Ymchwiliad Pwyllgor Amgylchedd a
Chynaliadwyedd Cynulliad Cenedlaethol
PB 32
Bil Cynllunio (Cymru)
Ymateb gan RSPB (Saesneg yn Unig)

yn rhoi cartref i fyd natur
giving nature a home

**Evidence submitted by RSPB Cymru to the Inquiry of the Environment and Sustainability Committee into the general principles of the Planning (Wales) Bill**

November 2014

*RSPB Cymru is part of the RSPB, the country's largest nature conservation charity. The RSPB works together with our partners, to protect threatened birds and wildlife so our towns, coast, seas and countryside will teem with life once again. We play a leading role in BirdLife International, a worldwide partnership of nature conservation organisations. The RSPB has over 1 million members, including more than 51,000 living in Wales.*

1. Introduction

1.1 The RSPB welcomes the opportunity to input to the Environment and Sustainability Committee's Stage one scrutiny of the Planning Bill. We would be keen to elaborate on our written evidence provided in this paper by giving oral evidence to the Committee should the opportunity arise.

1.2 The RSPB welcomes the advent of the Planning (Wales) Bill as the first item of Welsh primary legislation on planning matters. We consider that in general, the introduced Bill strikes a reasonable balance between the understandable desire to speed up and simplify processes associated with the town and country planning system in Wales, and the need to retain what we consider to be the central pillars of a modern planning system. These pillars consist of an emphasis upon strategic planning to avoid "downstream" confrontation, complete local development plan (LDP) coverage, and the primacy of the development plan as the major material consideration in local planning decisions. We consider that to erode the central importance of the development plan or to attempt in some way to give greater weight to economic matters at the expense of environmental protection and enhancement would be contrary to the pursuit of sustainable development which is recognised in *One Wales: One Planet* as the "central organising principle" for government in Wales. The pursuit of sustainable development demands an energetic and imaginative search for sustainable solutions which attain all of the three elements of sustainable development. This is the spirit and essence of Green Growth.

2. A Statutory Sustainable Development Purpose for the Welsh Planning System:

2.1 We are surprised and disappointed to note the absence of any provision in the Bill for the introduction of a statutory sustainable development purpose for the Welsh planning system. We consider the introduced Bill's treatment of sustainable development to be deficient, and not in conformity with the way in which the Independent Advisory Group (IAG) *"Towards a New Welsh Planning Act: Ensuring the Planning System Delivers*" June 2012 addresses this matter. The IAG Report recommended a statutory purpose for planning as follows :-

*"the purpose of the town and country planning system is the regulation and management of the development and use of land in a way that contributes to the achievement of sustainable development"* (Recommendation 1) and that : -

*"The Welsh Ministers may issue guidance to planning authorities of the application of the purpose in exercising or performing those powers or duties and the planning authority shall have regard to any such guidance so issued"* (Recommendation 3).

We support these recommendations, and see no reason to exclude them from the introduced Bill.

2.2 The IAG Report accepts the definition of sustainable development in Planning Policy Wales, which is itself drawn from the *One Wales: One Planet* document, and in respect of this matter we note that the concurrent Well-being of Future Generations (WFG) Bill proposes six 'well-being goals', which, taken together, constitute in effect a sustainable development 'duty' on the public bodies listed in the Bill. The descriptor for one of these, 'A Resilient Wales', makes reference to 'A biodiverse natural environment with healthy functioning ecosystems…'. Welsh Ministers are included in the list of public bodies to which the Bill will apply, together *inter alia* with local planning authorities, National Park authorities and Natural Resources Wales. The Bill requires the listed public bodies to 'seek to achieve' the well-being goals through their 'governance arrangements' and subsequent objectives and actions.

2.3 We therefore strongly advocate that a statutory sustainable development duty be introduced, along the lines of that applied to the Scottish planning system via para 28 et seq of Scottish Planning Policy 2014.

3. Over-reliance on Recourse to Secondary Legislation:

3.1 We consider that the Planning Bill as introduced, contains worrying references to the use of secondary legislation in places where we believe that primary legislation is more appropriate. The main example of is Clause 53(2), which would give powers to the Welsh Ministers to change primary planning legislation in the future by subordinate legislation. We do not accept that "this power is required to provide flexibility to amend technical provisions" (p77 Explanatory Memorandum), and consider this a sweeping power which would not allow for the appropriate level of scrutiny on what could be fundamental changes to the planning system in the future.

4. Relationship with the Environment (Wales) Bill:

4.1 National Natural Resource Policy (NNRP):

4.2 Clarification of the relationship between the introduced Planning Bill and the provisions of the emerging Environment Bill is required. We understand Welsh Government intends the NNRP in the forthcoming Environment Bill to be the policy expression of natural resource management (NRM) at a national scale. We also understand Welsh Government wishes to use the Environment Bill to set a direction for NRM, which will be "an area-based approach" and create Area Statements as the products of the process to drive change forward. To achieve change however, both the NNRP and the Area Statements must have materiality within the planning process. Thus, the National Development Framework (see below) should be in conformity with the overarching NNRP and LDPs should be in conformity with the Area Statements.

5. Relationship with the Well-being of Future Generations Bill:

5.1 Clarification is further required of the relationship between the introduced Planning Bill and the provisions of the emerging Well-being of Future Generations Bill for the creation of Public Services Boards and the local well-being plans for which they will have responsibility (Part 4, Chapters 1 and 2 of

the WFG Bill). The status of these plans and processes is unclear, especially with reference to LDPs. In our evidence concerning the WFG Bill to the Committee, we expressed concern that lines of planning responsibility might become blurred, especially in relation to environmental management and improvement.

6. Governance:

6.1 The National Development Framework (NDF):

6.2 The RSPB supports the introduction of the power to formulate a NDF, as we consider that a statutory national spatial plan that identifies broad locations of constraint and opportunity on a macro scale is good planning. We further support the intention that the NDF will be part of the development plan, and therefore that lower-level plans (Strategic Development Plans (SDPs) and Local Development Plans (LDPs)) will have to be in conformity with it, because this will deliver the predictability and certainty which a modern planning system should create in the interest of sustainable development in the round.

6.3 Thus, given the importance of this new national spatial plan, it is vitally important that the NDF is fit for purpose as a national spatial plan, because were unsustainable locations for development to be identified in it, that would embed such locations in the "downstream" planning structures of the SDP and LDP, and in development management, making it difficult if not impossible, to correct mistakes made at this level. It is important to consider that "customers" of the planning system are not only the applicants, but also communities, civil society, non-governmental organisations and indeed the environment of Wales. We therefore raise the following issues in relations to the NDF :-

6.3.1. We consider that, given the above, and the fact that, unlike all other levels of planning in Wales, the introduced Bill (Clause 2(60) *et seq*) does not provide for a public examination of the NDF, the proposed arrangements with regard to scrutiny and validation of the NDF are inadequate. Our experience in Scotland with regard to the Scottish National Planning Framework is that a 60 day scrutiny period is insufficient in this respect, and consequently, we advocate a 100 day period. We understand that a number of Members of the Scottish Parliament voiced similar concerns about the 60 day timescale.

6.4 It is difficult to overestimate the importance of the NDF or the way in which it will address the overwhelming majority of large-scale development, hence the need to ensure a thorough scrutiny process.

6.5 We are also disappointed that the IAG's view (Para 4.15) that an Inspector assists in the Assembly's scrutiny process over the NDF is not included in the introduced Bill, as this would greatly aid scrutiny.

7. Environmental Constraints and the National Development Framework (NDF):

7.1 In order to avoid "creeping validation", whereby damaging developments becoming enshrined in the NDF before a full understanding of their impacts emerges, we advocate that the Bill provides for the provision of the spatial expression of environmental constraints in the NDF, as well as development opportunities. Again, experience in Scotland shows that where this does not happen, for example, as in the case of the Hunterstone Powerstation application, expensive and time-consuming resistance was encountered. We consider that, at a minimum, Sites of Special Scientific Interest (SSSIs) and Natura 2000 sites/Ramsar Sites (respectively UK-important and internationally important sites for nature conservation) are indicated in the NDF, with a very strong presumption against development affecting such sites included as policies in the NDF. This means that developers are able to identify very early in project development, where Developments of National Significance (DNSs) are unlikely to be acceptable and therefore, by extension, where they are likely to be acceptable.

7.2 "Zones" versus "Sites":

7.3 Given that the NDF is an "upstream" plan, its strength is that there is considerable potential to design DNSs in a way, and at a location which obviates material adverse environmental impacts, because such upstream projects would not have become so deeply embedded in the consent process. We advocate therefore that the Bill includes reference to "zones" rather than specific sites to be indicated in the NDF, allowing the developers the time and flexibility to "design away" problems, through optimal location of development within a wider zone.

8. The Wales Infrastructure Investment Plan (WIIP):

8.1 The RSPB is concerned about a lack of clarity on the part of the introduced Bill with regard to the WIIP. The draft Bill stage consultation document "Positive Planning" implied that the WIIP is one of the "family" of national policy statements, however we do not consider the WIIP to be a mature and properly-formulated statement of national policy because *inter alia* :-

8.1.1. No proper consultation or validation processes were associated with its formulation, and the likely adverse environmental impacts of infrastructure projects contained within it were not examined in any way.

8.1No Strategic Environmental Assessment (SEA) or Habitats Regulations Assessment (HRA) was carried out in respect of it, in spite of the fact that it made spatial statements.

8.2 We therefore consider that the WIIP should be deleted, and that that contained within it form part of the evidence base for the NDF.

9. Relocation of the Spatial Element of the TANs into the NDF:

9.1 The RSPB considers that the relocation of the spatial elements of the Technical Advice Notes (TANs) in the NDF, as set out in Explanatory Memorandum (para 3.23,) could have adverse unintended consequences in the case of the Strategic Search Areas (SSAs) for onshore windfarm development, delineated pursuant to TAN 8 (which was referred to specifically in the draft Bill stage "Positive Planning" consultation). This provision could allow for the deletion of existing SSAs, the expansion of existing SSAs or the delineation of new SSAs, and this would then have subsequent requirements for a Strategic Environmental Assessment (SEA) and/or a Habitats Regulations Assessment (HRA). Furthermore, there is no indication that the Welsh Government has considered whether a Revocation SEA would be required for TAN 8 itself, i.e because the spatial elements have been removed. Both SEA and HRA require the consideration of alternatives, and require public consultation, which must be taken into consideration by the plan or programme formulator.

10. Relationship of the NDF with the "Family" of other National Plans:

10.1 The RSPB is of the view that clarity is required on the part of the Bill with regard to the relationship of the NDF with the family of other national plans (see above). These plans include *inter alia* the National Natural Resource Policy, the Wales Infrastructure Investment Plan (WIIP) and the Wales National Transport Plan (WNTP).

11. Developments of National Significance (DNS):

11.1 The RSPB understands the desire to reduce lengthy public inquiries in relation to such development types, and supports thoroughgoing validation and scrutiny processes in respect of them. However we have concerns about some aspects of the DNS proposal, which we set out below:-

11.2 Clause17(62D(3)) contains provision for Welsh Ministers to develop criteria which could have the effect of rendering any development a Development of National Significance (DNS). This creates a lack of clarity over the nature of DNS development types, and therefore a lack or certainty and predictability in terms of the way in which development types will be considered. Furthermore, this is an example of the over-reliance on recourse to secondary legislation referred to earlier in our evidence.

11.3 Notwithstanding the above, the process by which a development type becomes a DNS is not clear in the Bill. There appears to be two routes to a development type becoming a DNS (Clause 17/62D(2) above, and *via* subordinate legislation and in neither route is a list of development types provided), even though a list is provided in Annex B to the draft Bill stage consultation document "Positive Planning". Furthermore, green infrastructure or equivalent is absent from Annex B(i) of the above document, but present in Annex B(ii) (major development).

12. DNS and Lessons Learned from the Nationally Significant Infrastructure Project (NSIP) Process:

12.1 The proposed arrangement with regards to DNSs bears considerable resemblance to the England and Wales NSIP process (indeed the IAG Report makes reference at para 4.85 to "a Welsh NSIP process"). The UK Government has carried out an independent review of lessons learnt so far, and has responded to the review[1,2]**.** The RSPB's experience in our engagement with the NSIP process over several years leads us to make the following points in relation to this matter :-

12.1.2 There should be no provision for the developer to submit late supplementary information in support of his application. The Inspector should obtain confirmation from NRW at the appropriate stage in project development that all necessary environmental information has been provided.

12.1.3 "Frontloading" the application process (i.e. a greater emphasis on early consultation by the developer) should be meaningful, and where necessary, allow for substantive changes to the project.

12.1.4 NSIP deadlines (and the associated risk of punitive costs awards) are so draconian as to discourage members of the public/civil society and NGOs from engaging with projects.

12.1.5 There is a democratic deficit, which manifests itself as an overly professionalised approach, meaning that although the public, and local planning authorities can make contributions to the process, one gains the distinct impression that such contributions are treated as tokenistic. The fact that the "success-rate" of applications for NSIPs currently stands at 100% adds weight to this perception.

13. Environmental Restoration Enhancement Projects as DNSs:

13.1 We consider that large-scale environmental restoration/enhancement projects, for example opening seawalls and re-flooding areas to create new wetland habitats as well as more sustainable (or 'soft') flood management projects or other green infrastructure (GI) projects, should be capable of being DNSs. For example, the Scottish National Planning Framework includes the Central Scotland Green Network project. This would have the benefit of providing a presumption in favour of such landscape-scale green infrastructure projects, thus ensuring that the NDF plays its full role in relation to the provision of ecosystem services, possibly using Payment for Ecosystem Services schemes, pursuant to green

1 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/262984/Reviewing_the_National_Significant_Infrastructure_Planning_Regime_-_Discussion_document.pdf

2 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/306404/Government_response_to_the_consultation_on_the_review_of_the_Nationally_Significant_Infrastructure_Planning_Regime.pdf

infrastructure and climate change mitigation and adaptation imperatives, and in conformity with the provisions of the emerging Environment Bill.

14. Statutory Consultees and the Planning Bill:

14.1 We would like to point out an error in para 3.103 of the Explanatory Memorandum which accompanies the introduced Bill, which states :-

> *"The* [IAG's] *evidence base identified that the general level of performance of statutory consultees does not reflect their important role and influence in the planning system... Concern was expressed that statutory consultees cause delay in the process by providing late responses to consultation requests"*

14.2 This is simply incorrect. As a member of the IAG, we can state that, apart from individual anecdotes, no quantifiable evidence was submitted pursuant to the IAG's Call for Evidence which supports this claim. Indeed, evidence submitted by the then Countryside Council for Wales and Environment Agency Wales proved that the "hit rates" for consultation responses was in the range 80-95%. This is reflected in para 4.136 of the IAG Report, which states :-

> ***"Whether fully justified or not*** *there was a common thread criticism about delays due to late responses to consultation" (*on the part of statutory consultees*)* (emphasis added)

This is included in the IAG Report to reflect the fact that such claims were not supported by evidence submitted.

14.3 Clause 18(100A(2)) contains a new duty placed upon NRW, to provide a substantive response, which must be submitted within a specified period. Whilst we do not disagree with the principle of timely and substantive responses on the part of statutory consultees, this, in effect, imposes new duties without commensurate new funding. The timescales have to be proportionate and there needs to be reciprocal requirements on applicants to provide full and adequate information at the start of the process.

15. Development Management:

15.1 A Statutory Requirement for Pre-Application Public and Statutory Consultee Consultation:

The RSPB welcomes a statutory requirement for pre-application public and statutory consultee consultation. However, based on previous experience, we are concerned by reference in the Explanatory Memorandum at para 3.54 to the aim of "frontloading" being to :-

> *"smooth the passage of the application, by enabling any issues to be flushed out and resolved in advance"*

15.2 The concept of frontloading in the planning system has been pursued for several years by the Welsh Government, through reviews of the LDP formulation process for example. It is the RSPB's experience that it is a misconception that the mere fact of "flushing out" objections will, of itself, result in them being resolved. This is clearly illogical. There will be many instances where the development proposal and the environmental value of the "receiving land" are simply not compatible, and no amount of discussion and design modifications can remove such impacts, or reduce them to an inconsequential level.

15.3 Additionally, by definition, the pre-application stage takes place before a full appreciation of the environmental impacts of the development proposal can be gained, because, for example, a statutory Environmental Impact Assessment (EIA), where appropriate, would not have been carried out.

15.4 In order for the town and country planning system in Wales to play it's full role in environmental protection and enhancement, and or the system to retain the confidence of the people of Wales, the right to simply make and maintain objections on environmental grounds should not be eroded, either directly or indirectly, by the Bill either during the pre-application stage or afterwards.