

ROCP 32, UKELA (UK Environmental Law Association)

Senedd Cymru | Welsh Parliament

Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith | Climate Change, Environment, and Infrastructure Committee

Adolygiad o flaenoriaethau'r Pwyllgor ar gyfer y Chweched Senedd | Review of the Committee's priorities for the Sixth Senedd

Ymateb gan Cymdeithas Cyfraith Amgylcheddol y DU | Evidence from UK Environmental Law Association

**UKELA (UK ENVIRONMENTAL LAW ASSOCIATION) RESPONSE TO THE
CALL FOR EVIDENCE BY THE SENEDD'S CLIMATE CHANGE,
ENVIRONMENT AND INFRASTRUCTURE COMMITTEE ON ITS
REVIEW OF PRIORITIES FOR THE 6TH SENEDD**

INTRODUCTION

1. UKELA (UK Environmental Law Association) comprises over 2,000 academics, barristers, solicitors and consultants, in both the public and private sectors, involved in the practice, study and formulation of environmental law. Its primary purpose is to make better law for the environment.
2. UKELA prepares advice to government with the help of its specialist working parties, covering a range of environmental law and policy topics. This response is to the call for evidence by the Senedd's Climate Change, Environment and Infrastructure Committee's on its review of the Priorities for the 6th Senedd (the 6th Senedd Priorities).
3. It has been prepared by UKELA's Wales Working Party which sought input from a number of other specialist UKELA working parties and groups. It does not necessarily, and is not intended to, represent the views and opinions of all UKELA members but has been drawn together from a range of its members.
4. UKELA notes that the consultation process is unduly restrictive in requiring consultees to submit via online forms and limiting public participation. There should be the opportunity to submit consultation responses by email and post (if need be). UKELA will be publishing its consultation responses as a whole document.

CONSULTATION QUESTIONS

Q1. What are your views on the Committee's three strategic priorities: Climate Change; Sustainable Communities; and Protecting and enhancing the natural environment?

5. UKELA considers that the three strategic priorities of climate change, sustainable communities and protecting and enhancing the natural environment seem fair and appropriate. They are broad enough to cover an important range of sustainability factors. Further, from our understanding of the discussion areas within the 6th Senedd Priorities, the priorities have wide scope and broad purpose where e.g. protecting and enhancing the natural environment includes protection of watercourses and the marine environment. However, it is unclear whether a focus on those three broad areas might lead to attention being diverted from other aspects of sustainability such as tackling waste, urban air pollution, noise and light pollution that have a more immediate impact on people's quality of life¹. In summary, while it is understandable to be setting strategic priorities these should be set in the context of the full range of socio-environmental factors.

6. UKELA also considers that planning for sustainability needs to continue to align to the United Nations's Sustainable Development Goals (SDGs) and their interconnections. See e.g. Chapter 5 of the *Special Report: Global Warming of 1.5°C report* (2018) by the Intergovernmental Panel on Climate Change which provides detailed discussion and analysis on this topic².

¹ UKELA recognizes (and welcomes) the Environment (Air Quality and Soundscapes) (Wales) Bill (20.3.23) although the draft legislation appears to focus more on strategies, targets, consultations and reviews and less direct measures to reduce air pollution and noise.

² <https://www.ipcc.ch/sr15/>. See also: IPCC, 2018: Summary for Policymakers. In: *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty.*

Q2. To what extent are the Committee's three strategic priorities still relevant, reflecting on social, economic and environmental developments since they were set at the start of the Sixth Senedd?

7. Subject to the answer to Q1, the 3 strategic priorities remain relevant.

Q3. What are your view on the Committee's detailed priorities/outline programme of work for Years 3 to 5 of the Sixth Senedd (set out in its report, Priorities for the Sixth Senedd)?

8. This question is answered by reference to the sub-categories that fall within each of the 3 strategic priorities.

Strategic priority 1: climate change

Net zero Wales

9. UKELA notes that while 'net zero' is a concept that arose from modelled pathways to be compatible with limiting warming to 1.5°C, how this concept is articulated politically can have huge ramifications as to its overall sustainability and effectiveness. In general, energy emissions, for example, should achieve emission reductions by following the conceptual hierarchy of:

- using less energy
- using energy more efficiently
- using sustainable renewable energy

10. UKELA further notes that fossil carbon has been locked up for the last 360-300 million years and will remain stably stored if left undisturbed, but

biological carbon fluctuates on an annual basis (in boreal forests) and can be rapidly released e.g. through wildfires. While ecosystem restoration is an important part of joint action on climate and biodiversity restoration, fossil and biological carbon should therefore not be treated as fungible.

11. The 6th Senedd Priorities relies upon the *Net Zero Wales Carbon Budget 2 (2021-2025)* which, in turn, relies upon legislative based carbon targets and budgets passed in March 2021. The recent progress report from the Climate Change Committee of June 2023 noted that:

With an ambitious target to reach Net Zero greenhouse gas emissions by 2050, action on decarbonisation in Wales must now accelerate. Wales's journey to Net Zero is mapped out by a series of legislated five-yearly carbon budgets and decadal interim targets. While the First Carbon Budget (2016-2020) has been achieved, Wales is not yet on track to meet its targets for the second half of this decade and beyond.

- **The First Carbon Budget (2016-2020) was achieved.** Welsh greenhouse gas emissions decreased to an average of 28% below 1990 levels during the First Carbon Budget period. Wales has therefore achieved its First Carbon Budget, which required a 23% reduction.
- **Decarbonisation indicators.** Tangible progress has been insufficient in many areas that are dependent on Welsh Government policy powers. Most notably, tree-planting rates and peatland restoration rates are far too low, and development of the charging infrastructure needed to support the transition to electric vehicles is not happening quickly enough.
- **Policy progress.** Wales has taken some positive steps, for example the recent decision to cancel all major road projects on environmental grounds and the welcome focus ministers have placed on skills, jobs and public engagement for the Net Zero transition via several public engagement campaigns and a Skills Action Plan. But the Welsh Government is not using its policy powers to full effect.
- **Third Carbon Budget (2026-2030).** The middle of the Third Carbon Budget is only five years away, and by then Wales should have reduced emissions by 39% compared to pre-

pandemic (2019) levels. Policy action in all sectors across the economy is now needed³.

12. In the light of the CCC's findings, UKELA considers that the Senedd must further prioritise its efforts to reduce carbon in Wales. This will involve taking effective steps on stopping the production, extraction, transportation and use of fossil fuels (for energy, as well as being part of efforts to reduce air and plastic pollution); putting in place positive policy frameworks to accelerate the deployment of renewable energies, and achieving the goal of reducing energy use and ensuring that the energy that is used is more efficient. Further, achieving co-benefits of the SDG of 'Life on Land' increased native tree planting, where forest ecosystem have been removed or degraded, should be taken more seriously.
13. UKELA acknowledges the reference to the Welsh Government plans: *Prosperity for All: A Climate Conscious Wales* (2019) in terms of climate adaptation. However, in the light of the CCC Progress Report 2023 many of the five year strategic plans such as 'significantly investing in woodlands and forests' appear to be failing.

Decarbonising Housing

14. One of the easiest routes of avoiding lock-in to high carbon infrastructure is for new-builds to be designed and built in a manner respecting the climate in the first place, rather than requiring later retrofitting. The 2010-15 UK government had a goal of new houses being carbon neutral from 2015 onwards. Wales should implement a comparable aim, requiring all new houses to fulfil Passivhaus standards.
15. On retrofitting existing housing stock, UKELA agrees that one of the key areas of carbon reduction will be the decarbonisation of homes and we recognise that some steps have been taken towards securing this including: setting up the Decarbonisation of Homes in Wales Advisory

³ 3. Key messages: Climate Change Committee (June 2023): *Progress Report: Reducing emissions in Wales*. <https://www.theccc.org.uk/publication/2023-progress-report-reducing-emissions-in-wales/>

Group in 2019; developing a decarbonisation plan; and implementing some of the actions proposed such as undertaking the Optimised Retrofit Programme. It is also encouraging to see work in both the public and private sector see e.g. the report: *Decarbonising private housing: the net-zero elephant in the (energy inefficient) room* (April 2023)⁴. Yet, it is unclear how effective any plans and practical efforts may be if the CCC is reporting that Wales is, in effect, 'not on track' to meet its carbon goals.

16. Given the range of socio-environmental benefits associated with decarbonising homes such as: increased warmth in the home, reduced energy bills, employment in the regeneration sector and improved human health in housing that may be insufficiently insulated or mouldy, the Senedd must prioritise this work.

Renewable energy

17. UKELA welcomes the ambitious targets for Wales to meet 100% of its electricity needs from renewable sources by 2035 announced earlier this year by the Welsh Climate Change Minister, Julie James⁵ in which it was noted that Wales already generated 55% of its electricity from renewables. This is seen against a 2019 backdrop of Wales generating only 26.9% of Wales' electricity from renewables⁶ and where it appears that significant progress towards ambitious renewable generation is being made. Moreover, UKELA acknowledges the recent research: *Harnessing Wales' marine renewable energy: the story so far* (May 2023)⁷. The encouraging work on renewable energy is to be commended and the Senedd should maintain its efforts and support practical and substantive steps to meet its renewable energy targets. UKELA also recommends that, as well as working for greater electrification (e.g. in transport), Wales explores options and puts in place policies to accelerate the use of

⁴ <https://research.senedd.wales/research-articles/decarbonising-private-housing-the-net-zero-elephant-in-the-energy-inefficient-room/>

⁵ <https://www.gov.wales/wales-aims-meet-100-its-electricity-needs-renewable-sources-2035> (24.1.23).

⁶ See e.g. the UK Parliamentary report *Renewable Energy in Wales* (2021)

<https://publications.parliament.uk/pa/cm5802/cmselect/cmwelaf/439/43904.htm>

⁷ <https://research.senedd.wales/research-articles/harnessing-wales-marine-renewable-energy-the-story-so-far/>

renewable non-power sector energy use, e.g. warming in housing.

National Flood & Coastal Erosion Risk Strategy

18. The 3-5 year target of the 6th Senedd Priorities was to review the *National Strategy for Flood and Coastal Erosions Risk Management in Wales* (October 2020). UKELA is unclear how far that review has progressed, It is aware of the *Flood & Coastal Erosion Risk Management Research & Development Programme*; a collaborative project between the Welsh Government, Natural Resources Wales, the Environment Agency and Defra. It is also aware of specific review and reports such as the reports by Professor Elwen Evans KC into extreme flooding in Wales 2020-21.
19. In the light of extensive flooding, the risk of significant encroachment into Wales' coastlines from sea level rise⁸ and the likelihood of increased risk of both coastal and inland fluvial flooding as Wales becomes 'warmer and wetter'⁹, it is clear that flooding and coastal erosion represent both a key risk and a source of current and continuing environmental damage and harm for Wales. UKELA regards a review of the Flood and Coastal Erosion Risk Management strategy is an important priority of the Committee. However, there is further, perhaps more urgent work including e.g. updating Technical Advice Note ('TAN') 15: *Development, flooding and coastal erosion*, and the associated new Flood Map for Planning to accompanying it, both of which were introduced in late 2021, but subsequently withdrawn and now unlikely to be implemented before the end of 2023¹⁰. The current version of TAN 15 allowed approval of planning applications for 2,559 homes in high flood risk areas between 2016 and 2019 compared to refusal of applications for only 246 homes¹¹. It is clear that this is inadequate in the current context of increasing flood risk, and such results were described in the Welsh Government's All

⁸ See the Natural Resources Wales Coastal Erosion Risk Map: <https://naturalresources.wales/flooding/check-your-coastal-erosion-risk-national-coastal-erosion-risk-management-map/?lang=en>

⁹ Page 5, Para 3.5, *Planning Policy Wales: Technical Advice Note 15: Development, flooding and coastal erosion – Consultation Version*. January 2023.

¹⁰ <https://www.gov.wales/written-statement-tan-15-timeline>

¹¹ Page 61-62, *All Wales Planning Annual Performance Report 2018-19*.

Wales Planning Annual Performance Report 2018-19 as ‘concerning’¹².

20. It is concerning that implementation of the updated TAN appears to have been delayed by two years or potentially longer, with no updated planned implementation date publicised, in order to consult on integrating ‘an increased element of flexibility’ into the guidance¹³. It is not currently clear what the ‘increased element of flexibility’ will look like but it is clear that this must not compromise the need to protect communities from future flood risk. UKELA suggests the Committee may wish to monitor updates to the TAN’s content and implementation, and to work to ensure its timely implementation. Furthermore, the Committee’s scrutiny will be needed in monitoring the active implementation of the new TAN in planning decisions on the ground, given the data from previous years mentioned above, and in assessing the capacities of Local Authorities to ensure they have sufficient understanding of the risks of development in flood-risk areas as well as sufficient clarity around the use of the new TAN.
21. The Senedd may now be embarking upon its review of the Flood and Coastal Erosion Risk Management strategy. If not, UKELA considers it should progress the review without delay. It is likely that the extreme weather events over the last 3-4 years, including the recent unprecedented heat in September 2023, will cause increased pressures and vulnerability.

For strategic priority 2, sustainable communities

Circular economy

22. The 3-5 year priority includes a review of the Welsh Government’s circular economy strategy: *Beyond Recycling* (2021)¹⁴. It is unclear whether this review is yet underway. However, key components of any review will be a strengthening of the definition of circular economy. At present, the

¹² Ibid.

¹³ <https://www.gov.wales/technical-advice-note-tan15-development-flooding-and-coastal-erosion-further-amendments-html>

¹⁴ <https://www.gov.wales/beyond-recycling>

definition appears aspirational but only as far as attempting to move away from a 'linear economy'¹⁵. There is an urgent need to adopt a far more robust definition and that any strategy is moving towards this. See, for instance, the definition presented by the Ellen Macarthur Foundation and that:

The circular economy is a system where materials never become waste and nature is regenerated. In a circular economy, products and materials are kept in circulation through processes like maintenance, reuse, refurbishment, remanufacture, recycling, and composting. The circular economy tackles climate change and other global challenges, like biodiversity loss, waste, and pollution, by decoupling economic activity from the consumption of finite resources.

The circular economy is based on three principles, driven by design: [Eliminate waste and pollution](#), [Circulate products and materials \(at their highest value\)](#). [Regenerate nature](#)¹⁶

23. Setting a strategy towards a circular economy defined as such will be clearer and more certain and, while it makes the goal or ambitions as much harder, this will be necessary in any attempt to work towards a genuinely greener Wales.
24. Noting that achieving a circular economy will, in many instances, require international collaboration to ensure the effective action by manufacturers, UKELA recommends that the Senedd become an active voice in wider debate, advocating measures to achieve transboundary standards towards achieving a circular economy.
25. Finally, UKELA notes the progress of the Circular Economy (Scotland) Bill currently before the Scottish Parliament, and it is hoped that the advances and benefits from that experience may be drawn into the work of the Senedd. In summary, the review of the circular economy strategy is important and urgent and central to the 6th Senedd's Priorities.

¹⁵ Page 6, *Beyond Recycling* (2021)

¹⁶ <https://ellenmacarthurfoundation.org/topics/circular-economy-introduction/overview>

Digital Strategy

26. The Digital Strategy for Wales (March 2022) remains relevant and the goal to ensure progress is user-centred is laudable. The degree of honesty evident in the committee's '*Digital connectivity – broadband* (Aug 2022) report is to be commended. Particularly notable is the acknowledgement of the funding gap created by UK government and the unfeasibility of the Welsh government seeking to plug this gap (see paragraph 47). However, it is telling that the Deputy Minister for Climate Change has said that the end-user is not a '*particularly useful perspective to include within that discussion*' - speaking of the 'barrier-busting task force' recommended by the National Infrastructure Commission¹⁷. There appears to be great attention and resources allocated towards acceptable levels of connectivity – and little focus on the impact of that connectivity.
27. Digital exclusion is not a wholly technological issue, and although paragraph 28 of the *Digital connectivity* report highlights the impact that age, education and unemployment can have on a person's internet-use there appears to be a lack of coherent understanding of the methods used to overcome these barriers. Despite the obvious opportunities to create a national volunteer-led digital inclusion service, it is uncertain whether this has yet been explored. Such a service could harness the power of skilled volunteers to empower excluded individuals to develop digital skills. Confidence and proficiency are as crucial as technology. Timely support is needed to safeguard against vulnerabilities, such as falling prey to scams and harmful content. The strategy's merits aside, there remains a constructive space to foster digital inclusion holistically, aligning with the committee's overarching priorities.

Planning Framework

28. UKELA considers that effective land use planning has a critical role in whether sustainability goals are met. See e.g. the discussion above on

¹⁷ [Digital Connectivity - Broadband](#)

new-build houses to Passivhaus standards for climate reasons, UKELA also believes that the Senedd should consider biodiversity hotspots and wildlife corridors (also important for migration under changing climatic conditions) in deciding where to allow new developments.

29. UKELA notes the Senedd priority to review the land use planning framework and also in Year 2 to examine whether there was sufficient capacity, resources and specialist skills within local planning departments. It is aware of publication of *Future Wales: the national plan 2040 (2021)* which sets land use planning policy in the context of a 3-tier planning system at national, regional and local levels. It explains that:

“Future Wales does not seek to take decisions that are most appropriately taken at the regional or local level. It provides strategic direction for all scales of planning and sets out policies and key issues to be taken forward at the regional scale. It does not seek to identify the exact location for new development or the scale of growth in individual settlements. The regional and local tiers are the most appropriate level at which to take these decisions, involving communities as they do so.”¹⁸

30. UKELA is also aware of Planning Policy Wales (Edition 11) (Feb 2021) (PPW) which aims to ensure that the planning system in Wales:

“... contributes towards the delivery of sustainable development and improves the social, economic, environmental and cultural well-being of Wales, as required by the Planning (Wales) Act 2015, the Well-being of Future Generations (Wales) Act 2015 and other key legislation and resultant duties such as the Socio-economic Duty.”¹⁹

31. PPW provides policy for all 3 tiers of land use planning.
32. UKELA considers that the land use planning provisions and its coordination with the nation’s future generations and well-being commitments appears to be a modern and considered system. Based upon a mix of legislation and policy. It is far less clear whether it is being put into good effect, particularly at a local level. This may, in large part, be

¹⁸ Page 15, Future Wales (2021).

¹⁹ Page 4, PPW (Ed 11) (2021)

due to the financial pressures and cutbacks in local government.

33. UKELA is unclear as to current status of the Priorities Year 2 review on whether there is sufficient capacity, resources and specialist skills at a local level. However, a 2019 report by the Auditor General for Wales: *The Effectiveness of Local Planning Authorities in Wales* made a number of findings including that:

Citizens we surveyed and spoke to told us that they do not believe that their planning authorities are ambitious enough to help deliver the improvements needed in their community. People we spoke to are frustrated by planners focusing too much on individual applications and not enough on encouraging and supporting the creation of a more vibrant and sustainable community. As well as wanting to see local planning authorities upping their game and becoming more innovative, citizens are concerned that they are not effectively engaged or involved in discussions on the priorities for development in their area, nor in decision making on local applications. Some citizens noted that developers have the resources to 'play the system', and overall the system is disproportionately delivering greater benefits for developers than communities.

The negative perception of citizens is not helped by the poor-quality information often provided by local planning authorities to help explain what they are doing, where and when. Repeatedly, our survey respondents told us they considered information to be inaccessible and not useful. Over half of those responding to our survey stated that it is not easy to access information on planning, and 70% stated that local planning authorities are not good at engaging with stakeholders about planning proposals and their potential implications. Overall, many citizens we surveyed see local planning as a system which results in things happening in communities which they are unable to influence or control. There is a growing disconnect between what people want from their planning authority and what their planning authority is delivering.

...

With less money to fund services, planning officer capacity is stretched and skills are decreasing in key areas of work. The number of trainees entering planning has fallen in recent years which raises concerns over the long-term sustainability of services. Despite these reductions in funding, authorities continue to subsidise services because the charges made by local planning authorities for administering and approving planning applications and building works does not reflect the cost of providing these services.

In the last four years the number of planning applications made to local planning authorities has remained stable at around 24,000 per annum, but fewer planning applications are being processed on time. Also, the length of time taken to investigate complaints about

development varies widely across Wales. The best performing planning authorities deal with enforcement issues very quickly, often within a week. The worst performers can take over a year. On average it takes authorities over 37 weeks to investigate and deal with an enforcement case.²⁰

34. It is important for the Senedd to assess whether the concerns raised by the Auditor General remain and, if so, what steps are being taken to remedy them.

Placemaking

35. Planning Policy Wales Edition 11 (Feb 2021) describes placemaking as:

“... a holistic approach to the planning and design of development and spaces, focused on positive outcomes. It draws upon an area’s potential to create high quality development and public spaces that promote people’s prosperity, health, happiness, and well being in the widest sense.

Placemaking considers the context, function and relationships between a development site and its wider surroundings. This will be true for major developments creating new places as well as small developments created within a wider place.

Placemaking should not add additional cost to a development, but will require smart, multi-dimensional and innovative thinking to implement and should be considered at the earliest possible stage. Placemaking adds social, economic, environmental and cultural value to development proposals resulting in benefits which go beyond a physical development boundary and embed wider resilience into planning decisions.

36. ‘Placemaking’ as a concept can be innovative and may be a relatively recent approach adopted in Wales and so the experience and application elsewhere may be valuable ²¹. It is unclear whether it is being applied effectively in Wales and it will be important to review the approach currently being taken, including finding Welsh examples of best practice. Placemaking appears to have the potential to improve biodiversity in

²⁰ Pages 9-10. Auditor General For Wales: *The effectiveness of Local Planning Authorities in Wales* (Wales Audit Office, June 2019).

²¹ See e.g. [Placemaking and Green Infrastructure | NatureScot](#)

developed areas, through green spaces, requiring hedges rather than fencing, requiring integrated housing for wildlife in buildings (e.g. bat and bird bricks) and so on.

Strategic priority 3, natural environment

Agriculture

37. Agriculture is a significant contribution to water and soil pollution, including pesticides, nitrates and phosphates. This can be seen from the debates on the current state of the Wye and Usk rivers. The report by the House of Commons Environmental Audit Committee on *Water Quality in Rivers* (2022)²² is a reminder that there are many contributions to declining river health and water quality including e.g., sewage discharges from storm water outfalls and the use of household chemicals and these may well have a cumulative adverse effect with the agricultural impacts. The Senedd Committee needs to reflect this by being informed on different aspects of agricultural policy impacting the environment, definitely including Chemicals and Pesticides but also Nutrient Neutrality issues, while being sufficiently well informed to keep this in context.
38. The Agriculture (Wales) Act 2023 (AWA 2023) is a clear indication of a positive direction of travel for the Welsh government and Wales as a whole. The Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021, (defining Wales as a nitrate-vulnerable zone, and imposing the consequent restrictions on agriculture) stands in contrast to recent reports on the UK government's proposed changes to the Levelling-up and Regeneration Bill allowing housing development in England in areas of environmental concern.
39. Extensive consultation meant that the AWA 2023 should have broad support from environmental groups, animal rights charities and farming unions. However, further attention must be paid to the need to encourage

²² House of Commons Environmental Audit Committee 4th Session *Water Quality in Rivers* (Jan 2022) <https://publications.parliament.uk/pa/cm5802/cmselect/cmenvaud/74/report.html>

new entrants into the agricultural sector. New entrants have the potential benefits to tackle the issues of an ageing population, encourage cross-generational learning whilst bringing innovative and sustainable practices. This is particularly evident when considering the amplified advantages smallholders and community-owned farms bring to the broader domains of food security and sustainable land management see e.g. (Laughton, R. (2017) '*A Matter of Scale: A study of the productivity, financial viability and multifunctional benefits of small farms (20 ha and less)*')²³. Small agro-ecological farms tend to have a number of benefits not typically associated with larger-scale conventional farming. Anchored in localised supply chains, they fortify food security. By predominantly producing fruits and vegetables, they play a pivotal role in promoting health-conscious dietary patterns. Moreover, they nurture a generation of adept entrepreneurs poised to navigate a landscape impacted by climate change. A testament to these transformative prospects, the Scottish Farmland Trust (2017) reports 85% of new entrants to farming cite '*looking after the environment*' as a key motivation, with 79% wanting to '*help build/sustain rural communities*'. Allocating resources towards supporting new farmers and foresters can yield substantial returns on investment while fostering a more robust food system. In line with extensive scientific modelling about the need to reduce meat consumption in peoples' diets in order for the climate 1.5°C to remain in reach, UKELA also suggests the Senedd explore providing healthy vegan menus in public canteens and to consider nudge measures, including education, to encourage a reduction in meat consumption in the general public.

Marine matters

40. UKELA is unclear of the outcomes from the Committee's 6th month review of the marine policy which was to include consideration of spatial planning and renewable energy, marine protected areas and blue carbon. However, one important factor for the priorities moving forward will be the progression of the Wales Freeports in Milford Haven & Port Talbot and in

²³ Landworkers' Alliance and Centre for Agroecology, Coventry University).

Ynys Mon on Anglesey announced in March 2023²⁴. It is not known what socio-environmental laws and policies may apply to these Freeport areas. They do provide a clear opportunity to develop truly sustainable bases for Wales although it will be important that any proposed development and plans draws upon robust sustainability concepts such as strong circular economy principles and effective, robust air quality, biodiversity and climate change targets and plans. It is unclear what Parliamentary scrutiny is being provided in relation to the Freeports proposal. It is vital that lessons are learnt from the mismanagement of other major infrastructure matters (discussed below). The Senedd Committee should aim to be fully informed and contributing to this.

Environmental governance

41. UKELA is concerned that Wales is failing to provide effective environmental governance. In the rest of the UK, the successors to the European Commission (EC), with a role in monitoring and enforcing environmental law and policy, have been put in place and are moving forward to ensure that there is a voice for environmental protection. For instance, the Office for Environmental Protection has been holding government to account on late delivery of environmental principles, the content of environmental policies, and areas of perceived regression in environmental protection standards in relation to England and Northern Ireland; while Environmental Standards Scotland is helping to ensure high environmental standards and strong systems which maintain them.
42. The Welsh Government conducted consultation on EC successor bodies in 2019, there have been consultation and research papers on Environmental Governance and Principles, an Options Appraisal in 2020, and discussion of a Commission on the Environment for Wales (see *Environmental Governance following Brexit: Senedd Research Briefing July 2021*), yet the legislation to deliver this has still not been introduced. Despite the notable efforts of the Interim Environmental Protection Assessor for Wales Dr Nerys Llewelyn Jones, e.g. in conducting and

²⁴ <https://www.gov.wales/wales-new-freeports-unveiled>

delivering her inquiry into the impacts in Wales of the Retained EU Law (Revocation and Reform) Act 2023, the enactment of legislation to deliver full and effective governance of environmental law in Wales should be a priority for the Senedd Committee. This is particularly so, given the significant environmental concerns summarised in this paper.

Post Brexit environmental law landscape

43. The Retained EU Law (Revocation and Reform) Act 2023 will have a significant impact on environmental legislation in Wales (and the rest of the UK) despite the strong opposition to it from the Welsh Government. The legislation was much criticised during its passage for the ways in which it limited Parliamentary scrutiny and excluded public consultation altogether, as well as having a provision requiring any replacement legislation be deregulatory and uneven in its application to devolved Parliaments. It will be important to ensure that the Senedd carries on significant scrutiny of proposals and insists upon effective public participation in the debates on what legislation should be retained or replaced.

Trade Agreements

44. The role of trade agreements in environmental law and policy will have increasing relevance. However, the Trade Agreements entered into since Brexit appear to be afforded only brief debate in the UK Parliament and even then when it is almost too late to do anything about the content of the agreements, and the environment stands at the back of the queue of the issues to be addressed. Moreover, there does not appear to be any formal role for devolved parliaments to be engaged in the negotiation of trade agreement and it is unclear how far devolved governments have been informed and consulted upon.

45. The Senedd Committee should ensure that it is well informed in time to

influence outcomes, working alongside other Parliamentary Committees. It could, for instance, establish strong working collaboration with the Senedd's Economy, Trade & Rural Affairs Committee and its Trade Policy and Advisory Group. Similarly, and notwithstanding the apparent absence of collaborative working to date, it is important that the Senedd Committee seeks to work closely and effectively with equivalent trade agreement oversight committees in Westminster, the Scottish Parliament and the Northern Ireland Assembly with the aim of considering environmental issues well before negotiations on particular trade deals have concluded. Clearly, environmental provisions in the UK-EU TCA, UK-Australia, and CPTPP Trade Agreements could have major impacts on the environment in the UK, as well as in Wales and Welsh agriculture. It is unclear what work is being done to monitor such impacts for future trade deals under discussion such as UK-India or UK-USA. The Senedd and its advisors and stakeholders need to be centrally involved in these.

Statutory Biodiversity Targets

46. The Kunming-Montreal Global Biodiversity Framework December 2022 is now the leading marker for progress and or failure in relation to biodiversity. The UK government supports this Framework publicly although relevant policies on water pollution, habitats, environmental impact assessment, chemicals and pesticides may well be inconsistent with that. It is therefore important for Wales to be clear as to how it will significantly reduce the impacts and effects of agricultural and other sector practices including e.g. in relation to pesticides and chemicals and how it will create a landscape that enhances biodiversity, but also creates corridors by which species can migrate in response to climate change: a fragmented landscape does not provide this and what conditions different species need in effective corridors should be explored, and then implemented.
47. It is not yet fully clear what plans Wales has to meet the targets of the Global Biodiversity Framework and to ensure protection of 30% of its land and seas by 2030. While UKELA recognises that a number of proposals

and recommendations were made in the *Biodiversity Deep Dive Written Statement and Recommendations* of October 2022²⁵ it is, as yet, unclear how far forward this has been taken. The Senedd Committee ought to be fully up to date on this and to be offering Parliamentary scrutiny of its delivery. This is of particular concern given the practical experience of some Welsh communities discussed below.

48. In addition, there is some tension between Wales' net zero and renewable energy targets, and siting renewable energy projects within protected areas such as SSSIs where the Global Biodiversity Framework is calling for such areas to be further protected. The Senedd Committee should acknowledge this tension and explore ways to resolve it: climate and biodiversity both matter.

Q4. To what extent are the Committee's detailed priorities/outline programme of work still relevant, reflecting on social, economic and environmental developments since they were set at the start of the Sixth Senedd?

49. The discussion in the 6th Senedd Priorities of action in the first six months and Year 2 of the Senedd term appeared to be largely review, planning and exploring things rather than committing to and taking specific action. While UKELA recognises the need to prepare, plan and gather evidence to provide a sound basis for decision and policy making, there is also the need to secure effective action once that evidence has been drawn together. It is now time to review any action and the outcomes of any work that has been undertaken (rather than, say, just review whether the plans and aspirations were good or bad or otherwise).
50. Moreover, for some UKELA members the experience and the prognosis is not good. For instance, the approach of the Senedd, the Welsh Assembly and many local authorities to opencast coal mining, one of the worst forms of environmental pollution, is of significant concern. It will be clear to

²⁵ <https://www.gov.wales/written-statement-biodiversity-deep-dive>

the Senedd Committee that opencast coal extraction causes significant greenhouse gas emissions both in the extraction processes releasing emissions in the processes and transportation of coal and then in its combustion, it also causes significant dust, air pollution and noise. Further the extraction processes have significant biodiversity consequences, many of which were noted in the *Biodiversity Deep Dive* but not actioned. It is unfortunate that the Welsh Government was most often the decision-maker approving the opencast coal mining schemes see e.g., the Ffos-y-Fran mine at Merthyr Tydfil in which the Welsh Minister approved permission in 2004. It knew then of the significant adverse environmental harm it would cause. It knew also of the likely failure to secure adequate funds to ensure effective clean-up of the site. It was reminded of this in 2014 in its own report: *Research into the failure to restore opencast coal sites in south Wales (Welsh Government, April 2014)*²⁶; something that has now been realised. The remaining opencast coal mining schemes across Wales and their restoration demand urgent and immediate attention by the Senedd Committee, failing to do so will simply perpetuate the mistakes made by the Welsh Government. The UK Government committed to a phase out of coal at COP26 in Glasgow, the Senedd needs to agree a plan by which this is achieved for Wales.

51. Similarly, the approach of many local council's to environmental harm is inadequate both in terms of their approach to land use planning and environmental protection departments where there appears to be little genuine understanding of concepts of sustainability, biodiversity and future well-being²⁷. This is something recently noted by the House of Lords Select Committee report: *The neglected pollutants: the effects of artificial light and noise on human health* (July 2023, HL paper 232 and also in the recent Local Government Ombudsman's report: *Out of Order learning lessons from complaints about antisocial behaviour* (August 2023) which highlights problems and lack of resolution by local

²⁶ Page 39, the "... £15m held by the LPA, Merthyr Tydfil County Borough Council, falls well short of a worst case restoration cost which could be in excess of £50 m based on the collected information."

²⁷ See, for instance, noise pollution in *Thomas v Merthyr Tydfil Car Auction Ltd* [2013] EWCA Civ 815, [2014] Env LR4 with residents pursuing a claim in private nuisance in the absence of effective public environmental regulation. See also further concerns of light pollution failing to be taken into account in: *R (Thomas) v Merthyr Tydfil County Borough Council* [2016] EWHC 972 (Admin), [2017] Env LR3.)

authorities. UKELA recognises that the report relates to English councils, the same concerns and misunderstanding and application of regulation appears to be experienced by the Public Services Ombudsman for Wales.²⁸

Q5. Are there any other matters related to the Committee's priorities/work programme/ways of working that you would like to comment on?

Monitoring and Enforcement

52. As is evident from the discussion above, monitoring and enforcement of environmental regulation is a really big concern for Wales and it cannot reasonably be said that enough is being done to resolve this. For instance, more than half of Wales' rivers do not meet good ecological status, and even before Brexit, the patchy and underfunded nature of enforcement was becoming a matter of legal complaints to the EC. This is a key area for the Senedd Committee to investigate if it really wants to make a difference it needs to fully assess whether the resources for monitoring and enforcement by Natural Resources Wales are adequate and effectively applied. Similarly there is a lack of understanding and application of regulation relating to noise and light pollution and other forms of nuisance.
53. In contrast, Citizen Science projects designed to better understand society through gathering data, appear to be working well in citizen action, helping to better understand the environment: see e.g. the projects aiming to capture air quality data in Wales²⁹, and in the Wye catchment they are emerging as national examples of effective action. The Senedd Committee should be very well informed about them, this is an area where Wales appears to be taking a positive lead.

²⁸ <https://www.ombudsman.wales/?s=noise>

²⁹ <https://airquality.gov.wales/index.php/education/air-your-view/citizen-science>

Taking the Well-being of Future Generations Act 2015 seriously

54. UKELA considers that the Well-being of Future Generations Act 2015 (the Future Generations Act) is an impressive step forward towards sustainability, particularly in setting the agenda and being a world-first in enacting this type of legislation. However, given the commentary above it is less clear how it may actually be having any practical effect in e.g., improving well-being or being regarded as a clear tool for securing change for the better.
55. Moreover, its status as providing a duty on public bodies is debatable. In refusing permission for judicial review in *R (Blackmore) v Neath Port Talbot County Borough Council* (CO/4740/2018) (30.1.19) a case relating to the closure of a school, Mrs Justice Lambert stated that:
- I do not find it arguable that the 2015 Act does more than prescribe a high-level target duty which is deliberately vague, general and aspirational and which applies to a class rather than individuals. As such judicial review is not the appropriate means of enforcing such duties (see R(G) v Barnet LBC 2AC 208).*
56. If the Future Generations Act is to bite, there needs to be clear guidance or even legislative change to overcome this point and ensure that its objectives or target translate in clear, effective measures that are not regarded as ‘vague, general and aspirational’. If its provisions are to bite they need to have weight and application within judicial proceedings.

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