contracts and so on will continue as if the single body was the original body. We agree that this should include the items listed in the relevant section in the consultation document.

In addition to the above, there are other aspects that will need to be addressed by appropriate transitional arrangements in order to ensure a smooth and seamless transition from the present arrangements to the new body. National Grid supported the recommendation by the Environment and Sustainability Committee in respect of the need to ensure that there is no weakening of performance or reduction in the quality of service delivered by the three existing bodies, including during the transition period.

Any ongoing work, including the provision of advice and regulatory decisions dealt with by the present bodies, must continue to come forward without adverse impacts on quality of service and without delay. This is particularly important to 'live' and planned development projects which rely on the advice and decision making by the present and new bodies.

The details of any changes should be clearly communicated well in advance of their implementation so that all involved, including staff working for the new body, local authorities and developers, are well informed and can agree and take any necessary steps to ensure an orderly and seamless transition.

I trust you find these comments useful. Should you have any queries or wish to discuss of the issues raised in our response, please do not hesitate to contact me.

Yours sincerely, Stefan Preuss



Our Ref: WAG 5th October 2012

E-mailed to: SEB@wales.gsi.gov.uk

Carrie Moss
Living Wales Programme Team
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Welsh Government
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Dear Carrie

Welsh Government additional consultation on a Natural Resources Body for Wales.

I am responding on behalf of Associated British Ports to the above consultation. ABP is the UK's largest port operator, and owns and operates 21 ports across the UK, 5 of which are in Wales. The Welsh Economic Research Unit has estimated that ABP South Wales ports directly and indirectly support over £1.7 billion per year of gross output to the Welsh economy and account for over 16,000 jobs with 350 tenants across the 5 port estates, not withstanding the support to other business operations outside the port estate including some of Wales's largest manufacturing industries which are reliant upon ABP's infrastructure and support. ABP is statutory harbour authority for all its main ports and we are committed to effective environmental management across all its activities.

ABP welcomes the opportunity to comment on the Welsh Government's additional consultation on a Natural Resources Body for Wales. It is, however, of concern to us that the marine, coastal and maritime components of the Sustaining a Living Wales programme appear singularly low profile and even lacking in many of the consultation and draft documents to date. This point was raised as part of the Single Body consultation, by a wide range of responders including the Milford Haven Port Authority, Welsh Coastal and Maritime Partnership and others, but it appears not to have been integrated into either of the draft orders. Although Welsh 'countryside' and 'natural environment' is referred to, it is by inference rather than specific use of the words 'marine' or 'coastal' that the whole range of natural resources are encompassed. Marine functions of WAG must be fully factored in to the transitional arrangements and ensuring no loss of customer service or marine expertise should be a key objective of the transitional process.

Although the single body consultation document made great play of Natural Resource Planning, as one component of marine planning, the role of the Natural Resources Body is still unclear in this process. The Second Order draft should be more specific as to where responsibilities fall for developing the Natural Resources 'atlas' or database and the role of the single body in leading, facilitating or generating one of the three critical components within the marine planning process – the others being the social and economic data and priorities.

Our responses to the specific consultation questions are appended. Please get in touch if you wish to discuss any of these points further.

Yours sincerely

Ian Schofield

Engineering Director

Copied to: Richard Bird – UK Major Ports Groups

David Whitehead – British Ports Association

Dave Levell – Welsh Ports Group

Appended: ABP's Responses to the Specific Consultation Questions

Appendix: ABP's Responses to the Specific Consultation Questions from the Welsh Government's additional consultation on a Natural Resources Body for Wales.

Question 1: Do you agree with our proposal for the duties of the body in respect of conservation and natural beauty?

We broadly support the proposals with regards to conservation and natural beauty, however, we would like to see specific mention and consideration of marine and coastal nature conservation designations which are currently the responsibility of Countryside Council for Wales. These include SPA, SAC, RAMSAR sites and the proposed MCZs alongside the terrestrial designations that you have already listed.

We are also slightly concerned to see that the pollution control functions will be limited and would like further clarification of this.

Question 2: Do you agree with the proposals in respect of public access and recreation duties?

No comment.

Question 3: Do you agree with these proposals for the high level forestry duties?

No comment.

Question 4: Do you agree with the general proposals for cross-border arrangements?

Yes

Question 5: Do you agree with the proposals for the statutory consultee role?

No comment

Question 6: Do you agree with the proposals to provide internal separation of decision-making, improve transparency and ensure Welsh Ministers have the opportunity to call in significant issues? Broadly yes as there needs to be some formal distinction of the advisory, operational and regulatory roles of the organisation, especially with regards to the activities it undertakes itself.

Question 7: Do you agree with the proposals for permitting?

Yes. We are pleased to see that the existing standard permit conditions set for sites in Wales will continue to apply to permits granted or treated as granted by the new body via the second order. However we would like to see mention and clarification of this extended to those permits required for waste transfer and storage.

Question 8: Do you agree with these proposals for charging? No comment

Question 9: Do you agree with the proposals for public registers? No comment

Question 10: Do you agree that the new body should be a listed body under the Regulatory Investigatory Powers Act 2000? Yes.

Question 11: Do you agree that the new body should have powers to use civil sanctions? Yes.

Question 12: Do you agree with the proposals for appeal arrangements? No comment.

Question 13: Do you agree with the proposals for cross border monitoring? No comment.

Question 14: Do you agree with the proposals for statutory planning and reporting? Yes, although we note there is no mention of / commitment to marine planning under the Marine and Coastal Access Act 2009 and how this will be taken forward.

Although the single body consultation document made great play of Natural Resource Planning, as one component of marine planning, the role of the Natural Resources Body is still unclear in this process. The Second Order draft should be more specific as to where responsibilities fall for developing the Natural Resources 'atlas' or database and the role of the single body in leading, facilitating or generating one of the three critical components within the marine planning process – the others being the social and economic data and priorities.

Question 15: Do you agree with the proposals for Civil Contingencies and Control of Major Accident Hazards (COMAH)?

Yes, though we would expect to see a level of experience and expertise amongst those within the new body to be able to respond to marine and coastal issues and events which by their very nature are broad and wide ranging.

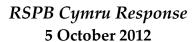
Question 16: Do you agree with the proposals for UK wide arrangements? Yes.

Question 17: Do you agree with the proposals for transitional arrangements?

We would welcome additional detail on the transitional period and merger of the 3 organisations into the single environment body, for example a timetable and information on how contacts with specific persons within each organisation relating to our business can be maintained. We also note that the transitional period only mentions the transfer of environmental functions of the EA, Forestry Commission and CCW (the 3 bodies). Marine licensing and planning functions of WAG are not considered, which is in our opinion a huge over-sight given the importance of the marine environment to the Welsh economy – as such the transfer of these functions without any loss of service to marine sectors must be factored in. As per our response to the last consultation earlier in the year, it would also seem sensible for environmental responsibilities of local authorities e.g. with regards to air quality, flood risk management etc, to be transferred also.

Question 18: If you have any related issues which we have not specifically addressed, please use this space to report them. No comment.

Natural Resources Body for Wales (additional consultation)





For further information, please contact:

Dr Sharon Thompson, Sustainable Development Manager / Rheolwr Datblygu Cynaladwy, RSPB Cymru. Tel: 029 2035 3049; sharon.thompson@rspb.org.uk

RSPB CYMRU SUMMARY:

RSPB Cymru has a significant number of concerns with respect to the proposals for the second Order which mean that we can not support these proposals, in particular:

- The proposed nature conservation and natural beauty duties are weaker than current versions and as such do not meet the requirements of the Public Bodies Act to retain "any necessary protection";
- While not ideal, the forestry 'balancing duty' is the better option proposed under the restrictions of the Public Bodies Act;
- The proposal for a new duty to promote woodland in Wales is not permissible under the Public Bodies Act as it is a new duty. While we support the sentiment, we could not support the current unqualified proposal because it lacks any references to native woodland species, planting only in appropriate locations, and avoiding damage to other habitats.
- Many of the other proposals within the consultation document lack enough detail to allow us to support them. In particular:
 - o the statutory consultee role;
 - o advising and regulating its own operations especially with respect to internal separation and transparency; and
 - issues regarding the timing or order of actions, in particular the publication of decisions.

RSPB CYMRU - OVERARCHING ISSUES NOT COVERED UNDER THE QUESTIONS (BELOW):

• RSPB Cymru welcomes the Ministerial Foreword to this consultation. In particular, we welcome the Minster's reiteration that ensuring that all the functions transferred to the

new body "properly encompass its role in protecting the natural environment, the cultural and historic landscape and access to the countryside and coast". However, despite this rhetoric, our view is that neither the proposals in this consultation document nor the first Order establishing the Natural Resources Body for Wales (NRBW) deliver the Minister's stated outcomes. As a consequence, RSPB Cymru has been unable to support the majority of what is being proposed in this additional NRBW consultation.

- RSPB Cymru also welcomes the summary of responses to the *Sustaining a Living Wales* Green Paper consultation (published September 2012). We note that the Minister further states in the Foreword of the current consultation document that he is continuing to consider carefully consultation responses. Consequently, the summary of the *Sustaining a Living Wales* consultation responses provides the Minister and Welsh Government with a clear rationale and direction for the primary role of the new body. Therefore, RSPB Cymru would like to see that primary role better reflected in the duties, powers and functions of the new body in the second Order.
- We would repeat our views, from the initial consultation on the single body, that it must have a strong primary purpose (duty) to protect, restore, enhance and proactively manage biodiversity (i.e. the building blocks of ecosystems) and ecosystems, on land and at sea. This reflects our belief that nature should be conserved for its own sake (i.e. its intrinsic value), given our moral responsibility for our stewardship for nature as a mark of civilised society, as well as for the utilitarian services we receive from it. In response to the first consultation, we proposed the following statutory purpose as we believe it better meets Welsh Government's aspirations for the new body:

"To maintain, protect and proactively improve Wales' natural environment, for the benefit of the environment, people and economy of Wales now and in the future."

With this in mind, we have continuing concerns regarding the multiple use of and definition of sustainability in the statutory purpose of the new body contained in the first Order. We are worried that the statutory purpose requires all conservation and biodiversity enhancement actions to also deliver benefits for people and the economy – an approach that ignores the long-term benefits of a restored, healthy and functioning natural environment in favour of short-term gains. We see such an approach as counter to achieving sustainable development. In addition, it is not clear how the definitions in the first Order integrate with the definitions and duties proposed on public bodies such as the new body, by WG for the Sustainable Development Bill.

- With respect to the second Order, RSPB Cymru note and bring to your attention the limitations of what is permissible under the Public Bodies Act 2011. Under section 16(2) of the Public Bodies Act (PBA), Welsh Ministers are only able to making an Order if it does not remove "any necessary protection". It is our view that any weakening of the existing nature conservation and protection duties and functions constitutes a removal of necessary protection and hence, does not comply with the PBA.
- RSPB Cymru notes that licensing of marine activities is not covered in this consultation
 on the second Order. This is despite consideration in the first consultation on the NRBW
 that marine licensing would be transferred from WG to the new body. Therefore, it is
 now not clear whether marine licensing will be a function of the new body or not. We

- would like further details of what is intended for marine licensing and how that will be achieved, to be made public by WG for scrutiny as soon as possible.
- A further omission from the consultation document is that it fails to provide any information on how the new body will interact with stakeholders. In particular, RSPB Cymru would like further detail on how the new body will engage with environmental NGO as stakeholders but also as delivery bodies for practical conservation activities. Whilst we appreciate that WG's intention is that the new body describe its own stakeholder relations, and has provided enabling clauses to do so in the First Order, we are anxious that existing stakeholder relations and advisory committees are being abolished before any discussion on the new arrangements has even commenced. We would therefore like to see a clear commitment to at least minimum standards in the legislation.
- RSPB Cymru sits on the Living Wales Reference Group, through which WEL has
 repeatedly requested to see a list of all pieces of legislation reviewed and the
 amendments proposed. For the 27 September 2012 Reference Group meeting, WG
 provided a list of pieces of legislation that are being considered. However, this is only
 part of what was requested as WEL are primarily interested in reviewing the proposed
 amendments.
- We wish to note that RSPB Cymru's response to this consultation document on the second Order for the NRBW is predominantly based on legal advice.

RSPB CYMRU RESPONSE TO THE CONSULTATION QUESTIONS:

Question 1. Do you agree with our proposal for the duties of the body in respect of conservation and natural beauty? (Yes, Mainly, Not at all). If not, how would you change it?

No, based on legal advice, RSPB Cymru does not agree with the proposed conservation and natural beauty duties of the body.

Our main concern is that the proposed conservation and natural beauty duties weaken the current conservation and hence weaken the "necessary protection" for the wildlife and natural environment of Wales.

- i. The duty on the EA, under s7(1)(a) Environment Act 1995, is weaker in conservation terms than CCW's duties under s130-s131 Environment Protection Act (EPA) 1990.
- ii. The main area of concern is that the duty in Box 2(a) is to be limited to applying "... so far as is consistent with (i)..., (ii)..., (iii)..., (iv)...". Our legal advice is that as a consequence, the conservation duty in Box 2(a) can only be exercised in so far as the impacts on the economy and people are also acceptable. The outcome is therefore, a weaker conservation duty than that currently applying to CCW.

- iii. Furthermore, the statutory purpose of the new Body is already present in the law in paragraphs 4(1) and 4(2) of the Natural Resources Body for Wales (Establishment) Order 2012 (referred to as the "1st NRBW Order"). Legal advice is that there is no need to refer to it expressly here (e.g. (i) and (iii) in Box 2(a)) and to do so weakens the current CCW position.
- iv. Finally, the new Body is already required under article 5(3) of the 1st NRBW Order to "have regard to" any guidance which is produced under article 5(1) of that Order so again there is no need to include (iii) in Box 2(a); and indeed (iii) (which requires "consistency") goes further than article 5(3) which merely requires "having regard".
- v. Taken together, the above results in weaker proposed duties than the current CCW duties. For example, under s130(2)(a) EPA 1990, CCW has a primary duty to discharge its functions for conservation and in so doing "shall have regard to the social and economic interests of rural areas in Wales". This duty is more specific and targeted to rural areas in Wales, not social and economic interests generally.
- vi. As we have noted, section 16(2) Public Bodies Act (PBA) prevents an Order removing "any necessary protection", and because it is existing law, the requirements of CCW's s130 duty must be regarded as "necessary" and so must remain.
- vii. Consequently, our legal advice is that the duty in Box 2(a) should not to be made subject to Parts (i)-(iv) if it is to comply with the PBA. Therefore, these parts should be removed.

Another area of concern relates to the use of the term "proposal(s)" in Box 2. For example, Box 2(a) states: "... in formulating or considering any proposals relating to any functions of the body ..., to exercise any power with respect to the proposals...". The use of the term "proposals" in this clause and throughout Box 2, is both tortuous and limiting. It is difficult to understand exactly what it means, however, our legal advice is that it is arguable that it means that the duty applies only when the body is formulating "proposals", rather then when it is simply exercising its functions generally. While this wording comes from the existing duty on the EA under s7(1) Environment Act 1995, compared with the existing CCW duty, this is narrower wording and consequently not allowable under the PBA. In contrast, the recreation duty at Box 3(2)(1) is far clearer: "The NRBW must exercise its functions so as to encourage...". We would therefore suggest similar wording, e.g. "... to exercise any power / its functions to further...", be used for the conservation duty to avoid narrowing of the current CCW duty and risking noncompliance with the PBA.

On a more positive note and assuming removal of the wording referring to "proposals", the duty "... to further the conservation and enhancement of natural beauty and the conservation of flora, fauna, geological or physiographical features" is welcome.

While not included in Box 2, the consultation paper makes special reference (pg 10) to the duty in s6(1) Environment Act 1995 with respect to inland and coastal waterways continuing (with modification to apply it to the new body). There is perhaps a risk that the separate stating of this duty might lead to it being given undue prominence, although we are unaware that this has in practice been an issue with the Environment Agency up until now. While the current duty is

modified by the phrase "to such extent as it considers desirable", we are of the view that it would be useful if this modification made specific reference to the other functions of the new body, e.g. "to such extent as it considers desirable <u>having regard to the functions in section</u>…". This would make it clear that the new body needs to exercise its functions in respect of inland and coastal waterways but without prejudicing its other duties.

Question 2. Do you agree with the proposals in respect of public access and recreation duties? (Yes, Mainly, Not at all). If not, how would you change it?

No, based on legal advice, RSPB Cymru does not agree with the proposed public access and recreation duties of the body.

For similar reasons given in response to Q1, RSPB Cymru believes that the Box 3, s2(2)(b) bullets (i)-(iii) should be removed to avoid weakening current duties and noncompliance with the PBA.

As with the proposals in Box 2, our main concern with the proposals for public access and recreation in Box 3 is the watering down of CCW's existing duty under s130(2)(b) of the EPA 1990. Section 130(2)(b) states that CCW shall discharge its functions "for encouraging the provision or improvement for persons resorting to the countryside in Wales, of facilities for the enjoyment thereof and for the enjoyment of the opportunities for open-air recreation and the study of nature afforded thereby ...and shall have regard to the social and economic interests of rural areas...". Compare this to the proposals in Box 3(2) which is caveated by (2)(b)(i)-(iii). As is the case for CCW's conservation duty (see Q1 response), (2)(b)(i)-(iii) (particularly (ii) and (iii)) should be removed.

Question 3. Do you agree with these proposals for the high level forestry duties? (Yes, Mainly, Not at all). If not, how would you change them?

No, based on legal advice, RSPB Cymru does not agree with the proposed high-level forestry duties of the new body.

RSPB Cymru has concerns about the following issues.

1. Retaining the 'balancing duty' for the environment in the Forestry Act

Of the two options proposed, retaining the current forestry 'balancing' duty – which is currently on the Forestry Commissioners in Section 1(3A[b]) of the Forestry Act 1967 – and placing this duty upon the single body under the Forestry Act, is the option that best protects and enhances the environment and wildlife of Wales. It therefore it must be adopted.

Removing the Forestry Act 1967 balancing duty in Wales would remove "necessary protection" to wildlife, therefore under the requirements of Section 16(2) of the Public Bodies Act 2011 it must be retained. It is also important to retain this duty so that Welsh Government continues to

address its domestic, European, EU and international long-term commitments to sustainable forestry policy, regulation and practice, and its obligations to protect and enhance biodiversity.

Under the terms of the Public Bodies Act 2011, retaining the [GB] Forestry Act 1967 balancing duty to wildlife, landscape and historic environment is the best option. However, we will be revisiting this through the Environment Bill. The alternative would be a bespoke Forestry Act for Wales as is the case in Northern Ireland or bespoke forestry legislation as part of the proposed Environment Bill for Wales.

The 'balancing' duty requires the new body to "achieve a reasonable balance" between the management of forests and the conservation of nature, whereas the current Environment Agency duty is to "have regard to". Comparing the two provisions, our legal advice is that it can be argued that the Forestry Act 'balancing' duty is stronger than the Environment Agency's duty, because the duty on the Forestry Commissioners' to "achieve a reasonable balance" suggests that the two duties it defines to forestry expansion/timber production and the environment are of equal importance, whereas the Environment Agency's duty to "have regard to" suggests that conservation is a subsidiary concern to be taken into account whilst exercising the main function.

We do, however, have concerns about the existing duties of the Forestry Commission which restrict its ability to extensively deliver high quality public benefits and facilitate and regulate others to do so. This includes the objectives for the Welsh Government Woodland Estate, currently constrained under Sections 3 and 1 of the Forestry Act 1967, as well as how far the Forestry Commission considers biodiversity when advising, developing and implementing policy, grants and regulation. The timber growing sub-section of the balancing duty (Section 1(3A[a]) is a restriction to fulfilling public benefits, as is Section 8A.

If the proposed alternative forestry duty option were to be adopted for the new Body, guidance must be given by the Welsh Ministers, which should set out how it should balance the interests of people, the environment and the economy. In theory, strong guidance could result in a strong or even stronger position but not in legal terms and therefore is not acceptable under the Public Bodies Act 2011. See Annex 1(1) for further detail on the 'balancing duty'.

2. <u>Implementing the Forestry Act</u>

Capturing and transferring the 'administrative conventions' of the Forestry Commission into the new body is a key task in the setting up and operation of this new organisation, so as not to lose the sense and translation of the Forestry Act 1967 in practice.

RSPB Cymru would be concerned if any existing duties to wildlife and sustainable forestry, and their implementation, were to be side-stepped or ignored by Welsh Government in the establishment and operation of the new single body. This includes as part of corporate planning, structures and reporting, budget setting, deployment of expertise, as well as the development and application of policy, regulation and best practice (including grants, advice

and regulatory consents to woodland managers), as well as transparency and public consultation and participation in forestry consenting procedures and policy making. See Annex 1(2) for further detail on the Forestry Act.

3. 'Main' duties of the Forestry Commissioners and the Single Body under the Forestry Act RSPB Cymru is concerned that the Section 1 duties of the Forestry Commissioners have only been partially represented in this consultation.

Section 1(2) of the Forestry Act 1967 is presented in the consultation as the 'main duty' of the Forestry Commissioners. The consultation unfortunately does not clearly enough state that this duty is subject to the Section 1(3A[b]) environmental 'balancing' duty, and is therefore not the sole, or principal duty on the state body for forestry.

The balancing duty places a broader sustainable forestry requirement across all of the duties, powers and functions of the Forestry Commissioners and their Commission, and the new body in the future, which helps the Welsh Government meet its international commitments on sustainable forest management, biodiversity protection and enhancement, as well as to the conservation of landscape and historic environment.

We seek confirmation from the Welsh Government that the wording of '4.1.3 forestry duty' section on pages 14-15 of this consultation document does not signal its intention to separate the broader sustainability context from the Forestry Commission's objectives within the Forestry Act and its implications, i.e. in exercising any functions under the Forestry Act, the balancing duty must apply to the new body in the same way as it currently does to the Forestry Commissioners. RSPB Cymru would not welcome such a statutory shifting of the Forestry Commission, and its successor body in Wales to unsustainable woodland expansion and management policy, regulation and practices that damage, not enhance biodiversity and other public benefits.

4. New duty to promote woodland cover in Wales

Whilst broadly supportive of the Welsh Government's policy direction to increase woodland cover – if the trees are native and not planted in marginal or priority habitats, RSPB Cymru does not support the introduction of a 'new' duty 'to promote woodland cover in Wales...' (see page 15) under the restrictions of the PBA. Furthermore, placing such an unqualified statement into statute would act as an overriding driver and place an unacceptable environmental burden for unsustainable woodland expansion while ignoring the need to improve the biodiversity quality of existing native woodlands, carry out work for priority wildlife species and restore priority peatland habitats from forestry.

RSPB Cymru notes that under Part 1 of Forestry Act 1967¹ – Sections 1(2), 1(3), 1(3A[a]) and 8A – the Forestry Commissioners, their commission and the Minister already have sufficient duties,

http://www.legislation.gov.uk/ukpga/1967/10/section/1 & http://www.legislation.gov.uk/ukpga/1967/10/section/8A

powers and functions to expand woodland and promote forestry, but also to do this in a sustainable manner – Section 1(3A[b]) that protects and enhances, not damages, important non-woodland as well as woodland wildlife.

We further note that it is our view that this is a new duty, because it is different to the existing general duty on the Forestry Commissioners of "promoting the establishment and maintenance of adequate reserves of growing trees". As such, it is unlikely that it can be included under the terms of the Public Bodies Act 2011.

5. A new Forestry Bill for Wales to truly deliver sustainable forestry?

If there were to be a new devolved Forestry Act for Wales, it should have clearer biodiversity and sustainable forestry duties on WG across all its powers and functions.

A new Forestry Bill for Wales should build upon the wording and approach of the current GB Forestry Act 1967, and it is considered implementation by Forestry Commission Wales, but with better focused duties, powers and functions to more extensively secure sustainable forestry policy, regulation and practice for all woodland in Wales, for a range of public benefits.

The development of such a Bill could perhaps usefully draw upon the recent revision of primary forestry legislation in Northern Ireland², which shows how a sustainable forestry duty and duties to wildlife on the forestry body can be written into law³.

The Forestry Act (Northern Ireland) 2010 also shows how primary legislation can be framed without the existence of a separate board of commissioners for forestry, conferring and framing duties, powers and functions on a government forestry body, rural affairs department and the minister.

However, we are aware that a new Forestry Act for Wales is not on offer, rather what is on offer is the limited changes to the Forestry Act 1967 that are possible under the Public Bodies Act 2011 provisions for the formation of the Single Body. However we raise these points in the context of future legislative opportunities, either alongside or incorporated with the proposed Environment Bill.

² http://www.legislation.gov.uk/nia/2010/10/contents

³ General Duty in Section 1 of: http://www.legislation.gov.uk/nia/2010/10/part/1, and February 2011 guidance from Northern Ireland Forest Service on implementing this General Duty, see paragraph 2, page 2 of: http://www.dardni.gov.uk/forestservice/forest_service_pdf_plan.pdf (alternative link with explanation of document's context: http://www.dardni.gov.uk/forestservice/index/publications/policy-and-legislation/content-delivery-plan.htm)

Question 4. Do you agree with the general proposals for cross-border arrangements? [Yes, Mainly, No] If not what would you change?

No, based on legal advice, RSPB Cymru does not agree with the majority of what is being proposed, primarily as the result of lack of detail or omissions from the consultation document.

Of most concern to us is that while there is reasonable discussion regarding cross-border EA, there is only passing reference on the relationship with JNCC, and none with respect to NE. The most worrying statement is the last sentence on pg18 which with reference to the management of cross-border protected sites, etc, states that WG "anticipate that this work will continue". We urgently require confirmation that this phrase is the result of poor drafting and that the management of these important cross-border sites and the necessary relationships with the relevant Statutory Nature Conservation Bodies (e.g. JNCC and NE) will continue once the new body is vested.

With respect to forestry and FC's activities we are strongly of the view that the sustainable forestry standard setting function of Forestry Commission GB needs to be retained for Wales, and be employed by the single body to develop sustainable forestry practice and the associated regulatory instrument (the UK Forestry Standard).

Also the research, monitoring, knowledge transfer and practice development duties, powers and functions of Forestry Commission GB need to be retained for Wales, but refocused for better delivery of sustainable forestry for public benefits, including the protection and enhancement of priority wildlife species, priority habitats and designated wildlife sites. An example of how this needs to be improved is changing the emphasis of forest plant disease research, policy development and control measures to better consider impacts on biodiversity. Forest plant health work by Welsh Government should also consider more extensive and longer term changes to forestry practice to produce more species and structural diversity in woodland, thereby delivering higher biodiversity and public benefits value, that could also assist climate change adaptation and disease resilience.

We also seek clarification from WG regarding powers of direction (both Welsh Ministers and Westminster) in respect of cross border activities, and how the consultation between Welsh and UK Ministers and the respective bodies will take place.

Wales' seas are mentioned for the first time in this consultation which highlights the lack of reference to cross-border relationships with the MMO with respect to marine boundaries between Wales and England. Furthermore, the first consultation referred to marine licensing moving from WG to the new body, however, this move is not covered at all in this consultation document. We would like further information on how and when marine licensing will be transferred into the new body.

Later on in the consultation document with respect to mobile plant permits and deployments (pg22), the proposal that checks of the operator's fitness, etc and whether it is appropriately equipped to undertake the permitted work are only done once in either England and Wales highlights how important will be that all relevant parties work closely and cooperatively with the new body and *vice versa*.

Question 5. Do you agree with the proposals for the statutory consultee role? [Yes, Mainly, No] If not what would you change?

No, based on legal advice, RSPB Cymru does not agree with the proposed statutory consultee role of the new body, primarily due to the lack of information on how this process would be carried out, issues with respect to the timing or order of actions, as well as how openness and transparency will be achieved.

The consultation document makes two points on this issue. The first that the consultation requirements entailing the Body to consult with itself will not be retained <u>except</u> where such requirements stem from EU legislation. The second is that WG will require the new Body to put together and publish a "scheme" identifying circumstances where formal publication of decision documents will be required (whether or not required by other legislation).

It appears sensible that if there are going to be circumstances where the Body is not obliged to consult with itself that there will be a greater needed for transparency. Information which previously would have been set out and publicly available in responses to consultations will no longer be available if there is no consultation process between organisations. However, there is no information within the consultation document about how this will be done in practice. This information may be contained within the scheme which is due to be developed by the new Body but the consultation document does not provide us with enough information to be satisfied that this will be adequate.

Furthermore, as the scheme relates to the publication of decision documents, it means that the decision has already been taken. Subsequently, this means that interested parties, such as RSPB Cymru and others would not be able to make representations prior to or during the decision-making process, unless they were a consultee. This would also prejudice civil society's ability to bring legal actions, for example, judicial review of decisions because the first the public would learn of it would be after the decision had been taken. The issue here is the timing and order of the various aspects of the process which remove rather than deliver openness and transparency. Also see our responses to Q7 with respect to publishing permits, and Q9 with respect to public registers.

Question 6. Do you agree with the proposals to provide internal separation of decision-making, improve transparency and ensure Welsh Ministers have the opportunity to call in significant issues? [Yes, Mainly, No] If not what would you change?

No, RSPB Cymru cannot agree with this proposal because it lacks any detail about how it is to be carried out in practice and how the new Body intends to achieve genuine transparency and openness. Based on legal advice, without this further detail, we can not support this proposal.

The Seaport Investments judgment held that there is no need to designate a separate body as consultee when a body was carrying out an SEA and also a statutory consultee. However, it does state that "a functional separation [must] be organised so that an administrative entity internal to it has real autonomy" so that it is in a position to "give an objective opinion on the plan or programme...". Our legal advice is that temporary separation is not sufficient and that functional separation would need to be permanent, separately managed and separately financed departments, with permanently separate staff, administration and HR, etc (see paragraph 42 of the Seaport Investments judgment).

The proposal in the consultation document is that under the SEA Directive, and in relation to Environmental Impact Assessment and Habitats Regulation Assessment, the new Body will remain as the statutory consultee. Pursuant to the *Seaport* case, the new Body can be the designated consultee where it undertakes a plan or programme itself, provided that it has the requisite degree of internal separation. The consultation document suggests that there will be internal separation with the decision-making and statutory advice being separate from the operational delivery of the activity. However, this section provides little or no detail regarding how this will be achieved in practice. We therefore require further detail and clarity about how Welsh Ministers will achieve functional separation of the Body in order to comply with the *Seaport* case and ensure transparency.

A further, and more specific concern, is that even functional separation within the new Body would not be adequate to allow prosecutions in relation to European Protected Species licenses or SSSI issues (for which CCW currently has responsibility) to be brought, where the Body is carrying out projects which might be in breach of these offences. Therefore, we require more information with respect to this particular situation.

Question 7. Do you agree with the proposals for permitting? [Yes, Mainly, No] If not what would you change?

RSPB Cymru does not have views on each specific aspect but would refer back to our response to Q4 on cross-border cooperation as much under this section depends on robust and clear cross-border cooperation and reporting/data sharing mechanisms.

However, based on legal advice, we cannot agree with the specific proposal for the new Body to publish a "list of the permits" it has granted itself. The main concern with this proposal is that a permit would not be added to the list until after it has already been granted. This is the same issue with respect to the timings of proposals to publish a "scheme" identifying circumstances where formal publication of the decision documents will table place, which we have discussed in Q5, above. We will further repeat this concern in Q9 below with respect to public registers. Consequently, we require greater clarity and reassurance that these documents will be published before decisions are made or permits granted, etc.

We also note that to ensure that the Welsh Ministers will retain their right of "call-in" the new Body will be required to inform the Ministers of any permissions it proposes to grant itself at the earliest opportunity. Whether such a notification must be made will depend upon the criteria for publishing a decision document in the scheme discussed in Q5. Consequently this aspect requires further clarity and detail.

Finally, in issuing EPR permits, we note that currently, CCW has different determination criteria as to what is "significant" with regards to Natura 2000 sites, than that used by the EA. Consequently, it is not clear what standard will be adopted by the new body. However, under the terms of the PBA, the stronger CCW criteria will have to be applied

Question 8. Do you agree with these proposals for charging? [Yes, Mainly, No] If not what would you change?

RSPB Cymru has no views on this issue at this time.

Question 9. Do you agree with the proposals for public registers? [Yes, Mainly, No] If not what would you change?

RSPB Cymru cannot agree with the proposal for public registers.

The proposal is confusing, as it is not clear how many registers are being considered, how they relate to the list of permits (see Q7, above), the scheme identifying circumstances for the formal publication of the decision documents (see Q5+7, above), and existing obligations with respect to registers. This section needs further clarity, particularly as multiple documents are more likely to result in greater confusion, rather than greater clarity. It is not clear how these different documents relate, what they would include and how they would operate.

Furthermore, to be truly open and transparent any public register needs to be easily accessible and up to date. We are concerned that many existing registers fail either one of both of those tests. For example, Local Planning Authorities (LPAs) publish a list of plans online. However, it can be extremely difficult and time consuming to find the relevant information. And once

found, it is often not clear what action was or was not taken as the result of advice from CCW. Similarly, the requirement under the Marine & Coastal Access Act to establish a Public Register containing information on marine license applications, licences granted, and compliance and enforcement, currently takes the form of a static PDF document on the MCU website but which does not appear regularly updated.

Question 10. Do you agree that the new body should be a listed body under the Regulation of Investigatory Powers Act 2000? [Yes, Mainly, No]

RSPB Cymru has no views on this issue at this time.

Question 11. Do you agree that the new body should have powers to use civil sanctions? [Yes, Mainly, No]

RSPB Cymru agrees that he new body should have powers to use civil sanctions. In addition, we would support the extension of these powers to other functions of the new body in future.

Question 12. Do you agree with the proposals for appeal arrangements? [Yes, Mainly, No] If not what would you change?

Following legal advice, RSPB Cymru has some concerns about the appeals proposals.

The intention is for the Welsh Ministers to become the route of appeal in respect of all Welsh matters. The concern is that the intention is also for the Welsh Ministers to be consultees in respect of some matters (e.g. paragraph 6.3, pg 21: the intention to designate Welsh Government as an SEA, EIA and HRA consultee). Our legal advice is that this may create a conflict when Welsh Ministers are determining an appeal on a decision that they have contributed to *via* the consultation process. There is also the potential risk that Welsh Ministers may have a conflict in respect of their duties to their constituencies.

As a consequence, safeguards need to be included in the legislation to ensure that there are no conflicts of interest. This could be achieved *via* a requirement that the Welsh Minister who considers the appeal should not have been involved with the consultation response, and should not represent a constituency that would be directly affected by the decision. However, this requires further consideration.

Question 13. Do you agree with the proposals for cross border monitoring? [Yes, Mainly, No] If not what would you change?

RSPB Cymru is of the view that much of what is anticipated under this section is dependent on robust cross-border arrangements and reporting/data collection. Please refer to our response to Q5 for our main concerns with respect to cross-border working.

The final paragraph of this section is particularly important as there should be some kind of method of sorting out disputes without resorting to litigation even if such events would be rare. However, we are unclear as to the situation should the Welsh Minister and the UK Minister also disagree.

Question 14. Do you agree with the proposals for statutory planning and reporting? [Yes, Mainly, No] If not what would you change?

RSPB Cymru can support the proposals for statutory planning and reporting. We would note that the Secretary of State should also consult EA and the new body, before issuing a direction to an undertaker wholly or mainly in England on plans that could or are likely to impact on water resources in Wales, as well as those that clearly will impact.

Question 15. Do you agree with the proposals for Civil Contingencies and COMAH? [Yes, Mainly, No] If not what would you change?

RSPB Cymru cannot agree with these proposals unless it is clear that there will be a sufficient number of trained staff to deal with these issues. As EA will have deployed its Civil Contingencies and COMAH staff across the Agency, it is highly likely that new staff will need to be recruited and trained to fill the gap. We would suggest that in the meantime, the new body has an MOU with the EA to use their staff should an emergency occur in the interim.

Question 16. Do you agree with the proposals for UK wide arrangements? [Yes, Mainly, No] If not what would you change?

RSPB Cymru has no views on this issue at this time.

Question 17. Do you agree with the proposals for transitional arrangements? [Yes, Mainly, No] If not what would you change?

Annex 1: Background to RSPB Cymru's response on the proposed Forestry duties

1. <u>Background to RSPB Cymru's views on the Forestry 'Balancing Duty'</u>
We note that the Section 1 duties of the Forestry Act 1967, including the Section 1(3A[b]) 'balancing duty' to wildlife, landscape and historic environment conservation, cover all the duties, powers and functions of the Forestry Commission, which are detailed in the rest of this primary legislation and related forestry legislation. Section 1 of the Forestry Act is effectively the Forestry Commission's 'license to operate'.

The Section 1 duties of the Forestry Commissioners are exercised in a sustainable manner, for example by the application of the UK Forestry Standard in all of the Forestry Commission's consenting procedures for woodland planting, management, planning, felling and removal and in the operation of the state forest.

The Section 1(3A[b]) balancing duty (see below) was an amendment to the duties of the Forestry Commissioners, and hence the Forestry Commission, under the Wildlife & Countryside (Amendment) Act 1985⁴:

- 3A) In discharging their functions under the Forestry Acts 1967 to 1979 the Commissioners shall, so far as may be consistent with the proper discharge of those functions, endeavour to achieve a reasonable balance between—
- (a) the development of afforestation, the management of forests and the production and supply of timber, and
- (b) the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special interest.

The RSPB, and other environmental organisations, supported this amendment as an important step to move forestry regulation, policy and practice towards less environmentally damaging objectives and impacts.

Removing such an amendment from the Forestry Act would clearly signal a return to unsustainable forestry practices driven by primary legislation, for example a push for new plantation forestry and woodland expansion on important habitats, low biodiversity quality 'greening up' woodland expansion. It would also mean even less biodiversity in state forestry, and forestry policy, regulatory or other powers and functions currently carried out by the Forestry Commission. The sole government focus for forestry would on increasing the volume of softwood timber being produced in Wales without any check on how this was done environmentally, or inclusion of environmental and social objectives in woodland design, planning or management.

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⁴ http://www.legislation.gov.uk/ukpga/1967/10/section/1

We note that the sustainability of forestry policy, regulation and practices has improved since this important amendment to the Forestry Commissioners' statutory duties, but this has still yet to fully result in appropriate scales of biodiversity protection and enhancement in state, public and private plantation forestry, native woodland and peatland habitats. There is still further work needed by government to improve the condition of priority native woodland habitats, such as upland oakwood and fridd, work for priority species for example birds such as black grouse, wood warbler and the pied flycatcher, lichen and bryophyte communities; flowering species, e.g. spreading bellflower and bastard balm and invertebrates, including the drap looper and pearl bordered fritillary.

In addition, there is still a need to improve the regulation of forestry practices to make them more sustainable, for example by stopping the replanting of plantations on areas of important peatland habitats that are restorable, and refining the existing targeting of woodland expansion away from sensitive habitats and sites for priority species.

2. <u>Background on the Forestry Act in practice</u>

The Forestry Act 1967 was a consolidation act, incorporating a number of earlier forestry statutes, with a range of subsequent amendments (for example under the Wildlife & Countryside [Amendment] Act 1985 and the Regulatory Reform [Forestry] Order 2006). This has resulted in a complex legislative and regulatory framework for all state, public and private woodland which has been interpreted and implemented mainly by administrative convention by the Forestry Commission, rather than a comprehensive set of case law.

Examples of this administrative convention include the introduction, development and application of the UK Forestry Standard and its constituent Forest Guidelines. The UK Forestry Standard is a 'soft law' instrument that is a requirement for all of state, public and private sector forestry and woodland consenting procedures, to meet the Forestry Act 1967 Section 1(3A[b]) balancing duty and the government's European, EU and international commitments to sustainable forestry and the conservation of biodiversity.

Compliance with the UK Forestry Standard is a key element in ensuring minimum standards of sustainable forestry in the exercising of the Forestry Commissioners' powers and functions, carried out by the Forestry Commission, in felling licensing, environmental assessment, appeals, regulatory oversight by advisory committees and public consultation are carried out by the Forestry Commission (under Part 2 and Sections 37 and 38 of the Forestry Act 1967⁵, and under the Environmental Impact Assessment [Forestry] [England & Wales] Regulations 1999⁶).

⁵ http://www.legislation.gov.uk/ukpga/1967/10/contents

⁶ http://www.legislation.gov.uk/uksi/1999/2228/contents/made



Carrie Moss
Living Wales Programme Team
Department for Environment &
Sustainable Development
Welsh Government
Cathays Park
Cardiff CF10 3NQ

5th October 2012

Dear Carrie,

National Resources Body for Wales (Additional Consultation) Response from EUROPARC Atlantic Isles

EUROPARC Atlantic Isles brings together and represents the protected landscapes of the United Kingdom, including the national parks and areas of outstanding natural beauty in Wales. We are therefore pleased to have the opportunity to respond to the additional consultation on the Natural Resources Body for Wales.

Our comments relate in particular to the first four questions contained in the consultation.

Q1. Do you agree with our proposal for the duties of the body in respect of conservation and natural beauty?

The proposed wording of the duties in respect of conservation and natural beauty makes no reference to landscape (or indeed seascape), which is rather limiting. We would like to see the character and values of landscape emphasized.

With protected landscapes playing an overarching role in the stewardship of the country's natural and cultural heritage and natural resources, we feel that this significance needs to be reflected in the proposal. Protected landscapes are vital components of sustainable development and deliver enormously valuable work thanks

EUROPARC Atlantic Isles
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Company No. 5750588, Charity No: 1114189

to their integrative character and the wide range of partners with which they work. In addition, people can readily support and have belief in the benefits of protected landscapes because of their distinct character. Given the importance of landscape in achieving sustainability objectives, the role and functions of the new body in relation to protected landscapes should not be weakened or diminished in any way.

We also feel that the international dimension of the Welsh Government's commitments needs to be highlighted. In particular, the aim of the European Landscape Convention (ELC) in promoting landscape protection, management and planning should be recognised in this context. There is a further need to raise awareness of the principles of the ELC in decision-making processes as well as promoting its implementation.

In addition, there appears to be no mention of how the planning and management functions relating to the marine environment are being transferred to the new organisation. It would therefore be useful to make reference to the importance of seascapes and coastal and marine conservation.

Q2. Do you agree with the proposals in respect of public access and recreation duties?

Here we are broadly in agreement, but again there appears to be no recognition of the role of protected landscapes in the provision of public access and recreation duties, which we feel to be an omission.

Q3. Do you agree with these proposals for the high level forestry duties?

For reasons of consistency EAI would suggest that the 'balancing duty' referred to in the text on forestry be included within the body's nature conservation duties.

Q4. Do you agree with the general proposals for cross-border arrangements?

In relation to cross border work and in particular the management of natural sites there is a wide range of experience and knowledge that can be drawn on from the EUROPARC Federation. It has been active in the field of certification of transboundary protected areas for around a decade, and this expertise maybe of interest to those with responsibility for cross border work in the new body.

We hope that these succinct comments will be helpful when considering the role of the new Natural Resources Body, in particular in its relationship to landscape, and in achieving the highest possible level of duty of care for nature conservation and natural beauty interests.

Yours sincerely,

Richard Blackman

Development Adviser

lithand Bluckman

Natural Resources Body for Wales (additional consultation)

Response from Denbighshire Countryside Service

Denbighshire Countryside Service is a Local Authority based countryside management service with functions covering the areas of biodiversity, archaeology, tree management and Coed Cymru, countryside access, interpretation and education, social and community engagement and the management of the Clwydian Range and Dee Valley Area of Outstanding Natural Beauty.

We welcome this opportunity to comment on the additional consultation for the Natural Resources Body for Wales. Whilst we agree with most of the proposals, we have some comments. In addition to the answers we have provided to the questions, we would like to highlight our concern that no mention is made of the grant-giving powers of the new body. We currently depend on grants made by CCW, EA and FC to fund staff and projects, and without this source of funding our ability to fulfil our role would be severely reduced.

Another general concern is the lack of recognition in the consultation document of the existing heritage legislation and the role of CADW.

Question 1. Do you agree with our proposal for the duties of the body in respect of conservation and natural beauty? (Yes, Mainly, Not at all). If not, how would you change it?

Mainly agree.

We support the proposal to give the body a "duty to promote conservation and natural beauty across all functions of the new body". However not including pollution control and forestry functions in this means the duty would be weakened, which feels like a missed opportunity.

The possible wording for the second order: section (a) appears adequate, but the wording of section (b) "to have regard to the desirability of conserving..." is very weak and we would like to see this strengthened. The same applies to the wording of section (c) regarding the historical and cultural landscape, which are equally important aspects of our environment. There is a legal requirement to take into account any effect the proposals would have on historical features including buildings, sites and objects, under the Heritage Bill. It is important that this heritage legislation is cross referenced.

Question 2. Do you agree with the proposals in respect of public access and recreation duties? (Yes, Mainly, Not at all). If not, how would you change it?

Agree.

Question 3. Do you agree with these proposals for the high level forestry duties? (Yes, Mainly, Not at all). If not, how would you change them?

Agree.

Question 4. Do you agree with the general proposals for cross-border arrangements? [Yes, Mainly, No] If not what would you change?

Agree.

Data sharing between EA / FC in England and the new body will be key – as well as data sharing with other organisations where appropriate e.g. local records centres, Wales Biodiversity Partnership.

CCW currently has the ability to undertake research. It is important that the new body can continue to carry out research (not only that directed by the Welsh Government). This information also needs to be shared.

Question 5. Do you agree with the proposals for the statutory consultee role? [Yes, Mainly, No]
If not what would you change?
Agree.

When the role of providing advice as statutory consultees (e.g. on planning applications) moves to the new body, it is important that we retain contact with named local officers. Concerns have been raised that this access to local staff and expertise could be reduced, limited or lost in the new body. If this was to happen it would almost certainly have negative impacts on local service delivery. It is important, therefore, that a local office network is established to enable service-users convenient opportunities to discuss problems and issues.

Transparency when the new body "consults itself" is vital and we look forward to seeing the scheme identifying circumstances where formal publication of decision documents is required. We agree that decisions on plans or projects affecting a European or Ramsar site should be published.

Question 6. Do you agree with the proposals to provide internal separation of decision-making, improve transparency and ensure Welsh Ministers have the opportunity to call in significant issues? [Yes, Mainly, No] If not what would you change?

Agree.

The new body needs to remain independent from the Welsh Government.

Question 7. Do you agree with the proposals for permitting? [Yes, Mainly, No] If not what would you change?

Agree.

Question 8. Do you agree with these proposals for charging? [Yes, Mainly, No] If not what would you change? Agree.

It is important that CCW licences, e.g. protected species licences, are not charged for under the new body.

Question 9. Do you agree with the proposals for public registers? [Yes, Mainly, No] If not what would you change?

Agree.

Question 10. Do you agree that the new body should be a listed body under the Regulation of Investigatory Powers Act 2000? [Yes, Mainly, No] Agree.

Question 11. Do you agree that the new body should have powers to use civil sanctions? [Yes, Mainly, No] Agree.

Question 12. Do you agree with the proposals for appeal arrangements? [Yes, Mainly, No]

If not what would you change? Agree.

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Question 13. Do you agree with the proposals for cross border monitoring? [Yes, Mainly, No] If not what would you change? Agree.

Question 14. Do you agree with the proposals for statutory planning and reporting? [Yes, Mainly, No] If not what would you change? Agree.

Question 15. Do you agree with the proposals for Civil Contingencies and COMAH? [Yes, Mainly, No] If not what would you change? Agree.

Question 16. Do you agree with the proposals for UK wide arrangements? [Yes, Mainly, No]
If not what would you change?
Agree.

Question 17. Do you agree with the proposals for transitional arrangements? [Yes, Mainly, No]
If not what would you change?
Agree.



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The Natural Resources Body for Wales (additional consultation)

20 June 2012

SUMMARY

WWF Cymru is deeply concerned that the issues raised by us, in regard to the first order (Article 4 which is in Box 1 in this consultation), have not been addressed in the second order. In consequence, we believe this order is setting a precedent of a totally inadequate definition of sustainability, which is inconsistent with the Government's intentions for the SD Bill.

The order is giving functions and responsibilities to the Body with primary responsibility for the environment, which is inconsistent with any accepted international definition of environmental or ecological sustainability and are inconsistent with the Rio declaration, to which we are signatories through UK government.

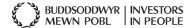
- 1. The document defines "sustainably" in the context of the purpose of the body as to "sustainably maintain, enhance and use" resources. The definition proposed includes no recognition of environmental limits, particularly any constraints on the legacy for future generations. Specifically, although it mentions benefits for the future, it has no sense of 'not compromising future generations ability to meet their needs', which is generally accepted as a crucial part of the definition of sustainable development. By not setting limits, it fails, in our opinion, to effectively define what sustainably means.
- 2. There is no recognition that Wales, its government and thus its key regulatory and delivery body has responsibilities for impacts on the environment beyond Wales' borders. There needs to be explicit recognition of this, in order to accord with the principles of sustainable development a key Government objective.

Therefore the repeated use of the phrase 'manage natural resources to deliver the best outcomes for the people and economy of Wales' needs to be tempered by the caveat that this must be achieved without shifting the burden/impact to ecosystems and people in other countries.

Further Information

Article 4 - the purpose of the Body incorporates the 'sustainably' definition - and which side-steps the use of 'sustainable development' in the purpose of this body.

In WWF's view the most worrying aspects of the purpose and of the 'sustainably' definition



are that it ignores environmental limits and, closely allied to that, loses the 'not *compromising* future generations' aspect.

The generally accepted definition of SD is the Brundtland one which states "Sustainable development is development that **meets the needs of the present without compromising the ability of future generations to meet their own needs**. It contains within it two key concepts:

- the concept of **needs**, in particular the essential needs of the world's poor, to which overriding priority should be given; and
- the idea of **limitations** imposed by the state of technology and social organization on the environment's ability to meet present and future needs."

The definition within this Order seems fundamentally to fall short of this definition. Therefore, it seems likely to be inconsistent with future Government definitions in the SD bill.

Firstly it defines sustainably as 'benefitting people, environment and economy in the present and in the future'. This is fundamentally different than providing for people's needs.

In consequence, it also loses the rigour of sustainable management having a responsibility to ensure it provides for the *needs* of people in the future.

Secondly, by only referring to benefiting people and environment in Wales, it fails entirely to embed the true concept of sustainability, which is that we have a responsibility for the sustainability of the Earth's ecosystems, resources and planetary systems.

It appears to us that this order would allow us to use resources in a way that will even be detrimental to our neighbours in England, never mind globally, It is not clear that this would be consistent with European directives.

SUMMARY

WWF Cymru is therefore not supportive of the Purpose of the Body as set out in Article 4. As regards the possible wording of the duty in respect of conservation, we believe it is very important that the recognition this gives to consistency with sustainable development is vital to temper any inadequacies into the rest of the wording of the Order in this regard. However, it would be better if this caveat applied to the whole of the order and not just the conservation duty.

	Anne Meikle
Contact	
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Date	05.10.12



EnvC 220/12

Response to the Welsh Government consultation on Natural Resources Body for Wales

5 October 2012

About Energy UK

Energy UK represents a wide spectrum of interests across the sector. This includes small, medium and large companies working in electricity generation, energy networks and gas and electricity supply, as well as a number of businesses that provide equipment and services to the industry.

We welcome the opportunity to participate in this consultation and offer the following responses to the questions raised in the consultation document.

Consultation Questions

1. Do you agree with our proposal for the duties of the body in respect of conservation and natural beauty? (Yes, Mainly, Not at all). If not, how would you change it?

Mainly agree. It is our view that, subject to the relevant legal requirements, the proposed Natural Resources Body for Wales (NRBW) must focus on the delivery of ecosystem services to both people and businesses in Wales, rather than on conservation as an end it itself. This implies a role that extends beyond that of purely reactive regulation and which includes facilitating and guiding the activities of others.

With this in mind, we propose that the aim of the NRBW is rephrased to put the emphasis clearly on the delivery of benefits from Wales' natural resources i.e.:

'To deliver benefit to the people and economy of Wales both now and in the long term through the maintenance, improvement, development and efficient sustainable use of Wales' natural resources"

In Box 1 on page 8 of the consultation document, Article 4 (1) could be amended to include "(d) used to support economic sustainability and economic development".

In Box 2 on page 11, (c) could be amended to include "(iv) to have regard to the need to reduce carbon emissions and to meet renewable energy targets".

2. Do you agree with the proposals in respect of public access and recreation duties? (Yes, Mainly, Not at all). If not, how would you change it?

We would point out that the NRBW should not compromise on public safety and should therefore act appropriately to restrict public access to potentially dangerous areas such as those under industrial development.

3. Do you agree with these proposals for the high level forestry duties? (Yes, Mainly, Not at all). If not, how would you change them?

Mainly agree. We consider that the Forestry Commission in Wales' (FCW) Wind Energy Programme (WEP) should be kept <u>outside</u> the NRBW and be managed by the Welsh Government (who are in effect landowner and beneficiary of revenue should wind farms be built on the Welsh forest estate). This would eliminate, or at least move to an 'arm's length position', the potential for conflicts of interest between the roles of landowner and environmental regulator. Should the WEP be separated from the regulatory functions of the three predecessor bodies, we would expect to see as a consequence a more 'directive' approach to the NRBW on the part of the Welsh Government to facilitate wind farm development on the forest estate and a commensurate reduction in bureaucracy.

4. Do you agree with the general proposals for cross-border arrangements? (Yes, Mainly, No). If not, what would you change?

Mainly agree. From the perspective of the power generation sector, it is essential that a consistent regulatory approach is taken in Wales as compared to the rest of the UK and that the approach should have regard to UK energy policy. As an example, applications for Environmental Permits are currently handled by a central Environment Agency (EA) team who are able to call on specialist skills, as required, from across the country. Whilst a Welsh team could clearly be set up to manage applications for installations in Wales, it is essential that the determination of them is carried out in a consistent manner and that the expert skills currently available to the EA remain available to the NRBW. Similarly, the regulation of power stations by the EA is currently being co-ordinated by a Sector Group of Site Inspectors who are able to work together across England and Wales to ensure a consistent approach and also to foster best practice. This Group also works with the sector on the implementation of new legislation, such as the Industrial Emissions Directive. In our opinion, it is essential that these activities continue to be co-ordinated consistently after the establishment of the NRBW and that, should a separate approach be needed in Wales in the future, the NRBW, the EA and industry understand where responsibility lies. It may even be possible for service level agreements to be established between the NRBW and service centres within the EA for Environmental Permitting and the administration of EU Emissions Trading Scheme (EUETS) permits.

5. Do you agree with the proposals for the statutory consultee role? (Yes, Mainly, No). If not, what would you change?

Mainly agree. Appropriate, reasonable timescales for the consideration and analysis of projects, consultation responses and the determination of consent and permit applications by the NRBW must be clearly prescribed and adhered to. In the case of major applications, this applies as much to each of the main stages of the determination process as to the final decision. Current experience is that where there are statutory timescales laid down, they are frequently not adhered to.

A key part of the focus of the NRBW on delivery, which we advocate, must be to deliver the NRBW's input to consent processes to the prescribed timescales. Where additional time is genuinely needed, this should be agreed with the developer and other interested parties at the outset and adhered to thereafter.

Stakeholder management and engagement is key, and it would be helpful for developers to have a single point of contact in the NRBW.

We agree that the Welsh Government should identify circumstances in which decision documents would be required. However, we would also expect that if any internal consultation is required between particular functions within the NRBW, then those consultation processes should be designed with transparency of decision-making in mind. If a transparent and auditable process were adopted, even in the cases of simple approvals, this would cut down the administration of requests under Freedom of Information from stakeholders who may ultimately be unhappy with the outcome of an application.

6. Do you agree with the proposals to provide internal separation of decision-making, improve transparency and ensure Welsh Ministers have the opportunity to call in significant issues? (Yes, Mainly, No). If not, what would you change?

No. As noted in our response to Question 3, we consider that the Forestry Commission in Wales' (FCW) Wind Energy Programme (WEP) should be kept <u>outside</u> the NRBW and be managed by the Welsh Government (who are in effect landowner and beneficiary of revenue should wind farms be built on the Welsh forest estate) as this would eliminate, or at least move to an 'arm's length position', the potential for conflicts of interest between the roles of landowner and environmental regulator. Should the WEP be separated from the regulatory functions of the three predecessor bodies, we would expect to see as a consequence a more 'directive' approach to the NRBW on the part of the Welsh Government to facilitate wind farm development on the forest estate and a commensurate reduction in bureaucracy.

For other aspects, we support proposals that ensure Welsh Ministers have the opportunity to call in significant issues.

7. Do you agree with the proposals for permitting? (Yes, Mainly, No). If not, what would you change?

We strongly support the intention to align standard rules for Welsh permits with those for England.

We also strongly support the proposal that licences for waste carriers and brokers should continue to be valid across borders between England and Wales. Failure to implement this approach would undoubtedly lead to an additional burden on industry in administration and governance over duty of care requirements.

8. Do you agree with these proposals for charging? (Yes, Mainly, No). If not, what would you change?

Mainly. We note that transition arrangements will be included to allow all EA charging schemes as at 1 April 2013 to continue for the life of the current approved charging scheme. However, our response is based on the expectation of full and inclusive consultation on any further proposed charging schemes, and appropriate and due consideration of our responses to those consultations.

9. Do you agree with the proposals for public registers? (Yes, Mainly, No). If not, what would you change?

We support the view that the proposals for public registers should be transparent and we would welcome clarity on principles as to how the actual arrangements will be determined on a case by case basis. We strongly support a consistent approach across all parts of the UK.

10. Do you agree that the new body should be a listed body under the Regulation of Investigatory Powers Act 2000? (Yes, Mainly, No)

Yes. This approach is the best way of ensuring continued consistency across England and Wales.

11. Do you agree that the new body should have powers to use civil sanctions? (Yes, Mainly, No)

Mainly. There is little evidence of civil sanctions having achieved any notable improvement in environmental performance over the period in which they have been in place. We would therefore suggest that the scope of the review proposed after 12 months should include consideration of whether these powers should continue to be available to the NRBW.

Any use of the powers must have regard to the better regulation principles of transparency, consistency, proportionality and targeting – we would expect significant detail about how and when civil sanctions will be sought and what governance arrangements the NRBW will put in place to monitor and review this.

12. Do you agree with the proposals for appeal arrangements? (Yes, Mainly, No). If not, what would you change?

No. The proposed change is potentially important for operators who may be making significant investments, such as power stations, in Wales. As such, the consultation document does not provide sufficient detail or justification for the proposed change, nor consideration of the risks and benefits. We would like to see this proposal considered in more depth.

13. Do you agree with the proposals for cross border monitoring? (Yes, Mainly, No). If not, what would you change?

Yes. The proposal is a pragmatic approach to addressing this issue.

14. Do you agree with the proposals for statutory planning and reporting? (Yes, Mainly, No). If not, what would you change?

Mainly. This proposed approach on cross-border River Basin Management Plans is potentially very important and further consideration needs to be given to how any difference in approach between the NRBW and the EA would be handled (e.g. quality standards in a downstream EA-managed section of river may only be achievable through close co-operation and agreement with the relevant upstream NRBW-managed section.)

15. Do you agree with the proposals for Civil Contingencies and COMAH? (Yes, Mainly, No). If not, what would you change?

Yes. From the perspective of the power generation sector, it is essential that a consistent regulatory approach is taken in Wales as compared to the rest of the UK with regard to COMAH. Energy UK members would like to emphasise the critical importance of the need for those personnel required to perform site inspections and permitting functions to have the necessary knowledge, expertise and competence to support the functional requirements of the role.

16. Do you agree with the proposals for UK wide arrangements? (Yes, Mainly, No). If not, what would you change?

Yes. We strongly support the intention to continue with the administrative aspects of arrangements for schemes where the EA has a statutory function or a service function on a UK basis. To do otherwise

would add unnecessarily to the complexity and cost of regulatory compliance. Our response is on the assumption that other schemes where these functions are also applicable, such as the Transitional National Plan component of the Industrial Emissions Directive, Eels Regulations and the UK Technical Working Group participation in the Large Combustion Plant BREF Review, are also included within the scope of the proposals.

17. Do you agree with the proposals for transitional arrangements? (Yes, Mainly, No). If not, what would you change?

Yes. We strongly support the intention to define transitional arrangements which will ensure that decisions taken by the existing bodies will continue to have effect, and that permits, agreements, contracts and so on will continue as if the NRBW was the original body.

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CRAGEN Llŷn a Môn

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Cragen Llŷn a Môn response to the consultation on new Single Body (NRBW) for the environment in Wales

October 5th, 2012

Dear Ms Moss

We welcome the opportunity to contribute to the process setting up the new Single Body, and are pleased to have the opportunity to bring forward our concerns about the future direction of environmental policy in Wales.

We are happy to see that the purpose of the new body is to ensure that the environment and natural resources of Wales are sustainably maintained; sustainably enhanced; and sustainably used. We are also happy to see that "sustainably" is defined as (i) with a view to benefitting; and (ii) in a manner designed to benefit, the people, environment and economy of Wales in the present and in the future; and that "environment" includes, without limitation, living organisms and ecosystems. We believe that in the past an emphasis solely on the environment (despite existing duties to consider socio-economic impacts) has led to a corresponding failure to consider the impact of conservation measures upon local communities and individual stakeholders, and on their economies, traditional culture and way of life. The new body provides a once-in-a-lifetime opportunity for a change in this attitude, and to ensure that all three aspects of sustainable development, environment, economy and society, are given equal weight in policy, something that has been lacking in the actions of in particular CCW in the past.

Above all, and based upon previous experience, the new Single Body needs to be accountable at the local, grass-roots level, with external, lay, oversight along the lines of the BBC Trust or a beefed-up Community Health Council as it used to be. Such an overseeing Body needs to be seen as a critical friend, one that the public feels comfortable to deal with. As such, it would require Welsh Government funding, but this would be in the interest of both the new Single Body and, more widely, of the Welsh Government itself.

We give a detailed response to the questions below, concentrating on Part 1 of the Consultation.

Dr Philip Hollington

Vice-Chair

Question 1. Do you agree with our proposal for the duties of the body in respect of conservation and natural beauty? (Yes, Mainly, Not at all).

If not, how would you change it?

We note the intention that bringing together the conservation and natural beauty duties will protect, and if possible strengthen the work undertaken by the body to promote and protect conservation features and natural beauty in a way that does not impose new regulatory burdens on industry or on operational forestry.

In the main we agree with this, but we consider that it is not strong enough with regard to stakeholder representation, or on the need to consider impacts on local communities, language and culture. It is essential that local interests are taken account of in the decision-making process and, ideally, that stakeholders are consulted from the beginning of any such process.

We note the existing duty on the Forestry Commission to endeavour to achieve a reasonable balance between the development of afforestation, the management of forests and the production and supply of timber with the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special interest. We agree that such a "balancing duty" should be included for the new body, and the wording of the Order needs to ensure that this includes the development of sustainable fisheries policy, and of sustainable management for the hills, uplands and agricultural land in Wales.

It is important that this is not solely a paper exercise. For example, CCW already has a duty to have regard to the social and economic interests of communities in rural areas, but this often carries less weight than their conservation and natural beauty duties.

Question 2. Do you agree with the proposals in respect of public access and recreation duties? (Yes, Mainly, Not at all). If not, how would you change it?

We agree with the proposals in this section.

Question 3. Do you agree with the proposals for the high level forestry duties? (Yes, Mainly, Not at all). If not, how would you change them?

Yes, we agree with these proposals. Our preferred option is to retain the balancing duty within the new body. We also believe that similar balancing duties to those proposed for forestry should be included for sustainable fisheries management, and for sustainable agriculture (land management), in order to achieve a reasonable balance between the development and management of land and fisheries resources and the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special interest on agricultural land and on the seas and coasts.

Question 4. Do you agree with the general proposals for cross-border arrangements? [Yes, Mainly, No] If not what would you change?

Yes, we agree with the general proposals for cross-border arrangements

Question 5. Do you agree with the proposals for the statutory consultee role? [Yes, Mainly, No] If not what would you change?

It is important that the wording of the order ensures that, when NRBW is a statutory consultee, it responds only as itself, and does not contribute to the responses of other organisations, for example, NATUR. This duty needs to be explicit, and to apply to the organisation as well as to its staff and to its governing body. Membership, by the NRBW, staff (including family links) or governing body, of any bodies or organisations which may cause the perception of a conflict of interest in such circumstances should be declared both

in the consultation response, and on the NRBW's website, and there should be clear guidance to staff and council members of the serious consequences for evading a declaration.

We are also clear that the new Body should have a duty to consult with the Welsh Government Fisheries Department when it proposes any actions, or responds to any consultations, concerning marine matters, and indeed with any affected WG Department when there may be a common interest. This has clearly not happened with the HPMCZ consultation.

Question 6. Do you agree with the proposals to provide internal separation of decision-making, improve transparency and ensure Welsh Ministers have the opportunity to call in significant issues? [Yes, Mainly, No] If not what would you change?

We strongly agree with the proposals for transparency, and for publication of decision documents, and that this scheme and its operation should be subject to Ministerial scrutiny. However, they do not go far enough. Given the low weighting to local ecological knowledge by the existing organisations, and of the effects of policies on local livelihoods, communities and culture, we believe the entire decision-making process of the new body should also be subject to independent, lay, scrutiny by a body similar to the old Community Health Trusts or the BBC Trust. Individuals or groups adversely affected by decisions of the Single Body should be given the right to appeal to such bodies. It should be explicit within the Standing Orders of the new body that staff and Council members are bound by the "Nolan Rules", and the overseeing body should have this as part of its remit.

We also have a great deal of concern about conflicts of interest, actual, potential or perceived, and with the wider remit of the new body the potential for such conflicts of interest is increased. Many staff, at all levels of for example CCW, are also members of conservation charities, and senior staff are members of NATUR. Where CCW is a statutory consultee these staff should not contribute to the consultation responses of the other organisations.

Recently there has been at least one instance where a statutory agency has funded a single-issue lobbying group to promote a controversial policy advocated by that agency. There have been many instances of funding conservation charities, which funding often constitutes hundreds of thousands of pounds. Presently it is hard to judge whether this use of public money is fully in the public interest, what goods and services are obtained, and what level of value for money is achieved.

The NRBW should review the grant award processes currently extant, and in future should ensure a fully transparent grant application process and that all funding decisions are based on high-quality, evidence-driven proposals. They should ensure the criteria for decisions on grant awards are published and that the reasons for awarding funding to a particular proposal are available.

Questions 7 – 17: We agree with these proposals, and have no comments to add



5 October 2012

Carrie Moss
Living Wales Programme Team
Department for Environment and Sustainable Development
Welsh Government
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Cardiff CF10 3NQ

By email

Natural Resources Body for Wales (additional consultation)

ScottishPower Renewables (SPR) is an energy company with a remit for developing and operating renewables assets and supplying electricity. SPR is the largest operator of onshore windfarm assets in the UK and the UK's leading developer with over 1,300MW of consented projects and a large pipeline of future projects, with offshore wind, wave and tidal renewable energy projects becoming increasingly significant. In Wales, we own and operate (in partnership with Eurus Energy) the Penrhyddlan and Llidiartywaun Windfarm and are currently seeking to repower this site and to develop two new large onshore windfarms. We therefore welcome the opportunity to feed into this consultation process.

SPR has already welcomed in principle the merger of the FCW, CCW and EA Wales into a single environment body, as this should lead to a better coordinated and more focussed delivery of the sustainable development policies of the Welsh Government.

While SPR understands the limitations imposed by the Public Bodies Act 2011, we believe that all measures taken in creating the single environment body should be with a view to creating a new body with a primary duty of delivering the Welsh Government policy on sustainable development.

Our specific comments are as follows

Question 1. Do you agree with our proposal for the duties of the body in respect of conservation and natural beauty?

It is the view of SPR that some of the proposals in this section fail to address the wider and longer term issues that affect the environment, the economy and the people of Wales.

In particular we would make the following observations.

4.1 Purpose and cross cutting duties

We note and support the intention in section 4.1 that "the body should interpret its duties and use its powers to benefit the people, environment and economy of Wales" in the hope that this will lead to balanced decisions which will more fully take into account long term social, environmental and economic benefits of action to mitigate climate change than the current decision making process, especially within CCW, where



parochial short term protection of the environment is favoured over longer term and wider benefits .

Question 1. Do you agree with our proposal for the duties of the body in respect of conservation and natural beauty.

It is the view of SPR that some of the proposals in this section fail to address the wider and longer term issues that affect the environment, the economy and the people of Wales.

In particular we would make the following observations.

The purpose to "promote conservation and natural beauty" while worthy, is rather ill defined, somewhat dated, and very narrow compared with furthering sustainability in its widest and proper sense. It can be contrasted with the duties of Scottish Natural Heritage (SNH) which are more geared towards **improvement** and **sustainable use** as opposed to **conservation**.

SNH's purpose as described on their website is to

- promote care for and improvement of the natural heritage
- help people enjoy it responsibly
- · enable greater understanding and awareness of it
- promote its sustainable use, now and for future generations.

Box 2. Possible wording for the second order

SPR is therefore concerned with the wording as proposed in Box 2, especially at paragraph (c) (ii), namely "to take into account any effect which the proposals would have on the beauty, or amenity of any rural or urban area, or on such flora, fauna, features and buildings, sites or objects."

CCW responses we have had on development proposals take a short term narrow view, and do not balance long term widespread benefits against short term, local effects. This approach is frustrating action to mitigate climate change and economic growth. The proposed wording would do little to improve this situation.

Likewise the wording at (c)(iii) "to have regard to any effect which the proposals would have on the economic and social well-being of local communities in rural areas" fails both to take account of the potential longer term adverse impacts of inaction, and completely fails to address wider economic issues as they affect the economy at a regional or Welsh scale – for example the economic benefits of renewable energy and specifically onshore windfarms. This runs counter to the position of the Welsh Government as expressed in Energy Wales: a low carbon transition, which seeks to maximise economic benefits for Wales and its communities.

This view is borne out be our experience to date, that CCW adopts a very short term and narrow view, failing to balance long term widespread economic and environmental benefits against short terms, local effects. Currently, CCW seems focussed heavily on specific issues, at the expense of the urgency of large scale climate mitigation as set out in National Policy Statements.

Question 2. Do you agree with the proposals in respect of public access and recreational duties?



SPR does agree with these proposals. Our experience in Scotland is that onshore windfarms can provide an excellent space for public access and recreation, and that these locations can be integrated with wider access and recreation strategies.

For example, public access at Whitelee Windfarm is positively encouraged and funded by SPR, through a dedicated ranger service run be East Renfrewshire Council. The over 90km of paths and tracks on site are integrated into the core path networks for the three surrounding local authorities and onsite provision of clearly marked routes, viewpoints and interpretation has proved very popular with walkers, cyclists and horse riders. Exact figures are not available due to the large area involved, but along with the numbers visiting the onsite Visitor Centre, conservatively we estimate that between 150,000 and 200,000 visits to the site are made each year. East Renfrewshire Council regard this site a major access and recreation resource which is used to promote the area to a range of audiences.

We would therefore look forward to working with the new body to maximise public access and recreation opportunities at our operational sites.

Question 3. Do you agree with these proposals for high level forestry duties?

SPR supports these proposals. We would also observe that given the major strategic role that the inheritor of FCW will play in delivering the renewable energy aspirations of the Welsh government, and the considerable financial benefits that will thus accrue to the people of Wales, it would be logical to reflect this in the duties of the new Body.

Indeed, we are slightly concerned that any reference to this vital area is missing from the consultation document. FCW, though its Wind Energy Project (WEP) has a large team set up within FCW whose objective is to deliver wind energy projects on Welsh Ministers' land in line with National policy and targets. In order to inspire investor confidence, we would like to see a clearer link between the duties of the new body and delivery of the objectives of the WEP.

Question 4. Do you agree with the general proposals for cross-border arrangements?

Yes

Question 5. Do you agree with the proposals for the statutory consultee role?

Yes, but we would refer to our answers on Question 1 and the overly restrictive approach adopted by CCW in this respect, and hope that creation of the new body provides an opportunity for a more balanced and forward looking approach.

If the main purpose and duties of the new body are correctly set out at this stage, then we would envisage a body that could work constructively with the renewable energy sector to help build a more sustainable Wales, with enhanced opportunities for education about and understanding of the environment of Wales, and improved access to the countryside for a wide range of users.

SPR has no further comments to offer and is generally supportive of the administrative proposals.

I hope these comments are of use and please feel free to contact me on 0141 568 2183, or at martin.mathers@scottishpower.com should you require any additional information.

Yours sincerely,



Martin Mathers Onshore Policy Manager From: Communications **Sent:** 05 October 2012 15:00

To: SEB mailbox

Subject: Natural Resources Body for Wales (additional consultation) response form

Page used to send

this email:

/consultations/forms/singlebodyresponse2/

Responses to

consultations may be made public - on the

internet or in a

report. If you would (Unchecked)

prefer your response

to be kept

confidential, please

tick here:

Your name:

Organisation (if applicable):

Llais y Goedwig

Email / telephone

number:

info@llaisygoedwig.org.uk

Question 1: Do you agree with our proposal for the duties of the body in

respect of

conservation and natural beauty?:

If not, how would you change it?:

Question 2: Do you agree with the proposals in respect of public access and recreation duties?:

If not, how would you change it?:

Question 3: Do you agree with these proposals for the high level forestry

duties?:

If not, how would you change them?:

Question 4: Do you agree with the general proposals for cross-border arrangements?:

If not what would you change?:

Question 5: Do you

agree with the proposals for the statutory consultee role?:

If not what would you change?:

Question 6: Do you agree with the proposals to provide internal separation of decision-making, improve transparency and ensure Welsh Ministers have the opportunity to call in significant issues?:

If not what would you change?:

Question 7: Do you agree with the proposals for permitting?:

If not what would you change?:

Question 8: Do you agree with these proposals for charging?:

If not what would you change?:

Question 9: Do you agree with the proposals for public registers?:

If not what would you change?:

Question 10: Do you agree that the new body should be a listed body under the Regulatory Investigatory Powers Act 2000?:

Question 11: Do you agree that the new body should have powers to use civil

sanctions?:

Question 12: Do you agree with the proposals for appeal arrangements?:

If not what would you change?:

Question 13: Do you agree with the proposals for cross border monitoring?:

If not what would you change?:

Question 14: Do you agree with the proposals for statutory planning and reporting?:

If not what would you change?:

Question 15: Do you agree with the proposals for Civil Contingencies and Control of Major Accident Hazards (COMAH)?:

If not what would you change?:

Question 16: Do you agree with the proposals for UK wide arrangements?:

If not what would you change?:

Question 17: Do you agree with the proposals for transitional arrangements?:

Mainly

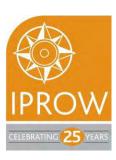
If not what would you change?:

These transitional arrangements only refer to contracts and the like. This is understandable as the Order can only refer to legal agreements. However, we wish to point out that there are a great many other understandings which the three organisations have with communities and 3rd sector organisations. These should also be protected during transition and some assurances given to partners that their contribution to delivery of services has been appreciated and what to expect in terms of the continuation of their relationship with FCW and CCW into the NRB. This is especially urgent for organisations (including Llais y Goedwig) which receive funding from FCW on a year-by-year contracts. These are usually negotiated around this time of year and so far there has been no communication on whether there is even the possibility of a contract for 2013-14. The ethos of transition appears to be continuation of the status quo at least for 2013-14 which implies the possibility of contracts for next year. Is this the case? If so partners should be informed and appropriate provision made in the NRB business plan for 2013-14.

Question 18: If you have any related

issues which we have not specifically addressed, please use this space to report them:

IPROW PO Box 222, Penrith, CA11 1BL iprow@iprow.co.uk



4th October 2012

To Carrie Moss
'A Living Wales' Programme Team
Department for Environment and Sustainable Development
Welsh Government
Cathays Park
CF10 3NQ

SEB@wales.gsi.gov.uk

Dear Chairman,

Ref: Natural Resources Body for Wales (additional consultation)

I am writing on behalf of the Institute of Public Rights of Way and Access Management (IPROW) in response to the Natural Resources Body for Wales additional consultation. IPROW is the professional body representing individuals involved in the management of public rights of way and other access in England, Wales, Scotland and Northern Ireland, principally as local government officers.

IPROW believes that a safe, well maintained and attractive public rights of way network, should perform many functions, which include, but stretch beyond transport, leisure and recreation. It also provides communities with opportunities to sustain and improve their health and well-being, sustains tourism, providing economic opportunities for regeneration and provides the principal means by which the special landscapes, culture, history and biodiversity of Wales can be appreciated and enjoyed. CCW have been instrumental in assisting such works in the past through grants to local authorities and have encouraged such joined-up thinking through the development and implementation of Rights of Way Improvement Plans. Wales has a particular problem with obesity and therefore the opportunity should not be missed to ensure that the new body reflects the importance of maintaining and improving access to the countryside for health and well-being. This connection is currently lacking in the main duties of the new agency. Furthermore many routes through the countryside provide sustainable walking and cycling trips. The Active Travel Wales Bill will seek to increase walking and cycling and this is one of the main objectives of the Welsh Government. It is therefore important that the new environmental body also encompasses this vision and enables this to happen by also acknowledging this role of countryside access and their part in it.

The comments of IPROW to the specific questions asked in the consultation are:

Question 1. Do you agree with our proposal for the duties of the body in respect of conservation and natural beauty?

Yes, it should be noted that presently CCW is also responsible for mapping and reviewing access land and has duties regarding National Trails.

Question 2. Do you agree with the proposals in respect of public access and recreation duties?

Yes, we welcome the proposal to actively promote access and recreation through its operational activities, and to have regard to the desirability of preserving freedom of access, in its regulatory functions. But these must be widened to include the benefits of providing access for health and well-being and sustainable transport.

Question 3. Do you agree with these proposals for the high level forestry duties?

No, access should be given priority over forestry works, where it can be shown that local economic benefit, health and well-being of the public are affected.

Question 4. Do you agree with the general proposals for cross-border arrangements?

Yes, but it is unclear what is happening with regards the Offa's Dyke National Trail.

Question 5. Do you agree with the proposals for the statutory consultee role?

Yes.

Question 6. Do you agree with the proposals to provide internal separation of decision-making, improve transparency and ensure Welsh Ministers have the opportunity to call in significant issues?

Yes.

Question 7. Do you agree with the proposals for permitting?

Yes.

Question 8. Do you agree with these proposals for charging?

Yes.

Question 9. Do you agree with the proposals for public registers?

Yes.

Question 10. Do you agree that the new body should be a listed body under the Regulation of Investigatory Powers Act 2000?

Yes.

Question 11. Do you agree that the new body should have powers to use civil sanctions?

Yes, where appropriate.

Question 12. Do you agree with the proposals for appeal arrangements?

Yes (What about Public Inquiries for modification orders?).

Question 13. Do you agree with the proposals for cross border monitoring?

Yes.

Question 14. Do you agree with the proposals for statutory planning and reporting?

Yes.

Question 15. Do you agree with the proposals for Civil Contingencies and COMAH?

Yes, this is a sensible approach.

Question 16. Do you agree with the proposals for UK wide arrangements?

Yes.

Question 17. Do you agree with the proposals for transitional arrangements?

This will be a difficult process and we therefore agree with the proposal. However, we would question what the process would be where there are conflicting obligations within the body to settle such matters (i.e. coastal path and conservation, or new access proposals where there is forestry) during the transitional period? Who will ensure a fairly applied and consistent approach across the country during the transition?

CCW have been able to actively engage and support forums and groups, such as The Wales Rights of Way Managers Working Group (WROWMWG) and Welsh National Access Forum in the past, for which IPROW is very grateful. We hope that the new body will continue to do so and we look forward to actively working with it in the future.

I trust these comments are of assistance in the development of the new Agency.

Yours Sincerely

Richard Cuthbert

IPROW President

Institute of Public Rights of Way & Access Management Ltd (IPRoW)

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Serydliad Rheolaeth Cern Gulad a Chaduraeth Cymru Welsh Institute of Countryside and Conservation Management

NATUR is the professional institute for all those who manage, conserve and promote the living and cultural environment of land and sea in Wales

Response to the Welsh Government consultation: 'Natural Resources Body for Wales (additional consultation)'

Carrie Moss
'A Living Wales' Programme Team
Department for Environment and Sustainable Development
Welsh Government
Cathays Park
CF10 3NQ

SEB@wales.gsi.gov.uk

5th October 2012

4.1.1 Natural beauty and nature conservation duties (pages 9-11)

Question 1. Do you agree with our proposal for the duties of the body in respect of conservation and natural beauty?

Answer option "Not at all"

How would we change it

<u>Page 9</u> 4th para (Heading The intention)states ... "and if possible strengthen the work undertaken by the body to promote and protect conservation features and natural beauty, but to do that in a way that does not impose new regulatory burdens on industry or on operational forestry."

We advise that a new body setting out with such discrimination in favour of certain sectors is likely to fail to achieve its overall objectives. There needs to be a balanced holistic view taken of the environment probably by application of the Ecosystem Approach as outlined in the recent WG Environment Green Paper consultation. There may be a good reason and need to regulate industry /forestry in a different way in the future to benefit the people, environment and economy of Wales.

NATUR, PO Box 62, Llandeilo, SA19 0AH

Ffôn/Phone: 07837 419995 E-bost/E-mail: mo@natur.org.uk

www.natur.org.uk

We do not agree at all with your preferred option to ensure that the new body would continue to be subject to the Forestry 'balancing duty' in section 1(3A) of the 1967 Forestry Act. In our opinion and experience the application of this balancing duty on the ground to date has not worked as well as it should have, to safeguard the interests of people, the environment and long term economics.

We are concerned that the current bias and discrimination towards forestry and industry in WG proposals will make it very difficult for staff working in the new body to try to achieve positive management of the totality of the Welsh environment. Additionally it is not always clear what are forestry functions and what are conservation functions as FCW woodland grants have long insisted on commercial planting densities for what are conservation planting schemes.

For example with the current 'balancing duty' a target for afforestation can result in pressure to; plant trees where they damage the environment (ecology and natural beauty); to plant too densely at 'commercial stocking' densities which can also be damaging and; to not remove conifers where they are currently damaging other ecosystems.

We are concerned that priority is being given to forestry and woodlands over other important habitats.

We advise that WG follow the "alternative approach" [described in para 6 line 2 of page 10 of the consultation document]" that the balancing duty would cease to apply, but the duty to have regard to the desirability of nature conservation in section 7(1)(b) of the 1995 Act would apply". Wording would then be as below:-

..any proposals relating to the forestry functions of the body, to have regard to the desirability of conserving and enhancing natural beauty and of conserving flora, fauna and geological or physiographical features.

We do not agree at all with the wording in Box 2 page 11 where forestry functions (need precise definition) under the Forestry Acts 1967-1979 are exempt from a conservation duty merely relying on the 'balancing duty' above.

Mike Alexander

Executive Director NATUR



<u>A Living Wales – a new framework for our environment,</u> <u>our countryside and our seas</u>

RESPONSE FROM THE COUNTRY LAND AND BUSINESS ASSOCIATION

Introduction

- Most of the 4,000 members of the Country Land & Business Association (CLA) in Wales are by definition rural landowners.
- Our members are particularly interested in the issues affecting rural areas as land managers who are ultimately responsible for the stewardship and management of those areas. It is these rural businesses which provide the countryside management that maintains the rural environment in the form we all recognise and treasure.
- The rural land management sector has one attribute that no other sector of the
 economy can claim. Rural land managers produce major positive environmental
 impacts. As well as producing environmental goods, land managers have the
 capacity to take actions to mitigate or reduce the negative effects on the environment
 caused elsewhere.

Overarching comment

The CLA has reservations about the current business plans. Work going forward has not gone far enough in ensuring that the service the new body delivers will facilitate landowners, farmers and rural businesses to be allowed to grow in a sustainable manner and to encourage a vibrant rural economy rather than stifle it.

We need to see the creation of a new body that streamlines the service currently provided to our members, whilst at the same time saving on administration costs for landowners and farmers. The quickest way for this organisation to fail on delivering its objectives would be to have a board that is completely environmentally focused without a balanced view on sustainable land management and rural enterprise.

The answers given below are all subject to continued discussion and negotiation with the private sector as situations and questions arise and develop. The questions in this consultation are very simplistic and theoretical. It is imperative that we are able to continue making representations as issues and problems come to light.

Question 1.

Broadly speaking the CLA agrees with the proposals for the duties of the body. However the impact of the functions and activities of the new body on the economic and social well-being of local communities in rural areas should be at the forefront of the second order. It is currently not given sufficient priority.

Question 2.

This section states that the proposals would extend access and recreation duties to forest land and expand the geographic extent of powers as compared with current arrangements. In the wording for the second order under the access section it refers to making further provisions for water and associated land available for recreation under the Environment Act 1995.

It is absolutely imperative that this new body does not embark on trying to reinstate longforgotten paths. The priority has to be focusing resources on maintaining and improving existing rights of way.

The CLA need to be at the very forefront of the discussions surrounding the new bodies agenda on public access.

Question 3.

The CLA are generally happy that the powers and duties of the Forestry Commission pass to the new body. CLA's preferred option would be to ensure that the body continues to be subject to the balancing duty in section 1(3A) of the 1967 Act. It is imperative that the focus remains on the production of timber in Wales to strengthen the industry and ensure that it is competitive and sustainable into the future.

CLA are concerned that most of the focus to date seems to be concentrated on conservation and public enjoyment of the Forestry Commission woodlands. We believe that forestry and timber enterprises in Wales have great potential for growth and we expect the new body to be at the forefront of promoting this commercial industry.

CLA Wales has no objection to extending access and recreation duties to PUBLICLY OWNED forest land, as this is in effect the current situation with high levels of public use of the FCW managed estate. However, the order must make absolutely clear that it is referring to public owned land only and not to all forest land in Wales. Private woodland owners are not prepared to grant access in this way.

Question 4.

Yes, we would like to see a common sense approach taken in dealing with cross border issues.

Question 5.

Yes, transparency is very important.

Question 6.

Mainly, however, we believe that there should be additional independent scrutiny, not just from Ministers call in powers, to look at any permission's that the body may grant itself. This may be provided by an independent scrutiny panel.

Question 7.

Yes, we favour a common sense approach

Question 8.
Yes
Question 9.
Yes
Question 10.
Yes. It will be useful to discuss further any extended uses that may wish to be made of this
Question 11.
Yes, again we would like further discussion on any extended use of these.
Question 12.
Yes
Question 13.
Yes, we favour a common sense approach
Question 14.
Yes
Question 15.
Yes
Question 16.
Yes
Question 17.
Yes
Date: 5 th October 2012
Contact:-
Ben Underwood Director Wales CLA ben.underwood@cla.org.uk

Sue Evans Director of Policy Wales CLA sue.evans@cla.org.uk



A UK company of E.ON and RWE

RESPONSE TO WELSH GOVERNMENT ADDITIONAL CONSULTATION ON NATURAL RESOURCES BODY FOR WALES

Introduction

- Horizon Nuclear Power is a 50:50 joint venture between E.ON and RWE, formed in January 2009. On 29 March 2012 E.ON and RWE announced that they no longer intended to pursue nuclear new build in the UK, and that they were seeking new ownership for Horizon. Whilst at the time of this submission the sale process is still in progress, Horizon remains a going concern with plans in development to deliver around 6GW of new nuclear capacity at Wylfa and Oldbury.
- 2. We welcome the opportunity to respond on the matters raised in this consultation.
- 3. We wholly support the creation of a Natural Resources Body for Wales (NRBW) as a significant step towards securing an integrated approach that delivers a high level of environmental protection for Wales. Our primary interest is around the delivery of major infrastructure projects such as our proposed new nuclear power station at Wylfa and its associated development.
- 4. In Horizon's response to the initial consultation on this matter, we highlighted a number of issues where we felt that further detail and clarity was needed. In part these points have been addressed by the additional consultation and we are grateful for these clarifications. However, there remain significant areas raised in our initial response, where further detail and clarity is still needed.
- 5. As raised in our previous submission, we believe there is a pressing need for far greater clarity over the transitional arrangements from the existing bodies to NRBW. We believe that it is important to avoid unintended delays and barriers to infrastructure projects, which could be brought about by uncertain or delayed transition arrangements. These include a range of issues, from the practical formation of the body, ensuring the ongoing validity of pre-existing frameworks for decisions made, securing adequate resources for the new body from often limited pools of expertise and managing cross-border issues.
- 6. Also as raised in our earlier consultation response, we believe that further detail is required on how NRBW will manage its resources both in terms of finance and personnel. Appropriate expertise can be limited especially in highly specialised sectors and we would welcome more detail on the governance frameworks under which the NRBW will pool resources with other bodies such as the Environment Agency, and the support mechanisms planned to facilitate this. To ensure smooth transition and maximum benefit, we believe it is important that developers are able to engage fully with the NRBW as early in the transition process as possible.
- 7. Given the complexity and level of detail of the matters necessary to deliver the effective transition to NRBW, Horizon would welcome the opportunity to participate in further consultation activities such as workshops and seminars on areas of specific detail.

Do you agree with our proposal for the duties of the body in respect of conservation and natural beauty? (Yes, Mainly, Not at all). If not, how would you change it?

- 8. We have some concerns over the practical working relationship between NRBW (which will retain the duty under the Habitats Regulations as currently discharged by the Countryside Council for Wales (CCW) and the regional EA office) and the EA, regarding emissions of radioactivity to the natural environment.
- 9. The consultation document clearly relates to UK-designated sites of conservation value with no mention of European Sites (special protection areas (SPA), special areas of conservation (SAC), Ramsar or marine designations). Whilst it is accepted that the duties to protect

European sites rests with CCW, and will therefore move into NRBW, this is not the case for radiological emissions.

- 10. Under the Habitats Regulations, the Environment Agency currently has obligations to review relevant existing as well as new or varied authorisations, permits, consents, licences and permissions to ensure that no EA-authorised activity or permission results in an adverse effect, either directly or indirectly, on the integrity of Natura 2000 sites.
- 11. We seek clarity on the proposed new institutional framework for the environmental regulation of sites with Environmental Permits under radioactive substances regulation (EP-RSRs) and the relative vires of the NRBW and what remains of an ostensibly UK EA body.

Do you agree with the proposals in respect of public access and recreation duties? (Yes, Mainly, Not at all). If not, how would you change it?

12. We do not have any particular comment in this area.

Do you agree with these proposals for the high level forestry duties? (Yes, Mainly, Not at all). If not, how would you change them?

13. We do not have any particular comment in this area.

Do you agree with the general proposals for cross-border arrangements? [Yes, Mainly, No] If not what would you change?

- 14. Whilst we welcome the proposals for managing cross-border impacts, we believe that further development of cross-border arrangements is still very much needed in a number of areas.
- 15. Given the limited pool of expertise available and pressure on this resource, it is imperative that there is clarity on the legal arrangements under which NRBW will liaise with UK bodies, such as the EA.
- 16. Some specific points on cross-border working include:
 - (i) Clarity on Responsibility for Regulation of Nuclear Sites The consultation document is unclear where the overall lead for regulation of nuclear sites will lie. We believe that the NRBW needs to have overall responsibility for regulation and regulatory decisions, even if nuclear related activity is heavily supported by the EA. The complexity of regulation and the extended timescales over which it is applied mean that it is important that there is a single line of responsibility.
 - (ii) **Definition of Cross-Border Programme Management Arrangements** We believe that explicit consideration of programme management arrangements are needed to ensure that NRBW resources (including those procured from the EA) are effectively managed. A range of potential possibilities for this exist (which are not necessarily mutually exclusive). These include the following:
 - NRBW sets up a programme board for management of permitting and environmental protection matters associated with large complex projects such as Wylfa
 - NRBW participates in EA's existing nuclear new build programme management. Such
 cooperation could ensure that Wylfa benefits from efficiencies derived from being an
 integral part of the regulation of the larger overall UK new build programme (with new
 build plans at Hinkley Point, Sizewell, Oldbury and Sellafield) whilst also assuring that
 Welsh interests are appropriately secured. Such an approach also provides a mechanism
 for ensuring that EA plan for and make adequate resource provision to support the
 activities in Wales.

(iii) Outsourcing niche skills - We note that under sections 26-29 of the Public Bodies Act 2011 there are general powers provided to the new body to enter into agreements with the EA to obtain services or potentially delegate responsibility.

Is it the intent that this arrangement only be applied where cross-border issues arise, or can other specialist skill areas not available within the new body be outsourced? In this case, what services are envisaged to be outsourced (e.g. hydrodynamic modelling) and what responsibility will be placed on service providers to fulfil the requests made of them in a timely manner?

- **(iv) Other Cross-Border Cooperation** In order to maximise efficiency, EA and NRBW should be under a duty to share working practices, methods and standards, such that one can accept work done by the other for cross border issues. This is wider than simply sharing data as already proposed in the consultation document. We also believe that more guidance needs to be provided on the commitments of NRBW in relation to balancing any differences between Welsh policy and UK-wide policy and the subsequent implementation of it. We are concerned that business efficiency will be diminished if Welsh and UK-wide policies and processes diverge. Perhaps this could be resolved by having a duty for the new body to consider the impact on business efficiency before implementing a policy that differs from the UK wide policy.
- **(v) Jurisdiction** We would welcome a mechanism for the clear resolution of disputes between Welsh and UK bodies where necessary. Such a mechanism should operate within set time limits.

Do you agree with the proposals for the statutory consultee role? [Yes, Mainly, No] If not what would you change?

- 17. More detail is required on how NRBW will manage decisions which have the potential to be contentious such as Habitats Regulations Assessment issues. Likewise, more information is needed on how functional separation will be achieved between the consenting part of the new body and the section that is a consultee?
- 18. It will be helpful to have clarity on circumstances when decision documents will be published. However we suggest that is important to allow the list of circumstances to be moderated by experience.
- 19. 6.2 States "where the consultation requirement arises from EU obligations (EIA, HR), requirements for the body to consult itself will be retained". EU obligations are placed on sovereign member states (of the EU) who will discharge this accountability through the appropriate government department. Is the intention that, for sites in Wales, the new body will be the statutory consultee to the UK Government in matters affecting EU obligations rather than the EA?

Do you agree with the proposals to provide internal separation of decision-making, improve transparency and ensure Welsh Ministers have the opportunity to call in significant issues? [Yes, Mainly, No]
If not what would you change?

20. It will be helpful to have clarity on circumstances when decision documents will be published. However we suggest that is important to allow the list of circumstances to be moderated by experience.

Do you agree with the proposals for permitting? [Yes, Mainly, No] If not what would you change?

21. We believe all Environmental Permitting Regulations (EPR) Permits need to be issued by NRBW. Earlier parts of our response have highlighted the need to clarify proposals for EPRSR (radioactive substances regulation) vires and regulation across NRBW and EA.

Do you agree with these proposals for charging? [Yes, Mainly, No] If not what would you change?

- 22. We feel that it is crucial for the NRBW to have the ability to recover its costs across all its functions in advising major infrastructure developers even in advance of formal applications being made. The EA has provision within permitting (section 37 of the Environment Act) to recovers its costs via charges made to developers and operators and we believe that this could be one effective model for NRBW to do likewise.
- 23. We note the potential for increased costs from NRBW through greater overhead resulting from the additional management associated with the setting up service agreements between NRBW and EA. We therefore think it is appropriate and beneficial that NRBW be able to offer a more integrated and holistic approach to regulation and environmental protection.
- 24. Accordingly, the ability to charge developers for advice from former CCW functions is needed. This is lacking in the current provisions and there is now an early opportunity to address this. Cost recovery across all its functions will enable the NRBW to:
 - offer the developer the benefits of targeted advice and engagement such that developers have a clear understanding of expectations for environmental protection
 - ensure that financial support is available for the required NRBW assessment resources
 - provide an early understanding within NRBW of the proposals that the developer will bring forward and so support a more efficient determination process for permits and other environmental permissions
 - support a coherent and integrated consideration of complex projects
 - enable a programme management approach to be taken (and integrated as appropriate with other related programmes such as other new nuclear build projects in England.)
- 25. We anticipate the benefits this would bring to greatly facilitate robust and timely regulatory decisions that achieve good environmental protection outcomes for Wales. In bringing these environmental protection functions together, NRBW affords a unique opportunity to secure a fully comprehensive and holistic approach to environmental protection. Without the resources to affect the right operational practices, the new body will not be able to achieve its full potential.
- 26. We would also support provisions to ensure that developers cannot be charged twice once by UK bodies and once by Welsh bodies in relation to the same activity.

Do you agree with the proposals for public registers? [Yes, Mainly, No] If not what would you change?

27. Yes, we think these are appropriate proposals.

Do you agree that the new body should be a listed body under the Regulation of Investigatory Powers Act 2000? [Yes, Mainly, No]

28. Yes, the new body should be listed, although its powers to carry out surveillance should not exceed those of the EA and should not be used for any circumstances other than those for which they are currently used.

Do you agree that the new body should have powers to use civil sanctions? [Yes, Mainly, No]

29. We agree that the new body should have the same rights as the EA currently has to impose civil sanctions and welcome proposals to review the proportionality and effectiveness of the use of these in practice. Care should be taken to ensure that the powers do not exceed the powers currently given to the EA.

Do you agree with the proposals for appeal arrangements? [Yes, Mainly, No] If not what would you change?

30. We agree with the principle that the Welsh Ministers should hear appeals in respect of decisions made by the new body (and this is perhaps clearer than stating that the Welsh Ministers should hear appeals in respect of "Welsh matters"). We would appreciate if thought could be given to whether there will be sufficient resource and expertise to provide inspectors who could advise the Welsh Ministers.

Do you agree with the proposals for cross border monitoring? [Yes, Mainly, No] If not what would you change?

31. We do not have any particular comment in this area.

Do you agree with the proposals for statutory planning and reporting? [Yes, Mainly, No] If not what would you change?

32. We do not have any particular comment in this area.

Do you agree with the proposals for Civil Contingencies and COMAH? [Yes, Mainly, No] If not what would you change?

33. The EA currently also has responsibilities in Local Authorities' off-site emergency plans under REPPIR 2001 (Radiation (Emergency Preparedness and Public Information) Regulations). We seek clarification of which body will fulfil these responsibilities under the proposed new arrangements.

Do you agree with the proposals for UK wide arrangements? [Yes, Mainly, No] If not what would you change?

34. We do not have any particular comment in this area.

Do you agree with the proposals for transitional arrangements? [Yes, Mainly, No] If not what would you change?

- 35. We believe that further clarification on transitional arrangements is urgently required.
- 36. We acknowledge that it is challenging to identify, explicitly cater for, and anticipate the detailed requirements of each and every circumstance that NRBW may have to deal with in the near future. It is therefore imperative that explicit provision is made to manage unforeseen gaps in transitional arrangements and ensure that these do not cause interruption of existing activities, and that this can be achieved on an urgent basis where merited. In addition a commitment to remedy these gaps as they are identified in a pragmatic manner is needed.
- 37. Below we have identified specific points on which we need clarification.
- (i) Horizon Specific Transitional Issues Horizon has a charging agreement with the EA (under section 37 of the Environment Act) in respect of advice concerning our Wylfa and Oldbury sites. Suitable charging arrangements with both bodies will therefore need to be put in place to support continuity of advice from both NRBW and the EA for our Wylfa and Oldbury sites respectively.

We believe that the advice and guidance previously provided by the EA to Horizon in relation to Wylfa should also continue to stand.

(ii) Policies - Given the significant and complex nature of planning and developing a new nuclear site we would hope that there will not be significant changes to sector guidance documents or EA scientific publications, as this could significantly disrupt the design and planning phase of our Wylfa new build project. In the longer term, our comments in relation to question 4 on cross-border cooperation are relevant. Carrie Moss
'A Living Wales' Programme Team
Department for Environment and Sustainable Development
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5th October 2012

Dear Ms. Moss

NATURAL RESOURCES BODY FOR WALES (NRBW) (ADDITIONAL CONSULTATION) OCTOBER 2012

Thank you for the opportunity to comment on the above consultation.

This response is supplemental to the submission that Wildlife Trust Wales (WTW) made on the initial consultation, therefore we offer the following headline observations, analysis and critique. This is presented in detail in **Annex 1** and summarised below.

Whilst WTW is widely supportive of the creation of the new Body, we have a number of concerns. These include:

- The consultation, similar to the initial consultation provided insufficient detail in important areas where the transfer of functions (duties and powers) has been proposed.
- The NRBW should strongly influence delivery of European and UK biodiversity targets in Wales, and will specifically influence delivery of the ambitions for ecological restoration set out in the 'Sustaining A Living Wales'.
- Biodiversity underpins our society and the economy. Therefore, as CCW are the statutory champions of biodiversity, in order to make the NRBW truly sustainable, all of CCW current duties should be transferred in full to the NRBW.
- The Trusts are broadly in support of maintaining the Forestry Commissions
 'balancing duty' (between afforestation/timber production and nature
 conservation/natural beauty). However, given the recent and historical losses of
 biodiversity and thus ecosystem services in Wales, for the 'ecosystem approach'
 to work, the balance must be tipped in favour of ecosystems rather than timber
 production.
- The consultation proposes that CCWs existing functions will be transferred to the NRBW but this will NOT apply to its pollution control or forestry functions. This appears to be weakening the powers and duties for the NRBW. Therefore, WTW believe that the NRBW forestry interests should be securely mandated to further nature conservation.
- The proposed wording (Box 2) seems to confuse and weaken CCWs existing clear functions in the Environmental Protection Act. Therefore, WTW would like to see simplification of language used.
- The caveats listed in Box 2 (a) serve only to weaken the current CCW duties and therefore are unacceptable. Therefore these caveats should be removed.
- There appears to be a new duty within the consultation to "to promote woodland cover in Wales". This may bring opportunities or risks for nature conservation. It could be interpreted to allow for the expansion of commercial interests and planting of mainly non-native coniferous plantations. If this were the case, the new duty could override conservation interests and thus has the potential to be hugely damaging to ecosystem services.



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However if the duty was reworded to promote 'native woodland cover in appropriate locations, in accordance to the Woodland for Wales – Wales Woodland Strategy', it could make significant contributions to achieving A Living Wales.

- On the issue of **transparency**, WTW would like to see further detail from WG on how a high level of functional separation between advice given and the granting of permission/permitting, especially on WG's own applications or on contentious applications (e.g. Pembroke Power Station).
- Clarity on how NRBW will weigh up its various responsibilities on a range of issues will be required.
- There are a number of omissions from within the document that require further explanation, such as.
 - SSSI Appeals
 - Wildlife/Species Licensing
 - Powers of Direction
 - Streamlining
 - Marine
 - Global Context
 - Sustainable Development Bill
 - Strategic Environmental Assessment (SEA)

Once again, thank you for the opportunity to comment on this document.

Yours sincerely,

Rachel Sharp

Chief Executive Officer

Wildlife Trusts Wales

ANNEX 1 NATURAL RESOURCES BODY FOR WALES (ADDITIONAL CONSULTATION) OCTOBER 2012

INTRODUCTION

Wildlife Trusts Wales (WTW) is the umbrella organisation for the six Wildlife Trusts in Wales – Brecknock, Gwent, Montgomeryshire, North Wales, Radnorshire and South and West Wales (hereafter referred to as 'the Trusts') working together in partnership to achieve a common aims. The Trusts collectively have more than **28,000 members** and manage **over 200 nature reserves**, covering more than **6,000 hectares of prime wildlife habitat**, from rugged coastline to urban wildlife havens.

The Trusts strive for a *Living Landscapes* and *Living Seas*, recognising this as an inspirational end point where our environment, society, and economy coexist for the benefit of wildlife and people. We want to foster the connectivity that links our urban and rural areas, our freshwater and coast, our land and sea. We aim, along with our partners, to create;

- ecologically functioning areas that can adapt to climate change; providing resilience and connectivity for wildlife,
- access and enjoyment for people
- a sustainable, low carbon contribution to the economy;
- areas that provide a suite of essential ecosystem goods and services.

Our interests therefore lie in people, wildlife, and their interaction.

NATURAL RESOURCES BODY FOR WALES

The formation of a Natural Resources Body for Wales (NRBW) is of critical concern to the Trusts and our ambition, to work in partnership, to create a **Living Landscape** and **Living Seas** across Wales. The Trusts believes that critical outcome for the NRBW should be to;

- Restore,
- Recreate and
- Reconnect Wales' terrestrial and marine environments

This would ensure benefits for the people of Wales now and in the future as **Wales' economy and community are dependent on the quality of the natural environment.**

There is a real threat that the NRBW 'environmental work' may be diluted with increasing socio-economic considerations -. To achieve 'Sustaining A Living Wales' (hereafter referred to as 'Living Wales') the NRBW must be a champion for the environment pillar of Sustainable Development in Wales.. For that reason, in order to truly make the NRBW sustainable, all of CCW's current duties (as CCW are the statutory champions of biodiversity) and should be transferred in full to the NRBW, and not watered down.

For a Living Wales to succeed, the NRBW must have a clear purpose to protect, conserve and enhance the environment. The NRBW must be an independent advisor to WG and, as a government sponsored body, be able to take the WG to task, if necessary.

The NRBW should strongly influence delivery of European and UK biodiversity targets in Wales, and will specifically influence delivery of the ambitions for ecological restoration set out in the A Living Wales.

However, the consultation, similar to the initial consultation provided insufficient detail in important areas where the transfer of functions (duties and powers) has been proposed.

Although this Order cannot introduce new duties or powers WTW would expect that **the development and delivery of the Living Wales vision should be the defining function of the NRBW**. Therefore the future Environment Bill must provide specific reference to Living Wales in the establishment legislation.

Therefore, the Trusts seek reassurance from WG that the final legislation will ensure that the full range of functions of the existing organisations is transferred with no loss of environmental protection/ operational functionality.

NATURE BEAUTY AND NATURE CONSERVATION DUTIES

Balancing Duty

The Trusts are broadly in support of <u>maintaining</u> the Forestry Commissions 'balancing duty' (between afforestation/timber production and nature conservation/natural beauty) from the 1967 Forestry Act.

We believe that if replaced with a duty "to have regard to the desirability of", this would be major weakening of nature conservation and landscape duties. We believe that there is broad support for this duty to stay, including from the forestry sector. Therefore, the Trusts advise that this 'duty' should be maintained.

However, given the recent and historical losses of biodiversity and thus ecosystem services in Wales, for the 'ecosystem approach to work, the balance must be tipped in favour of ecosystems.

Pollution control or forestry functions

The consultation proposes that CCWs existing functions

"to further the conservation and enhancement of natural beauty and the conservation of flora, fauna, geological and physiographical features"

will be transferred to the new body, but will NOT apply to its pollution control or forestry functions. This appears to be a weakening of the powers and duties for the NRBW. Therefore, the Trusts believe that the forestry interests should be securely mandated to "further the proposed natural beauty and nature conservation duty" in the manner in which they undertake their activities.

Possible word for the Second order (Box 2)

The wording within Box 2 states that;

(a) Ministers and the new body would be under a duty, **in formulating or considering any proposals relating to any functions of the body** other than its pollution control functions or its functions under the Forestry Acts 1967 to 1979, to exercise any power with respect to the proposals so as to further the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features..."

The Trusts agree with the latter half of the above (i.e. "further the conservation and enhancement of natural beauty and the conservation of flora, fauna, geological and physiographical features"). However, it is prefaced by some tortuous language (highlighted in bold). As it stands, the wording seems to confuse and weaken CCWs existing clear functions in the Environmental Protection Act. The references to "proposals" in the duty also create uncertainty over whether the duty applies only to these proposals, as opposed to the wider exercising of its functions. Therefore, the Trusts would like to see simplification of language used and the duty clarified i.e. "to exercise any power/ its functions to further...", to ensure future clarity and practical application.

Another area of concern in Box 2 (a) are caveats to which "This duty would apply so far as it was consistent". These points also serve only to weaken the current CCW duties and therefore, are unacceptable. This Bill is intended to **only** transfer current duties and not to add or remove/dilute current duties. The duty in Box 2 (a) should therefore **not be** made subject to parts (i) – (iv) if it is to comply with the Public Bodies Act. Therefore these caveats should be removed.

FORESTRY DUTIES

There appears to be a new duty within the consultation to "to promote woodland cover in Wales".

This may bring opportunities or risks for nature conservation. This reference could be interpreted to allow for the expansion of commercial interests and planting of mainly non-native coniferous plantations in inappropriate locations. If this were the case, the new duty could override conservation interests and therefore has the potential to be hugely damaging to ecosystem services (e.g. plantations on peat bogs negatively impacting on carbon and water/flood storage). If the duty was reworded to promote 'native woodland cover in appropriate locations' e.g. restore, recreate, reconnect ancient, and semi-natural woodland this could set the tone for A Living Wales. As such, it would depend on how the duty is expressed and how this is balanced against other interests, for example, increasing in woodland cover using Woodlands for Wales – Wales Woodland Strategy criteria.

In addition, it is unclear how such a new duty could be given to the NRBW under the Public Bodies Bill as WG has always argued that this process does not allow new duties.

There is also the issue as to why a duty for woodland cover has been chosen but not one for other habitats (e.g. open ground habitats such as peatland or heathland expansion) or for achieving favourable conservation status for protected sites. Why just woodland?

Therefore, the Trusts believe that such discussions should be deferred to the Environment Bill when a new set of duties could be given to the new body, reflecting a wider range of WG guidance and WG biodiversity targets.

CROSS-BORDER ISSUES

The consultation states that "we anticipate that this work will continue" in relation to the management of cross-border protected sites by CCW (and we assume other Agencies). This is poorly worded. The Trusts would like to see a requirement placed on the NRBW to co-operate with Natural England, JNCC and others to further nature conservation. The NRBW will also need to work across Irish Sea on marine issues with DEFRA and the Irish Government.

ADVISING AND REGULATING ITS OWN ACTIVATES

Consultee Role

The Trusts would like WG to clarify the role of the NRBW in relation to its statutory consultee function, especially for the engagement and working relationships with the environmental third sector such as the Wildlife Trusts. For example, questions remain regarding how the NRBW will deliver **independent**, **transparent advice**, and act as the **champion of Sustainable Development** and the **ecosystem approach**.

In order to have confidence in the future arrangements, the Trusts would like to more information on this crucial element of the NRBW function.

Transparency

The Trusts are pleased to see that the WG acknowledges, and will comply with the Seaport judgment. However very little evidence of how this will be achieved is presented. For example, how will the operational, regulatory and advisory arms be kept are functionally separate? How will the NRBW be able to give an objective opinion on their own plans or programmes? Will the NRBW be subject to external scrutiny, such as the Wales Audit Office?

If the proposal is that the NRBW will publish decision documents (presumably on how it made its decisions) to ensure transparency however, few details are presented. For example,

- how will lessons be learnt and therefore systems altered? This is a critical and contentious area (e.g. Pembroke Power Station).
- How the NRBW will weigh up its various responsibilities?
- When and how will the NRBW or WG consult itself on its own proposals and how will differences of opinion will be accommodated?

Therefore, the Trusts would like to see further detail from WG on how this high level of functional separation will be achieved to ensure independence and transparency.

Legal permits,

The Trusts believe that instead of simply listing any legal permits that the NRBW will issue, the body must publish a list of permits it *intends* to issue. This advance notification period could provide an important opportunity for interested parties to view the information upon which a proposed decision has been based and act accordingly. For example, issuing draft Appropriate Assessments for consultation with specialist and knowledgeable independent bodies such as the Trusts, rather than being presented with a *'fait accompli'*.

CIVIL SANCTIONS

The Trusts agrees with the use and expansion of civil sanctions.

OMISSIONs

SSSI Appeals

An omission from the consultation was the issue of SSSI appeals. The Trusts believe that CCW's SSSI notification process, with hearings to their Council in public, is more than sufficient. This function should be transferred to the NRBW and not reallocated to WG.

Wildlife/Species Licensing

There is no reference to the transfer of wildlife/species licensing or marine licensing. The Trusts would like clarification on what is the arrangement going to be and will all functions be transferred?

Powers of Direction

The Trusts would like clarification on proposals for Powers of Direction for Welsh Ministers e.g. how will they direct the NRBW on non-devolved functions.

Streamlining

The Trusts would like to highlight that where there is a duplication of function, this does not necessary relate to a duplication of work, for example, the delivery of work by CCW's local conservation staff and EA's biodiversity teams. These teams, although having a lot of overlap on paper, enable very different delivery. They fund and deliver different projects on the ground, with more work required than funds available.

These teams have also built up working partnerships over many years with third sector organisations and we would welcome the continuation of these relationships.

Therefore, the Trusts ask that prior to any restructuring of similar teams within the different legacy bodies, a full appraisal of their function and delivery objectives is undertaken.

Marine

The consultation provides little information on the arrangements for planning and management of the marine environment with regard to the NRBW. The Trusts would like these arrangements clarified. For example, who will be responsible what elements of the marine environment, WG, NRBW, both etc? What will be relationship with WG marine branch?

The NRBW should have a clear and explicit duty to conserving nature and natural beauty in marine as well as terrestrial environments. The Trusts believe that there needs to be a strong relationship between marine planning and marine licensing to achieve sustainable development in the marine environment.

Global Context

The Trusts believes that the NRBW must recognise that its decision-making cannot take place in isolation from international legislation, agreements or without recognition of its consequences on others in a global context.

Sustainable Development Bill

The NRBW should be the embodiment of Sustainable Development, with the Ecosystem Approach being the guiding principle for the new Body. The NRBW should serve as an ambassador for public bodies in implementing the sustainable development duty, the Natural Environment and Rural Communities (NERC) Act, and help to spearhead the important cultural and behavioral shifts necessary to create a sustainable Wales.

Strategic Environmental Assessment (SEA)

The Trusts would like Forest Design Plans to require SEA.

Rachel Sharp Chief Executive Officer Wildlife Trusts Wales

5th October 2010

PARCIAU CENEDLAETHOL CYMRU Lle I enaid gael llonydd







NATIONAL PARKS WALES
Britain's breathing spaces

Carrie Moss Living Wales Programme Team Department for Environment and Sustainable development Welsh Government Cathays Park Cardiff CF10 3NQ

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05 October 2012

National Parks Wales' Response to the Natural Resources Body for Wales Consultation

National Parks Wales is grateful for the opportunity to respond to the most recent consultation informing the setting up of the new Natural Resources Body for Wales (NRBW). The three National Park Authorities (NPAs) in Wales work in partnership as National Parks Wales to collectively respond to policy issues which may potentially influence the management of Wales' National Parks. The creation of the Natural Resources Body for Wales will influence the management of National Parks, which, together with Areas of Outstanding Natural Beauty, cover around 25% of Wales' land area; one way this will happen will be in response to developing working arrangements with the new single organisation.

Before we comment upon the questions posed within the consultation we have several recommendations related to the establishment of the NRBW:

We wish to stress the special role that National Parks and Areas of Outstanding Natural Beauty can and should play in implementing *A Living Wales* and recommend that NPAs be included as principal strategic partners for its implementation.

We recommend full retention of the vitally important duty to protect Wales' landscapes and seascapes, ensuring that Wales meets in full its obligations as set out with the European Landscape Convention. In terms of Wales' protected areas this would include the current CCW duty to identify and recommend future National Parks, National Park extensions, Areas of Outstanding Natural Beauty and AONB extensions.

We recommend a duty to support and champion the S62(2) duty (Environment Act 1995).

We also suggest that the regulatory roles of the new body should be complemented by the responsibility and resources to provide effective advice and guidance.







Parciau Cenedlaethol Cymru National Parks Wales

We seek confirmation of the continued availability of the Rights of Way Improvement Plan (ROWIP) and National Trail grants from the NRBW to NPAs following the introduction of regional transport plans sometime in the foreseeable future. Our understanding is that ROWIP will be subsumed into these plans. This may affect NPAs adversely because NPAs are not transport authorities, but they are responsible for rights of way maintenance.

We seek assurances as to the independence of the NRBW and its freedom to provide independent advice.

We recommend a duty to ensure the rapid and affordable availability of environmental data (including telemetry, aerial photography and remote sensing) to the public, to public bodies and to local records centres.

We have commented upon select areas of the consultation where we feel that additional work is required to ensure that the new Natural Resources Body for Wales is capable of meting the needs of Wales' landscapes, whether protected or not.

Question 1: Do you agree with our proposal for the duties of the body in respect of conservation and natural beauty?

We mainly agree, but we have the following thoughts.

We welcome the duty for the Minister to consult the NRBW prior to issuing guidance (for example in an annual remit letter).

The Forestry Commission's (FC) "balancing duty" may be inimical to the Welsh Government's duty to achieve sustainable development. This is because a balance will always lead to a trade off between potentially conflicting interests, whereas sustainable development requires integration of interests. Rather than having this duty cease to apply, as is suggested in the consultation, we suggest that Section 7 (1) (b) of the Environment Act 1995 is applied with a clear instructions for integrating forestry, conservation - and also - access and recreation objectives (most of the FC estate is also Access land designated under the Countryside and Rights of Way Act 2000.) We suggest that the draft order offers an opportunity to explicitly reframe forestry creation/woodland management as means to the ends of ecosystem and habitat/species outcomes, and people's enjoyment and wellbeing. We also recommend that in cases of irreconcilable conflict, a duty to deploy the Sandford Principle is imposed. This principle asserts the primacy of conservation over other purposes and underpins National Park purposes for example.

In Box 2, the clause at (a.)(ii.) seems redundant and confusing, given that the conservation duty detailed at (a.) is integral to sustainable development.







Parciau Cenedlaethol Cymru National Parks Wales The wording within Box 2 (b) needs to be more positive towards landscape and seascape: "... regard to the desirability of conserving and enhancing natural beauty" is weak, especially when exercised within protected landscapes.

For Box 2 parts b and c, we note that "having regard to the desirability of..." is too weak and very vulnerable to providing an 'opt out' of conservation. It is possible to have regard to something by considering it and then deciding against it for other reasons. Therefore we recommend substituting "having regard to the desirability of..." with "aim to achieve the protection/conservation/enhancement of x, y, z...."

We recommend using the definition of "natural beauty" provided by CCW. It is reproduced in full in Annex 6 of the Brecon Beacons National Park Management Plan here:

http://www.breconbeacons.org/the-authority/planning/strategy-and-policy/npmp/link-folder/npmp-2010-annex.

Box 2(c)(1) should also include cultural features, sites and landscape.

Box 3: 2 (1)(a.) and Box 3: 3(2) (a)(i) could also specify 'coast, inshore waters, rivers and estuaries'.

There appears to be no reference to the marine responsibilities of the new body. Accordingly we suggest that there should be clarification on how the marine responsibilities of CCW and EAW will transfer across to the new body, and about how they will be implemented, and how management across marine planning boundaries will be organised.

Unless these roles and functions are clearly articulated in the final order, there is a risk that the new body will not be adequately equipped to achieve the vision of the Living Wales agenda.

Question 2: Do you agree with the proposals in respect of public access and recreation duties?

We mainly agree, but we have the following thoughts:

We feel that Box 3, 2(1)(a) could be open to interpretation and would ask for additional clarity to avoid future confusion.

Box 3: para 3. The facilities detailed in paragraph 3 which NRBW may provide strongly reflect the Forestry Commission's powers from 1968 and need to be updated accordingly, to integrate with public transport systems and to embrace forms of recreation such as walking, cycling, horse riding and providing opportunities for people with mobility impairments. We suggest that references to the provision of commercial facilities should







Parciau Cenedlaethol Cymru National Parks Wales

be deleted as the private sector can meet any such demand. We would suggest that a summary of facilities more relevant to current and future needs should read as follows:

- (3) The facilities which fall within paragraph (2) include, without limitation—
- (a) facilities to increase enjoyment and understanding, including picnic areas, information centres, and public conveniences
- (b) multi-user routes
- (c) sustainable transport solutions linked to local communities. We presume that the duty set out within this Chapter relates to Welsh Government/NRBW assets only, not the wider countryside. Additional clarity concerning this point within the Order would be welcomed.

There is no reference to enabling other partners and sectors to facilitate and develop access opportunities e.g. off Welsh Government or NRBW estate. We note the matter of the management and devolvement of Welsh Government assets, could this be devolved to a more local level and for the new body to have a strategic overview?

We advise that where the NRBW will have powers to provide facilities, these may require planning permission. With this such tests as environmental impact assessment, ecological impact assessment, sustainability appraisals, access statements and so on may be necessary in order to fulfil validation requirements. There may also be a requirement for mitigation, compensation and enhancement measures. Conversely, the NRBW may struggle to obtain planning permission where developments are proposed in the open countryside; this would be contrary to Wales and local planning policy guidance.

Question 3: Do you agree with these proposals for the high level forestry duties?

We mainly agree, but we have the following thoughts:

The context for forestry operation and development should be set within any Framework that is to be adopted. The current position is for the production and supply of timber and other forestry products; within an Ecosystem approach there should not be such a constraint of land by such an emphasis on forestry and timber products.

We have already commented on the FC's balancing duty. We believe that care should be taken in allowing the forestry sector to consider how to execute such a "balancing duty". Clear and transparent criteria should be developed to define how such a "balancing duty" can be executed.

Question 4: Do you agree with the general proposals for cross-border arrangements?

We mainly agree, but we have the following thoughts:







Parciau Cenedlaethol Cymru National Parks Wales

We feel that the proposals could address the question of invasive species, which as with all of the issues included within pages 17 and 18 know no political borders.

We seek clarification on the administration of cross-border conservation projects. An example is the Black Mountains SSSI, which straddles the Wales-England border. The SSSI is mainly in the Brecon Beacons National Park and consists of a number of contiguous commons, one of which is entirely in England but over which livestock have continuous access from the Welsh commons. CCW, Natural England and the Brecon Beacons National Park Authority have struggled for years, without success, to find an integrated, one stop shop agri-environment solution here. This has so far eluded these organisations because of the different funding rules for the England HLS and Tir Gofal (as was). We urge the Welsh Government to make these nationally important projects a priority for the NRBW.

Question 5: Do you agree with the proposals for the statutory consultee role? Yes

Question 6: Do you agree with the proposals to provide internal separation of decision-making, improve transparency and ensure Welsh Ministers have the opportunity to call in significant issues? Yes

Question 7: Do you agree with the proposals for permitting?

We mainly agree, but we have the following thoughts:

We propose that the NRBW amends the situation whereby the EA delays any consideration of Environmental Permits affecting a planning proposal until after planning permission has been granted. This hinders a local planning authority from making a reasoned and weighted judgement on a proposal because the relevant expertise, held by the EA, is not deployed until after planning permission is granted. It also has an adverse effect the LPA being able to meet its Welsh Government requirement for determining all planning applications within eight weeks.

Therefore we recommend that a duty is imposed on the NRBW for it to ensure that its EPR timetables with those imposed by the relevant local planning authority.

Question 8: Do you agree with these proposals for charging? Yes

Question 9: Do you agree with the proposals for public registers? Yes

Question 10: Do you agree that the new body should be a listed body under the Regulatory Investigatory Powers Act 2000? Yes

Question 11: Do you agree that the new body should have powers to use civil sanctions? Yes

Question 12: Do you agree with the proposals for appeal arrangements? Yes







Parciau Cenedlaethol Cymru National Parks Wales

Question 13: Do you agree with the proposals for cross border monitoring?

See our response to Question 4

Question 14: Do you agree with the proposals for statutory planning and reporting? Yes

Question 15: Do you agree with the proposals for Civil Contingencies and Control of Major Accident Hazards (COMAH)? Yes

Question 16: Do you agree with the proposals for UK wide arrangements? Yes

Question 17: Do you agree with the proposals for transitional arrangements? Yes

Thank you again for the opportunity to comment. If you require any further information or clarification please do not hesitate to contact me in the first instance.

Yours sincerely,

Greg Pycroft Policy Officer

National Parks Wales









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Living Wales Programme Team,
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5 October 2012

Dear Sir,

NATURAL RESOURCES BODY FOR WALES – ADDITIONAL CONSULTATION

I am writing to you to outline our views with regards to the above, but may I begin by thanking you for undertaking this supplementary consultation which covers some of your more detailed proposals relating to the establishment and role of new Natural Resources Body for Wales. We welcome the opportunity to comment on these proposals, many of which will directly affect our business, and our customers of course.

These comments are from Dŵr Cymru Welsh Water, the statutory water and sewerage undertaker that supplies over three million people in Wales and some adjoining parts of England. We are owned by Glas Cymru, a single purpose, not-for-profit company with no shareholders. We provide essential public services to our customers by supplying their drinking water and then carrying away and dealing with their wastewater. In this way, we make a major contribution to public health and to the protection of the Welsh environment. Our services are also essential to sustainable economic development in Wales.

We support the position taken in the consultation that the Welsh Government must continue to focus on how best to enable the new body to protect the Welsh environment whilst ensuring that Welsh business can thrive. We also support your intention (page 7) 'that the body should interpret its duties and use its powers to benefit the people, environment and economy of Wales' and that 'the body will have to take decisions which take account of all of these interests, seeking to secure the best outcomes'. We would welcome greater clarity on how you plan to ensure that the new body can successfully strike this sometimes very difficult balance, which lies at the heart of the changes needed so essential for the long term interests of the environment and our customers.



It follows that we are pleased that the new body will be under a statutory duty to have regard to costs and benefits in exercising its powers. Again it would be useful to understand how the Welsh Government intends to ensure that the new body is fulfilling this requirement, and illustrating this to our customers, the people of Wales.

Your consultation paper refers to the process that will be used to develop drafts of the Order to implement these proposals. As well as taking account of the views of Defra and relevant National Assembly for Wales Committees, we hope that external parties, like our company will be able to comment if, for example, we spot some practical problems with your published drafts.

Looking forward to the second phase of development and the coming Environment Bill, it is essential if we are to secure a safe and sustainable environment for Wales that there should be a greater voice for Wales in Europe regarding environmental matters; particularly the need to balance the needs of society, the economy and the environment. This long term ambition should be clearly stated in the structure and remit of the new body. To support this we would be delighted to offer our support to both Welsh Government and the new body in terms of gathering evidence and environmental data to support the right outcomes for Wales and to assist it to fulfil its new duties.

I hope that the comments in the attached paper will be useful. I would be very happy to meet you to discuss any of the issues raised.

A copy of this letter has been sent to Ceri Davies at Environment Agency Wales and to Prys Davies, Deputy Director, Welsh Government.

Yours faithfully,

Tony Harrington

Director of Environment

Email: tony.harrington@dwrcymru.com

COMMENTS BY DŴR CYMRU WELSH WATER ON THE WELSH GOVERNMENT'S ADDITIONAL CONSULTATION ON ITS NATURAL RESOURCES BODY FOR WALES

Question 1 – Do you agree with our proposal for the duties of the body in respect of conservation and natural beauty? (Yes, Mainly, Not at all) If not, how would you change it?

We have considered your proposals in their wider context, rather than in isolation and broadly support them. As well as the duties your consultation paper focuses on, the new body will inherit many other important conservation obligations. For example, as mentioned in your consultation paper, the new body will inherit the duty currently placed on the Environment Agency under section 6 of the Environment Act 1995: thus it will be required "to such extent as it considers desirable, generally to promote" the conservation and enhancement of the natural beauty and amenity of inland and coastal waters; and the conservation of flora and fauna that depend on the aquatic environment.

We assume that the new body will be the leading authority for the implementation in Wales of all the relevant European environmental Directives. Amongst these, the Habitats Directive will continue to provide enhanced protection of sites that have been designated in recognition of their particular conservation importance. The Water Framework Directive will also require greater emphasis to be placed on the ecological quality of the water environment.

Against that background, Dŵr Cymru feels that your proposals provide an adequate, allembracing nature conservation duty.

On points of detail, we note that the duty refers to having "regard to any effect which [its] proposals would have on the economic and social well-being of local communities in rural areas". We would recommend that the reference to "in rural areas" be removed thus widening the duty to all local communities in Wales. This would be more compatible with the new body's statutory purpose (under Article 4 of The Natural Resources Body for Wales (Establishment) Order 2012) and the Welsh Government's wider drive to embed sustainable development principles throughout the Welsh public sector.

You propose exempting the new body's functions under the Forestry Acts from the conservation duty and, instead, you intend relying on the "balancing duty" enshrined in current legislation. As we noted in our response to your previous consultation on the new body, Wales' main environmental regulator must aspire to be a top environmental performer. The new body will be in some difficulty if it is trying to persuade others to protect Sites of Special Scientific Interest or comply with obligations arising from the Water Framework or Habitats Directives if its own performance is less than exemplary. That will inevitably extend to the impact of its forestry activities.

Question 2 - Do you agree with the proposals in respect of public access and recreation duties?

No comment.

Question 3 - Do you agree with these proposals for the high level forestry duties? (Yes, Mainly, Not at all). If not, how would you change them?

Please see our comment in response to Question 1 about the need for the new body to be an exemplar of good environmental practice, including in the performance of its forestry activities.

Question 4 - Do you agree with the general proposals for cross-border arrangements? [Yes, Mainly, No] If not what would you change?

Dŵr Cymru is a cross border body, with significant numbers of customers in Herefordshire and around Chester.

You intend to ensure that there are powers enabling the (English) Forestry Commission and Environment Agency to share data with the new body to assist in the exercise of their functions. These arrangements will have to extend to Natural England, particularly as some cross border rivers are protected under European Habitats legislation. To be practical, there will need to be some harmonisation of standards in respect of these cross border sites. The new body and Natural England should therefore be under a statutory duty to consult and cooperate with each other before exercising any functions that are likely to have a significant effect in cross border areas.

To illustrate the potential problems that can arise from a lack of coordination, Dŵr Cymru is having to cope with inconsistent approaches (e.g. to levels of phosphorus) adopted by regulators on either side of the border in respect of the River Wye. This can put businesses like ours in an impossible position and does nothing to enhance the reputation of the relevant bodies in terms of their willingness to understand the position of the industries they regulate and promote sustainable economic development.

The Welsh Government's goal should be to enable the new body to work effectively with its English counterparts, while ensuring that Wales-based cross border companies are not disadvantaged.

The establishment of the new body will inevitably complicate the regulatory environment in which cross border companies like ours operate. It could potentially increase our costs. An Impact Assessment could have helped to inform the debate if had been prepared to examine in detail the cost implications of your cross border proposals. Section 16 of the Public Bodies Act 2011 requires that the new body may only be established if the Welsh Ministers are satisfied that it will improve the exercise of public functions having regard to efficiency, effectiveness and the economy: an Impact Assessment would have provided evidence that this obligation has been fulfilled.

Question 5 - Do you agree with the proposals for the statutory consultee role? [Yes, Mainly, No] If not what would you change?

Yes - Dŵr Cymru agrees with your proposals.

Question 6 - Do you agree with the proposals to provide internal separation of decision-making, improve transparency and ensure Welsh Ministers have the opportunity to call in significant issues? [Yes, Mainly, No] If not what would you change?

Dŵr Cymru mainly agrees with your proposals but feels that there are important omissions, particularly around the risks arising from the position of the new body as a major landowner.

As Dŵr Cymru noted in our response to your last consultation about the Natural Resources Body for Wales, the Welsh Government needs to clarify the position regarding enforcement action — including prosecution — if the single body causes pollution, a situation that could easily arise as it will be a major land owner. The latest consultation paper remains silent on this key issue. This will be critical to the new body's wider credibility, particularly amongst the other parties it prosecutes for similar offences.

The Welsh Government must be far more upfront about how it intends to address this issue and, under the Orders establishing the new body, should consider conferring on itself powers of prosecution in respect of environmental damage the new body may cause.

Having said that, we think that, for all but the most serious pollution incidents, civil sanctions may be a useful tool that the Welsh Government could use. The Welsh Government should therefore also confer on itself the power to accept undertakings the new body may offer using its powers under the Regulatory Enforcement and Sanctions Act 2008.

Similarly, we would like to see the new body taking a lead to address the problem of diffuse pollution within Wales, including from forestry, by applying the polluter pays principal transparently, even-handedly and by delivering more actions to achieve 'Good Status' for waterbodies under the Water Framework Directive. The Welsh Government should use its call in powers to ensure this agenda is delivered.

Question 7 - Do you agree with the proposals for permitting? [Yes, Mainly, No]. If not what would you change?

Dŵr Cymru mainly agrees with your proposals.

Dŵr Cymru holds thousands of Environment Agency licences and environment permits in respect of our activities in Wales and bordering parts of England. Your proposals represent a practical way of preserving the status quo while the new body is being established.

In the longer term, though, Dŵr Cymru is less convinced that the Environmental Permitting system is a model of good regulation. Although it unified several previously separate regulatory regime (and looks set to subsume several more), it unnecessarily complicates applications in respect of low risk activities. For example we find ourselves faced with an eleven page permit for even the most low risk discharge into low amenity watercourses. The regime also blurs the boundaries between legal conditions (with a criminal liability) and associated guidance which is open to interpretation by regulators, the regulated and third parties. It is a basic premise of law that legal obligations must be unambiguous, clear and legally enforceable. We do not feel the regime has struck the right balance on this front. We would therefore welcome the inclusion of this regime within your policy of simplifying

regulatory processes here in Wales to achieve a better balance between protecting the Welsh environment and not being overly onerous for Welsh business in respect of low risk activities.

Question 8 - Do you agree with these proposals for charging? [Yes, Mainly, No] If not what would you change?

Dŵr Cymru mainly agrees with your proposals.

We accept that a charging system will need to be in place when the new body comes into existence on 1 April next year. We can therefore understand why you have opted for retaining the Environment Agency's existing charging scheme, to give the new body time to develop a scheme reflecting the position in Wales.

Since your consultation paper was published, the Environment Agency has proposed changes to its charging scheme which (subject to the Secretary of State's approval) the Agency will introduce on 1 April 2013. To complicate matters further, the proposals include some provisions that will be backdated to 1 January 2013. The Welsh Government will need to clarify whether the new body will adopt the charging scheme that is currently in place or the amended version that the Agency plans to introduce next April.

Looking further ahead, we hope that the new charging scheme that the body eventually drafts will be the subject of a comprehensive consultation exercise with its stakeholders in Wales.

Overall we expect the new body to deliver efficiencies both in its own costs and the costs of regulation to industry.

However – and as we pointed out in our response to your last consultation about the new body - the Welsh Government needs to set out its policy as regards hypothecation and cost recovery.

Abstraction charges levied by the Environment Agency currently have a regional element, including for Wales, reflecting the different costs incurred. By contrast, charges for discharge permits are currently set on an England and Wales basis without regional factors: we would like to see these charges set to fairly reflect the Agency's costs of delivering the relevant function in Wales.

The Environment Act 1995 limits the Environment Agency's charges to cost recovery. Hypothecation of charges should continue to be a central principle of the new body's remit and reflect the cost of environmental regulation here in Wales. Such a principle would not only reflect the value that we place upon the environment, but could also be used as a means of engagement with Welsh business — better environmental performance should mean lower charges for customers of the new body. This would be a win:win for the environment and for Welsh business.

We also think that your proposals in relation to rod licensing may be a missed opportunity. Given the better fisheries we have here in Wales (salmonid rivers are prevalent here whereas in England coarse fisheries are more widespread), we think that the cost of rod

licence in Wales should rise to reflect to the cost of the (provisioning) ecosystem service the fisheries provide. Extra income generated in this way could fund the improvements to fish that the new body will have to deliver under the Water Framework Directive.

Question 9 - Do you agree with the proposals for public registers? [Yes, Mainly, No] If not what would you change?

No comment.

Question 10 - Do you agree that the new body should be a listed body under the Regulation of Investigatory Powers Act 2000? [Yes, Mainly, No]

Yes we agree.

Question 11 - Do you agree that the new body should have powers to use civil sanctions? [Yes, Mainly, No]

Yes we agree.

We think that civil sanctions will have a very useful role to play as part of the new body's enforcement toolkit. Criminal prosecution must remain an option available for the new body in response to the most serious environmental offences. However, for other, less serious cases, civil sanctions may on occasions be a more appropriate response. By delivering benefits 'on the ground', civil sanctions represent a much more constructive outcome for the Welsh environment in comparison with an offender facing a day in court.

As noted in our response to question 6, the Welsh Government will need to able to take enforcement action if the new body causes environmental damage. As well as the possibility of criminal prosecution, the new body should be able to offer enforcement undertakings for formal acceptance by the Welsh Government.

Question 12 - Do you agree with the proposals for appeal arrangements? [Yes, Mainly, No] If not what would you change?

Dŵr Cymru mainly agrees with your proposals but would have liked much more detail.

We would have found it useful if the consultation paper had confirmed that the Welsh Government will continue to use the Planning Inspectorate (PINS) in environmental appeals processes. PINS generally performs this role well and so enjoys wide confidence.

As acknowledged at other points in the consultation, many rivers are cross border. You will need to make arrangements in respect of appeals against determinations relating to cross border watercourses where organisations from both the English and Welsh sides of the border may have been involved in the original decision making process. There may be appeals against a refusal to allow an activity in Wales because it risks causing pollution/water quantity problems downstream in England (or visa versa). Again, the involvement of PINS would be helpful in overcoming these complications.

Question 13 - Do you agree with the proposals for cross border monitoring? [Yes, Mainly, No] If not what would you change?

Yes we agree.

Question 14 - Do you agree with the proposals for statutory planning and reporting? [Yes, Mainly, No] If not what would you change?

Dŵr Cymru mainly agrees with your proposals.

Dŵr Cymru has a direct interest in the proposals. We are, for example, a key 'co-deliverer' of the European Water Framework Directive and we prepare statutory Drought Plans and Water Resources Management Plans for our supply area

You say (on page 28) that you 'propose to give the new body a general obligation to exercise certain functions so to ensure compliance with the requirements of the Water Framework Directive'. We had assumed that the Natural Resources Body for Wales would be the competent authority for the Directive's delivery in Wales and that the transposing regulations would be amended so that the new body would be referred to within Regulation 3(1) (which currently says "(1) The Secretary of State, the Assembly and the Agency must exercise their relevant functions so as to secure compliance with the requirements of the Directive"). This small amendment would put the new body onto an equal footing as its English counterparts and would overcome many of the problems you seem to foresee.

The River Basin Liaison Panels could play an enhanced role in ensuring 'join-up' of the Directive's delivery on both sides of the border in the two cross border River Basin Districts. Ministers in the Welsh Government and Defra may want to consider giving the Panels statutory status.

Up to now the Environment Agency Wales has been reliant on the support it receives from its Head Office. Looking ahead, successful delivery of the Water Framework Directive in Wales will depend on the new body committing adequate resources to this work: this will need to include high calibre staff to prepare and drive through the statutory plans, as well as funding to reduce the new body's direct impact on the aquatic environment (such as by introducing improved forestry practices or removing barriers to fish).

We note your proposals in respect of water company Drought and Water Resources Management Plans. We welcome the prospect of the new body's overarching purpose and its duty to have regard to costs and benefits² being applied to how its exercises its statutory role in these plans in the future.

Question 15 - Do you agree with the proposals for Civil Contingencies and COMAH? [Yes, Mainly, No] If not what would you change?

Yes we agree.

¹ The Water Environment (Water Framework Directive) (England and Wales) Regulations 2003 (SI 2003, No 3242)

² Articles 4 and 8 of SI 2012 No 1903 refer

Question 16 - Do you agree with the proposals for UK wide arrangements? [Yes, Mainly, No] If not what would you change?

Yes we agree.

Question 17 - Do you agree with the proposals for transitional arrangements? [Yes, Mainly, No] If not what would you change?

Yes we agree – your list of transitional provisions looks comprehensive.

From: Communications

Sent: 05 October 2012 15:55

To: SEB mailbox

Subject: Natural Resources Body for Wales (additional consultation) response form

Page used to send

this email:

/consultations/forms/singlebodyresponse2/

Responses to consultations may be made public - on the internet or

in a report. If you (Unchecked)

would prefer your response to be kept confidential, please tick here:

Your name: Rhian Nowell-Phillips

Organisation (if

applicable):

Farmers Union of Wales

Email / telephone

number:

rhian.nowell-phillips@fuw.org.uk

Question 1: Do you agree with our proposal for the

duties of the body Mainly

in respect of conservation and natural beauty?:

The FUW is concerned that the Welsh Government seek to strengthen the work undertaken by the new body to promote and protect conservation features and natural beauty. The definition of 'natural beauty' is considered to be a subjective issue and unless there is a clear defined view on what it means, there is concern that the wording of the Order will end up being unduly restrictive in recognising the need for sustainable development in rural areas. Under the proposed wording for the second order outlined in Box 2. The Union is concerned that the balanced approach currently adopted by Forestry Commissioners to seek a 'reasonable' balance between conservation and natural beauty and production has been lost and that the economic and well-being of local communities in rural areas has been relegated to the bottom of the pile in terms of duties. The FUW believes that there is a need to ensure that the lessons of the past i.e National Parks which have a statutory purpose to conserve and enhance the natural beauty wildlife and cultural heritage; Promote opportunities for the understanding and enjoyment of the special qualities of National Parks by the Public, whilst the duty to foster the social and economic well being of local communities, can only be considered as an addendum to the purposes. Whilst recognising the need for the new body to undertake a range of statutory functions to protect and enhance the environment and peoples enjoyment of the same, the FUW believes that the duties of the new body should ensure that the well being of the rural economy and its sustainable development should be enshrined in its duties and that there is balance from the outset in its approach to sustainable

If not, how would you change it?:

development.

Question 2: Do you agree with the proposals in respect of public access and recreation

duties?:

Mainly

If not, how would you change it?:

Whilst recognising the need to incorporate the duties of the existing bodies in respect of public access and recreation, the Union believes that there should be a clear distinction made to ensure that these duties to provide are for land in public ownership. The FUW would also welcome the inclusion of a duty to ensure that the body can take steps to mitigate any problems that occur on private land in discharging its duties under the second order. This might include for example ensuring that it has a duty to remedy damage to private property, fencing etc or the provision of signage where the public use private land believing it to be in public ownership.

Question 3: Do you agree with these proposals for the high level forestry duties?:

Mainly

If not, how would you change them?:

The Union has been concerned over recent years that the Forestry Commission focus in Wales has been driven by Government priorities for amenity woodland rather than economic production. As the Forestry Commission has a vital role to play in providing a steer to timber growers and indeed in encouraging farmers to plant more trees, it is extremely important that the new body retains its remit to promote forestry and to help develop a market infrastructure for the production and economic viability of commercial forestry. The Union would also question why the competent role for the protection of forest trees and timber from attack by pests under the Plant Health Act 1967 is to be transferred to Welsh ministers, when the experience and expertise of forestry staff should remain within the new body.

Question 4: Do you agree with the general proposals Mainly for cross-border arrangements?:

If not what would you change?:

As outlined in its response to the earlier consultation, one of the concerns expressed by the Union on the creation of the new body would be the possible loss of information, R&D, corporate knowledge etc, built up over the years between existing agencies. There is concern that unless robust Memorandum of Understanding agreements and or contracts are put in place, that the work currently funded over the border which includes Welsh data will be lost and that there will be significantly less work undertaken in Wales due to budgetary constraints. The information outlined in the consultation does go some way to addressing these concerns, but there is a very real need to ensure that these agreements are pinned down as soon as possible to ensure that Wales is not disadvantaged by the loss of future funding and or data sharing. The FUW would also welcome more detail on the permitting regime is likely to work under the new body. Currently, environmental permitting such as Groundwater Authorisations are agreed

centrally by the EA. It is assumed that in future that the permitting regime will be passed to the new body, which begs the question whether costs will increase due to the relatively low number of authorisations or decrease due to improved transparency in the process?

Question 5: Do you agree with the proposals for the Yestatutory consultee role?:

If not what would you change?:

There has been a great deal of concern regarding the need for transparency within the new body and the FUW believes that requiring the new body to develop and publish a scheme identifying where formal publication of decision documents will be required is to be welcomed.

Question 6: Do you agree with the proposals to provide internal separation of decision-making, improve transparency and ensure Welsh Ministers have the opportunity to call in significant

Yes

If not what would you change?:

issues?:

As outlined above and in the previous consultation the FUW believes that requiring the body to organise itself to ensure that there is a transparent process where it is regulating its own activities and operational delivery. It therefore welcomes the proposal to ensure clear separation between regulating its own activities and the operational delivery of the activity. It also welcomes the requirement on the new body, to publish a list, on its website, of all legal permits, of any type, it has issued in respect of its own operations

Question 7: Do you agree with the proposals for permitting?:

Mainly

If not what would you change?:

As outlined previously, the Union supports in principal the proposals for permitting as outlined in the document. The FUW does however believe that there is scope for the new body to re examine the cope for 'standard permits' to consider whether there could be a risk based approach taken to th

Question 8: Do you agree with these proposals for charging?:

Mainly

If not what would you change?:

As outlined previously, the FUW has had ongoing correspondence with the EA centrally on the basis of its charging regime for permits such as Groundwater Authorisations. The actual rationale for charging remains totally incomprehensible even to the Agency, in that the fees generated by authorisations are not used to monitor the authorised sites but are used to fund generic testing of water bodies. The FUW believes that the new body needs to be far more transparent in how the permits are developed and how

charges are calculated and that whilst the industry recognises the need for administration costs to be recouped, there needs to be a realistic approach to charging, based on risk.

Ouestion 9: Do you agree with the Yes proposals for public registers?: If not what would

you change?:

Question 10: Do you agree that the new body should be a listed body

under the

Regulatory Investigatory Powers Act 2000?:

Ouestion 11: Do you agree that the new body should have powers to use civil sanctions?:

Mainly

Mainly

Question 12: Do you agree with the

proposals for Mainly

appeal

arrangements?:

The FUW recognises that Civil Sanctions should provide regulators with a broader, more proportionate toolkit to deal with the full range of noncompliance, although it does have concerns that the process could be overly complicated and difficult for the farming industry to understand. The agricultural industry in Wales is predominantly made up of small businesses which are highly dependent on family labour. It already has a wide range of regulatory requirements to comply with and the associated paperwork to complete, and is therefore one of the most highly regulated industries. The overwhelming majority of farmers already comply with the existing regulations and, given their concern about understanding the complexity of the standards that are required and the potential financial impacts on the business if an offence is committed, many exceed the expected requirements. Farmers have to contend with a range of Regulatory processes, most of which come under the auspices of the CAP Cross Compliance regime. Breaches can not only result in a percentage loss of Single Farm Payment, but farmers might also suffer whatever additional sanction is deemed necessary by the Regulator. This can result in a business facing an extremely high financial penalty for transgressions, which could affect the financial viability of the business or its ability to rectify the problem for which it was originally penalised. If the new body is seeking to operate in accordance with the better regulation principles to improve the fairness and transparency of its regulatory regimes, it should ensure that the penalties for transgressions are proportionate and are only imposed once, either as a civil sanction or a penalty under the CAP Cross Compliance

If not what would you change?:

Regulations. The Union is concerned that the introduction of fixed or variable money penalties' can result in less dialogue between the operator and regulator, and believes that even minor infringements, which historically carried a warning and a remedial notice, would, in future, attract a financial penalty and welcomes a review of the process within 12 months operation of the new body.

Question 13: Do you agree with the

proposals for

Mainly

cross border monitoring?:

The arrangements for cross border monitoring should be made within the parameters of efficiency and least cost to ensure that there are no disproportionate costs associated with the process. Sharing data and information is considered to be the most positive way forward.

If not what would you change?:

Question 14: Do you agree with the proposals for

Mainly

statutory planning and reporting?:

If not what would you change?:

Whilst the proposals outlined within the paper seem to be a sensible approach, there is concern that for some cross border issues such as River Basin Management Plans for river basin Districts, have, in the past reflected the EA England view, which has meant failure to reflect those priorities and actions from Wales which were submitted as part of the Management Plan process. It is extremely important to ensure that the cross border information sharing and co-ordination procedures be reflected and agreed on both sides.

Question 15: Do you agree with the proposals for Civil Contingencies and Yes Control of Major Accident Hazards (COMAH)?:

If not what would you change?:

Question 16: Do you agree with the proposals for UK Yes

wide

arrangements?:

If not what would The FUW believes that this is a sensible approach which avoids duplication you change?: and ensures the best use of resources.

Question 17: Do you agree with the

proposals for Mainly

transitional arrangements?:

If not what would

you change?:

The FUW believes that Welsh Government needs to ensure that the transitional arrangements ensure that there is minimal disruption to the day to day functions of the services offered currently by the three agencies after the change over. The perception of the new body will be made or broken on

the ability of front line staff to deliver services advice and guidance as if the single body was the original organisation and it is extremely important to ensure that there is no additional red tape or bureaucracy on customers.

Question 18: If you have any related issues which we have not specifically addressed, please use this space to report them:

HYBU CIG CYMRU • MEAT PROMOTION WALES

Our Ref: GH/KS/SAJ/Cons.

5 October 2012

Ms Carrie Moss
Living Wales Programme Team
Department for Environment and Sustainable Development
Welsh Government
Cathays Park
CF10 3NQ

Email: SEB@wales.gsi.gov.uk

Dear Ms Moss



Ty Rheidol Parc Merlin Aberystwyth Ceredigion SY23 3FF

Tel: 01970 625 050 Fax: 01970 615 148 Email:

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Natural Resources Body for Wales (Additional Consultation)

Hybu Cig Cymru - Meat Promotion Wales (HCC) is the industry-led organisation responsible for the development, promotion and marketing of Welsh red meat. HCC's stakeholder representatives implement, on behalf of all Welsh farmers and other key industry participants, a strategic plan to develop profitable and sustainable markets for Welsh red meat to derive benefit for all in the supply-chain.

A consultation on the proposed arrangements for establishing and directing a new body for the management of Wales' natural resources was published by the Welsh Government on 09 February 2012. Further to the HCC response to the first consultation, dated 30 April 2012, HCC welcomes the opportunity to consider the additional consultation following the decision by the Minister for Environment and Sustainable Development, John Griffiths AM, to seek further views on specific aspects of implementation, looking at the overarching duties of the new body and seeking additional views about the proposed legal and working arrangements of the body.

HCC published a Welsh Red Meat Roadmap in 2011 which was developed with input from the Welsh Government, Countryside Council for Wales and the Environment Agency. This sets out how livestock farmers, processors and retailers in Wales can achieve new and agreed goals while adhering to the business model essentials of improving profitability and sustainability. The roadmap considers challenges such as the industry's approach to greenhouse gasses, carbon footprint, water quality and use, biodiversity, countryside management and carbon conservation and sequestration and their solutions.

The total value of the red meat sector to the Welsh economy; taking into account the agricultural, processing and retail sectors; is estimated by HCC to be more than £1 billion per annum. Welsh livestock farmers also underpin the visitor economy, not least in managing the beautiful and valuable landscape of the country, with tourism supporting 172,000 jobs and contributing £6.2 billion in Gross Domestic Product (GDP).

The Welsh livestock industry has a significant role to play, as custodians of large areas of the countryside, in managing Wales' natural resources and full consideration should be given at every level to ensure positive interaction with farmers and landowners.

With regard to the specific questions raised HCC gives the following responses:

Part 1. Overarching Duties

Natural beauty and nature conservation duties

Question 1. Do you agree with our proposal for the duties of the body in respect of conservation and natural beauty?

It is noted that the overall proposal is to give the body a duty, set within the context of its overarching purpose, to promote conservation and natural beauty across all functions of the new body.

HCC acknowledges the proposal for the duties in respect of conservation and natural beauty. However, it is suggested that further consideration is given to the proposed wording in the second order to take account of the sustainable intensification food agenda. The proposed wording (page 11) c) iii) currently reads: having regard to any effect which the proposals would have on the economic and social well-being of local communities in rural areas.

The Foresight Project on the Future of Food and Farming¹ concluded that *if (i) there is relatively little new land for agriculture. (ii) more food needs to be produced and (iii) achieving sustainability is critical, then sustainable intensification is a priority.*

Sustainable intensification means <u>simultaneously raising yields</u>, <u>increasing the efficiency with which inputs are used and reducing the negative environmental effects of food production</u>".

Against the backdrop of needing to provide more food in future, whilst at the same time safeguarding the ecosystem services underpinning agricultural production, it is therefore suggested that the wording of the proposed order is revisited to take account of the sustainable intensification food agenda. To inform consideration of this point it is suggested that account may also be taken of the outcomes from the recent work commissioned by Countryside Council for Wales. This was undertaken on behalf of the Land Use Policy Group (LUPG) of the UK environmental, conservation and countryside agencies, to explore the concept of sustainable intensification².

Public access and recreation duties

Question 2. Do you agree with the proposals in respect of public access and recreation duties?

¹ http://www.bis.gov.uk/assets/foresight/docs/food-and-farming/11-546-future-of-food-and-farming-report.

² Exploring the Concept of Sustainable Intensification: ADAS & Firbank Ecosystems Ltd.

It is noted that the proposals give the new body public access and recreation duties and powers, set within the context of its overarching purpose, to actively promote access and recreation through its operational activities, and to have regard to the desirability of preserving freedom of access, in its regulatory functions.

This would include powers to provide facilities, charging for them where appropriate, as well as the power to enter into joint ventures. It is also noted that the effect of the proposals would be to *extend access and recreation duties to forest land* and to expand the geographic extent of the *powers* as compared with current arrangements.

Forestry duties

Question 3. Do you agree with these proposals for the high level forestry duties?

It is noted that the proposal is to ensure that the general duty to promote the interests of forestry is passed to the new body. The section 3 powers of the Forestry Act 1967 for management of the Welsh Ministers' woodland estate will also be transferred to the new body. The proposals specifically include a duty to promote woodland cover in Wales in line with guidance from Ministers, as well as the support of forest industries through the management of forests and the harvesting of timber products.

Part 2 - Additional Information on Legal Arrangements

Cross- border issues – general principles

Question 4. Do you agree with the general proposals for cross-border arrangements?

HCC recognises that a pragmatic approach appears to have been taken in regard to the two main areas of work where cross-border issues arise namely shared service provision and operational arrangements. It is noted that should there be a difference of view between the bodies as to the way forward on a future matter, both the Secretary of State and the Welsh Ministers will be able to direct each body in respect of these cross-border issues.

Regulation and enforcement

Question 5. Do you agree with the proposals for the statutory consultee role?

HCC welcomes the proposals that the Welsh Government will require the body to develop and publish a scheme, agreed by the Welsh Ministers, identifying circumstances where formal publication of decision documents will be required, whether or not required by other legislation.

HCC has noted the proposals for the statutory consultee role and welcomes recognition of the importance attached to transparency of decisions through publication of decision documents and that the need for proportionality is recognised.

Advising on and regulating its own operational activities

Question 6. Do you agree with the proposals to provide internal separation of decision-making, improve transparency and ensure Welsh Ministers have the opportunity to call in significant issues?

The decision to require the operational and regulatory/ advice arms to be in functionally separate structures within the business is welcomed.

HCC welcomes the intention to improve transparency by requiring the body to publish a list, on its website, of all legal permits, of any type, it has issued in respect of its own operations. This would be additional to other statutory public register requirements.

Environmental Permitting Regime (EPR)

Question 7. Do you agree with the proposals for permitting?

HCC recognises that the issue of self-permitting is one area of potential conflict and it is essential that the body gives due consideration to ensure all decision making and issuing of licences/ consents is done in a transparent and correct manner. There are certain areas where conflicts of interest could potentially arise particularly with the issue of self-permitting of some licences, i.e. badger licences. HCC considers however that the development of strategic policy and legislation should sit with Welsh Government to ensure that clear boundaries exist with potentially sensitive areas of work.

HCC notes the proposal that the single body will become the rule making authority in relation to Wales. This will enable, in future, the setting of separate sets of standard rules for Welsh permits, though in practice it is likely that a high degree of alignment between England and Wales will continue.

Permit charging

Question 8. Do you agree with these proposals for charging?

It is noted that the Public Bodies Act 2011 is not considered the most appropriate mechanism for the introduction of entirely new charges. This will be considered at a future date as part of the development of and consultation on the future Environment Bill. Transitional arrangements will be included to allow the new body to continue charging on the basis of existing Environment Agency charging schemes (or any approved before the new body takes on its functions). The intention is that all Environment Agency charging schemes as at 01 April 2013 will continue for the life of the current approved charging scheme. Once existing schemes lapse, the body itself will make schemes for Wales, which we propose will be approved by the Welsh Ministers.

Public registers

Question 9. Do you agree with the proposals for public registers?

It is noted that the current range of public register requirements placed on the three bodies will transfer to the new body in respect of its accountabilities in Wales. Legal provisions will allow for either joint registers with Environment Agency (each body being responsible for its own data within joint registers) or for the new body to create Wales only registers. The actual arrangements will be determined on a case by case basis, by agreement with Environment Agency.

Regulation of Investigatory powers Act 2000

Question 10. Do you agree that the new body should be a listed body under the Regulation of Investigatory Powers Act 2000?

It is noted that a proposal is to add the new body to Part 1 of Schedule 1 under the Regulation of Investigatory Powers Act 2000 to provide the new body with powers to ensure that effective enforcement is undertaken of environmental regulations. This enables the undertaking of certain surveillance activity in respect of for example, environmental crime, such as waste crime.

Civil sanctions

Question 11. Do you agree that the new body should have powers to use civil sanctions?

It is noted that civil sanctions are considered a valuable tool in creating a proportionate and effective response to environmental incidents. For that reason it is the intention that the new body has these powers.

HCC welcomes the fact that the new body will need to exercise the power in accordance with the better regulation principles namely, that the exercise of the power must be proportionate, transparent, consistent, accountable and targeted.

Appeals

Question 12. Do you agree with the proposals for appeal arrangements?

It is noted that the general principle that will be applied to the new arrangements is that the new body takes operational decisions (such as issuing or refusing permits) and the Welsh Ministers will remain the route of appeal. This is currently the case for much of the existing legislation. Some legislation however provides that appeals against decisions will be heard by the Secretary of State.

HCC welcomes the proposal that in relation to the new body, the preferred position is to enable the Welsh Ministers to hear appeals in respect of all Welsh matters.

Monitoring and sampling of cross-border sites and impacts

Question 13. Do you agree with the proposals for cross border monitoring?

HCC recognises that where cross-border monitoring is required, the activity will normally be undertaken by the new body for all sites in Wales and by the Environment Agency or Natural England for all sites in England, and appropriate recharge made for costs incurred by the monitoring body.

Statutory planning and reporting

Question 14. Do you agree with the proposals for statutory planning and reporting?

It is noted that for cross-border plans, the intention is that each body (i.e. the new body and Environment Agency or Forestry Commission) will be accountable for its own area, both in respect of planning and subsequent actions such as monitoring, reporting and enforcement/ improvement works.

HCC welcomes recognition of the importance to ensure co-ordination at the river basin district level, by proposing propose that the new body and the Environment Agency will be required to exercise relevant functions in relation to each river basin district, including cross-border districts, so as to best secure the requirements of the Water Framework Directive and co-ordinated for the whole of each district.

An important proposal is to give the new body a general obligation to exercise certain relevant functions so to ensure compliance with the requirements of the Water Framework Directive.

Where data are required for statutory UK reporting purposes, HCC concurs with the view that the single body should have a duty to provide them for Wales – either via the Welsh Ministers to the relevant Government department, or jointly with Environment Agency by agreement between the parties.

It is recognised that the requirement for a water undertaker to consult the Environment Agency will remain. Additionally, as the new body will have responsibility for the management of water resources in Wales, HCC acknowledges the importance of including the new body as a consultee where drought and water resource management plans impact on water resources in Wales.

Incident management

Question 15. Do you agree with the proposals for Civil Contingencies and COMAH?

It is noted that the new body will be added to the list of Category 1 responders in Part 1 of Schedule 1 to the Civil Contingencies Act 2004, in order to respond to emergencies such as flood events or marine incidents.

It is also noted that the responsibilities for control of major accident hazards (COMAH) will be transferred to the new body, to enforce the COMAH Regulations 1999.

Trading schemes and producer responsibility

Question 16. Do you agree with the proposals for UK wide arrangements?

It is noted that the administrative aspects of existing arrangements will continue under the new body.

Transitional arrangements

Question 17. Do you agree with the proposals for transitional arrangements?

It is noted that the second order will define a wide range of transitional arrangements which will ensure that decisions of the existing bodies will continue to have effect.

In conclusion, HCC recognises the importance of environmental and social well being as key elements in the role of the Natural Resources Body for Wales. However, with an ever-increasing EU and global population, economic well being and ensuring a plentiful supply of high quality food must also be seen in equal terms. The Welsh livestock industry also has a significant role to play, in managing Wales' natural resources. Sustainable agriculture promotes greater stability in the rural economy. It is therefore suggested that of key importance to the success of the Natural Resources Body for Wales is to recognise and encourage the importance of an effective working relationship with the Welsh livestock industry.

HCC also considers it vitally important from the outset for the Natural Resource Body for Wales to take account of and embed into its culture the principle of Working Smarter in conjunction with the Welsh Government and others in implementing the recommendations of the Working Smarter report. The report which was published on 31 January 2012 by the Deputy Minister for Agriculture, Food, Fisheries and European Programmes recommended a simplified and improved way of working for both regulators and farmers in Wales.

We hope that these comments are useful in your deliberations and would appreciate being kept informed of any further developments in this area.

Yours sincerely

Gwyn Howells Chief Executive

Natural Resource Body for Wales (Additional Consultation) Consultation Response from Monmouthshire County Council

Part 1

Question 1. Do you agree with our proposal for the duties of the body in respect of conservation and natural beauty? (Yes, Mainly, Not at all). If not, how would you change it?

Yes we agree with the approach set out. In due course we would welcome further clarity and local consultation as to how those duties under 7(1) a will be applied and developed across all of the single body's activities particularly with regard to the conservation and enhancement of natural beauty.

7 (1) c (i) we suggest possible additional reference to the setting of buildings, sites and objects:-

"to have regard to the desirability of protecting and conserving buildings, sites and objects of archaeological, architectural, engineering or historic interest and their settings;"

7 (1) c (ii) we suggest possible additional wording to refer to landscape character:-

"to take into account any effect which the proposals would have on the beauty or amenity of any rural or urban area <u>in particular the landscape character</u> or on any such flora, fauna, features, buildings, sites or objects; and

Question 2. Do you agree with the proposals in respect of public access and recreation duties? (Yes, Mainly, Not at all). If not, how would you change it?

Yes we agree with the approach set out and in particular we welcome the extension of an access and recreation duties to forest land.

We would welcome the addition of a reference to the health and well-being benefits of access and recreation, which potentially could be incorporated into section 2 (1)

The facilities outlined in 3 (3) include footpaths but not other forms of recreational routes, such as bridleways or to facilitate other forms of countryside access, or improve the accessibility of such provision, and this seems to be an omission.

As worded there is currently no linkage between the two sets of duties i.e. linking references to public access and recreation to ensuring that the conservation and enhancement of the natural landscape (including its natural beauty and nature conservation matters) are fully considered. This would support the development of multi – functional landscapes, the ecosystem approach and further development of a Green Infrastructure approach.

Question 3. Do you agree with these proposals for the high level forestry duties? (Yes, Mainly, Not at all). If not, how would you change them?

We do not have a definitive view on this proposal but if transferred to 7(1) b of the 1995 act then there would need to be some amendments of clauses to <u>ensure the conservation and enhancement of natural beauty</u> is taken into account as is currently the case in its balancing duties. The need to ensure a strong regard to nature conservation interests could be better served by transferring it to the Nature Conservation Duties.

Question 4. Do you agree with the general proposals for cross-border arrangements? [Yes, Mainly, No] If not what would you change?

We support the broad approach set out. However the summary of cross border work seems to exclude many areas, for example issues relating to landscape protection, and specifically the Wye Valley Areas of Outstanding Natural Beauty, the only cross border AONB; managed forest that does not accord with the national boundary, river catchment and estuary issues etc.

Our comments on the first consultation are reproduced below:

"The resources, skills and expertise of the EA in England provide key support to the EA in Wales. It is imperative that robust arrangements and access to these remain for the SB and we seek assurance that appropriate arrangements are put in place. Continuation of cross border working is also critical on river catchment areas, such as that of the River Wye and the Severn Estuary. Again assurances are sought that robust arrangements are put in place for the SB to operate effectively on cross border issues. Other cross border matters which will require formal arrangements with the Environment Agency, Forestry Commission in England and Natural England include the Wye Valley AONB and management plan, the Wye SAC, Wye Navigation and Waterway Plan, and that part of the Welsh forestry estate in Monmouthshire managed by Forestry Commission England."

Part 2

Question 5. Do you agree with the proposals for the statutory consultee role? [Yes, Mainly, No] If not what would you change?

Yes, but we would comment additionally that;

 The relationship with local authorities needs to be clearly set out particularly with regards to how the body will work as a statutory consultee to planning and its internal expert consultees. 2. There could be greater shared working of expertise to identify problem areas and seek solutions both internally within body and externally with local authorities and other public bodies.

Question 6 Do you agree with the proposals to provide internal separation of decision-making, improve transparency and ensure Welsh Ministers have the opportunity to call in significant issues?

[Yes, Mainly, No]

If not what would you change?

Yes

Question 7 Do you agree with the proposals for permitting? [Yes, Mainly, No] If not what would you change?

Yes

Question 8 Do you agree with these proposals for charging? [Yes, Mainly, No] If not what would you change?

Yes

Question 9 Do you agree with these proposals for public registers? [Yes, Mainly, No] If not what would you change?

Yes

Question 10 Do you agree that the new body should be listed under the Regulation of Investigatory Powers Act 2000? [Yes, Mainly, No] If not what would you change?

Yes

Question 11 Do you agree that the new body should have powers to use civil sanctions?

[Yes, Mainly, No]

If not what would you change?

Yes

Question 12 Do you agree with the proposals for appeal arrangements? [Yes, Mainly, No] If not what would you change?

Yes

Question 13 Do you agree with the proposals for cross border monitoring?

[Yes, Mainly, No] If not what would you change?

Yes

Question 14 Do you agree with the proposals for statutory planning and reporting?

[Yes, Mainly, No]

If not what would you change?

Yes

Question 15 Do you agree with the proposals for civil contingencies and COMAH?

[Yes, Mainly, No]

If not what would you change?

Yes

Question 16 Do you agree with the proposals for UK wide arrangements? [Yes, Mainly, No] If not what would you change?

Yes

Question 17 Do you agree with the proposals for transitional arrangements? [Yes, Mainly, No] If not what would you change?

Yes



FFORYMAU MYNEDIAD LLEOL YNG NGHYMRU LOCAL ACCESS FORUMS IN WALES

Cynrychiolydd Cenedlaethol/National Representative: Jean Rosenfeld (Cadeirydd FfMLl Sir y Fflint/Chair Flintshire LAF). E-bost/Email: jean.rosenfeld@ukgateway.net. Ffôn/Phone: 01352 750566

Response on behalf of the Local Access Forums in Wales to the Second Consultation Document "Natural Resources Body for Wales"

Note: The following response is submitted in my capacity as National Representative of the Local Access Forums in Wales, on their collective behalf. It does not supersede or replace any responses individual Local Access Forums may give. The response is limited to matters relevant to the remit of Local Access Forums, which are statutory bodies set up in each Local Authority area under the Countryside and Rights of Way Act 2000 to advise their respective Local Authority, the Countryside Commission for Wales, the Welsh Government and National Assembly 'as to the improvement of public access to land for the purpose of open-air recreation and the enjoyment of the area.'

1. General comment

The three existing bodies, in addition to their activities stemming from their statutory duties have also been engaged (usually with stakeholders and other third sector organisations) in activities that, whilst they do not flow directly from their statutory duties, are nevertheless related to and effectively support their remits and objectives.

Of particular concern to the Local Access Forums is the support, both financial and administrative, that CCW has given to the Local Access Forums over a number of years. This has proved effective to ensure that local communities are properly engaged in matters relating to access in their locality and that local needs and wishes are fully reflected in the democratic process.

Similarly, the National Access Forum of Wales (set up by CCW), whilst it is not a statutory body, has provided an effective channel for the exchange of views between the bodies and the voluntary sector involved in access issues.

Whilst we appreciate that the proposed orders are intended to define the overarching duties of the new body and therefore do not necessarily cover explicitly all detailed activities that may be envisaged, we would seek reassurance that those activities currently carried out by one or other of the three bodies that do not stem directly from their statutory duties will be taken up and continued by the single body, at the least during a reasonably extended transition period during which a review might be undertaken.

2. Need for the single body to consult external bodies

The regulatory arrangements, especially where self permitting is envisaged, should ensure that relevant stakeholders are consulted before a decision is reached. For proposals that could materially affect or restrict public access or impact on a public right of way, the Local Access Forum in whose area the proposal lies should be a statutory consultee. Similarly for proposals materially impacting on a site of cultural or historic interest, CADW should be a statutory consultee.

Jean L.J. Rosenfeld National Representative of the Local Access Forums in Wales

Page 1

NFU Cymru Consultation Response

To: Carrie Moss Date: 5/10/12

Living Wales Programme Team

WG

Cathays Park

Cardiff

Cc: NFU Cymru RAB

NFU Cymru Policy Team

Ref:

Contact: Dafydd Jarrett

Tel: 01982554200

Fax: 01982554201

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Natural Resource Body for Wales (additional consultation)

NFU Cymru represents 22,380 farmers, managers and partners in agricultural businesses including those with an interest in farming and the countryside. We welcome the opportunity to respond to this additional consultation.

We would ask that these responses are considered in conjunction with our response to the earlier consultation in May a copy of which will be attached to the e mail for your reference.

Question 1

Do you agree with our proposal for the duties of the body in respect of conservation and natural beauty?

We do not agree with this proposal as we do not believe the section is well balanced. In Box 2 point (c) iii to have regard to any effect which the proposals would have on the economic and social well- being of local communities in rural areas, comes right at the very bottom. In our view this should come much higher in the second order's wording

The proposals put promoting conservation and natural beauty as an overarching purpose, but do not appear to expressly recognise the need for there to be a sustainable farming industry.

NFU Cymru is concerned that this could lead to nature conservation/protection of natural beauty always been given higher importance than farming interests and economic development.

There is a recognition of the need to ensure that the duty is exercised in a manner that is consistent with sustainable development, which should help to some degree, but the environment must encompass the needs and livelihoods of people who manage the land.





Question 2

Do you agree with the proposals in respect of public access and recreation duties?

Not entirely.

The proposals are entirely focused on public enjoyment and public access rights; there is no recognition of the need to balance those interests against the rights and interests of landowners and managers.

It is a very one sided proposal which could be to the detriment of our members. Creating more and more access without its regular maintenance will lead to insurmountable problems and functions should concentrate on providing high quality access and visitor experience and not access everywhere. Access should focus on quiet enjoyment to specified areas on foot.

We are pleased to see that the definition of the word "provide" in the second order includes manage, maintain and improve but does not include the word increase.

Whether this is a problem or not depends, to some degree, on the functions conferred, as the duty only applies when exercising its functions.

Question 3

Proposals for high level forestry duties

Yes

We agree particularly with the duties to prevent pest attack, however we must not lose the expertise currently provided by Forest Research on an UK wide basis.

The Single Body should not be placing barriers against the development of commercial forestry and planting of conifer trees on appropriate sites and for appropriate purposes.

Question 4

Do you agree with the general proposals for cross-border arrangements?

Mainly but with the following concerns

NFU Cymru is not sure how the Welsh Government proposes to place a duty on the Environment Agency to do something (in this instance consult with the Welsh body). Would this require a change to primary legislation governing the EA, in which case it's likely to have to be done by Westminster? The WG does not have powers which would enable it to make changes to legislation that would affect England.

NFU Cymru seeks clarification with regards to the proposal.





NFU Cymru Consultation Response

However should there be a difference of view between the bodies as to the way forward on a future matter, both the Secretary of State (SoS) and the Welsh Ministers will be able to direct each body in respect of these cross-border issues....

Does this mean that the SoS and the WAG can each direct both bodies or that the SoS can direct the EA and the WG the Welsh body? If so, how are these powers to be conferred?

What if the SoS and the WG give inconsistent directions? That won't lead to a resolution of the situation.

We have raised this concern in the previous consultation as it will affect members who live near or have land each side of the border. Two examples would be flood control responses and the River Basin District programmes. There needs to be better clarification on this which is unfortunately not provided in this consultation.

Question 5

Do you agree with the proposals for the statutory consul tee role?

No

Mainly because we don't understand how the body can consult itself. NFU Cymru can see the need to have appropriate internal procedures to ensure that all relevant Departments/Teams within the body are involved in formulating the proposals and that all relevant duties are taken into account.

But it is not clear how the Body can properly consult itself – what if the Body feels the need to object to its own proposals? Surely those sorts of issues should be ironed out before any formal consultation with other bodies?

It is partly dealt with in the paragraph above Q5 – everyone has the right to know why decisions have been taken – so a householder has the right to know why their application for a septic tank has been rejected. Whilst this does not necessarily need to be in a formal document (it could simply be set out in a letter to the affected individual), the reasons behind a decision do need to be communicated. If decisions are not communicated individuals will not be able to understand why decisions have been reached, what they could change to get a different outcome, or whether there are grounds for challenging decisions.

Questions 6 to 9

Yes we agree with the proposals in these sections.

Question 10

Do you agree that the new body should be listed under the Regulation of Investigatory Powers Act 2000





Mainly agree

The listing the Single Body could lead to an expansion of the powers to a wider set of functions as the CCW and FC do not currently have such powers. However, if not listed would lose the investigatory powers that the EA has under this legislation and we would regard investigation of waste crime as an important function

There is a need to ensure that there is communication between the EA and the Welsh body re cross-border investigations to avoid duplication of work and to ensure that any action is co-ordinated if both bodies are to be involved.

Question 11

Powers to use civil sanctions

No we cannot agree

NFU Cymru have had concerns about the use and far reaching powers of Civil Sanctions since they became law in 2008. We would only be able to support this if the Single Body could give assurances that the powers used are ones of last resort and proportionate. As written the consultation does not provide such assurances

Question 12

Do you agree with the proposals for appeal arrangements?

Mainly agree

This involves some transfer of powers to Wales, which is likely to require amendments to the relevant legislation to specify the Welsh Minsters as the route for appeals in Wales. Provision may also need to be made to ensure that there are sufficient resources available to the WG to deal with appeals in a timely and consistent manner.

Question 13

Cross Border Monitoring

Mainly agree but there must be recourse to appeal in cases of doubt.

Question 14

Do you agree with the proposals for statutory planning and reporting?

Mainly

Cross border river basins could be an issue. If the EA and the Welsh Body each draw up their own plan for the part in their region it could lead to inconsistent approaches between the English and Welsh sections. This may not be helpful in terms of achieving the objectives of protecting the river basin and may complicate issues for landowners/managers who have





NFU Cymru Consultation Response

to apply different conditions on different parts of their land. Would it be better to provide for the EA and the Welsh Body to jointly draw up the plans? An alternative would be for the plans to be drawn up by the body responsible for the majority of the basin?

Question 15

Do you agree with the proposals for civil contingencies and COMAH?

Mainly

There is a need to ensure that appropriate resources are available for these functions.

There is a need for procedures to be in place to ensure co-operation between the relevant bodies, particularly in relation to cross border issues.

The transfer of powers to Welsh Ministers is likely to require changes to legislation, which may have to be done at Westminster, so is likely to require co-operation.

Questions 16&17

Yes we agree with the UK wide and transitional arrangements proposed.





27 Heol y Wig / 27 Pier Street, Aberystwyth, SY23 2LN 2: 01970 611621 3: enquiry@waleslink.org Cadeirydd / Chair: Dr Madeleine Havard Cyfarwyddwraig / Director: Susan Evans www.waleslink.org

Natural Resources Body for Wales (additional consultation) response October 2012

Wales Environment Link (WEL) is a network of environmental and countryside Non-Governmental Organisations in Wales, most of whom have an all-Wales remit. WEL is officially designated the intermediary body between the government and the environmental NGO sector in Wales. Its vision is to increase the effectiveness of the environmental sector in its ability to protect and improve the environment through facilitating and articulating the voice of the sector.

Wales Environment Link values the opportunity to take part in this important consultation.

Introduction – overarching considerations

Whilst WEL is widely supportive of the creation of the new Natural Resources Body for Wales (NRBW) we have concerns regarding the proposed wording for the duties of the body and will provide further detail in the appropriate section of our response below. In principle we would like to see one strong and common duty for the NRBW, which is applied across the range of its activities and is in line with WEL's position on the purpose of the new body. We will be revisiting this point in our future work with Government on the Environment Bill. We are also concerned that Welsh Government has not provided sufficient detail in important areas where the transfer of functions (duties and powers) has been proposed. There is little information available on the arrangements for planning and management of the marine environment with regard to the new body, and issues relating to landscape management and protection have thus far been significantly under-represented in the proposed role, functions and scope of the new body.

The omission of detail on such important areas is contributing to growing uncertainty within WEL that all of the existing functions of the legacy bodies will be transferred across to the NRBW with the same weight and relevance as they had in their predecessor organisations. WEL would be highly concerned if this were not the case, and we therefore seek reassurance from Welsh Government that the final legislation will ensure that the full range of functions of the existing organisations is transferred with no loss of protection/ operational functionality. In addition, WEL has repeatedly asked to see a list of all the pieces of legislation being reviewed and the amendments proposed. For 27 September 2012 Reference Group meeting, Welsh Government provided a list of pieces of legislation that are being considered. However, this is only part of what was requested as WEL is primarily interested in reviewing the proposed amendments, and we would appreciate the information in its entirety as soon as possible.

We would like to emphasise the importance of developing and retaining a strong purpose for the body, which comprises a broad definition of environment and is underpinned by a clear understanding of what is meant by sustainability and sustainable development. In our response to the previous NRBW consultation WEL stated that the primary purpose of the new body must be: "To protect, conserve, enhance and positively manage Wales' environment and so ensure its benefits for the people of Wales, now and in the future." WEL believes that the purpose of the NRBW as defined in the legal orders must conform to these principles and serve to ensure that the body positively manages urban and rural environments in Wales in a sustainable and integrated way ensuring the conservation, protection and enhancement of biodiversity, landscapes, seascapes and heritage assets. The body must also recognise that its decision-making cannot take place in isolation from international legislation or agreements or without recognition of its consequences on others in a global context.

The incorporation of Welsh Government's work on the Sustainable Development Bill with the establishment of the NRBW is therefore essential if the new body is to achieve its potential as a powerful, creative and influential force for the responsible and sustainable stewardship of the Welsh environment in an international context. The new body could then serve as an ambassador for public bodies in implementing the sustainable development duty and help to spearhead the important cultural and behavioural shifts necessary to create a sustainable Wales.

The body also has potential to lead a step change in environmental management and adaptation in the face of accelerating environmental change; outcomes we anticipate the emerging Natural Environment Framework and Living Wales agenda will introduce. As a result, WEL was surprised and concerned to find no obvious reference to Living Wales in the establishment legislation, especially given that the NRBW will be a key developer and deliverer of this programme. We believe that the orders to create the body must include direct reference to the body's overarching role and responsibility towards sustainable development and the new approaches identified by the work of Living Wales. Without sufficient flexibility and opportunity built into the new body's core remit and functions there is a danger that the NRBW will be, from its inception, limited and lacking in ambition. Thus there has never been a more crucial time for Welsh Government to effectively align and integrate the emerging policy areas.

Natural beauty and nature conservation duty

WEL is unhappy with the wording proposed in Box 2 (a). Whilst we understand that it has been taken from the existing duty on the Environment Agency under s7(1) Environment Act, 1995, the limiting and torturous wording serves to create a duty much narrower in its obligations than the existing CCW duty. In particular, the references to "proposals" in the duty create uncertainty over whether the duty applies only to these proposals as opposed to the wider exercising of its functions. By comparison the recreation duty in Box 3(2)(1) is much clearer – "The NRBW must exercise its functions so as to encourage...". WEL feels that the natural beauty and nature conservation duty must therefore be amended to expand and clarify its meaning, i.e. "to exercise and discharge any power/ its functions to **further**...".

Forestry duty

WEL recognises the limited nature of the powers in the Public Bodies Act and that Welsh Government is unable to make legislative changes in this process other than those considered 'necessary' to facilitate the transfer of functions to the new body. However, we do not feel that either option put forward by Welsh Government in the consultation document, i.e. the transfer of the forestry balancing duty or the duty to have regard to the desirability of nature conservation from the Environment Act 1995, is the ideal scenario for the new body, and as a result we cannot directly support either option.

WEL understands that it would be unhelpful to ask Welsh Government to make substantial changes to the forestry balancing duty as part of this particular legislative process and we will instead be recommending amendments as part of subsequent legislative programmes, i.e. the Environment Bill. WEL would like to take this opportunity to state our belief that it is the duty of the NRBW to manage its woodland estate sustainably to fulfil a variety of needs and outcomes. We would expect this approach to integrate environmental, economic and social factors.

Powers of direction and cross-border arrangements

WEL would like clarification from Welsh Government on powers of direction (Welsh ministers and Westminster) in respect of cross border activities and how the consultation between Welsh-UK ministers and the respective bodies will take place. We would also like acknowledgement from Welsh Government that the last sentence on page 18 of the consultation document "we anticipate that this work will continue" with respect to management of cross-border protected sites by CCW and other Statutory Nature Conservation Bodies (e.g. JNCC, Natural England) is poorly worded, and that the management of these sites will continue once the new body is vested.

Statutory consultee role

WEL is concerned at the current lack of information on the NRBW's plans for engagement and working relationships with the environmental NGO sector. WEL wants to see more information on this crucial element of the new body's role in order to have confidence in the future arrangements.

Internal separation of decision-making, transparency and public registers

While WEL agrees in principle with the concept of internal separation to ensure independent decision-making and adequate transparency for the new body, we have some concerns about how the NRBW will achieve this in practice. The Seaports Investments judgment states that "a functional separation [must] be organized so that an administrative entity internal to it has real autonomy" so that it is in a position to "give an objective opinion on the plan or programme…". Therefore WEL cannot agree with the specific proposals outlined by Welsh Government in the consultation document, and we would like further detail on how a high level of functional separation in compliance with the Seaports judgment will be achieved in the NRBW to ensure transparency.

WEL also has concerns over the procedure Welsh Government has outlined in section 6.3 of the consultation document, for the NRBW to publish a "list... of all legal permits, of any type" that the body issues in respect of its own operations. In order to ensure complete transparency in the process, we believe that instead of simply listing any legal permits it has issued, the body must publish a list of permits it intends to issue. The incorporation of an advance notification period into the process would provide a crucial opportunity for interested parties to view the information upon which a proposed decision has been based and act accordingly, legitimizing the final decision. WEL has similar concerns over the retrospective publication of the "scheme" and public registers, and would like reassurance from Government that an advance notification period will be included in all these processes to ensure transparency.

WEL finds the proposal for a public register confusing as it is not clear how it relates to the list of permits, the scheme, the formal publication of decision documents (s6.2) and existing obligations with respect to registers. This section needs further clarity to make it clearer how these different documents relate, what they would include and how they would operate.

Civil sanctions

WEL supports Welsh Government's proposals for the NRBW regarding civil sanctions. We understand that whilst the civil sanction powers will be extended to the whole body they will remain within the existing functions of the Environment Agency for an initial period. We would strongly support the extension of these powers to other functions of the new body in future, including but not limited to the existing functions of CCW.

The following WEL members support this document:

Afonydd Cymru

Bat Conservation Trust

British Mountaineering Council

Butterfly Conservation Wales

Cambrian Mountains Society

Campaign for National Parks

Campaign for the Protection of Rural Wales

Coed Cadw / Woodland Trust

The Conservation Volunteers

Cymdeithas Eryri / Snowdonia Society

Marine Conservation Society

Plantlife Cymru

Ramblers Cymru

RSPB Cymru

Salmon and Trout Association

Vincent Wildlife Trust

Wildlife Trusts Wales

Wye & Usk Foundation

Ymddiriedolaeth Genedlaethol / National Trust

From: Communications

Sent: 05 October 2012 16:30

To: SEB mailbox

Subject: Natural Resources Body for Wales (additional consultation) response form

(Unchecked)

Page used to send this

email:

/consultations/forms/singlebodyresponse2/

Responses to consultations may be made public - on the

internet or in a report.

If you would prefer your response to be kept confidential, please tick here:

Your name:

Organisation (if applicable):

Email / telephone

number:

Question 1: Do you agree with our proposal for the duties of the body in respect of conservation and natural beauty?:

If not, how would you change it?:

Question 2: Do you agree with the proposals in respect of public access and recreation duties?:

If not, how would you change it?:

Question 3: Do you agree with these proposals for the high level forestry duties?:

If not, how would you change them?:

Question 4: Do you agree with the general proposals for cross-border arrangements?:

Yes

If not what would you change?:

Question 5: Do you agree with the

proposals for the statutory consultee Yes role?:

If not what would you change?:

Question 6: Do you agree with the proposals to provide internal separation of decision-making, improve transparency and ensure Welsh Ministers have the opportunity to call in significant issues?:

If not what would you change?:

Question 7: Do you agree with the proposals for permitting?:

If not what would you change?:

Question 8: Do you agree with these proposals for charging?:

If not what would you change?:

Question 9: Do you agree with the proposals for public registers?:

If not what would you change?:

Question 10: Do you agree that the new body should be a listed body under the Yes Regulatory Investigatory Powers Act 2000?:

Question 11: Do you agree that the new body should have yes powers to use civil sanctions?:

Question 12: Do you agree with the proposals for appeal arrangements?:

01/11/2012

If not what would you change?:

Question 13: Do you agree with the proposals for cross border monitoring?:

Yes

If not what would you change?:

Question 14: Do you agree with the proposals for statutory planning and reporting?:

If not what would you change?:

Question 15: Do you agree with the proposals for Civil Contingencies and Control of Major **Accident Hazards** (COMAH)?:

If not what would you change?:

Question 16: Do you agree with the proposals for UK wide Mainly arrangements?:

If not what would you change?:

CIWM is aware that arrangements for international waste shipments might need to be altered from the current service provided, in relation to statutory recycling targets legislation in Wales.

Question 17: Do you agree with the proposals for transitional arrangements?:

Yes

If not what would you change?:

Question 18: If you which we have not report them:

Co-operation aspect important in relation to data sharing and systems currently shared as well as need to monitor cross border waste flows. CIWM has some concern about the practicality of regulation, rod licences and mobile plant, around the deployment forms for mobile have any related issues plant. CIWM is concerned that in Appendix 1 there is only general functions of pollution listed for its main duty, not any of the later specifically addressed, sections of the Environment Act 1995 in relation to waste strategy, in please use this space to particular to what the Secretary of State can direct the Agency to do in respect to waste and industry regulation, the basis under which Welsh Government currently ask surveys to be performed and information gathered to inform strategy development. Other duties are mentioned throught out the document.

Natural Resource Body for Wales (*Additional Consultation*) Response from the Wales Activity Tourism Organisation (WATO)

WATO's Joint Response represents the views of :
Pembrokeshire Outdoor Charter Group
Snowdonia Active
South Wales Outdoor Activity Providers Group

Purpose of Report

The purpose of this report is to outline the response of the WATO to the additional consultation issued by Welsh Government on the formation of the Natural Resources Body for Wales.

Background

During 2011 Welsh Government consulted on its proposal to merge the functions of Countryside Council for Wales (CCW), Forestry Commission Wales (FCW) and Environment Agency Wales (EAW) in a new Single Environment Body. We responded to that consultation seeking to ensure that the interests of activity and recreational tourism were recognised, protected and enhanced in any new arrangements. Subsequently the Environment Minister confirmed WG's intention of pressing ahead with its proposal and the order establishing the new body came into force on 19th July 2012.

Welsh Government has now opened a further consultation on the arrangements for establishing the new body's functions and transferring powers from the 3 existing organisations. Further information can be found at: http://wales.gov.uk/consultations/environmentandcountryside/singlebodyadditional/?skip=1&lang=en

WATO supports the development of sustainable tourism based on the environment of Wales and the management of its natural assets. We are aware that the majority of Wales' visitors state the environment and outdoor activities as a major attraction, motivation and component of the visit.

We offer the following comments relating specifically to tourism issues.

Comments

P11

We note that the proposed order states:

"Ministers and the new body would be under a duty, in formulating or considering any proposal relating to any functions of the body -

- To have regard to the desirability of protecting and conserving buildings, sites and objects of archaeological, architectural, engineering or historical interest;
- To take into account any effect which the proposals would have on the beauty or amenity of any rural or urban area or on any such flora, fauna, features, buildings, sites or objects; and
- To have regard to any effect which the proposals would have on the economic and social well-being of local communities in rural areas"

We are not sure whether there is a distinction in degrees of obligation between 'have regard to' and 'take into account' (although the latter seems firmer) but all three points should have equal strength.

Arguably there should be a specific reference to Health and well-being in the third point

In respect of the first bullet point we are also aware that the Welsh Government is currently framing a Heritage Bill so it is clearly important that the duties laid on public bodies are consistent between the 2 areas of legislation.

We are not sure why there is reference to 'rural and urban' in the second point and only 'rural' in the third. Both should be included.

P13/14

While we would not disagree with the responsibilities and opportunities identified for the new body in respect of recreation we believe the wording of the order should be made more explicit to embrace both land and water-based activities and the list of possible facilities operated by the new body should be expanded to include *inter alia* fishing, sail and paddle sports, mountain biking trails and riding facilities

P18

In considering cross-border issues, it should be noted that the Environment Agency is currently the Navigation Authority for the River Wye. Is such a responsibility envisaged as a possibility for the new body, is it to be left to EA in England, or would Welsh Government seek to transfer such responsibilities to the newly formed Canals and Rivers Trust?

Recommendations

We recommend that the above comments are considered by Welsh Government.



Welsh Government Consultation on a Natural Resources Body for Wales (additional consultation)

Response from The Crown Estate

October, 2012

1. General Comments

- The Crown Estate welcomes the publication of this consultation and is grateful for the opportunity to provide these comments in the context of our interests and ownership of almost the entire seabed.
- Since November 2011, The Welsh Government has a Memorandum of Understanding with The Crown
 Estate which sets a framework to illustrate how the two bodies can work together for the benefit of
 marine planning and Wales. We work closely with the Welsh Government and have an open and
 transparent working arrangement in which we welcome further dialogue on the development of the
 single natural resources body in the context of progressing marine developments in Wales.

Re Section 6: Regulation and enforcement

- The Marine Consents Unit (MCU) of the Welsh Government is seen by The Crown Estate and many of our partners as an example of a well-functioning and efficient delivery unit.
- Page 19 (and page 21, Section 6.3) references separate administrative arrangements that will be put in place for regulation and operations within the body. Although the wording is not entirely clear, we acknowledge that it is the intention to move the function of marine licensing into the Natural Resources Body. We feel that this needs to be carefully considered by the Welsh Government as there is a danger of a regressive step if implementation is not carried out with rigour and understanding of all implications. Specifically, planned renewable energy developments need to be considered in the context of wider Government objectives and resource provisions planned accordingly.

2. Introduction

The Crown Estate welcomes the publication of this inquiry and is grateful for the opportunity to provide these comments. The statements contained in this response are in the context of The Crown Estate's interests and ownership of almost the entire seabed. This response is informed by The Crown Estate's extensive experience of managing activities within the marine environment and, within its core remit, of balancing economic activity with stewardship of natural resources for future generations to use and enjoy. We are committed to working with government departments, stakeholders and industry in helping to manage the coastal and marine environment.

The Crown Estate can bring to bear a high level of knowledge and expertise on issues relating to management of the foreshore, the territorial seabed and continental shelf, and we are committed to working with the UK and Devolved Governments and all stakeholders on issues which affect these areas. Our Welsh portfolio is diverse



including, on our rural estate, substantial areas of common land, agricultural holdings and a range of mineral interests. Our marine estate takes in around half of the foreshore and the seabed out to 12 nautical miles, where we are playing a key role in enabling developers to realise the potential for renewable energy, particularly through offshore wind farms and marine renewable energy installations. In managing our Welsh estates we aim to work in partnership with government and local communities for mutual benefit. We have built good working relationships with the Welsh Government and the National Assembly for Wales, local councils, communities and our own customers.

Having reviewed the consultation document, please see below for some specific comments related to the questions asked: -

3. Responses to consultation questions

Question 1: Do you agree with our proposal for the duties of the body in respect of conservation and natural beauty? If not, how would you change it?

Page 9, under the Proposal section, states that the body's duty is to "promote conservation and natural
beauty across all functions of the new body", this is of interest to us in relation to the licensing function
this new body will hold – Section 6 mentions the separate administration arrangements, but the licensing
decision making needs to include a duty for sustainable development as well as a duty to promote natural
beauty and converse the marine environment.

Question 2: Do you agree with the proposals in respect of public access and recreation duties? If not, how would you change it?

Yes. With regards to the duty of public access and recreation duties, The Crown Estate, in the context of
our ownership of over half of the foreshore and significant coastal assets in Wales, would welcome
liaising with the Welsh Government on developing innovative coastal management schemes that would
enhance public access, usage and have broader social and economic benefit to the surrounding areas.

Question 3: Do you agree with these proposals for the high level of forestry duties? If not, how would you change it?

• No comment.

Question 4: Do you agree with the general proposals for cross-border arrangements? If not, what would you change?

- Page 18 refers to cross-border requirements for bodies to "agree circumstances where they will consult each other on activities which could have cross-border effect". Whilst we welcome the proactive approach to cross-border operations, we would also like to note that the "agreed circumstances" should not be prescriptive and regular dialogue should be enabled and encouraged.
- In the context of our duties across the UK, we believe there is a need to create momentum around
 marine planning in Wales and there is an opportunity for the Welsh Government to work closely with its
 neighbours in the UK and Republic of Ireland to create the first cross-border multi-sector marine plan



which helps deliver the objectives of government. We believe the Natural Resources Body can play an instrumental part to this cross-border activity and is also applicable when considering an ecologically coherent network of MPAs (including MCZs) that would make an important contribution to the implementation of an ecosystem approach with benefits economic and social, as well as environmental.

Question 5: Do you agree with the proposals for the statutory consultee role? If not, what would you change?

 Yes, however, we would wish to see more detail on the scheme for formal publication of decision documents.

Question 6: Do you agree with the proposals to provide internal separation of decision-making, improve transparency and ensure Welsh Ministers have the opportunity to call in significant issues? If not, what would you change?

- As per our comments above, we feel that this needs to be carefully considered by the Welsh Government
 as there is a danger of a regressive step if implementation is not carried out with rigour and
 understanding of all implications. Specifically, planned renewable energy developments need to be
 considered in the context of wider Government objectives and resource provisions planned accordingly.
- We welcome further discussions with the Welsh Government on how to ensure there is a smooth transition of function to this Natural Resources Body and we contribute an overarching view of planned renewable energy developments that will need to be considered in the context of licensing arrangements.

Question 7: Do you agree with the proposals for permitting? If not, what would you change?

No comment.

Question 8: Do you agree with the proposals for charging? If not, what would you change?

No comment.

Question 9: Do you agree with the proposals for public registers? If not, what would you change?

• Yes, no comment.

Question 10: Do you agree that the new body should be a listed body under the Regulation of Investigatory Powers Act 2000?

Yes.

Question 11: Do you agree that the new body should have powers to use civil sanctions?

No comment.

Question 12: Do you agree with the proposals for appeal arrangements? If not, what would you change?



 With regards to Welsh Ministerial arrangements, The Crown Estate seeks to work with the grain of Government, regardless of changes to ministerial powers, and therefore we do not anticipate any impact on our relationship.

Question 13: Do you agree with the proposals for cross border monitoring? If not, what would you change?

• Yes, in principle, however, we would want to see a robust process in place for final decision making (where reference is made to "substantial disagreement between the bodies").

Question 14: Do you agree with the proposals for statutory planning and reporting?

- Yes, the plans and reporting by the body seem to be a pragmatic approach.
- The Crown Estate through discussions with the Marine Management Organisation in England, Marine Scotland and the Welsh Government have identified an opportunity to create a vehicle to share information, resources and knowledge exchange about marine planning issues, that would also benefit the Natural Resources Body. We would suggest that this is a key way forward to assist in the pooling of human and technical resource across the breadth of the UK marine environment.
- From experience of other marine planning processes across the UK, we would recommend early
 consideration of existing and planned sustainable renewable energy installations (and stakeholder and UK
 Government dialogue) in any associated plan produced by the new Body, in the context of meeting Wales
 and UK renewable energy objectives.

Question 15: Do you agree with the proposals for civil contingencies and COMAH? If not, what would you change?

No comment.

Question 16: Do you agree with the proposals for the UK wide arrangements? If not, what would you change?

No comment.

Question 17: Do you agree with proposals for transitional arrangements? If not, what would change?

• Yes.

4. Conclusion

We trust that you will find these comments constructive. We would be very willing to provide additional information on any of the points we have raised above and be very pleased to discuss these matters with you further. Through the Energy & Infrastructure's Policy, Planning and Consenting team, we are ready to engage in further discussions on these and other points relevant to our ownership or which our expertise may be brought to bear. All of this response may be put into the public domain and there is no part of it that should be treated as confidential.



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Background Information on The Crown Estate and our marine based portfolios

The diverse portfolio of The Crown Estate comprises marine, rural and urban properties across the whole of the United Kingdom valued in total at £7.6 billion, £118m of which is in Wales (2012 figures). Under the 1961 Crown Estate Act, The Crown Estate is charged with maintaining and enhancing both the value of the property and the revenue from it consistent with the requirements of good management. We are a commercial organisation guided by our core values of commercialism, integrity and stewardship.

The Crown Estate's entire revenue surplus is paid directly to HM Treasury for the benefit of UK citizens; in 2012 this amounted to just over £240 million, with £6.8m of this generated in Wales.

We are custodians of the seabed out to the 12 nautical mile territorial limit, including the rights to explore and utilise the natural resources of the UK continental shelf (excluding oil, gas and coal). We are responsible for 65 per cent of the Welsh foreshore. Through our marine stewardship programme, we support a range of practical projects that contribute to good stewardship around the UK coast. Our coastal holdings comprise areas of great beauty and national importance, and we take our responsibilities towards them and to the people of Wales very seriously indeed. The challenge is to balance environmental priorities with opportunities for commercially sustainable development. We achieve this by working closely with the full spectrum of marine-based industries.

The Crown Estate manages its marine assets on a commercial basis, guided by the principles of sustainable development and social responsibility. We engage with partners, local people and other bodies in order to facilitate the development of a world class offshore energy capability. In Wales our economic interests include ports, marinas, renewable energy and marine aggregate extraction. The activities of the marine estate are bringing significant new inward investment, businesses and jobs to the UK. As stewards of the territorial seabed and having brought forward the first three rounds of offshore wind farm developments around the UK, The Crown Estate is playing an active role in helping Wales to make the most of offshore resources.

We take a consistent approach to the management of our activities around the UK, whilst retaining flexibility to take local factors into account whenever necessary. The Crown Estate can bring to bear an unparalleled level of knowledge and expertise on issues relating to management of the foreshore, the territorial seabed and continental shelf. We have a strong understanding of the needs of a broad range of sea users, as commercial partners, customers and stakeholders.

From: Communications

05 October 2012 17:15 Sent:

To: SEB mailbox

Subject: Natural Resources Body for Wales (additional consultation) response form

Page used to /consultations/forms/singlebodyresponse2/ send this email:

Responses to consultations may be made public - on the internet or in a

report. If you (Unchecked)

would prefer your response to be kept confidential, please tick here:

Your name: Andrew Blake

Organisation (if

Wye Valley Area of Outstanding Natural Beauty (AONB) Partnership applicable):

Email /

telephone aonb.officer@wyevalleyaonb.org.uk 01600 713977

number:

Question 1: Do you agree with our proposal for the duties of the body in respect of conservation and natural beauty?:

Mainly

We welcome the recognition and reinforcement of Natural Beauty and the duty of the NRB towards its conservation and enhancement. However we feel there are number issues that need to be addressed around this. Firstly the long standing issue that there is no clear legal definition of Natural Beauty and it remains open to interpretation. A definition of Natural Beauty should be referred to. CCW's Statement on Natural Beauty (May 2006) stated "It relates primarily to unspoiled, but not necessarily extensive, rural landscapes that are largely free from the effects of disfiguring development or urbanisation. Although the legislation makes clear that it includes flora, fauna, geological and physiographic features, it applies not only to landscapes where nature is dominant but also to those which have been shaped and nurtured by human activities. People perceive and appreciate Natural Beauty through all their senses, responding to many different aspects of the landscape, including its distinctive character, its aesthetic qualities, the presence of wildlife, its cultural and historical dimensions and its perceptual qualities such as, for example, tranquillity, remoteness and a sense of freedom...". If such as definition is adopted for this Order then there seems little logic in the separate and repeated reference to 'flora, fauna, geological and physiographic features' as these are integral to Natural Beauty. Of equal concern is the apparent lack of reference

just in special places and, whether beautiful or degraded, is everyone's shared inheritance. • Increasing awareness and understanding of landscape and its value, as a unifying framework for all land-use sectors. • Promoting a more accessible, integrated and forward looking approach to managing inherited landscapes and shaping new landscapes. The ELC stresses that landscape is not merely scenery, but links people with place, culture with nature and past with present. It stresses that landscape has many values that matter to people (not all tangible), because it is they who create and value the landscape. As such the ELC takes a realistic and forward looking view, rather than a preservationist / backward view: creating future landscapes is regarded as being just as much an aim as managing sustainably those we have inherited. Consequently an integrated landscape approach would provide a more appropriate strategic framework for the NRB than just conserving Natural Beauty. The adoption of the ELC would represent some common core principles and actions for the NRB. These include a strong emphasis not just on natural beauty and conservation but embracing a clear landscape role. Therefore we believe the NRB should have a duty to and have specific responsibilities for: • Promoting an increased awareness and relevance of the principles of the European Landscape Convention in all decision making processes • Championing and monitoring the effectiveness of the implementation of the ELC in an appropriate Welsh context. • Actively collaborating with partners and stakeholders to improve the quality, diversity and opportunities that Wales's landscapes offer to enhance public benefits and improve their well being. • Producing appropriate planning, management and delivery advice to Welsh Government which ensures that the quality and functional integrity of all landscapes are maintained and the range and quality of the environmental goods and services they offer, are improved. • Ensuring that a long term vision for Wales's landscape heritage is positively delivered by the sustainable and responsible stewardship of the nation's natural resources in ways which enhance the distinctiveness of the nation's cultural identity. • Designating and showcasing Wales's finest landscapes and seascapes by acting as their co guardians by securing the necessary resources to enable these areas to be sensitively managed in ways which reflect their international importance. Further amendments are: - Box 2 Section (a) Para 1 Line 4 amended to read to discharge any power with respect to the proposals so as to further the conservation and enhancement of... Line 6 amended to read ... physiographic features especially those having particular value or significance" Section (a) Clause (ii) We strongly disagree that the proposed "conservation and enhancement duty" of the new body should be

subordinate to the intentions of Clause (ii) in respect of the objective of Ministers achieving Sustainable Development. As it stands this statement is illogical and unnecessary. For any proposal to be sustainable it must be

flora, fauna etc, themselves a fundamental component of Sustainable

consistent with good practice principles for the conservation of natural beauty,

Development. Similarly to enable the new body to discharge its functions in a

to 'landscape' and the European Landscape Convention (ELC). The ELC, which the UK government signed and ratified in March 2007, is the first international treaty specifically on landscape. It provides a clear definition of 'landscape', being "an area, as perceived by people, whose character is the result of the action and interaction of natural and/or human factors". It provides a broad framework for the planning and management of all landscapes, which includes:- • Putting people – from all cultures and communities – and their surroundings, at the heart of spatial planning and sustainable development. • Recognising that landscape exists everywhere, not

If not, how would you change it?:

more inclusive and consistent manner we believe that Clause (i) and (ii) of Section (c) should be incorporated into Section (a). In addition, the new body should have a responsibility to discharge these functions rather than it being expected to "have regard to" or "taking into account" the various issues identified in Sections ci. cii and ciii

Question 2: Do you agree with the proposals in respect of public Mainly access and recreation duties?:

> Whilst supporting the overall tone and intentions of this section we believe the following further amendments are necessary Page 13 Box 3: Section 1. Line 1 The word "protect" should be inserted before the phrase "... promote and facilitate public access to" Section 2 Clause (a) and (b) To ensure that these activities are undertaken in a manner which is consistent with the new body's other conservation duties; the following wording should preface Section 2 Clause (i) and (ii) ...quiet and responsible enjoyment of the

Question 3: Do

duties?:

If not, how

would you

change it?:

you agree with these proposals for the high level forestry

Mainly

countryside

If not, how would you change them?:

We object to the Forestry Commission 'balancing duty'. Whilst we accept that this part of the NRB should continue to be able to undertake its commercial forestry activities as effectively as possible, we believe any forestry activities, and hence this relevant function of the NRB, must be fulfilled to the highest possible environmental standards and in a manner which is consistent with the aims of the organisation as a whole. We fail to see how the scope or emphasis of a "duty of care towards the environment" can be different for one part of a governmental organisation than it is for other parts, especially when the whole organisation is charged with ensuring that Wales's natural resources are used in an integrated, consistent and sustainable manner. So far as the positioning of this duty is concerned; we see no reason why this is necessary if the forestry interests for the new body are subject to the same duty to "further" natural beauty and nature conservation interests as the other parts of the new body. For that reason we believe this duty is best included in the Body's nature conservation or landscape duty and not independent of it.

Question 4: Do you agree with the general proposals for cross-border arrangements?:

Yes

If not what would you change?:

We are disappointed that the CCW's work with Protected Landscapes on a UK and international level is not recognised, nor its work specifically with Wye Valley AONB as a cross-border Protected Landscape. However we welcome the recognition of the aministrative and operational complexity of cross-border working.

Question 5: Do

you agree with the proposals for the statutory consultee role?:

If not what would you change?:

Question 6: Do you agree with the proposals to provide internal separation of decisionmaking,

improve Yes transparency and ensure Welsh Ministers have the opportunity to call in significant issues?:

If not what would you change?:

Question 7: Do you agree with the proposals for permitting?:

If not what

would you No comment

change?:

Question 8: Do you agree with these proposals for charging?:

If not what

would you No comment

change?:

Question 9: Do you agree with the proposals for public

registers?:

If not what

would you No comment

change?:

Question 10: Do you agree that the new body should be a listed body under the Regulatory Investigatory Powers Act 2000?:

Question 11: Do you agree that the new body should have powers to use civil sanctions?:

Question 12: Do you agree with the proposals for appeal

arrangements?:

If not what

would you No comment

change?:

Question 13: Do you agree with the proposals for Yes cross border monitoring?:

If not what would you change?:

There is also the need for greater flexibility in allowing for monitoring species that feely cross borders such as in the Wye Valley AONB. Clarity or flexibility on arrangements and agreements to collaborate on cross-border species monitoring would be welcomed.

Question 14: Do you agree with the proposals for Yes

statutory planning and reporting?:

If not what

We welcome the duty to take account of cross-border impacts in all decision

would you making. change?:

you agree with the proposals for

Question 15: Do

Civil

Contingencies and Control of Major Accident

Hazards (COMAH)?:

If not what

would you No comment

change?:

Question 16: Do you agree with the proposals for UK wide arrangements?: If not what

would you change?:

Question 17: Do you agree with the proposals for Yes transitional arrangements?:

If not what would you change?:

Question 18: If you have any related issues which we have not specifically addressed, please use this space to report them:

Three issues:- 1. We believe it crucial that the full range of functions of the existing organisations are transferred to the new body in a manner which affords them all at least the same weight and relevance in the work of the new body, as they had in their predecessors organisations. The final wording of the Order needs to confirm the full transfer of functions, including CCW's non – regulatory functions such as its full range of responsibilities in respect of Protected Landscapes and its Grant aid powers. 2. We feel that the proposed remit and scope of the new body (and hence the wording of the proposed Second Order) appears to be shaped solely by the interpretation of a limited number of existing themes namely natural beauty, conservation, access, protection of the historic landscapes and forestry. Using these as the only templates for the role of the new body not only appears to limit its remit unnecessarily but fails to take the opportunity to guide its future work in more ambitious and integrated manner. As a result the current Order appears to point the new body backwards, rather than offering it a forward looking enabling role which allows it to fully embrace the agenda of the forthcoming Planning, Environment and Heritage Bills and the step change in environmental management which the Living Wales agenda will introduce. Given these circumstances, we are concerned therefore at the obvious lack of reference to or any stated link between the functions of the new body and its role in the development and delivery of the new Living Wales Agenda. We believe that the Order must include direct reference to the overarching role and responsibilities that the new Body will have for this area of work. 3. Definition of environment: If the new body is to be charged with the "protection of the historic environment" - with the transfer of the existing responsibility of CCW in respect of protection of landscapes of historic and cultural importance - then the definition of "environment" as stated in Box 1 Article 4 Clause 2 will need to be amended to reflect this fact. We suggest Article 4 Clause (2) (b) should read "environment includes without limitation, living organisms, ecosystems and historic or cultural assets Defining "environment" in this more complete way would ensure that the new body undertake its work in a manner which recognises and fully accounts for the important cultural services, intangible qualities and sense of identity that all landscapes currently provide.

Natural Resources Body for Wales

(additional consultation)

Response by the Mineral Products Association

The Mineral Products Association (MPA) is the trade association for the aggregates, asphalt, cement, ready-mixed concrete, lime, mortar and silica sand industries. With a growing membership of 272 companies, it is the largest UK trade association in the sector and represents the majority of independent companies, as well as the 9 major international and global companies. The MPA represents 100% of GB cement production, 90% of aggregates production and 95% of asphalt and ready-mixed concrete production. Each year the industry supplies £5 billion of materials to the £110 billion construction and other sectors, and industry production represents the largest materials flow in the UK economy.

This response should be considered in the context of comments that the MPA made in response to earlier consultations ("Natural Resources Wales" and "Sustaining a Living Wales") in May 2012.

Overall comment

The natural resources of Wales are clearly central to this consultation and to the duties of the new body; indeed the term "natural resources" has been introduced into the working title of that body. It is difficult for the MPA to comment meaningfully on this document when no definition is given for the term "natural resource" and more specifically it is not clear if mineral resources are included within that definition or purposely excluded.

The "Definitions" document which accompanied the earlier "Sustaining a Living Wales" Green Paper, defined mineral resources as a natural resource. However, there is no mention of minerals anywhere in this additional consultation. It is a major omission.

The MPA believe that this lack of clarity is significant, not only to this consultation but to the future of Welsh Government regulatory activities and to the delivery of sustainable development.

Our responses to the questions posed in the additional consultation paper are as follows:

Question 1. Do you agree with our proposal for the duties of the body in respect of conservation and natural beauty? (Yes, Mainly, Not at all).

Not at all.

If not, how would you change it?

The MPA has doubts about the ability of the new body to contribute to the delivery of sustainable development, a doubt that is fuelled by the confused messages which come out of the consultation document. Paragraph (a) states that the new body will be under a duty to

exercise any power "so as to further the conservation and enhancement of natural beauty and the conservation of flora, fauna, and geological or physiographical features." Such a duty is not compatible with the "purpose of the Body" (Box1), which is to do things sustainably i.e. "in a manner designed to benefit the people, environment and economy of Wales."

There seems no reason why it is only the duty of <u>Ministers</u> to achieve sustainable development (a(ii)) when in the same paragraph the new body is not under that duty.

In the view of the MPA, there will have to be a significant shift in culture of the constituent organisations in the new body, from one of simply <u>conserving</u> to one of <u>considering the</u> <u>desirability of conserving</u> resources, as set out in paragraphs (b) and (c).

It is difficult to understand how the new body will be able to consider the desirability of that conservation when it does not have responsibility for matters related to the <u>people</u> and <u>economy</u> of Wales that are essential to making such a judgement in line with the overall objective of achieving sustainable development.

Judgements of what does and does not constitute sustainable development are balancing judgements, which the land use planning system has been established and developed to make. The new body is not in a position to deliver sustainable development on its' own but can only contribute to the delivery of sustainable development by acting as a specialist consultee as part of the land use planning process.

The new body should not attempt to take on that role from the planning system or indeed take on a responsibility which leads to "overlap" between the environment regulation and planning systems.

Question 2. Do you agree with the proposals in respect of public access and recreation duties? (Yes, Mainly, Not at all).

Not at all.

If not, how would you change it?

As in the previous question, the new body should now be under a duty to <u>consider the</u> <u>desirability of</u> promoting, facilitating, providing, improving etc..

Question 3. Do you agree with these proposals for the high level forestry duties? (Yes, Mainly, Not at all).

No comment

If not, how would you change them?

Question 4. Do you agree with the general proposals for cross-border arrangements? [Yes, Mainly, No]

NO. It is not clear what the proposals are for cross-border arrangements as the topic is dealt with too generally. It seems wrong that this subject had not been given more thought before the question was posed.

If not what would you change?

See above; no meaningful comments can be made without more detail of how cross-border sites would be handled by the English and Welsh bodies. The MPA has no information to hand on how many members have operations which straddle the border but on the face of it, it seems that if geographical boundaries are adhered to it will result in unnecessary duplication of cost and effort to obtain permits etc.

Question 5. Do you agree with the proposals for the statutory consultee role? [Yes, Mainly, No]

No comment

If not what would you change?

Question 6. Do you agree with the proposals to provide internal separation of decision-making, improve transparency and ensure Welsh Ministers have the opportunity to call in significant issues? [Yes, Mainly, No]

No comment

If not what would you change?

Question 7. Do you agree with the proposals for permitting? [Yes, Mainly, No]

Mainly

If not what would you change?

Question 8. Do you agree with these proposals for charging? [Yes, Mainly, No]

Mainly

If not what would you change?

There is very little detail on which to base comments. MPA would not expect charges in Wales to exceed those in England for the same type of permits in the future.

Question 9. Do you agree with the proposals for public registers? [Yes, Mainly, No]

Yes

If not what would you change?

Question 10. Do you agree that the new body should be a listed body under the Regulation of Investigatory Powers Act 2000? [Yes, Mainly, No]

Yes

Question 11. Do you agree that the new body should have powers to use civil sanctions? [Yes, Mainly, No]

No comment

Question 12. Do you agree with the proposals for appeal arrangements? [Yes, Mainly, No]

Mainly

If not what would you change?

No detail is given of how this would operate in cross-border situations

Question 13. Do you agree with the proposals for cross border monitoring? [Yes, Mainly, No]

MPA members would not expect to be burdened as a result of two different regulators failing to reach agreement or incurring additional cost which they would seek to pass on. Other than that this is largely a matter for the two bodies.

If not what would you change?

Question 14. Do you agree with the proposals for statutory planning and reporting? [Yes, Mainly, No]

No comment

If not what would you change?

Question 15. Do you agree with the proposals for Civil Contingencies and COMAH? [Yes, Mainly, No]

No comment

If not what would you change?

Question 16. Do you agree with the proposals for UK wide arrangements? [Yes, Mainly, No]

No comment If not what would you change?

Question 17. Do you agree with the proposals for transitional arrangements? [Yes, Mainly, No]

No comment

If not what would you change?

Dr Jenny Wong Ynys Uchaf Mynydd Llandygai Bangor Gwynedd LL57 4BZ

Carrie Moss
'A Living Wales' Programme Team
Department for Environment and Sustainable Development
Welsh Government
Cathays Park
CF10 3NQ

4 October 2012

Response to Natural Resources Body for Wales (additional consultation)

Over the past year I have participated in responses to the various consultations on the NRB, Living Wales and Sustainable Development on behalf of Llais y Goedwig and the Woodland Strategy Advisory Panel. This present response is a personal response and does not reflect the opinions of any of the other bodies of which I am a member.

Firstly, my background is in forestry in Africa mostly as an advisor on sustainable forest management and also on high level policy especially as it relates to institutional and legal reform. I therefore have some experience with these processes when the intention is to secure the national forest estate against nefarious interests in both the private sector and government. My understanding is that good law should protect the interests of citizens against all threats including those arising from within government. This is achieved by ensuring there are curbs on inappropriate use of power by Ministers, transparency and accountability at all levels of government. It is with disquiet that I note that there is little acknowledgement of these principles in arrangements for the NRB which is to be charged with the management of public forest estate and environmental licensing.

One issue which concerns me is the contention that there was no statutory need for a consultation on the second order or that the 8 week consultation on the 2nd Order is a Ministerial gift rather than an unprecedented reduction of the statutory requirement for a 12 week consultation on all Orders made under the Public Bodies Act. I am not a legal expert and am not aware of the full range of Standing orders covering the making of Orders under Westminster legislation – if the Minister is working within an existing order could you please make this public in the interests of full transparency.

The forest estate was paid for by taxpayers and is presumably a public asset – as has been clearly demonstrated in England this is highly valued by civil society who wish to see it given proper statutory protection. My experience in Wales suggests that the people of Wales are likely to feel equally strongly about the FC estate here. It is therefore with consternation that I see the consultation document refers to the 'Welsh Minister's forest estate' (page 15 5th paragraph, line 3). Is the intention to transfer the function under clause 3(2) of the Forestry Act 'The Commissioners may undertake the management or supervision, upon such terms and subject to such conditions as may be agreed upon, or give assistance or advice in relation to the planting or management, of any woods or forests belonging to any person, including woods and forests under the management of the Crown Estate Commissioners or under the control of a government department, or belonging to a local authority.' This would permit the new body to also take on management of other public woodland.

Perhaps my greatest concern is the transfer of duties on the Minister in connection with his powers to direct and give guidance to the NRB. In particular the first Order put no restrictions on these powers but assurances where later given that the Minister's duties under the primary legislation would still apply as there is nothing in the Order that changes them. This is as may be but it would be reassuring to see these duties explicitly transferred. Of more concern is the proposed wording in the Second Order which in Box 2 (a)(ii) 'in the case of Ministers, with the objective of achieving sustainable development'. To make this work 'sustainable development' would need to be defined and not by reference to the definition of 'sustainable' in the First Order which is untenable in comparison with existing international definitions. Also this is a new duty and we have been told it is not possible to introduce new duties under the Public Bodies Act. It would be better to have a general duty on Ministers closer to existing provisions in the parent Acts and not have it as a exclusion on specific duties of the body. For reference the clause restricting the power of the Minister to direct in the Forestry Act 1967 is 8A 'In performing their functions under this Act the Ministers shall have regard to the national interest in maintaining and expanding the forestry resources'. This of course also leaves 'national interest' open to interpretation but it is at least something with which we are already familiar.

Transparency arrangements for the NRB are very weak – reassurances are given that the new body will develop 'scheme' but without any details or a timeframe for the development of the scheme it is difficult to comment on stakeholder arrangements.

Internal 'Chinese walls' (incidentally as someone of Chinese descent I find the use of this term distasteful) might work but will need very careful construction and a culture which encourages staff to be frank. I remain unconvinced that this is possible but hope to be proven wrong. The timing of disclosure of decisions is important as is the opportunity to question them before they are assented. At present felling licences are placed on the public register before they are granted. All arrangements of this type must continue and included in the 2nd Order if necessary.

On the rights of appeal, fine to appeal to Welsh Ministers in the event of a failing of the NRB. Forestry appeals are brought to bodies independent of government is this to be scrapped? If so it would appear to be a reduction in transparency as the NRB acts as the advisory body to the Minister on forestry matters so from where would he obtain expert advice on whether there is a basis to the complaint?

Trading schemes – what schemes in relation the FCW are referred to here?

Acceptance of gifts – both CCW and FC have functions related to the acceptance of gifts which ensure they are used to further the general functions of the body and subject to the terms of the gift. It seems EA do not have such restrictions and gifts can be appropriated by the Minister. In the NRB first Order the EA provision was applied which means a possible weakening of protection for gifts made for forestry or nature conservation. This is a concern and should be addressed in the Second Order. If WG is serious about wanting to involve people in the management of the environment then it should give assurances that gifts will be treated with respect and used for the purposes intended by the giver.

END

From: Communications

Sent: 05 October 2012 17:40

To: SEB mailbox

Subject: Natural Resources Body for Wales (additional consultation) response form

Page used to send this

email:

/consultations/forms/singlebodyresponse2/

Responses to consultations may be made public - on the internet or in a report. If you would prefer your response to be kept confidential, please tick

here:

Your name:

Organisation (if applicable):

Email / telephone

number:

Question 1: Do you agree with our proposal for the duties of the body in respect of conservation and natural beauty?:

Yes

If not, how would you change it?:

Question 2: Do you agree with the proposals in respect of public access and recreation duties?:

If not, how would you change it?:

Question 3: Do you agree with these proposals for the high level forestry duties?:

If not, how would you change them?:

Question 4: Do you agree with the general proposals for cross-border arrangements?:

Mainly

If not what would you change?:

There should be clarification on which issues require a co-ordinated approach from the offset.

Question 5: Do you agree with the

proposals for the statutory consultee role?:

Yes

If not what would you change?:

Question 6: Do you agree with the proposals to provide internal separation of decision-making, improve transparency and ensure Welsh Ministers have the opportunity to call in significant issues?:

Yes

If not what would you change?:

Question 7: Do you agree with the proposals for permitting?:

Mainly

If not what would you change?:

Support high degree of alignment as this will be necessary to ensure level playing field is maintained for industry and ensure that unnecessary complications do not arise from differences in conditions/ enforcement in the regions. Clarification as to why a SR permit/ condition is only available/ enforced in either England or Wales should be provided so as to maintain the 'high degree of alignment'. Agree that one body should provide registration service for carriers and brokers, however if this changes there could be ambiguity over public register information/ access of information by officers who perform checks on registrations which would need to be clarified.

Question 8: Do you agree with these proposals for charging?:

Mainly

If not what would you change?:

If eventually there are different charges in Wales to England for standard rules permits/ permit variations/ chargeable exemptions, these should be subject to consultation and explanation for changes should be given

Question 9: Do you agree with the proposals for public registers?:

Yes

If not what would you change?:

Joint registers would be preferable, ELV ATF resister already has a separate section for Wales, albeit on the same spread sheet – works well. If separate registers are decided then consistency of format and detail provided would be welcomed and an online link to the other bodies register would be useful.

Question 10: Do you agree that the new body Yes should be a listed body under the Regulatory

Investigatory Powers Act 2000?:

Question 11: Do you agree that the new body should have powers to use civil sanctions?:

Yes

Question 12: Do you agree with the proposals for appeal arrangements?:

Yes

If not what would you change?:

The reasoning behind the preferred position to remove the Secretary State current requirement would be useful.

Question 13: Do you agree with the proposals for cross border monitoring?:

Yes

If not what would you change?:

Question 14: Do you agree with the proposals for statutory Yes planning and reporting?:

If not what would you change?:

Question 15: Do you agree with the proposals for Civil Contingencies and Control of Major **Accident Hazards**

Yes

If not what would you change?:

(COMAH)?:

Question 16: Do you agree with the proposals for UK wide arrangements?:

Yes

If not what would you change?:

Question 17: Do you agree with the proposals for transitional arrangements?:

Yes

If not what would you change?:

Question 18: If you have any related issues which we have not specifically addressed,

please use this space to report them:



Response to the consultation on the Natural Resources Body for Wales Second Order

Confor: promoting forestry and wood is a membership organisation that promotes sustainable forestry and low-carbon businesses. Confor represents and supports members by helping build the market for wood and forest products, creating a supportive policy environment, and helping members to become more competitive and successful.

Thank you for the opportunity to provide views on the second order for the Natural Resources Body for Wales.

Confor welcomes the intention "to do that in a way that does not impose new regulatory burdens on industry or on operational forestry."

Q1

Confor agrees with the preferred option of ensuring that the body continues to be subject to the balancing duty in section 1(3A) of the 1967 Act.

Confor recommends that this principle is extended to the duties of CCW and EAW and should be an integral feature of the new body because this will be a step in the direction of sustainable development.

In relation to paragraph "(iii) to have regard to any effect which the proposals would have on the economic and social well-being of local communities in rural areas." The actual wording mentioned in relation to CCW's existing duty seems to be stronger. The sentiment is similar though. Suggestion: replace "economic and social well-being of local communities in rural areas" with "economic and social interests of rural areas".

Q2

Confor has no objection to extending access and recreation duties to PUBLICLY OWNED forest land, as this is in effect the current situation with high levels of public use of the FCW managed estate. However the order must make absolutely clear that it is referring to public land only and not to all forest land in Wales. Private woodland owners are not prepared to grant access by stealth.

Confor welcomes the statement "In managing forestry the new body will continue to take account of the needs of both timber production and public access in much the same way as the FC does currently."

Q3

Confor would like to emphasise the importance of the balancing duty and the need for this duty to pass to the new body.



Confor would like all duties and powers of the Forestry Commission to be transferred to the new body. In particular those duties relating to the growing of trees for timber and the supply of forest produce to the forest sector.

Confor welcomes the inclusion of a duty to promote woodland cover in Wales, this should not, however, be subject to the whim of a minister. Although at present the current minister is supportive of an excellent afforestation target this may not be the case under his successors.

For "the power that enables assistance or advice to be given in relation to the general planting or management of any woods or forests to any owner without restriction" will only be possible for as long as the new body maintains forestry knowledge among its staff.

Confor remains concerned that the new body will not have the adequate resources to provide competent authority as regards the protection of forest trees and timber from attack by pests under the Plant Health Act 1967.

Q4

Confor agrees with the general proposal for plant health and FR cross border working. However the detail of how this is implemented is extremely important. Confor would welcome the opportunity to contribute detail to the arrangements.

It is important to remember that the forest industry is GB wide and does not stop at the Welsh border. Where decisions are taken which result in England and Wales providing two very different economic zones, these could impact on which side of the border businesses decide to invest.

Q5

Confor welcomes the new body's intention to "look to simplify regulatory processes".

"Arrangements would be put in place to ensure transparency of decision-and advice where the body was regulating its own functions or providing statutory advice to its own decision-making functions." This statement is very vague. There needs to be transparency in the way the new body makes decisions. This needs to be clearly embedded in the second order.

Confor supports the proposal but emphasises the need for a clear and accountable decision making process with a straight forward appeals system.

The Welsh Government needs to be aware of the potential economic consequences of two different permit systems in Wales to England.



Q6

Confor supports the proposal but emphasises the need for a clear and accountable decision making process with a straight forward appeals system.

Q7

No mention is made of permits issued by Forestry Commission Wales. Confor assumes that the new body will take over the role of issuing such permits in a similar way to the Forestry Commission does now.

Q8

Confor expects there to be no change to the application for forestry felling licences and that these will remain free of charge.

Q10

Confor assumes that the existing FCW powers relating to illegal felling and enforcement of the UK Forestry Standard will transfer to the new body.

Kath McNulty National Manager for Wales Confor October 2012 From: Catrin Hughes [catrin@talk21.com]

Sent: 05 October 2012 22:10

To: SEB mailbox

Subject: Natural Resources Body for Wales consultation

I write regarding the above consultation.

I am very concerned about the relationship between the new body and windfarm development that is currently proposed on Forestry Commission land in those areas identified for windfarm development under TAN8.

The Forestry Commission (and presumbly the new body) will receive profits from the wind farm developments on Forestry Commission land. As a public body answerable to the Welsh government this creates a conflict of interest. As consultees on such developments, the new body cannot be impartial when objecting to wind farm developments. It is not just the Foresty Commission land itself that will be ruined by wind farms, but there are also the knock-on implications to consider on surrounding areas not just by the wind farms themselves but also by the associated infrastructure they bring with them (such as pylons).

Yours, Catrin Hughes Vicarage, Bwlch-y-Cibau Llanfyllin SY22 5LL

Natural Resources Body for Wales (additional consultation)

Response from City and County of Swansea Nature Conservation Team

Part 1 Overarching Duties of the new body

General comments -

- The wording of this consultation document was not always clear and sometimes repetitive, making it difficult to respond appropriately to some of the questions. Paragraph numbering would have been helpful.
- this section seems to focus on existing duties with little or no mention of some of the possible future priorities as outlined in the previous Living Wales consultation eg ecosystem services approach, natural resource plans etc
- Some key existing duties/ areas of work are not mentioned at all, or are understated eg coastal and marine conservation, urban nature conservation/green infrastructure, landscape conservation, environmental education and awareness, community engagement, partnership working and Coed Cymru.

4.1.1 Natural Beauty and Nature Conservation Duties

 Need for consistency of wording here. with regard to the meaning of 'conservation', referred to under current position in paras 1,2 and 3 as 'conservation of flora ,fauna and geological or physiological features', and then in paras 4 and 5 as just 'conservation'

Box 2 possible wording for the second order. Question 1

 para (c)(1)- not sure where this has come from - does not seem to relate directly to current provision. Need a more specific definition of 'buildings and objects' para (c) (ii) should be (c) (i). Again need to define 'buildings, sites or objects' (could mean anything).

4.1.2 Public access and recreation duties

- Needs to include education/interpretation /awareness duties
- The Proposal. 1st sentence should include 'awareness raising and educational' duties
- Box 3 Possible wording for second order 1. (c) add 'appreciation' and enjoyment ...
- 2- (1) add 'and/or resources' before facilities
- 3.(2) (a) (iii)- as above
- 3.(3)(e)- add education/study centres
- 3(3) add (h) literature, learning materials, events, environmental art, virtual /multi media resources

4.1.3 Forestry duties Q3

- The Proposal-Para 1, 3rd sentence need to define what type of woodland cover.
- No mention is made of the role of Coed Cymru

6 Regulation and enforcement

- 6.2 Question 5 mainly agree, but what happens if CCW and EA disagree (eg in relation to Habs Regs issues)
- 6.3 Question 6 -Agree
- 6.4.3 Question 7 Agree
- 6.6 Question 9 mainly agree
- Questions 10-17 -mainly agree, but need more knowledge/understanding of issues to be certain.

Response of the Woodland Strategy Advisory Panel to Additional Consultation on Natural Resources Body for Wales

A joint meeting of the Woodland Strategy Advisory Panel (WSAP) and CONFOR was held on 21st September to consider this consultation document. The meeting began with an explanation of the document and the proposed second order by Dave Clarke (WG). This was followed by a Q&A session with answers from Dave Clarke and Terry O'Keefe, Clive Thomas and Chris Botting (FCW). Attendees then discussed the various sections of the consultation document in two working groups focussing primarily on forestry related matters. The following response is based on these discussions and has been agreed by those WSAP members present (see annex)

Comment on first order

There was a widely held view that the definition of "sustainability" in the first order was unsatisfactory. We recommend that a more comprehensive definition is used in future orders and legislation.

Natural beauty and nature conservation duties. Question 1.

We **mainly** agree with the proposals. Detailed points:

- We strongly support the option of transferring the FC's "balancing duty" to NRBW. This principle must continue to apply to the NRBW's forestry duties.
- We believe this principle should extent to the duties of CCW and EAW and should be an integral feature of the NRBW.
- Draft wording of order: urban areas should be included in (c) (iii) not just rural areas.

Public access and recreation duties. Question 2.

We **mainly** agree with the proposals. Detailed points:

- Draft wording of order: Para 1 needs clarification particularly with respect to the powers of NRBW related to access to privately owned land.
- Draft wording of order: Para 3 should refer to facilities **and opportunities** and also to **community enterprise and development** in 3 (2) (a)
- These duties should extend to the marine environment.

Forestry duties. Question 3.

We **mainly** agree with the proposals. Detailed points:

- We reiterate the importance of transferring the "balancing duty" of FCW to the NRBW.
- All current duties of FCW must be transferred to the NRBW.
- Woodlands for Wales must remain the strategy for the NWBW's forestry duties and functions.
- FCW has acquired additional functions to those contained in the Forestry Acts e.g. functions related to social forestry, urban trees, education and training. These functions must be continued by the new body.
- We have previously expressed concern about the removal of the forest policy role of FCW to WG. We believe an effective NRBW must be closely involved in forestry policy formulation.

- There is a continued need for a stakeholders' advisory body on forestry matters
- The order gives no details for monitoring the accountability of the NRBW.

Cross-border issues. Question 4.

We **mainly** agree with the proposals. Detailed points:

- There is a lack of clarity of who will fund cross-border operations and how these will be managed. Use of sound MoU's will be vital.
- It is unclear who will decide on which shared services will continue- NRBW WG? We believe it should be the NRBW.
- Sharing data across borders is in principle desirable but it must be recognised that problems may arise if there is lack of clarity of how information will be used by each of the three countries.

Regulation and enforcement. Question 5.

We **mainly** agree with the proposals. Detailed points:

• Para 6.2 is vague about internal consultations in the new body. This raised concerns about "Chinese walls" and lack of transparency in the NRBW's decisions. Publication of decision documents after a decision has been made may be too late. Greater clarity is needed here.

Advising and regulating its own operational activities. Question 6.

We support the proposals but reiterate the importance of internal transparency of decision making.

Permitting. Question 7.

No comment

Permit charging. Question 8.

No comment but one query:

• Is there any intention for the new body to charge for felling licences? Will this be an operational decision of the NRBW?

Public registers. Question 9.

No comment

Inspection, investigation, enforcement and prosecution. Question 10.

No comment but one question:

• Will the existing FCW powers relating to illegal felling and monitoring of the UK Forestry Standard be transferred to NRBW?

Questions 11-16

No comment

Transitional arrangements. Question 17.

We **mainly** agree with the proposals but they lack sufficient detail.

• There is already inconsistency between the three bodies in transitional arrangements. E.g. with respect to funding partner organisations beyond 31st

March 2013. CCW is reported to have committed funds beyond vesting day to partner organisations but FCW appears unable to make such commitments. This leaves partners in a precarious position in planning future work.

• What is the future position of partner organisations which do not have a formal MoU with the existing bodies? This needs clarificfation.

Roger Cooper Chair WSAP 6th October 2012

Annex

WSAP members attending meeting 21st September

Nigel Ajax Lewis MBE Senior Conservation Officer for Wildlife

Trust for South and South East Wales

Roger Cooper (Chair) Bangor University (retired)
David Edwards District Manager, Tilhill Forestry

Rory Francis Woodland Trust, Wales

Dr Alun Gee Executive Manager, Environment Agency

(Retired)

Sue Gittins Deputy Director, Ramblers' Association

Wales (retired)

David Jenkins OBE Director, Coed Cymru

Tim Kirk Chairman, CONFOR, Wales Kath McNulty Manager, CONFOR, Wales

Prof Colin Price Free-lance academic

Dr Jenny Wong Director, Wild Resources Ltd, Honorary

Lecturer Bangor University

Carrie Moss,
Living Wales Programme Team,
Department for Environment and Sustainable
Development,
Welsh Government,
Cathays Park,
Cardiff.
CF10 3NQ

(01792) 635741

Mike.Scott2@swansea.gov.uk

5th October 2012

Dear Ms Moss.

Natural Resources Body for Wales (additional consultation) A RESPONSE ON BEHALF OF THE GOWER AONB PARTNERSHIP

The Gower AONB Partnership brings together local communities, the local authority, interest groups and national agencies to promote the environmental, social and economic well-being of the Gower Area of Outstanding Natural Beauty for present and future generations. The aim of the Partnership is to deliver the statutory purposes of AONB designation, and to deliver the statutory duties and other requirements in managing the AONB on behalf of its members.

Our response is brief, and highlights the main area of concern for our members on behalf of Gower AONB. In addition, the Welsh Landscape Partnership have provided a more detailed response, which we also support. The individual members of the AONB Partnership may also submit responses, highlighting issues of particular concern to themselves.

We are concerned that "landscape" barely features in the consultation document – mainly being mentioned as "natural beauty". We feel that this puts at risk the whole work of the Protected Landscapes family (AONBs & National Parks) within Wales. They provide a wide range of benefits:

- Promoting ecological, social, and economic well-being and sustainable outdoor recreation
- Furthering the conservation, restoration and enhancement of ecosystems and landscapes (including cultural)
- Fostering the sustainable use and management of the landscape (including cultural)
- Contributing to both mitigating and adapting to the effects of climate change

Like all Protected Landscapes, tourism plays a very important part in our local economy. In 2009, 4.1m visitors came to Gower & Swansea Bay, spending £295.9m, and supporting about 5,400 jobs. The Partnership work to manage the impact this has on the designated and other sites within Gower.

This includes the following sites and features

- 5 SAC's, 1 SPA, 3 NNR's, 25 SSSI's
- 3 LNR's, 42 SINC's
- 78 SAM's, 128 Listed Buildings, 17 Conservation Areas
- 2 Landscapes of Outstanding Historic Interest, 5 Historic Parks & Gardens

We find it strange that the Europan Landscape Convention is not mentioned at all within the consultation document – this is a key international convention, underpinning much of the work of the Protected Areas with in Wales.

The European Landscape Convention, which was signed and ratified by the UK Government on 1st March 2007, outlines some common core principles and actions:

- Putting people from all cultures and communities and their surroundings, at the heart of spatial planning and sustainable development.
- Recognising that landscape exists everywhere, not just in special places, and, whether beautiful or degraded, is everyone's shared inheritance.
- Increasing awareness and understanding of landscape and its value, as a unifying framework for all land-use sectors.
- Promoting a more accessible, integrated and forward looking approach to managing inherited landscapes and shaping new landscapes.

These commitments are implemented within the context of UK domestic legal and policy frameworks. The ELC also stresses that landscape is not merely scenery ("natural beauty"), but links people with place, culture with nature and past with present. It stresses that landscape has many values that matter to people (not all tangible), because it is they who create and value the landscape.

Equally important, the ELC takes a realistic and forward looking view, rather than a preservationist one: creating future landscapes is regarded as being just as much an aim as managing sustainably those we have inherited.

The use within the consultation document of the term "natural beauty" does not adequatly encapsulate the issues of "landscape" within the ELC. This is a serious concern for the AONB Partnership.

The cultural influence on AONBs is recognised by the International Union for Conservation of Nature, which has classified AONBs along with National Parks and Heritage Coasts as Category V Protected Landscapes and Seascapes. These are defined as 'a protected area where the interaction of people and nature over time has produced an area of distinct character with significant ecological, biological, cultural and scenic value: and where safeguarding the integrity of this interaction is vital to protecting and sustaining the area and its associated nature conservation and other values'.

The Welsh AONB's operate with limited resources (relying very heavily upon grant support from CCW) yet they have achieved a great deal through active partnerships with the communities and organisations within their areas. Through an understanding of the importance of sustainable development, we have worked to protect some of Wales most precious landscapes, while supporting local communities.

We believe that the new body does not have a clear "landscape role" within the terms of the Orders, and that this is a serious omission, which will result in the loss of the integrity of Welsh landscapes – both in Protected Areas, and in the wider landscape.

As landscapes fundamentally link cultural and natural environments, it is concerning that the framework which connects the role of all three current bodies is to be neglected in this way.

Under the Countryside & Rights of Way Act 2000, (Section 85) Public Bodies have a duty to "have regard to the purposes of conserving and enhancing the natural beauty of AONB's".

The Gower AONB Partnership would draw your attention to this duty, and the benefits which landscape provides for the Welsh nation. We consider that the lack of recognition of the importance of "landscape" within the proposals for the Single Body represent a serious threat to the Welsh environment and people. We would urge you to look again at the proposals for the Single Body, recognising that "landscape" as defined by the ELC must play an important part in its work.

Yours sincerely

Mike Scott Gower AONB Officer

Footnote

Although a key member of the Partnership, CCW do not feel that it is appropriate for them to be part of the response – they do not wish to express any comment.

Neath Port Talbot CBC response to Single Environment Body Consultation - 5th October 2012.

This is the second consultation event on the setting up of a single environmental body in Wales to which this Council has responded.

This Council is pleased to be given the opportunity to comment on the developing proposals and continues to support the development of a single environment body for Wales.

The following response has been collated from feedback across the various departments and special interest areas within the Council and follows the format required by the consultation.

Question 1. Do you agree with our proposal for the duties of the body in respect of conservation and natural beauty? (Yes, Mainly, Not at all). If not, how would you change it?

Mainly.

The duty that pollution control functions is seen as of overriding importance to public health and environment is welcomed.

The Forestry Commission Wales has potential to contribute in a positive way towards nature conservation aims rather than just balance the issue with forestry production. The FCW is a significant landowner in Wales and therefore has potential to significantly contribute towards improving nature conservation and setting an example for full integration of nature conservation and ecosystems services into the appropriate management of forestry and woodlands in Wales.

It is unclear how the requirements of the habitat regulations fit with the 'desirability' of conserving etc as part of pollution control functions. Surely the habitat regulations require nature conservation to be included in the decision-making process.

The requirements of the NERC Act for enhancing biodiversity are not sufficiently recognised and there is opportunity to include this as part of Section C. In this regard part (ii) references to 'beauty or amenity' should perhaps be strengthened to include protection, preservation and enhancement of biodiversity.

Section 6.2 discusses a general duty to fully consider matters such as conservation, biodiversity etc.in accordance with legislation. It is not clear how the exceptions for forestry (balancing) and pollution control (desirability) fit with this general duty.

Question 2. Do you agree with the proposals in respect of public access and recreation duties? (Yes, Mainly, Not at all).

If not, how would you change it?

Mainly

The encouragement for the protection, access to and use of the countryside and open spaces is welcomed as is the requirement to manage, maintain and improve its own facilities. There should perhaps be clearer reference to the management responsibilities relating to Rights of Way currently managed by Local Authorities and often funded by the constituent bodies of the SEB.

We would specifically like to see mention of a periodic review of the condition of the existing rights of way within the forest area, as we feel that this would help in the day to day management of these existing routes.

Question 3. Do you agree with these proposals for the high level forestry duties? (Yes, Mainly, Not at all). If not, how would you change them?

Refer to Q1.

Question 4. Do you agree with the general proposals for cross-border arrangements? [Yes, Mainly, No] If not what would you change?

Yes

Question 5. Do you agree with the proposals for the statutory consultee role? [Yes, Mainly, No] If not what would you change?

Mainly

However, no further detail is provided in relation to how responding to external consultations, as statutory consultees, will be made more efficient. Will there be a single point of contact to co-ordinate response over the relevant sections of the body or will individual interests be contacted directly?

We welcome the intended transparency of decisions for internal controversial issues.

Question 6. Do you agree with the proposals to provide internal separation of decision-making, improve transparency and ensure Welsh Ministers have the opportunity to call in significant issues? [Yes, Mainly, No] If not what would you change?

Not at all.

The intention to separate operational delivery from decisionmaking and statutory advice is welcomed. There is however no mention of any standardised scrutiny process where representatives of 'the body' or external stakeholders might subject decision making to challenge. Improving transparency by publishing lists on websites is considerably short of the transparency expected and required of other public bodies.

There is no mention here of a requirement on the NRBW to communicate externally or provide liaison with other regulatory bodies. Such communication and liaison has led to significant environmental improvements in our area of operations and reinforcing this as part of the strategy for the NRBW would be welcomed.

This local authority has supported the work of the South West Wales Area Environment Group (SWWAEG) organised by EAW and would welcome a successor arrangement with the NRBW.

Question 7. Do you agree with the proposals for permitting? [Yes, Mainly, No] If not what would you change?

Mainly.

We agree with the proposals in relation to the EPR regulated by the NRBW. It would be useful to make it known that these proposals do not include LA IPPC Part A2 and LA PPC Part B permits regulated by local authorities. There should be reference to these responsibilities and a statement saying that they will remain unchanged by the merger.

Question 8. Do you agree with these proposals for charging? [Yes, Mainly, No] If not what would you change?

Yes, although references in Q7 apply here also.

Question 9. Do you agree with the proposals for public registers? [Yes, Mainly, No] If not what would you change?

Yes, although references in Q7/Q8 in relation to LA's apply here also.

Question 10. Do you agree that the new body should be a listed body under the Regulation of Investigatory Powers Act 2000? [Yes, Mainly, No]

Yes

Question 11. Do you agree that the new body should have powers to use civil sanctions? [Yes, Mainly, No]

Yes

Question 12. Do you agree with the proposals for appeal arrangements? [Yes, Mainly, No]

If not what would you change?

Yes

Question 13. Do you agree with the proposals for cross border monitoring? [Yes, Mainly, No] If not what would you change?

Yes

Question 14. Do you agree with the proposals for statutory planning and reporting? [Yes, Mainly, No] If not what would you change?

Mainly.

We have concerns about the dividing up of responsibility for the development of cross-border plans based on an arbitrary country boundary rather than the functionality of the environmental system involved, e.g. the river basin. Someone needs to have an overview of how the individual parts connect and work together and the overall functionality; this may not be achieved through each country only dealing with their bit. We suggest that the agency in the country covering the majority of the area take a lead role to ensure the 'bigger picture' and system functioning is fully understood.

Similarly consultation responses from the SEB should be able to represent comments on a whole water catchment/river basin basis rather than limited to 'Wales only' sections to ensure the bigger picture is fully considered.

Question 15. Do you agree with the proposals for Civil Contingencies and COMAH? [Yes, Mainly, No] If not what would you change?

Yes

Question 16. Do you agree with the proposals for UK wide arrangements? [Yes, Mainly, No] If not what would you change?

Yes

Question 17. Do you agree with the proposals for transitional arrangements? [Yes, Mainly, No] If not what would you change?

Yes

Additional comments:

Concern that the following issues are not covered in the consultation:

- Scrutiny arrangements for decision making
- Wildlife licensing arrangements
- Supporting local biodiversity conservation action
- Funding e.g. local biodiversity funding



'Single Environment Body – Supplementary consultation'

Wales Tourism Alliance Limited 77 Conwy Road, Colwyn Bay, LL29 7LN

For Attention of: Welsh Government

Company No: 4449548

1. Industry Representation

The Wales Tourism Alliance

- 1.1 The Wales Tourism Alliance (WTA) is the recognised over-arching representative organisation for the tourism industry in Wales, liaising with and coordinating the views of all concerned and informing and working with Government at Westminster, Cardiff and at Local Authority levels.
- 1.2 The WTA also acts as an intermediary between Government and all involved in tourism, disseminating information to the industry via our member organisations and we work with colleagues in organisations in other parts of the UK.
- 1.3 The membership of the WTA includes sectoral, national, regional and local representative bodies comprising accommodation (hotels, guest houses, bed and breakfast establishments, holiday home parks, touring caravan and camping sites, hostels and self-catering cottages), attractions, activities, training and skills, tourism guides and transport.
- 1.4 The Wales Tourism Alliance is a pan-Wales umbrella group with 23 member organisations resting within its general membership. This amounts to around 7,000 working operators and means WTA contacts and representatives are now found in every part of Wales. Our members are:

Association of Welsh Agents British Home & Holiday Park Assoc **British Hospitality Association Brecon Beacons Tourism** The Camping & Caravanning Club The Caravan Club Carmarthenshire Tourism Cardiff & Co Federation of Small Businesses Farmstay UK Institute of Hospitality (Wales) Mid Wales Tourism National Caravan Council North Wales Tourism Pembrokeshire Tourism Small serviced sector Forum SE Wales Tourism Forum Snowdonia Active Tourism Swansea Bay Visit Wales Wales Official Tourist Guides Association Wales Activity Tourism Operators Wales Association of Self Catering Operators Wales Association of Visitor Attractions

- 1.5 The WTA therefore works with on behalf of operators ranging from major industry players from across the UK to the numerous micro-businesses that make up so much of the tourism industry.
- 1.6 To achieve this the Wales Tourism Alliance brings together the most powerful private and public sector partnership of tourism industry interests in Wales, including

some of the biggest industry members in the United Kingdom who add their voice to ours in Westminster as well as in Cardiff. In that capacity the WTA remains committed to 'working together' with partners on an honest broker basis, only possible due to our trusted status and unique way in which we are supported. The tourism sector in Wales will not achieve its potential if Government, Local Authorities and the private sector are all working independently with a low level of communication and understanding of each other. The Wales Tourism Alliance provides the mechanism to make a reality of the partnership concept.

2. The Tourism Industry in Wales and its Value to the Welsh Economy

- 2.1 The final report of "The Economic Case for the Visitor Economy" by Deloitte & Oxford Economics published in June 2010 illustrates the importance of tourism to the economy of Wales compared to other parts of the UK. The total contribution in 2009 (which includes impacts through the supply chain, of capital investment and Government expenditure) accounts for £6.2bn of GDP, 13.3% of the total economy compared to 8.6% in England, 10.4% in Scotland and 4.9% in Northern Ireland. The direct contribution is £2.7bn which equates to 5.8% of Wales GDP compared to 3.9% in England, 4.9% in Scotland and 2.1% in NI.
- 2.2 This report also highlights the importance of tourism to employment in Wales. The total contribution in 2009 accounted for 0.17m jobs in Wales, 12.7% of the total workforce; this compares with 8.3% in England, 10.0% in Scotland and 4.7% in NI. The direct contribution supports around 0.09m jobs, 6.9% of the Wales workforce, considerably higher than the 4.4% figure for England, 4.2% for Scotland and 3.0% for NI.
- 2.3 Although high levels of employment in the Visitor Economy can be found in cities, rural areas are more dependent on the sector as it plays a large role in local economies and indeed communities, enhancing the provision of facilities and amenities that are also extensively used by residents as well as visitors.
- 2.4 In Wales, the rural economy has a particularly strong link with the Visitor Economy with the share of employees in Conwy estimated to be 16.7% with 15.1% in Pembrokeshire, 13.2% in Ceredigion, 12.2% in Gwynedd and 12.0% in Powys. 25% of all VAT registered businesses in Wales are in the Visitor Economy.
- 2.5 As a stable and dependable industry, tourism also has a vital role in the regeneration of urban communities within Wales. Tourism has proven itself strongly resilient to the ravages of the current economic downturn and this is especially relevant to rural Wales, where employment alternatives are limited. Tourism as an employer, as an economic driver and, perhaps just as significantly, as the custodian of community facilities & opportunities, is paramount and irreplaceable.
- 2.6 Tourism in Wales also has considerable potential for growth with Deloitte forecasting that the Visitor Economy by 2020 will provide a total contribution of 6.9% of the Wales GDP, supporting 188,000 jobs and accounting for 13.7% of total employment.

Further to the WTA's earlier engagement in 2011 when the Welsh Government consulted on its proposal to merge the functions of Countryside Council for Wales (CCW), Forestry Commission Wales (FCW) and Environment Agency Wales (EAW) in a new Single Environment Body. this is a brief supplementary response.

We noted in the consultation document reference to 'charging for them (use of natural resources) where appropriate'. We therefore request that where proposals are likely to have economic impact on the tourism industry, that those likely to face charges, are identified and fully consulted with prior to the implementation of any new fee charging regime.

The following are comments received from the WTA's member namely WATO which we also fully endorse:

We broadly support the development of sustainable tourism based on the environment of Wales and the management of its natural assets. The environment and countryside assets of Wales remain as a major draw to visitors and require ongoing responsible management.

We note that: "Ministers and the new body would be under a duty, in formulating or considering any proposal relating to any functions of the body —

- To have regard to the desirability of protecting and conserving buildings, sites and objects of archaeological, architectural, engineering or historical interest;
- To take into account any effect which the proposals would have on the beauty or amenity of any rural or urban area or on any such flora, fauna, features, buildings, sites or objects; and
- To have regard to any effect which the proposals would have on the economic and social well-being of local communities in rural areas"

We are not sure whether there is a distinction in degrees of obligation between 'have regard to' and 'take into account' (although the latter seems firmer) but all three points should have equal strength. Arguably there should be a specific reference to Health and well-being in the third point.

In respect of the first bullet point we are also aware that the Welsh Government is currently framing a Heritage Bill so it is clearly important that the duties laid on public bodies are consistent between the 2 areas of legislation.

We are not sure why there is reference to 'rural and urban' in the second point and only 'rural' in the third. Both should be included.

P13/14

While we would not disagree with the responsibilities and opportunities identified for the new body in respect of recreation we believe the wording of the order should be made more explicit to embrace both land and water-based activities and the list of possible facilities operated by the new body should be expanded to include inter alia fishing, sail and paddle sports, mountain biking trails and riding facilities In considering cross-border issues, it should be noted that the Environment Agency is currently the Navigation Authority for the River Wye. Is such a responsibility envisaged as a possibility for the new body, is it to be left to EA in England, or would Welsh Government seek to transfer such responsibilities to the newly formed Canals and Rivers Trust?

Recommendations

We recommend that the above comments are considered by Welsh Government.

Adrian D. Greason-Walker Wales Tourism Alliance

5th October 2012

CADEIRYDD/CHAIRMAN: MORGAN PARRY • PRIF WEITHREDWR/CHIEF EXECUTIVE: ROGER THOMAS

Anfonwch eich ateb at/Please reply to: Mr Morgan Parry, Cadeirydd/Chairman

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NATURAL RESOURCES BODY FOR WALES ADDITIONAL CONSULTATION ON THE SINGLE BODY

RESPONSE FROM THE COUNTRYSIDE COUNCIL FOR WALES (Final Version; amended 9 October 2012)

The Countryside Council for Wales champions the environment and landscapes of Wales and its coastal waters as sources of natural and cultural riches, as a foundation for economic and social activity, and as a place for leisure and learning opportunities. We aim to make the environment a valued part of everyone's life in Wales.

We note that the Second Order will amend existing legislation and make changes that are considered necessary as a consequence of the transfer of functions or are incidental or supplementary to such transfer and welcome the opportunity to strengthen and clarify aspects of the legislation within this stated scope. We also appreciate the dialogue between CCW and Welsh Government in recent weeks over its proposals and recognise that many of the issues covered in our response below will have been addressed as a result of these discussions. Our response, however, is to the consultation, as published on 13 August 2012.

A. FIRST ORDER

A.1. Amendments to the First Order (Page 6)

CCW notes that the Second Order provides a vehicle for amending provisions in the First Order. As such we would advise that the **definition of 'environment'** in Section 2(b) of the First Order is amended to include specific reference to **landscape and geodiversity** This



Gofalu am natur Cymru - ar y tir ac yn y môr • Caring for our natural heritage - on land and in the sea

would help ensure greater clarity with regard to the new body's landscape functions and duties, in the context of the 2007 European Landscape Convention. Welsh Government is legally obliged to adhere to the requirements of the European Landscape Convention. Article 5 of the ELC requires importance of landscape to be reflected in legislation and policy.

Explicit reference to geodiversity in the First Order would help ensure a common and consistent understanding of the importance of these features as key components of the Welsh natural environment. Embedding geodiversity into the work of the new body will ensure that Wales will continue to play a key role in developing a fully holistic ecosystems approach, including all aspect of the natural environment.

Including an explicit reference to landscape, and geodiversity in the definition of 'environment' in the First Order would provide better alignment with the more detailed provisions of the Second Order.

We welcome the assurance from Welsh Government that such an amendment is feasible and within scope of the current exercise.

B. PART 1 OF THE CONSULTATION: OVERARCHING DUTIES OF THE NEW BODY

B.1. Natural Beauty and Nature Conservation duties (Pages 9 -12)

CCW welcomes Government's intention to protect and strengthen, where possible, the work undertaken by the body to promote and protect conservation features and natural beauty.

We are concerned that the duty towards conservation of natural beauty and conservation of flora, fauna, geology, and physiographic features, as set out in the consultation document (Sections (a) and (b) in Box 2) applies solely to 'formulating or considering any proposals relating to any functions' and not to the direct discharging of functions by the new body. The rationale for the wording, and its implication for the new body, are unclear and we are concerned that this change may represent a weakening of CCW's existing functions and current legislation.

Following recent discussions we welcome Welsh Government's intention to revisit the wording to ensure it reflects the more direct duty placed on CCW under the Environment Act 1990.

The consultation document proposes that CCWs existing functions "to further the conservation and enhancement of natural beauty and the conservation of flora, fauna, geological and physiographical features" will be transferred to the new body, but **will not apply to its pollution control or forestry functions.** This appears to contradict the stated intention to strengthen or simplify duties and powers. Clarification is required as to why the duty to conserve and enhance natural beauty and to conserve flora, fauna, geological and physiographical features should not apply to pollution control or forestry functions and sufficient provision should be made in the legislation to ensure CCW's clear duties, as set out

in the Environment Act 1990, are fully transferred so as to achieve the purpose of the new body.

CCW wishes to see Welsh Government taking the opportunity, through the Second Order, to clarify the new body's **landscape functions and duties**, and in so doing ensure better alignment with the European Landscape Convention.

We are concerned that using **s7 of the 1995** Act (i.e. the Environment Agency functions) is **not a comparable** replacement for CCW's landscape functions under s130 of the 1990 Act. If that was so then since 1995 Government would have had two public bodies with landscape advice functions in Wales and England. Clearly this has not been the case, which suggests that s7 isn't a replacement for CCW's landscape purpose and functions.

The omission in s7 of any reference to **National Parks and AONBs** will be seen as a weakening of the importance of the role of National Parks and AONBs in assisting the new body in delivering its natural beauty functions. The s16(2) Public Bodies Act 2011 states that Welsh Ministers can only make an order if the order does not remove any necessary protection. Whilst not potentially removing protection the lack of reference to protected landscapes is being perceived by partners as a downgrading of the role and status of National Parks and AONBs in relation to new body, which is counterintuitive to the principal role we expect them to take in managing and delivering natural resource planning across a quarter of Wales. There is also the loss of the reference to conservation and enhancement of 'amenity of the countryside of Wales' – which reflects in particular the dual purposes of National Parks.

It is important, in creating the Second Order that the **legal meaning of natural beauty is not changed.** Such a change would require specific primary legislation and repeals/ changes to a very large number of Acts because:

- 1) this is a legally understood and accepted term;
- 2) it is the legal basis of National Park Authorities and local authority powers and duties in relation to AONBs;
- 3) it is the legal basis of landscape designations across Wales and England. This includes the shared Wye Valley AONB we can't have different meanings applied to the same designation;
- 4) natural beauty is referred to in Acts outside the environment sector including Water Industries Act 1991, Transport and Works Act 1992, Coal Industry Act 1994 and Electricity Act 1989 and so forth.

We would advise, however, that reference to the term 'natural beauty' throughout the Second Order, is expanded to 'Landscape. seascape and natural beauty' in order to give greater clarity and promote better understanding of the new body's landscape duties and functions.

We note the Minister's intention, in the foreword to the consultation, to ensure the functions of the new body encompasses its role in protecting the **cultural landscape** alongside the natural and historic environment. We would suggest therefore that '**cultural interest**' is added to paragraph c (1) in Box 2 and the word 'features' is included alongside buildings, sites and objects. This would better reflect the role that **cultural features** play in determining **landscape character and aspects of natural beauty.** In paragraph c (1) in Box 2, '**geodiversity**' features need to be added to 'flora, fauna'. This would lead to the recognition

of the importance of geodiversity in the wider countryside as well as non-statutory sites such as RIGS.

CCW is concerned that the duty on CCW to foster the **understanding of nature conservation** (EPA 1990) is not reflected in the proposals for the nature conservation and natural beauty duties of the new body. We believe the implementation of such a duty will be vital if the new body is to achieve its purposes and is a duty that should apply across the whole of the single body's remit as it has as much relevance and importance to achieving conservation outcomes as it to achieving objectives and outcomes for people's enjoyment of the natural environment

The establishment of the new body provides a welcome opportunity to amend and clarify some **outdated concepts and terms** contained within existing legislation and which CCW believes are inadequate for delivering the purpose of the new body. We would advise the replacement of the word 'rural' throughout the Second Order in order to reflect the need for the new body to discharge its functions in **all parts of Wales**, in both rural and urban areas and in all terrestrial, freshwater and coastal marine environments (out to 12 nm), and to have regard to the social and economic well being of communities throughout the country, in order to achieve its purpose of securing the sustainable management, enhancement and use of the environment and natural resources of Wales. We have provided evidence to Welsh Government that demonstrates how the legal scope of the terms 'rural' and 'countryside' has restricted CCWs' work in the marine environment. We would therefore advise that the term 'countryside' is likewise amended in the Second Order to ensure better clarity of the new body's duties and functions in respect of all land, air and water (including coastal waters out to 12nm) in Wales.

CCW agrees with the preferred option in the consultation document to ensure the new body would_continue to be subject to the **balancing duty** in section 1 (3A) of the 1967 Forestry Act. We are concerned that the alternative option of replacing this duty with a duty "to have regard to the desirability of" would represent a major weakening in nature conservation and landscape duties with respect to forestry and would bring substantial risks of forestry taking less account of these than it does now. CCW would strongly recommend that the balancing duty should be retained and even strengthened to ensure the new body balances its forestry functions with the need to ensure integrity of ecosystems and to conserve and enhance natural beauty, flora, fauna, geology and physiographic features.

CCW welcomes the **removal of the reference to 'special interest'** in Section 7(1) to ensure the duties of the body in respect of landscape and nature/geological conservation apply to all parts of Wales and inshore waters.

We note that the document proposes a power as well as specific duties in relation to the new body's recreation and access functions but that there is **no equivalent proposal for a power** in relation to **nature conservation and landscape/natural beauty functions**, although section (a) in Box 2 makes reference to the duty to 'exercise any power'. Clarification is required about the powers of the new body in relation to nature conservation and landscape/natural beauty functions and as part of this we would wish to ensure that **CCW's experimental powers** are transferred into the new body.

B.2. Public Access and recreation duties. (Pages 12-14)

CCW recognises, through discussion with Welsh Government, that Para. 1 of Box 3 refers to a power that will enable the new body to 'take such steps as it considers appropriate to promote and facilitate public access to and enjoyment of the countryside and open spaces in Wales" and whilst reassured that the inclusion of a general power alongside a duty (as set out in Para 2 Box 3) in respect of the new body's access, recreation and learning functions does not represent an overall weakening of the duty, we would advise amendments to the wording of the Second Order to ensure an overall strengthening of the power and duty in these areas.

Specifically we would advise that the wording of the **power** is amended to include specific reference to **study and learning alongside access and enjoyment**. Given the issues surrounding the interpretation of the term 'countryside' as noted in Section 2 above we would advise that the terms 'countryside and open space' in Para 1, Box 3 should be amended in a way that better reflects the role of the new body in promoting and facilitating access, enjoyment, engagement and learning in connection with the **natural environment** throughout Wales, including its land, air, freshwater and coastal waters.

Likewise we would advise that the reference to countryside and open spaces in Para 2(1((a) is amended in order to clarify that the duty applies to enjoyment of natural environment throughout Wales, including its coastal waters.

CCW is concerned that the duty refers only to the **provision and improvement of 'facilities'**. This inadequately reflects the range of measures that are currently utilised to deliver the purpose of promoting and facilitating public access and enjoyment of the natural environment. We suggest therefore that the word **'opportunities'** is added alongside 'facilities' throughout the wording of the Second Order as it relates to the new body's access and recreation duties, and suggest the inclusion of some of these examples (such as outdoor recreation and learning events, provision of environmental information) alongside the examples of facilities selected for inclusion in Section 3 (2) and (3). We would also advise that the word 'facilitate' is also included in the wording of the duty (i.e. so as to facilitate and encourage the provision.....).

It is important that the wording of the legislation does not **restrict the range of mechanisms**, voluntary or otherwise, that the new body can deploy to promote and facilitate public access, enjoyment and learning opportunities in connection with the natural environment.

In Section 3.3 (d) of Box 3, the word 'footpaths' should be replaced with the term 'public rights of way' if referring to all users who have legal rights of access. We would also advise that this category of 'facilities and opportunities' also includes open access land.

B.3. Forestry Duties (Pages 14-15)

No convincing rationale has been provided for the inclusion of the duty to promote woodland cover without similar duties for other habitats also subject to Welsh Government commitments and strategies equivalent to the Wales Woodland Strategy.

CCW is concerned to ensure that the general duty passed to the new body to **promote** woodland cover in Wales does not lead to **negative impacts** on other important habitats and geological and physiographic features, nor compromise the integrity and functioning of ecosystems, nor affect the achievement of favourable conservation status for protected sites, nor impact negatively on landscape character and natural beauty. We would advise that the wording of any power and/or duty in respect of promoting woodland cover includes **adequate provisions** to ensure that landscape, natural beauty, biodiversity and geodiversity features and ecosystem functioning are safeguarded and are not overridden by the interests associated with this single habitat.

Our recommendation, however, is that this **duty to promote woodland cover is not included in the Order** but deferred for further consideration in the Environment Bill to allow a more balanced approach, reflecting all Ministerial guidance on protecting and enhancing habitats.

C. PART 2 OF THE CONSULTATION: LEGAL AND WORKING ARRANGEMENTS

C.1. Cross Border Issues (Pages 17-18)

This section of the consultation document focuses **primarily on EA functions** with only brief reference to issues relating to the management etc of **cross border sites of nature conservation interest.** This is especially relevant given the later sections relating to water resource management plans and natural resources. There are many instances where we do not concur with Natural England (NE) interpretation/guidance on management of cross border issues e.g. the issues we currently have with NE's review of conservation objectives and with EA (England)'s interpretation/guidance on water quality and abstraction targets on cross border rivers and European Sites.

This section also does not sufficiently acknowledge the **borders in the marine environment** between Welsh and UK waters nor **cross-border issues on landscape** (e.g. Wye Valley AONB).

As the existing arrangements between CCW and NE or JNCC are not specified in legislation and are covered in local agreements and informal arrangements this will appear somewhat inconsistent in terms of the new relationships between the new body and its UK or English counterparts, and we do recommend that further thought is given to this and discussions held between the legal team and NE/JNCC lawyers.

CCW believes it is important that the new body is given appropriate **duties to cooperate and consult with English and UK bodies on all aspects of its remit** for cross-border sites and issues. CCW notes that the intention is to place the new body under a duty to take account of cross border impacts when making operational/regulatory decisions. However, it is suggested that there should be a commitment to making this duty **reciprocal** upon relevant authorities and bodies in England.

In addition to the cross border issues identified, it should be emphasised that a number of internationally designated nature conservation sites also 'cross the border'. CCW would seek reassurance that such cross border sites (including the Severn Estuary SAC/SPA/Ramsar, Dee Estuary SAC/SPA/Ramsar, river Wye SAC and River Dee and Bala Lake SAC etc) will benefir from appropriate cross border agreements and operational structures which will enable the protection and maintenance of these important sites and their ecological functions. In addition, given that a number of these European Sites also serve as major water resources for both England and Wales, reassurance is required that appropriate measures will be put into place to protect these resources and to manage them sustainably and in accordance with the principles of ecological limits and capacities.

C.2. Regulation and Enforcement (Pages 19-26)

[Please refer also to Annex 1 where we have outlined possible scenarios in relation to the functional separation and transparency issues referred to in the comments below].

CCW believes it is important for Welsh Government to recognise and clarify, in taking proposals forward for the new body, that much of the environmental legislation regulated/implemented and enforced by CCW/EA and FC have origins in European legislation and international conventions. Where EC legislation is transposed into the UK context, it is done so via the UK (Westminster Government) as the government of the Member State. This consultation document and any associated work in connection with the establishment of the new body, needs to acknowledge the strong relationship of environmental legislation to Europe and the UK (as the Member State) and identify those instances where 'simplification' would be inappropriate or not possible. This would aid transparency in the consultation process over the establishment of the new body, and clearly identify those areas of regulation/legislation where it is not possible to reinterpret/simplify provisions.

CCW welcomes the insertion, within the second bullet point, of the reference to 'functional separation' in the context of SEA and HRA. Clarification is needed however, regarding the meaning of the word 'advice' in this context. Further clarification is also required with regard to the application of functional separation for Environmental Impact Assessment (EIA), notably where the Single Body will be responsible for undertaking EIA of its own projects (flood defence works, drainage works etc) and will also have a role as a statutory EIA consultation body.

Para 6.1: In respect to cross border work, additional reference needs to be made to the possible requirement for the statutory environmental assessment (HRA, EIA and SEA) **of permits/assents and consents of projects/plans/programmes affecting cross border sites** and the status and role of the SB as a statutory consultee/consultant body on such assessment processes.

In addition to the cross border issues identified, it should be emphasised that a number of internationally designated nature conservation sites also 'cross the border'. CCW would seek reassurance that such cross border sites (including the Severn Estuary SAC/SPA/Ramsar, Dee Estuary SAC/SPA/Ramsar, river Wye SAC and River Dee and Bala Lake SAC etc) will benefit from appropriate cross border agreements and operational structures which will enable the protection and maintenance of these important sites and their ecological functions. In addition, given that a number of these European Sites also serve as major water resources for both England and Wales, reassurance is required that appropriate measures will be put into place to protect these resources and to manage them sustainably and in accordance with the principles of ecological limits and capacities.

Para 6.2: This section, as written, requires clarification and reconsideration, notably in the context of the ECJ Case 474/10- the Seaport case and the potential conflicts of interest inherent in 'self regulation'. CCW would suggest that this section fails to demonstrate an understanding of the complexity of the new Body's roles and responsibilities in relation to operational activities, provision of advice and formal roles as decision makers and statutory consultees on plans/projects and their statutory assessment processes and would welcome the earliest possible opportunity to discuss these issue with WG and with EA and the FC.. Our specific comments on Section 6.2 follow;

CCW disagrees with the statement that 'where **consultation requirements** arise from **EU obligations**, for example EIA or Habitats Regulations the requirements for the body to consult itself will be retained'. Clarification is required here in the context of the **Seaport Case and the spirit of the Habitats Directive and EIA Directives and Aarhus Convention. It may not, without appropriate and robust measures being undertaken** (e.g. in respect of functional separation), it may not be appropriate for the SB to consult itself. As written, this statement conflicts with the Section 6.3, which further considers the requirement for 'functional separation'.

The consultation document is **unclear in key places** on what is being proposed, **for example with respect to the statutory consultee role**. The proposal is that the new body will publish decision documents (presumably on how it made its decisions) to ensure transparency but few details are given. It should be noted that the publication of decision and consultation documents and public participation in all process stages is a legal requirement of both the SEA and EIA Directives. Matters relating to transparency of the decision making process and public participation is a critical and contentious area (aka Pembroke Power Station, FC Wind Energy Projects) and it is important that the new body will be best placed to enable and ensure transparency and accountability in all its decision-making processes.. Other proposals are that the new Body will consult itself in some circumstances - but this also is confused. Clarification and detail is needed before it can be possible to assess the appropriateness of the proposals.

As a separate point, Paragraph 6.2 refers to the requirement 'to fully consider matters such as conservation, biodiversity, landscape access and historic features in regulatory decision-making'. Consideration of geodiversity would also be a requirement.

Para 6.3: as with Section 6.2, his section requires clarification and reconsideration, particularly in the context of the ECJ Case 474/10- the Seaport case and the implications of 'self regulation'. CCW would suggest that this section fails to demonstrate an understanding of the complexity of the new Body's roles and responsibilities in relation to operational activities, provision of advice and formal roles as decision makers and statutory consultees on plans/projects and their statutory assessment processes and would welcome the earliest possible opportunity to discuss these issue with WG and with EA and the FC.

In some parts of this section, regarding the Body's role in advising on and regulating its own functions is still unclear what is being proposed. Clarification of these issues is required as a matter of urgency in order to enable the strategic planning and planning processes to continue/progress throughout the forthcoming transition period between the existing environmental bodies and the SB

CCW welcomes the acknowledgement, in Para 2, to the need for 'functional separation' consistent with the Seaport Judgement- ECK 474/10. and further supports the intention, in Para 3, to extend this arrangement to the EIA and HRA processes. However, given that the second bullet point in Section 6 identifies the need for 'functional separation' in respect of only HRA and SEA, it is suggested that 'EIA' needs to be added to Section 6, bullet point two in order that this consultation document is consistent in its acknowledgement of the need for functional separation to be considered/established in respect of all three assessment processes.

Clarification/explanation is required of the stated intention in Para 4 of this Section 'to designate the WG as an SEA consultation Body in respect of plans/programmes undertaken by the Body itself'. WG is already a SEA consultation Body for SEA under the Environmental Assessment of Plans and Programmes Regulations 2004. The intention to create WG as an SEA consultation body under the Environmental Assessment of Plans and Programmes (Wales) Regulations may be legally problematic in terms of Article 6(3) of the SEA Directive and in the context of WG's existing role as 'administrators' of the SEA Directive in Wales. Consideration of such a new role for WG should not be undertaken lightly and would need to be discussed with the Department of Communities and Local Government who have the overall role of implementing the SEA Directive in the UK context. Similarly, should WG assume the role of a consultation body for SEAs undertaken by the new Body, care would be needed to ensure this role was compliant with the findings of ECJ 474/10 in respect of transparency of process and the freedom to comment independently.

The proposal to designate the WG as an SEA consultation body in respect to plans or programmes undertaken by the single body appears to conflict with the statement in paragraph 2 "within the business". It also raises issues of inconsistency of approach by WG on the separation of duties - for example, Cadw will presumably remain the SEA consultation body for WG plans and programmes, even though the status of Cadw (as having been

subsumed into WG without reference to CLG and/or amendment/reconsideration of the SEA Regulations in Wales) is potentially problematic. The need to replicate SEA teams in both the single body and WG will also be highly resource and skill intensive. Therefore, the rationale behind this proposal needs further explanation in the consultation document.

In addition, while this Section makes reference to the designation of WG as a consultation body for SEA, no similar aspiration has been identified for the EIA and/or HRA processes. Clarification is required as to why WG consider it necessary/desirable to be a consultation body for SEA while not also assuming the responsibilities of being a consultee for the EIA/HRA processes.

We note there is no reference to the new body's **role for HRA and EIA** in the first paragraph. As written, this section is **ambiguous and requires clarification**. The Seaport case does not relate *per se* to operation/regulation but relates to plan/project makers (responsible authorities) and statutory consultation bodies. In Paragraph 4,

The proposal to designate the WG as an SEA consultation body in respect to plans or programmes undertaken by the single body appears to conflict with the statement in paragraph 2 "within the business". It also raises issues of inconsistency of approach by WG on the separation of duties - for example, Cadw will presumably remain the SEA consultation body for WG plans and programmes. The need to replicate SEA teams in both the single body and WG will also be highly resource intensive. Therefore, the rationale behind this, and particularly reason for going beyond the Seaport judgement, needs further explanation in the consultation document.

Paragraph 6.4.3: It would be useful to clarify if the Eel Licensing and preparation of Eel Management Plans and Salmon Action Plans etc. would be based on **administrative boundaries and/or on a catchment basis.**

Functional Separation and Transparency issues: It would seem the need for functional separation between the SEA roles of consultation body and responsible authority is agreed/acknowledged however there is no clarification (and no references in the current iteration of the 12 single body workstreams) regarding the new body's responsibilities to undertake SEA on relevant plans and programmes and only the requirement for functional separation for the SB in the context of a consultation body has been given. Further clarification is required here. The same is true in relation to HRA at plan and strategic level and for EIA at project level

The SB consultation document refers to a need for functional separation for HRA but does not distinguish between HRA at project stage and HRA at strategic stage. There is also a slight contradiction in the consultation document in that in one section there is a reference to need for functional separation for EIA/SEA/HRA whereas in another section, the reference to functional separation is only made in the context of SEA and HRA.

Clarification is required. Is EIA (notably in the context of EIA of the new body's own projects) going to be included within the context of functional separation?

The **existing statutory requirements** for the bodies to give **guidance to each other** (eg s33 Countryside & Rights of Way Act) in discharging regulatory functions **does not appear to be covered**.

Para 6.8 Appeals. CCW is **unable to provide an informed response** to Question 12 as there is no detail on proposals for appeal arrangements in this section.

C.3. Monitoring and Sampling (Page 27)

CCW would advise that Welsh Government considers carefully the provisions of Regulation 129a of the Conservation of Habitats and Species Regulations 2012 (as amended) and other legislation, such as the Birds and Habitats Directives, to ensure CCW's duties in respect of monitoring and research are transferred appropriately and clearly into the new body (see also comment under C.4 below).

C.4. Statutory Planning and Reporting (pages 28-30)

Paragraph 8.1: Cross reference to sections on SEA and HRA is required here in respect of cross-border plans

Paragraph 8.2: Second paragraph. Reference needs to be made to the requirement for plans/programmes which might impact the water resources of Wales to be subject to the SEA/HRA processes (see comments on Section 6 below).

Note that Water Resource Management Plans and Drought Plans require both SEA and HRA. The new body will be consulted on both SEA and HRA for these plans in respect of effects on water resources.

CCW is involved in reporting activity for landscape and conservation purposes. For example, it is responsible for providing the Welsh contribution to ELC reporting (though Defra is responsible for preparing the final report) and for Habitats Directive reporting (though the final report is prepared by JNCC). The document isn't clear (on page 28) on whether the duty on the single body to provide data for Wales, where these are required for statutory UK reporting purposes, refers only to WFD work (as suggested by the text). There is a complication here, in relation to Habitats Directive monitoring, in that the Habitats Regulations clearly indicate that CCW has only an advisory role and that Welsh Government itself is responsible for ensuring monitoring is undertaken to enable statutory reporting. There is some risk, therefore, of inconsistent approaches in the new body. CCW recommends that the single body is given clear responsibility for undertaking relevant monitoring for UK reporting purposes (in the same way that SNH has been given responsibility in Scotland), but this should be a clear and consistent message if it is what is being proposed.

D. ANNEX 1

CCWs key duty under the **Countryside Act s2 (2) is missing** - to keep under review all matters relating to the provision and improvement of facilities for enjoyment of the countryside, conservation and enhancement of natural beauty and amenity of the countryside and the need to secure public access for the purpose of open recreation.

The 'Main duties of the Countryside Council for Wales' section, starting on page 38, reflects the Environmental Protection Act 1990 in listing CCW's high level duties. However it **misses out** an additional bit of text, which reads '....and they may do all such other things as are incidental or conducive to those functions including (without prejudice to the generality of this provision) making charges and holding land or any interest in or right over land.' (S132 (2)(b) of the EPA 1990).

E. OTHER ISSUES

Missing items:-

CCW would have expected **Powers of Direction for Welsh Ministers** to be considered in the consultation. They are included in the draft Order, but have not been consulted on to our knowledge.

CCW would have expected this consultation to state whether functions on **marine licensing** and wildlife licensing will be transferred to the new body and, if so, to set out in more detail which functions will be transferred/modified. At present this is not mentioned and it would be appropriate to explain why.

Thank you for the opportunity to respond to the additional consultation. We hope our comments can be fully taken on board and reflected in Welsh Government's proposals for the establishment and working arrangements of the new body and look forward to continued dialogue over these matters.

Yours faithfully

Morgan Parry Cadeirydd / Chair

Cyngor Cefn Gwlad Cymru Countryside Council for Wales

9/10/12

<u>Annex 1</u>: Regulatory scenarios – analysis of requirements to deal with functional separation, transparency and conflict of interest issues

	Scenario	Example	*if contentious, affecting site designated under EC law or required by WG guidance
Pro	 pject Level (all permits, licences, authorisations	, consents, assents)	
1	SB is statutory consultee for project application (plus EIA and/or HRA where relevant). Application made and regulated by others.	T & CP applications (not from SB) NSIP Development Consent Orders	Single coordinated response across SB remit Explanatory document published if required* to show how different elements of remit taken into account in response (transparency) Functional separation and Conflict of Interest (CoI) issues not relevant

2	SB is regulator for application made by others. Legacy bodies were not statutory consultees.	EA permit (any regime where neither CCW nor FC was statutory consultee)	No additional requirements compared to current situation Transparency, functional separation and Conflict of Interest (CoI) issues not relevant
3	SB is regulator for application (plus EIA where relevant) made by others. SB both carries out and consults on HRA where relevant. Legacy bodies are/were statutory consultee . 2 nd Consultation Document suggests that SB will remain statutory consultee in cases involving EIA and HRA.	EA permit (any regime where either CCW or FC was statutory consultee)	Separation of functions between advisory/consultee team and regulatory team determining application. Where HRA involved will require additional separation of functions between advisory/consultee team and team preparing HRA for regulatory team. If SB remains statutory consultee for EIA/HRA cases, should SB publish responses from advisory/consultee team? Decision document published if required* to show how advice has been taken into account in decision (transparency). Conflict of Interest issues not relevant

4	SB is applicant . SB is not the regulator. Legacy bodies were not statutory consultees.	?	No additional requirements compared to current situation Transparency, functional separation and Conflict of Interest (CoI) issues not relevant
5	SB is project applicant (and originator of EIA/HRA where relevant). Legacy bodies are/were statutory consultee. SB is not the regulator	T & CP applications made by SB	Separation of functions between advisory/consultee team and operational team (originator of application) for application Where EIA involved will also require separation of functions between EIA operational team (originator of application/EIA) and EIA advisory/consultee team. Where HRA required will similarly require separation of functions between operational team (applicant and originator of EIA/HRA) and HRA advisor/consultee team Will regulator still formally consult SB (on application, EIA, and HRA) in this scenario? If so, SB should publish response from advisory/consultee team. If not, should Explanatory document be published to show how advice taken into account due to Conflict of Interest Issues?

6	SB is applicant . SB is regulator . Legacy bodies were not statutory consultees. 2 nd consultation document proposes that Welsh Ministers can call in and determine application. 2 nd consultation document proposes publication of consents for own operations on lists of permits	SSSI consents and assents on own land	Separation of functions between operational team (originator of application) and regulatory team. Decision document published? (due to Conflict of Interest issues) Publish on list of permits for own operations
7	SB is applicant (and originator of EIA where relevant). Legacy bodies are/were statutory consultee. SB is the regulator. SB carries out and consults on HRA where relevant. 2 nd Consultation Document suggests that SB will remain statutory consultee in cases involving EIA and HRA. 2 nd consultation document proposes that Welsh Ministers can call in and determine application. 2 nd consultation document proposes publication of consents for own operations on lists of permits	Abstraction licence application by SB in protected site, Felling License applications	Separation of functions between operational team (originator of application), advisory/consultee team and regulatory team determining the application. Where EIA is involved will also require separation of functions between EIA preparation team, regulatory team and consultee teams.for the EIA Where HRA involved will also require separation of functions between team preparing HRA for regulatory team and consultee team for HRA. If SB remains statutory consultee for EIA/HRA cases, SB will publish response from advisory/consultee team. Decision document published to show how advice taken into account in decision? Conflict of Interest Issues Publish on list of permits of own operation

Pla	Plan or programme level			
8	SB is statutory consultee for an external plan or programme plus its' SEA and where relevant HRA.	LDPs, National Transport Plan, Water Resource Management Plans, Offshore Oil and Gas Licensing Rounds, etc	Single Coordinated Response across SB remit to both plan and relevant assessment processes Explanatory document published if required* to show how different elements of remit taken into account in responses (transparency) Functional separation and Conflict of Interest (CoI) issues not relevant. If however, SB participates in making the plan, separation of functions between plan-makers/SM participants in plan making and SEA/HRA consultee role will be required (see CCW staff guidance on dual roles in SEA)	

	SB is originator of plan plus its SEA and where relevant HRA.	River Basin Management Plans, Forest Design Plans, Eel Management Plans, NNR Management Plans	Functional Separation required between teams producing/developing plan itself and the team(s) performing statutory consultation body/consultee role (Seaport Case ECJ 474/10).
ç	SB consultation document says WG intends to be SEA consultation body for plans/programmes made by SB.		Potential WG role as SEA consultation body open to interpretation in the context of Article 6(3) of the SEA Directive. Direction/advice would be required from Department of Communities and Local Government Role of WG as SEA consultation body unnecessary if functional separation in the context of ECJ 474/10 is complied with. Potential conflict of interest with WG acting as both SEA consultation body and the authority responsible for SEA implementation in Wales

WELSH PORTS GROUP

BRITISH PORTS ASSOCIATION

THE UNITED KINGDOM MAJOR PORTS GROUP LIMITED

30 PARK STREET, LONDON SE1 9EQ

Carrie Moss
Living Wales Programme Team
Department for Environment and Sustainable Development
Welsh Government
Cathys Park
Cardiff
CF10 3NQ

10 October 2012

Dear Carrie

ADDITIONAL CONSULTATION ON A NATURAL RESOURCES BODY FOR WALES

Thank you for the opportunity to comment on the additional consultation on setting up a National Resources Body for Wales. This response is made on behalf of the Welsh Ports Group which represents the overwhelming majority of port operators in Wales, a sector which is fundamental to the Welsh and UK economies.

We have commented previously that the Welsh Ports Group generally supports the setting up of a single environmental body for Wales. We see this is an opportunity to establish more efficient and streamlined working arrangements for handling environmental licensing and regulation and to strengthen stakeholder relationships. We trust that these aspects will continue to be given high priority as establishment of the new body moves forward.

The main impact of the new single environmental body on ports in Wales will be through its role on marine licensing and through other activities which impact on the marine environment. We remain concerned that marine issues appear not to be sufficiently recognised as a key aspect of the SEB's role. We would like to see marine included as a specific responsibility of the new body backed up by arrangements which ensure that that there is no loss of customer service or marine licensing expertise during the transitional process setting up the SEB. We understand that at least one of our member groups has written in making the same point.

We would be happy to discuss this issue further if that would be helpful.

With best wishes

Yours sincerely

David Whitchead

DAVID WHITEHEAD

Director British Ports Association

RICHARD BIRD

Rina Bin

Executive Director UK Major Ports Group

From: Davies, Corrie A [mailto:corrie.davies@environment-agency.wales.gov.uk]

Sent: 12 October 2012 15:24

To: SEB mailbox; Moss, Carrie (DESH)

Cc: Williams, Sarah; Davies, Ceri; Mills, Chris; Gilder, Pam

Subject: EA Wales Response to the Additional Natural Resources Body for Wales additional

consultation

Dear Carrie

Please find attached the response by the Environment Agency Wales to the Natural Resources Body for Wales (additional consultation).

Please accept our apologies for the delay in our response. I would be very grateful if you could reply to this message as an acknowledgement of your receipt of the response.

Kind Regards

Corrie Davies Consultation Officer Environment Agency Wales

Gall yr wybodaeth yn y neges hon fod yn gyfrinachol, ac yn gyfreithiol freiniol. Os ydych wedi derbyn y neges hon trwy gamgymeriad, rhoddwch wybod ar unwaith i'r sawl a'i gyrrodd, os gwelwch yn dda. Yna dilëwch hi, a pheidiwch â gyrru copi at neb arall. Bu inni fwrw golwg ar yr e-bost hwn a'i atodiadau, rhag bod feirysau ynddo. Serch hynny, dylech chwilio unrhyw atodiad cyn ei agor.

Efallai bydd rhaid inni ryddhau'r neges hon, ac unrhyw ateb iddi, i sylw'r cyhoedd pe gofynnid inni tan y Ddeddf Rhyddid Gwybodaeth, y Ddeddf Gwarchod Data neu at ddibenion ymgyfreithio. Y mae'n bosib hefyd y darllenir negesau ac atodiadau e-bost a yrrir at unrhyw gyfeiriad Asiantaeth yr Amgylchedd, neu a dderbynnir oddi yno, gan rywun arall na'r gyrrwr a'r derbynnydd. Hynny at ddibenion busnes.

Os ydym wedi gyrru gwybodaeth atoch, a chithau'n dymuno'i defnyddio, yna ddarllenwch ein telerau a'n hamodau, os gwelwch yn dda. Gellir eu cael trwy ein galw ar 08708 506 506. Am ragor o wybodaeth ynghylch Asiantaeth yr Amgylchedd Cymru, ewch at www.asiantaeth-amgylchedd.cymru.gov.uk.

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Dear Matthew

Welsh Government consultation: Natural Resources Body for Wales (additional consultation)

Thank you for the opportunity to comment on the additional consultation on the Natural Resources Body for Wales. We recognise that many of the issues raised in this consultation are the subject of on-going discussions between policy and legal teams from the Environment Agency, Environment Agency Wales, Welsh Government and Defra. Working together, I am confident we will find acceptable solutions that will meet our shared objective of protecting the environments of Wales and England.

We have not set out our detailed response to the powers and duties of the new organisation as these are being addressed through a series of bilaterals involving Environment Agency and Welsh Government staff. However, we do want to flag two generic issues relating to the over arching duties of the new organisation and cross border management of estuaries.

Over-arching duties of the Single Body

Where there is overlap in the duties of the three legacy organisations, we support the intention to bring together and consolidate them into one duty. Given that Sustainable Development will be the central organising principle of the Single Body, we believe the legal position would be simplified and made more transparent if there was a clear hierarchy of duties governing the work of the Single Body. We believe the inclusion of a simple statement stating that the Single Body, in discharging its duties, must contribute to delivery of sustainable development would provide sufficient clarity.

The conservation duties of the legacy bodies place different emphases on natural beauty and nature conservation in the decision making process. To avoid concerns raised by developers that different interpretations of these duties may apply in different parts of the organisation, we suggest that one duty should be developed requiring the Single Body to balance the needs of natural beauty and nature conservation with the needs of people and the economy. We believe such a

balancing duty could be supplemented by additional supplementary guidance from the Minister to describe how the duty is interpreted in practice. We recognise the approach is a policy matter for Welsh Government and understand the justification for a different approach in Wales. There are however practical benefits of having similar duties across the border to ensure clarity in the decision making process for those developers and businesses who operate along the border.

Cross border management of estuaries

We support the approach to cross border management of catchments following the principle of plan by catchment implement by geography. As part of our work in preparing for the new organisation in Wales we are looking at how this will work in estuaries where it is difficult to demarcate boundaries. We are exploring the benefits of having a lead body for each estuary. The lead body would instigate and lead planning in the estuary working closely with the other organisation. Each organisation would implement the plan within their jurisdiction.

The plan could also set out the arrangements that would be put in place in the case of an incident within the estuary.

These are issues that we propose are covered in the joint working agreements between the Environment Agency and the Single Body. We are working towards being able to discuss these in more detail with the Living Wales Programme Board over the forthcoming months.

If you or your team have any queries regarding the issues raised in this letter please do not hesitate to contact me. I can assure you of our continuing commitment to work with you, the Welsh Government and Defra legal teams to make sure that the Single Body is fully operational from day one.

Yours sincerely

Paul Leinster

CC: Chris Mills, Pam Gilder,



Carrie Moss
Living Wales Programme Team
Department for the Environment and Sustainable Development
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

12 October 2012

Dear Carrie

NATURAL RESOURCES BODY FOR WALES

CBI Wales welcomes this opportunity to respond to the second stage consultation on the creation of the Single Environment Body. The CBI is the UK's leading business organisation, representing some 240,000 businesses that together employ about a third of the private sector workforce. In Wales we represent the country's biggest employers, including 75% of anchor companies and a range of growth SMEs. The CBI is the main business organisation working with the Welsh Government to deliver a more competitive business environment.

The CBI's more detailed <u>response</u> to the first stage consultation should also be considered during this stage of the consultation. Our response is available at <u>www.cbi.org.uk/wales</u>.

For the private sector to drive economic recovery in the wake of a shrinking public sector, Wales must be an attractive place to build a business and create jobs. Therefore all policies must be measured against their capacity to support private sector growth.

The implications of the new Single Environment Body for business are significant so it is critical that the Welsh Government gets this process right and engage with business ins seeking to achieve this. This is a once in a generation opportunity to recast the relationship with industry.

The creation of a new body brings with it a new remit, culture, legal framework, governance structure and a new environment strategy. The outcome of this process will tangibly change the way companies operate and their relationship with the environment.



Leighton Jenkins Assistant Director/Head of Policy UK Operations **DL/LlineII Union:** 02920977606 **DF:** 02920977619 **E/E-bost:** Leighton.Jenkins@cbi.org.uk

For the CBI the four key aspects of this process are:

- forging a new relationship with business
- maintaining operational independence of the new body
- clarity and certainty on regulatory powers
- an effective Natural Environment Framework

Given the weak state of the UK economy, the goal for the Welsh Government should be clear: the creation of a streamlined, cost efficient single-voice regulatory body that will help business and others deliver economic growth for Wales. The new body should take a proactive role in supporting business fulfil its environmental duties while enabling a stronger economy.

The CBI believes the Welsh Government is right to state in the consultation document that the new body must "... ensure value for money and achieve the best outcomes for all the people of Wales and our economy." This is the litmus test that many in business will use to determine the success or otherwise of the new body. The CBI and its members are keen to be an active partner in supporting and helping to shape the new body's creation and operation.

Part one: cross cutting duties

CBI Wales supports the government's plan to rationalise and refine the duties of the new body. The three bodies (Environment Agency, Countryside Council for Wales, Forestry Commission) currently have many overlapping duties so a failure to rationalise these duties would result in considerable confusion for business. The initial outline of the broad categories within this consultation seems appropriate. However, the CBI would need more information before making a final decision.

CBI Wales supports the purpose of the body, as outlined in Box 1. We particularly welcome the express duty to support sustainability in practice and that sustainability includes economic growth and jobs. CBI Wales also welcomes the statement that other duties (such as those associated with conservation) must be carried out without 'impos[ing] new regulatory burdens on industry.' This commitment must be honoured if the new body is to retain the confidence of Welsh business.

With regard to the 'second order', we welcome the express duty to be placed on ministers and the need for the new body to have regard for 'economic and social well-being' when 'formulating or considering any proposals relating to the functions of the new body' (clause (c)iii). We note this duty covers only 'rural areas'. We would welcome a dialogue with Welsh Government to fully understand the implications of this reform.

CBI Wales advises the Welsh Government to consider the <u>remit</u> of the American Environmental Protection Agency. The EPA's remit includes an express duty to ensure their regulatory framework supports economic growth and provide information to those seeking to grow the economy. We would welcome these additional duties being considered for the Single Environment Body.

Part two: additional duties and legal arrangements

CBI Wales welcomes the Welsh Government's outlined approach to regulation and enforcement. In particular, we welcome the intention to 'simplify regulatory processes where appropriate while maintaining environmental standards.' It is vital however that industry is closely involved at the formative stages of these new processes. Industry in Wales has experience of many different environmental frameworks and could advise on best practice.

The consultation documents rightly raise questions about the legal framework. The CBI sees two distinct sets of issues. The first relates to the obvious issues around establishing a new body. It is unfortunate that the creation of a single new body requires three Welsh Government Bills (Planning Bill, Environment Bill, Sustainable Development Bill). Welsh business will need to understand the legal foundations of the new body and its powers. A single Bill for a single body would have been our preferred approach, rather than three bills with different timeframes and engagement windows.

Secondly, the CBI sees this as a perfect opportunity to look at the legal framework that underpins the powers of the new body. While some of the institutional powers will be tackled, the CBI is unsure to what extent the Welsh Government will look at operational powers. The CBI would value a discussion on this point, going forward.

CBI Wales welcomes the intention to preserve existing permitting conditions. However, we are concerned that the Single Environment Body will be empowered to 'set separate sets of standard rules for Welsh permits.' While we welcome the Welsh Government stating it 'expects a high degree of alignment between England and Wales', we believe closer attention must be paid to the implications of setting separate standard rules for Welsh permits. We recommend a Memorandum of Understanding is drawn up with appropriate UK agencies to ensure unfettered cross border working.

Finally, CBI Wales supports the creation of the Single Environment Body and welcomes the Welsh Government's efforts to ensure a balanced approach to sustainable development. When considering how best to structure the new body's duties and legal structure, the Welsh Government should always remember the Single Environment Body's customers. The CBI's members are some of Wales' largest and most complex industrial operators. As a result, our members already navigate a complex regulatory landscape that includes local, regional, national and international agencies. Key to the Single Environment Body's success will be not adding additional burdens on business that chose to operate in Wales. Designing duties and processes that have due regard to this existing regulatory landscape is in the best interest of Wales, its people and its environment.

The Welsh Government is changing the way our environment is managed and protected. While the process may have begun as a cost-cutting exercise it cannot end there. This is a once in a lifetime opportunity to recast the relationship between business and the environment. If Wales gets this right, the Welsh Government could deliver real benefits for the environment, the economy and its people. CBI Wales looks forward to continuing to work with the Welsh Government on this matter in the months ahead.

Yours sincerely

Leighton Jenkins
Assistant Director Policy
CBI Wales

Wye and Usk Foundation (WUF) response to additional consultation

Natural Resources Body for Wales

Details of the Wye and Usk Foundation will already be known, having responded to the first consultation. We wish to make specific points in respect of the issues of:

- Border Rivers Management
- Forestry Activities

Our concern with both centres around the relationship between regulation / planning duties of the New Body and the delivery of any service or outcome that is required of it. Being both the deliverer and controller has been a constant blight in our sector. At one time it was anticipated that creation of the NRA then EA(W) would be the ideal arrangement for the regulation of water companies following privatisation. However the NRA and successors were, and still are, required to "Maintain, Improve and Develop" our inland fisheries (and other duties) while regulating the whole business. That means a responsibility for delivery of whatever service is required and regulating it in respect of fisheries and biodiversity. Centre Forward and Referee?

It was short comings in that area that spawned a series of Rivers Trusts UK wide, including some eight in Wales who currently carry out some of these fisheries services. Skill and capacity is increasing but crucially, costs are substantially lower than when left in the hands of statutory bodies. Additionally, a greater level of stakeholder involvement is achieved. A particular difficulty arises in the Wye catchment which crosses and re-crosses the political boundaries. Currently WUF deals with six sets of regulators with different budgets and remits. We are delighted that the New Body could reduce this to just four! (3 England, 1 Wales).

Our suggestion is that one regulator – the New Body – manages the entire Wye catchment in the way it was before 1st April 2010 and that delivery of fishery and biodiversity services is offered to the Foundation, who have no difficulties in working both sides of the border. It should be remembered that DCWW currently also has its boundary on the eastern edge of the Wye catchment. A paper on this was submitted with our last consultation. It might be considered that the navigational duty should remain with the EA but there is no reason not to repatriate this with the New Body – EAW once managed it.

In respect of our concerns with forestry: Very few people are aware of the problems that this environmental loose cannon creates with water quality, especially acididity, siltation and irregular (flashy) flows. We shudder at the prospect of removing the balancing duty from the replacement for the Commission's new role. These serial water polluters already get away with little or no enforced action with regard to water quality. The occasional publication of "Forestry and Water Guidelines" serves to show that they know what should be done, despite talking no heed of it. Whatever the regulatory formalities may be, if the New Body is to avoid infraction procedures, firm control of the adverse effects forestry activities is essential

In a similar vein, we see problems with the existing management of farm or diffuse pollution. Environment Agency Wales claim they do not have sufficient regulatory clout to bring about

resolution of this increasingly serious issue either through courts or enforcement orders. They are much given to lengthy discussion on the subject invariably to end with the matter in the "Box marked too difficult" (BMTD). Please can the New Body take a much more responsive and responsible attitude with a higher priority on successful outcome and much lower focus on the process.

The Wye and Usk Foundation The Coach House Llanstephan Nr Brecon LD3 OYR