

Lord Dafydd Elis-Thomas AM
Chair, Environment and Sustainability Committee
National Assembly for Wales
Cardiff Bay
CF10 1NA

Tuesday 9 October 2012

RE: Natural Resources Body for Wales draft 2nd Order

Dear Dafydd,

As I'm sure you are aware, WEL has been involved in discussions regarding the formation of the Natural Resources Body for Wales (previously the Single (Environment) Body). We are aware that the Environment and Sustainability Committee is scrutinising the draft Order, with a deadline for views of 15th October. WEL has also been asked to make an initial response through the Welsh Government's Living Wales Reference Group and we welcome this early opportunity to make comments. WEL has two major concerns about the new Body and we would like to share these with you and members of the Committee.

1 Purpose of the new Body

We would like to emphasise the importance of developing and retaining a strong purpose for the new 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 first Natural Resources Body for Wales 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. In this way we believe that it will ensure that the Body can positively manage 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. It must also incorporate thinking around the Sustainable Development Bill as well as *Sustaining a Living Wales*.

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 ecosystem based approach identified in *A Living Wales*. Without sufficient flexibility and opportunity built into the new organisation's core remit and functions we feel that there is a danger that the Body will be, from its inception, limited and lacking in ambition.

Thus this is a crucial time for Welsh Government to align and integrate these emerging policy areas.

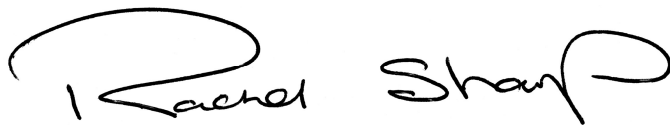
2 Strength of the Natural Beauty and Nature Conservation Duty

WEL has serious concerns over the wording of this duty. Whilst we understand that the wording proposed in the 2nd Order has been taken from the existing duty on the Environment Agency under s7(1) Environment Act, 1995, we believe that the limiting and torturous wording creates a duty narrower and weaker in its obligations than the existing CCW duty. As the weakening of existing duties is prohibited under the powers of the Public Bodies Act, this serious issue needs to be addressed.

WEL would be grateful if you could consider these critical concerns in your own deliberations. If you wish for any further clarification or assistance please do not hesitate to contact Raoul Bhambral, Advocacy Officer for WEL, on raoul@waleslink.org.

Many thanks for your consideration.

Warm regards,

A handwritten signature in black ink that reads "Rachel Sharp". The signature is fluid and cursive, with the first name "Rachel" and the last name "Sharp" clearly legible.

Rachel Sharp
Chair of WEL Living Wales Working Group

CC:

Mick Antoniw AM

Keith Davies AM

Russell George AM

Vaughan Gething AM

Llyr Huws Gruffydd AM

Julie James AM

William Powell AM

David Rees AM

Antionette Sandbach AM



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