



DŴR CYMRU  
WELSH WATER

Pentwyn Road  
Nelson  
Mid Glamorgan  
Treharris CF46 6LY

Heol Pentwyn  
Nelson  
Morgannwg Ganol  
Treharris CF46 6LY

Tel: +44 (0)1443 452300  
Fax: +44 (0)1443 452323  
Web site: [www.dwrcymru.com](http://www.dwrcymru.com)

Ffôn: +44 (0)1443 452300  
Ffacs: +44 (0)1443 452323  
Safle gwe: [www.dwrcymru.com](http://www.dwrcymru.com)

Ms Meriel Singleton  
Deputy Committee Clerk  
Sustainability Committee  
National Assembly for Wales  
Cardiff Bay  
Cardiff  
CF99 1NA

13 September 2010

Dear Ms Singleton

### Sustainability Committee Inquiry into Planning in Wales

In advance of the evidence meeting of the Committee on 23 September 2010, please find enclosed a short paper outlining the main issues for Welsh Water in respect of planning in Wales.

One of the biggest challenges we face in Welsh Water is aligning the capacity and performance of our sewerage network with the needs of "Wales plc" given the very high cost of our sewer network, the way legislation tends to work against the interest of our customers, and in particular, the impact of climate change.

Large parts of our network have capacity and supporting new development is entirely sustainable. Other parts are already at full capacity and any further connections trigger real problems. Increasing local capacity at these pinch points can be very expensive. A kilometer of sewer costs around 8 times more than a kilometer of water pipe. This is because sewers need to take rainwater away as well as sewage.

As a company owned on behalf of the people of Wales (both today and future generations) we want to support sustainable development – efficiently and fairly. Where we need to add capacity, the question is who pays – the developer (and its customers) or all our customers through higher bills. Currently, legislation favours the developer rather than Welsh Water customers.

This general situation is made worse by the possible effects of climate change. Changing weather patterns with more frequent heavy storms are expected to place an even higher burden on our sewerage systems and when they cannot cope, flooding and pollution is the result. Building larger and larger infrastructure is simply unaffordable, unsustainable and not in the interests of our customers. Dealing with surface water entering the system is the only sustainable way of addressing the potential challenges of climate change.

Yours sincerely

**Mike Davis**  
Planning & Regulation Director

**glas**

Glas Cymru Cyfyngedig

We welcome correspondence in Welsh and English  
Rydym yn croesawu gohebiaeth yn y Gymraeg neu yn Saesneg

Dŵr Cymru Cyf, a limited company registered in  
Wales no. 2366777. Registered office: Pentwyn Road,  
Nelson, Treharris, Mid Glamorgan CF46 6LY

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Nghymru rhif 2366777. Swyddfa gofrestredig: Heol Pentwyn,  
Nelson, Treharris, Morgannwg Ganol CF46 6LY

National Assembly for Wales  
Sustainability Committee  
Inquiry into Planning : Evidence from Dwr Cymru Welsh Water

Dwr Cymru Welsh Water (DCWW) welcomes the opportunity to submit evidence to the Sustainability Committee concentrating on our role in planning and further supporting our comments provided in our letter of 10<sup>th</sup> June 2010.

**Introduction:**

Dwr Cymru Welsh Water is the 6<sup>th</sup> largest water company in England and Wales. Dwr Cymru Welsh Water has been owned by Glas Cymru since 2001 and is a 'not for profit' company limited by guarantee whose sole purpose is to provide high quality and high value water and sewerage services to over 3 million people living and working in Wales. We do not have shareholders and we fund our on-going large investment programme with retained earnings, efficiency savings and bonds rather than shareholder equity.

We fully support and encourage sustainable economic development and will work with developers to achieve this goal. However, in doing so, due consideration must be given to maintaining service standards to the communities our assets serve and to also minimise flooding and environmental pollution resulting from excessive and uncontrolled flows entering the sewerage system and causing them to become overloaded.

Our primary regulator is the Water Services Regulation Authority (Ofwat) and they ensure we undertake our obligations in line with our License and also determine price limits for customer bills every 5 years. Dwr Cymru Welsh Water is committed to ensuring customer bills remain affordable. The 'Strategic Position Statement on Water' published last year by the Assembly confirmed that keeping water bills at affordable levels is also a priority.

We are also regulated by the Drinking Water Inspectorate (DWI) and the Environment Agency (EA). Both these regulators contribute to Ofwat's requirements placed upon Dwr Cymru Welsh Water and also have an 'operational' role to ensure the water and sewerage services provided by us on a daily basis are in line with statutory requirements thereby safeguarding public health and the environment.

In terms of governance, the primary legislation governing water and sewerage undertakers is the Water Industry Act 1991(as amended). In large part, this Act affords us very little direct control and protection on who and what can connect to our networks thereby causing potential consequential impact on communities or the environment.

There is a clear lack of awareness of our reliance on Local Planning Authorities to provide effective control of any development's water and drainage proposals as water companies have no direct controls within water legislation to protect its

interests. Water and sewerage undertakers are therefore heavily reliant on other legislation to provide the necessary protection and effective control. Accordingly, our involvement in land-use planning has been transformed from a passive approach to an engaged and proactive approach.

Therefore as we have no direct legislative controls we rely on other legislation :-

- Town & Country Planning Act 1990 (as amended) - the recent Supreme Court Judgement {Barratt Homes Ltd v. Dwr Cymru Cyf} confirmed that the planning system is the only effective means of controlling communication with the public sewer and its potential impact on the environment. Indeed Lord Phillips in the judgement said that *'it was essential that there should be input to planning decisions from the sewerage undertaker'*.

In the same case before the Court of Appeal Carnwath LJ stated that *"It may be that more thought needs to be given to the interaction of planning and water regulation systems under the modern law, to ensure that the different interests are adequately protected, given the significant changes since the days when the predecessor of section 106 [Water Industry Act 1991] first came into existence"*.

However, we are only currently an advisory body in the development control process, albeit, water and drainage are material considerations.

- Building Act, Building Regulations Approved Document H, part H3 – this identifies a hierarchal approach for dealing with surface water disposal whereby sustainable drainage systems are the default position and discharging to a sewer is the very last resort where no alternative is available.
- Flood and Water Management Act 2010 – this allows for the setting up of a SuDS Approving Body, which is likely to be the Local Authority who will vet surface water drainage proposals of new development to ensure sustainable drainage facilities are utilised. Regulations are now awaited, which will provide more detail on how this new legislation will work in practice and interface with the planning regime.

Climate change is potentially our biggest challenge and building larger infrastructure is simply unaffordable, unsustainable and not in the interests of our customers. The removal and/or reduction of surface water entering the sewerage system is essential if we are to deliver new development in a sustainable manner. We have to think differently and innovatively in how we achieve this together with learning and sharing the research and findings of earlier work conducted in this area. Although we are currently reliant on Planning Policies and TAN's, we hope the new Flood & Water Management Act will go a long way towards achieving sustainable development through a much awaited legislative route.

Turning to Development Plans, which is one of the topics the Committee has highlighted, I would wish to remind the Committee that under the Local Development Plan Framework in Wales, water and sewerage undertakers are a 'special consultation body', which provides a similar function of a statutory consultee.

We welcome this approach and are playing an important role in assisting the LPAs in the deliverability of Development Plans. We are actively engaging with 30 LPAs (25 in Wales, 5 adjoining English counties) and participate in stakeholder groups at appropriate stages of the Plans to provide information on the performance of our assets to assist in the evidence gathering.

We also assist in policy formulation, but ultimately, require detailed information on where future growth is to be allocated to allow us to assess the potential impact on our assets and plan our investment accordingly. In terms of providing new infrastructure, we would make submissions to Ofwat every 5 years and subject to the approval of funding (i.e. the price determination), we would deliver a planned programme of investment in terms of drinking water and environmental improvements.

Therefore, early engagement is key as improvements invariably require substantial lead in times and where shortfalls or no funding is programmed we would work with the developers to investigate alternative funding arrangements available through the Water Industry Act 1991 or if there is an opportunity for acquiring convergence funding. An example of the latter was Cross Hands Food Park.

**Do land-use planning policies at both a national and local level adequately reflect the key Welsh Government priorities?**

Planning Policy Wales (PPW) is regarded as the bible for land-use development in Wales. PPW is the principal and authoritative source of national policy, supported by several Technical Advice Notes (TANs). It is fair to say that everyone involved in the planning process in Wales understands the substantial weight given to these documents.

From a statutory water and sewerage undertaker's perspective, we are pleased that water and drainage is included within PPWs as these are a fundamental pre-requisite for any proposed development.

A key challenge for the water industry is climate change and we fully support the Assembly's objectives of sustainable development. The Built Environment can play an important role in meeting the Assembly's sustainability objectives by incorporating energy saving devices, water efficiency components and sustainable drainage proposals. Water is a finite resource and every effort should be made to use this resource wisely. We are continually promoting education and awareness of water efficiency and sustainable drainage.

**Do planning policies help to deliver priorities such as affordable housing, economic regeneration and more energy from renewable sources?**

**Are they effective in reconciling potential conflicts between different policies in areas such as renewable energy, landscape quality, housing provision, economic development and sustainable development?**

In the main, the policies help deliver these priorities but we believe the following areas need further consideration in terms of policy review, affordability, the communities they serve and the environment.

With regards economic development, the classification of areas for Business Planning Zones and Local Development Orders where there is the potential that any development in these zones will not require planning permission is a cause of concern for us. Such developments may require demands for water where there is no ability (practically or financially) or obligation for us to provide water.

Additionally, a potential development may require a new or amended trade effluent discharge consent which is covered by separate legislation. We will always work with potential businesses to provide solutions but this will require lead in times to do so and financing.

Drainage is a material consideration in national policy and whilst proposals are identified on plans for approval, in practice problems may occur before the development begins as it may be proven that a particular form of drainage proposal may not physically work on the ground. For example an applicant may specify 'soakaway' as the method of surface water disposal and planning may be approved on that basis. However, when development begins, it is found that ground conditions may not lend itself to soakaways and we are then under pressure to accept 'clean' surface water into the public sewer.

Dwr Cymru Welsh Water are constantly engaged in promoting to developers, and local authorities for sustainable drainage options to be utilised and not follow the conventional route of connecting surface water to the public sewer. We have numerous examples where a watercourse may be located in close proximity of a development but the developer seeks a connection to the sewer because this is easier and usually less cost to them.

With regards to renewable energy proposals, we are aware of TAN8 and the Strategic Search Areas which identify vast areas of Wales for potential locations of wind farms. Two SSAs encroach into the impounding reservoir catchments of the Upper Lliw, north of Swansea and the Alwen (north Wales) which are vital components in the deliverability of water supply to customers in Wales. It is therefore essential that any conflict between the provision of drinking water and renewable energy ensures stringent mitigation measures are in place in the interests of public health.

**Do they help to ensure decisions on planning applications contribute to key Welsh Government priorities.**

In our experience of supporting local planning authorities at planning appeals there is strong emphasis on policy, both at national and at local level. What perhaps does not help are matters associated with emerging policy such as those associated with the Infrastructure Planning Commission if these are retained in future and also cover Wales, the future of Section 106 Agreements & associated Community Infrastructure Levy which each LPA has discretion as to whether it will set such a charge or not.

**Is the system for preparing and updating these planning policies flexible and responsive enough to cope with new and changing priorities.**

We believe the system currently works relatively well but as with most topics, there are always areas where improvements can be made.

The implementation of the Flood and Water Management Act 2010 for example (which became law in April 2010) requires further Regulations by Welsh Ministers. Precise timescales for the introduction of the Regulations are not known and we would urge for these Regulations to be brought forward quickly to ensure the benefits of the Flood and Water Management Act are realised at the earliest opportunity.

Urban creep (the increase of impermeable areas around buildings, i.e. patios, tarmac drives etc) has been tackled in England with legislation introduced so that planning permission is required for areas over a certain size. Wales can follow suit with Legislative Competence Orders and DCWW has provided input to the Assembly on this matter.

The LDP system in Wales is meant to be more streamlined with adoption of Plans being reached in a much shorter timescale than its predecessor, the Unitary Development Plan. Whilst the system appears to be working well it must be recognised that each LPA is at a different stage with their LDP and those that started the process early and are well advanced may have missed the opportunity of including policies on community infrastructure levy.

**Are there examples of good practice in other countries and regions that we can learn from.**

The only example we can offer is the submission of a Drainage Impact Assessment to accompany a planning application as is the case in Scotland. This should address how the drainage arrangements are to be proposed and implemented and should provide assurances that the drainage proposals can actually work (i.e. soakaways has met a porosity test, their location conforms with Building regulations etc). Whilst the Flood and Water Management Act 2010 may have now dealt with surface water drainage

(once Regulations are introduced), this proposal has merits in assessing foul water impacts on the public sewerage system.

**What changes can we recommend to the Welsh Government to improve the current system.**

Collaborative working arrangements of resources, skills and knowledge is working well and the 3 regional Strategic Planning Groups is testimony of this in the LDP process. Additionally, the recent establishment of a North Wales Shared Mineral Service adds to the increasing need to share resources, good practice and skills in delivering efficiencies. Perhaps the collaborative working arrangements could be extended to cover other topics.

In terms of planning decisions, to make these available to all parties that made representations, and in particular where the LPA are minded to discharge or amend conditions, so that the appropriate organisation is afforded the opportunity to provide further representation (this was a key issue in the Supreme Court Judgement, Barratt Homes v. Dwr Cymru Cyf).

Finally, we would recommend to the Committee that DCWW are made a statutory consultee in the development control process. As we have already mentioned we are a 'special consultation body' in the LDP framework and a statutory consultee status would bring alignment to all planning matters. As owners and operators of public water supply and sewerage assets, we are best placed to offer representation on the performance of our assets in terms of supporting economic development whilst ensuring communities remain protected from the adverse consequences of overloaded sewers and negating environmental impact and harm.