



RTPI Cymru
Royal Town Planning Institute
Sefydliad Cynllunio Trefol Brenhinol

Royal Town Planning Institute
Cymru (RTPI Cymru)
PO Box 2465
Cardiff
CF23 0DS
Tel +44 (0)29 2047 3923
email walespolicy@rtpi.org.uk
Website: www.rtpi.org.uk/rtpi_cymru

30 September 2017

e-mail response sent to: naturalresourcemanagement@wales.gsi.gov.uk

Dear Sir/Madam,

Response to: Taking forward Wales' sustainable management of natural resources

The Royal Town Planning Institute (RTPI) is the largest professional institute for planners in Europe, representing some 24,000 spatial planners. RTPI Cymru represents the RTPI in Wales, with 1,100 members. The Institute seeks to advance the science and art of spatial planning for the benefit of the public. As well as promoting spatial planning, the RTPI develops and shapes policy affecting the built environment, works to raise professional standards and supports members through continuous education, training and development.

The response has been formed drawing on the expertise of the RTPI Cymru Policy and Research Forum which includes a cross section of planning practitioners from the private and public sectors and academia from across Wales.

While this consultation has strong links with the Environment (Wales) Act 2016 we also welcome the connections made with the Well-being of Future Generations Act 2015 and the Planning (Wales) Act 2015. Recognising that these Acts put in place a legislative framework which supports Welsh Government's commitment to help secure Wales' long-term wellbeing, benefiting from a prosperous economy, a healthy and resilient environment and vibrant, cohesive communities.

The broad principle of an integrated approach to the sustainable management of our natural resources, which the consultation document seeks to take forward, is very welcome. However, with other legislation having a range of other purposes, the case for prioritising wider legislative change to achieve alignment with the sustainable management of natural resources, as proposed in the consultation document, is not always compelling. In particular, we have serious reservations about the proposal to realign the statutory purposes of designated landscapes solely with the sustainable management of natural resources. See our response to Chapter 3 below.

Looking more broadly at the future of rural areas, it is evident that, with the leaving of the European Union underway, many of the certainties which have guided the broader planning of these areas in terms of the future of, and funding for, agriculture, and the communities it supports, can no longer be taken as given. These changes have the potential not only to impact profoundly on the agriculture industry, and on the economy of these rural communities, but also on the landscape and the way it is managed, and on wildlife. There is a need to develop a new agenda for rural Wales, and this needs to be a key priority for Government. Proposals to advance the sustainable management of natural resources need to be rooted in such a broader perspective.

Please find below our comments on this consultation. Where able we have responded to the consultation questions set, where we have not been able to do this we have provided comments on the individual chapters and proposals within them.

If you require further assistance, please contact RTPI Cymru on 029 2047 3923 or e-mail Roisin Willmott at walespolicy@rtpi.org.uk

Yours sincerely,



Dr Roisin Willmott OBE FRTPi

Director
RTPI Cymru

1. Chapter 1: General Views

Question 1: Do you consider there are further opportunities for integration of circular economic approaches? If so, please provide examples of where there are any regulatory obstacles to achieving integration.

- 1.1 The planning system in Wales is already well aligned and integrated to support circular economic approaches. As a particular example, the national waste strategy, through legislation, policies at national and local level (Planning Policy Wales (PPW), Technical Advice Note (TAN) 21, and Local Development Plans (LDPs)) and development management which support the re-use and recycling of waste materials. It is considered that there are no regulatory obstacles within the planning system to further integration.
- 1.2 We support the principles and wealth of current initiatives to help Wales position itself as a Centre of Excellence for the circular economy. Planning has an important role is supporting this policy framework.
- 1.3 We believe there is scope to encourage greater specification for construction projects in bringing forward higher recycled content. Supplementary Planning Guidance could play a role here in terms of design etc, in bringing forward and encouraging the use of recycled materials and secondary aggregates.
- 1.4 You may be interested in the [‘Cities in the Circular Economy: An Initial Exploration’](#) which is part of the Ellen MacArthur Foundation’s ongoing research on the circular economy.

Question 2: Are there any regulatory barriers to introducing nature based solutions? If so, please provide information.

- 1.5 The planning system, through national and LDP policies and guidance, development management, countryside, landscaping and nature conservation management, supports and promotes ‘green’ design, ‘green’ and ‘blue’ solutions for drainage and flood prevention, tree preservation and planting, landscaping and habitat management and improvement. There are not perceived to be any barriers within the planning system to introducing such solutions.
- 1.6 However, Part 8, Class C of the [General Permitted Development Order](#) sets out permitted development rights for industrial and warehouse developments. Class C allows a new hard surface to be laid, or an existing hard surface to be replaced providing it is porous or permeable or laid to direct surface water run-off to a porous or permeable area within the curtilage of the premises. We would be interested to find out the uptake and impact this has in assisting with flood prevention. There could be a potential research focus on the implementation and potential for stimulating market demand to reduce the cost of using porous tarmac to bring forward a SUDS scheme. The balance of this alongside longer distance deliveries, currently, for this form of specification has links to the circular economy issue discussed above.
- 1.7 Wales has a range of case studies and best practice that demonstrate the potential for a wider ecosystem approach to land management. These include Pont Projects (Anglesey, Carmarthenshire, Bridgend); the RSPB Futurescapes Projects (Gwent

Levels, Northern Welsh Moors); Wildlife Trust Living Landscapes Projects (Pumlumon, Teifi Gateway, Mid Wales Red Squirrel Project) and Natural Trust in Wales are moving forward a payment for outcomes process relating to delivering nature based solutions.

Question 3: Are there potential opportunities for market mechanisms or innovative regulatory approaches? Are there any legislative barriers to their implementation?

- 1.8 There are potential mechanisms within the planning system, such as S106 or the Community Infrastructure Levy, which could incorporate innovative schemes or approaches to support sustainable management of natural resources in connection with development proposals. Please see our response to the consultation on [the Implementation of Sustainable Drainage Systems on New Developments](#).
- 1.9 [Carmarthenshire County Council's, Caeau Mynndd Mawr Supplementary Planning Guidance](#) and Marsh Fritillary Project is an example of where LDP policy can lever S106 funding to deliver habitat mitigation necessary to ensure the survival of the Marsh Fritillary butterfly, as development in the Cross Hands growth area proceeds.

2. Chapter 2: Forestry

Question 5: Do you agree that NRW should be able to delegate its responsibilities for managing the Welsh Government Woodland Estate to others? Please indicate, whether you consider if there should be any limitations on NRW to delegate these functions.

- 2.1 Yes, however, the duties and responsibilities of Natural Resources Wales should be applied to others and that co-operation and liaison with planning authorities on countryside management and planning issues are not compromised.

Question 6: Do you agree that a long-term forest management plan agreed between a forest manger/owner and NRW could be an appropriate way to regulate and authorise the felling of trees?

- 2.2 Yes, however we believe that major long term management plans and their potential landscape impact should be subject to consultation, in the wider public interest.

Ancient, veteran and heritage trees

Question 10: Do you agree with the proposals to improve the protection afforded to valued veteran and heritage trees by refining the existing statutory frameworks, principally the tree preservation order regime?

- 2.3 We agree that a review of aspects of the Tree Preservation Order (TPO) regime to improve the protection for ancient, veteran and heritage trees would be useful. However, we do not think that this consultation document defines proposals in sufficient detail or clarity. We would suggest that proposals should be further investigated and developed with input from practitioners involved in operating and enforcing the TPO regime to enable more specific and detailed proposals to be put forward for consultation. For example, it is not clear, in point a), what changes are proposed – is it being suggested that the ‘amenity’ test should be extended and the ‘expediency’ requirement should be modified and, if so, how?

- 2.4 Point b) refers to the lack of any necessity to notify the Local Planning Authority (LPA) where works are carried out to a protected tree relying on exemptions or exceptions in the legislation. Introducing a requirement to notify is suggested in point e) alongside a proposal to review offences and penalties but detail is lacking.
- 2.5 Point c), also relating to exceptions and exemptions, describes a change which could be made to narrow the definition which currently applies to trees which have become 'dangerous' to works that are required to the extent that they "...are urgently necessary to remove an immediate risk of serious harm". However, more justification would be helpful, particularly reference to interpretation of "dangerous" arising from legal proceedings under the current regime.
- 2.6 Point d) suggests investigating whether a maintenance obligation or duty could be imposed in respect of protected trees. Consultation on this should involve practitioners. The experience of other protection regimes, e.g. listed buildings, might usefully be examined to inform any investigation in respect of protected trees.
- 2.7 We would agree with the proposal in point e) to review the effectiveness of the definition of offences and adequacy of penalties, involving practitioners, as suggested. A requirement to notify could be examined as part of such a review.
- 2.8 We note that no reference is made to trees in Conservation Areas. Sections 211 – 214 of the [Town & Country Planning Act 1990](#) refers specifically to trees in Conservation Areas where any tree felling is in effect subject to a TPO. There may be instances where valued heritage and veteran trees are not covered by a TPO but lie within a Conservation Area. This situation should be addressed and clarified.

3. Chapter 3: Designated Landscapes

- 3.1 Our response to the issues around designated landscapes is more broadly focused on the proposals set out in Chapter 3, and indeed on the broader [Future Landscapes: Delivering for Wales](#) report, rather than on the consultation questions alone.

The Landscapes of Wales

- 3.2 We would endorse the broad vision for the designated landscapes that has been developed in preparing the [Future Landscapes report](#). We also welcome the recognition of the importance of landscapes throughout Wales, whether designated or not. Our landscapes are at the root of aspirations to live more sustainably, including objectives for well-being. We welcome the principle of using our designated landscapes as a source of good practice for all of the landscapes of Wales, and the consideration given to how areas not currently designated might be recognised.

The Marsden Report

- 3.3 The Marsden Report, ([National Landscapes – Realising their Potential \(2015\)](#)) was prepared following widespread consultation and engagement. Its 69 recommendations across purposes, principles, vision, governance, planning and funding are widely supported by stakeholders as a robust framework for taking forward the designated landscapes. The report proposes that there should be three interlocking purposes, adding a sustainable resource management and economic well-being purpose to the established purposes of conservation and promotion of enjoyment of the landscape,

and extending these to Areas of Outstanding Natural Beauty (AONB) as well as National Parks. The report also reviews the planning role of the National Park Authorities (NPAs) and concludes that this needs to be retained, recognising it as a key tool in delivering the statutory purposes and in delivering consistency.

The Sandford Principle

- 3.4 A further key conclusion of the [Marsden Report](#) is to re-affirm the importance of the Sandford Principle that, in the event of conflict between purposes, the conservation purpose should take precedence. The Report goes on to recommend that this principle be extended from the National Parks to include the AONBs. This principle is enshrined in the Environment (Wales) Act 1995. Commitment to it has been reaffirmed by the Welsh Government a number of times, including through the Policy Statement for the National Parks and National Park Authorities (2007).

The Silkin Test

- 3.5 A further key principle recognised by the [Marsden Report](#) is the Silkin Test. This long-established test for major developments in National Parks and AONBs (set out in PPW) emphasises that major developments should only take place in designated landscapes where they are absolutely necessary, and only where such developments are of national importance.

Planning and the Statutory Purposes for Designated Landscapes

- 3.6 The importance of the statutory purposes for designated landscapes, underpinned by the planning responsibilities of the NPAs, and rooted in the Sandford Principle and the Silkin Test, are widely recognised and respected as fundamental building blocks for the future of these very special areas. They are at the root of the [Marsden Report](#), and its widespread support.

Future Landscapes: Delivering for Wales Report

- 3.7 With the Future Landscapes Wales Working Group tasked with considering and advising on the way forward with the [Marsden Report](#), it is difficult to understand how these key considerations, linking the Sandford Principle, the Silkin Test and the planning functions of National Parks came to be absent from the [Future Landscapes: Delivering for Wales](#) report. Accordingly, it would not be reasonable to accept that this report could provide the blueprint for the future of our landscapes. With such critical omissions, there are concerns that the [Future Landscapes: Delivering for Wales](#) report could expose the future of our designated landscapes to unacceptable risks.

Risks to International Recognition

- 3.8 This potential high risk environment has quickly become evident in terms of the international standing of our protected landscapes. The UK Assessment Panel of the World Commission on Protected Areas, set up to determine which areas meet the standards for protected areas of the International Union for Conservation of Nature and Natural Resources (IUCN), has articulated some of the key concerns which are shared by many stakeholders.

- 3.9 The UK Assessment Panel has expressed deep reservations about the [Future Landscapes: Delivering for Wales](#) report, concluding that, if acted upon, the recommendations would make it impossible for the National Parks and AONBs of Wales to maintain their international recognition. In comparison, the Panel is supportive of the [Marsden Report](#), concluding that it offers a way forward for protected areas which could be commended to other parts of the UK.

The Future Landscapes Wales Working Group

- 3.10 The Working Group was established with the intention that it would be highly collaborative, and would bring together representatives of a wide range of interests and sectors. It was disappointing, therefore, that the Royal Town Planning Institute in Wales (RTPI Cymru) was not invited to be represented on the Working Group. The planning system is widely recognised as a key tool in delivering the purposes of designated landscapes. RTPI Cymru, which develops and shapes policy affecting the built and natural environment, has 1,100 members across Wales. As the Working Group moves forward in responding to this round of consultation, RTPI Cymru would welcome the opportunity to be represented on the Group.

The Consultation Document

- 3.11 The consultation document indicates that adoption of the proposal to align the purposes with sustainable management of natural resources means that the Sandford Principle is no longer necessary. However, the case to substantiate this view is far from clear. The Sandford Principle has provided a valuable safeguard for National Parks, when “irreconcilable conflicts exist between the purposes of conservation and public enjoyment”.

Sandford Plus

- 3.12 The [Marsden Report](#) made a recommendation to introduce a ‘Sandford Plus’ principle in order to take account of the proposed revision of the statutory purposes of designated landscapes. Rather than removing the Sandford Principle, we would recommend that the Welsh Government builds on this recommendation for dealing with any ‘irreconcilable conflict’ between the various statutory purposes and legislation.

Proposal 6 / Question 11 – Aligning the statutory functions of designated landscapes with the sustainable management of natural resources.

- 3.13 In looking to update and widen the purposes of the designated landscapes, the [Marsden Report](#) proposes that their purposes should be redefined as follows:

“To conserve and enhance the distinctive landscape and seascape qualities of the area (where landscape incorporates the total natural environment, together with its biodiversity, human settlements and cultural aspects)” – *the Conservation Purpose*;

“To promote physical and mental well-being through the enjoyment and understanding of the landscape of the area” – *the Human Well-being Purpose*;

“To promote sustainable forms of economic and community development based on the management of natural resources and the cultural heritage of the area” – *the Sustainable Resource Management Purpose*.

- 3.14 The Report also re-affirmed the Sandford Principle, confirming the primacy of the conservation purpose.
- 3.15 In proposing these purposes, the [Marsden Report](#) seeks to position the designated landscapes where they would be able to address complex environmental challenges, to address inequalities in well-being and health, and to deliver more vibrant rural communities. In our view, the purposes proposed by the [Marsden Report](#) are sound in moving forward the designated landscapes to address this complex agenda. We believe that they would enable the purposes of the designated landscapes to be clearly aligned with the sustainable management of natural resources, while recognising broader considerations around distinctiveness, biodiversity, human well-being, vibrant communities, and cultural heritage. In our view, to align the functions of the designated landscapes solely with the sustainable management of natural resources as now proposed would be a retrograde step.

The Consultation Document and the Sandford Principle

- 3.16 The consultation document asserts that the Sandford Principle “and its form in statute are limited to only a very narrow set of circumstances which rarely arise”. It is difficult to understand how this conclusion could have been reached, and it is not clear what evidence was gathered to lead to this conclusion. The Sandford Principle lies at the root of all of the National Park Management Plans, and the LDPs which give the Management Plans their spatial expression. In accordance with PPW, every planning application within the National Parks is evaluated against the policies set out in these LDPs. In this context, the Sandford Principle has the potential to influence decision-making on a daily basis.
- 3.17 LDPs contain a wide range of objectives, and decision-making routinely involves an assessment as to how a proposal would affect what can sometimes be competing objectives. The suggestion in the consultation document that aligning the purpose of designation with the sustainable management of natural resources would remove any competing duties appears to be an over-simplification of the reality faced by decision-makers in our designated landscapes. The argument that “there would be no need for the Sandford Principle” does not appear to us to be well-founded.

Proposal 7 / Question 12 – Establishing a clear formal relationship between the special qualities of a designated area and the partnerships, powers and policies that drive its sustainable management

- 3.18 Proposal 7 reflects directly a statement from the Proposition section of the [Future Landscapes: Delivering for Wales](#) report, but the consultation document does not include any real explanation of what is intended.

Question 12 – Where the special qualities of each designated area are identified, should this be given greater weight in decision making? In considering this, how should it be done in order to most effectively add value to the governance of those areas and the connection to local communities and businesses?

- 3.19 The principle of giving greater weight seems somewhat similar to the Sandford principle, where greater weight is given to the conservation purpose. However, there

is no explanation of what is intended or what is meant by doing it, in order to most effectively add value to the governance of those areas and the connection to local communities and businesses.

3.20 The [Future Landscapes: Delivering for Wales](#) report also includes the statement that “All landscapes have special qualities. The bodies and partnerships with responsibility for the designated landscapes should together promote the social, cultural and economic value and sustainable use of all landscapes, working across boundaries with Natural Resources Wales and with local partnerships.” This broad perspective is to be welcomed. However, the special qualities of the National Parks are clearly identified within their National Park Management Plans, and reflected in their LDPs, through which they carry significant weight in decision-making on planning applications. With these documents rooted in the governance of these areas, and prepared in consultation with local communities and businesses, it is difficult to identify a deficit in the weight given to those special qualities in the decision-making of the authorities themselves. There would, however, be a case for National Park Management Plans to be given greater weight in the decision-making of other organisations who are in a position to influence change in the National Parks, and for similar arrangements to be put in place for the AONBs.

3.21 In this context, we would commend the following recommendation from the [Marsden Report](#) on the responsibilities of relevant public bodies:

“There should be a new single statutory duty that removes the weak ‘have regard to’ prefixes in the current duties on relevant public bodies, and replaces them with a clear and single duty:

‘To contribute to the delivery of the three purposes on the National Landscapes’”

Proposals 8 and 9 and Question 13: Introducing legislation to enable governance arrangements to evolve to reflect local circumstances, including a wider range of delivery models, and refreshing the way that new areas can be recognised.

3.22 The governance arrangements of our designated landscapes have been extensively reviewed over recent years, and have been confirmed as broadly fit for purpose. They are recognised internationally for effectively balancing national objectives with local considerations, and already reflect the governance principles set out in the [Future Landscapes: Delivering for Wales](#) report. These principles, reflecting those endorsed by the IUCN, are to be welcomed, and will certainly be appropriate for the governance of any new areas being proposed for landscape designation. However, the case for change in terms of existing designated landscapes as set out in the [Future Landscapes report](#) and in the consultation document is unconvincing. The current arrangements have the benefit of consistency, where stakeholders dealing with NPAs or AONBs can reasonably expect to be dealing with common sets of arrangements between one area and another. In terms of decision-making on planning matters in particular, it is important that the governance of the three NPAs continues to operate in a manner which is consistent with the other 22 LPAs across Wales.

3.23 The recognition of the case for new areas to be identified as designated landscapes is to be welcomed. We recognise the value of community input in this and the potential

for wider stakeholders to be able to initiate proposals merits further consideration. However, the current arrangements whereby only Natural Resources Wales can make an order to designate a new area have ensured a high and consistent level of analysis and decision-making, ensuring high quality standards in terms of processes and outcomes. These well-understood processes, rooted in the legislative framework, also ensure high levels of transparency and accountability.

- 3.24 While the proposition that existing designated areas might be able to offer best practice support to areas beyond their boundaries, including potential new designations, is to be welcomed in principle, it will be important to ensure that the quality of service delivery within the existing designations is not diluted in the process. There are major concerns about the way in which the resources available to designated landscapes have diminished in recent years, and those areas need to be supported in developing access to new resources. At the same time, where proposals for new designations come forward, they will need to be accompanied by proposals for their resourcing.

4. Chapter 4: Access to the Outdoors

- 4.1 Proposal 11 includes activities which may, depending on the circumstances, require planning permission, e.g. recreational changes of use, camping etc. We believe that removing restrictions could encourage the growth of short term recreational activities that could have a damaging effect on the land including on bio-diversity and the often very fragile coastal natural habitat ranging from beachheads, dunes systems, salt marsh, coastal slopes and cliffs. Coastal land is an important refuge and breeding ground for wildlife and where wildlife can be very sensitive to disturbance such as nesting birds and seal pups. Many coastal areas are designated Sites of Special Scientific Interest, Special Areas of Conservation and Special Protection Areas. If the right to camp and paraglide is extended to the coast under Proposal 11 then the potential for disturbance to coastal habitats is much greater.
- 4.2 There appears to be provision in Schedule 2 of the Countryside and Rights of Way Act 2000 for restrictions to be relaxed in individual cases, which could provide better controls?
- 4.3 Proposal 19 focuses on the development of one statutory map of accessible areas and green infrastructure. Layers of mapping would initially include Countryside and Rights of Way (CRoW) access land (including water), public rights of way and designations, including, national trails. Legislation would need to allow further layers to be identified and added. We would welcome this proposal.
- 4.4 Proposal 22 suggests the requirement for a decadal review of access maps to a process of continual review. We assume access maps refer to CRoW access land maps so we would welcome this, as a continuous review will keep maps of CRoW access land more current and be consistent with the duty to keep Definitive Maps of public rights of way under continuous review.

5. Chapter 5 – Marine

- 5.1 The relevant responsibility for marine planning in Wales rests with the Welsh Ministers. Currently there is no legislative provision for marine plans at a lower level than national plan. Welsh Government intend to produce and consult on the first Welsh National Marine Plan this summer. We are therefore interested in how this consultation relates to the Wales National Marine Plan, Natural Resources Policy, Nature Recovery Plan and Area Statements?
- 5.2 An overarching concern is the funding situation for Natural Resources Wales and their central role in facilitating many of the emerging policies, in particular the central role of Area Statements and their importance in providing an integrated approach alongside LDPs across Wales. Is Natural Resources Wales sufficiently resourced to drive forward this agenda?
- 5.3 RTPI Cymru supports the principle of sub regional marine planning where local evidence brings forward the need and demand. On a national and regional scale there is a need for closer integration between marine and land based planning, in particular the role and function of Area Statements. The geographical boundaries of sub regional land use planning, LDP boundaries and Area Statements need to be key considerations with the potential boundaries of sub regional marine planning areas.
- 5.4 There remains an overarching need to update TAN 14 in relation to Coastal Planning, and the need for a more integrated approach and stronger connectivity between land and sea. Area Statements have a role and function in providing the link to LDP policies and proposals, and if resourced appropriately could bring forward adaptation at the coastal zone and engage with local communities and stakeholders. Work is needed to ensure Local Planning Authorities have input and influence to Area Statements.
- 5.5 Work led by Marine Scotland was recognised by the RTPI Awards for Planning Excellence, in 2017 developing closer links between marine and terrestrial planning. <https://blogs.gov.scot/marine-scotland/2017/06/29/another-award-goes-to-plan/>

Question 18 Do you support the need for new powers to identify Welsh regional marine plan regions and to produce marine plans for these regions?

- 5.6 We support the powers to identify Welsh marine planning regions, subject to views on how best to deal with local issues, to produce regional marine plans. From a planning perspective, the issues which arise include: how are these plans related to and coordinated with the National Development Framework, Strategic Development Plans and LDPs; and how they are to be coordinated with local planning authority work in coastal areas.

6. Chapter 7 - Waste and Local Environmental Quality

Question 26 Do you agree that Welsh government should amend Section 108 of the Environment Act 1995 so that:

- **it removes the need for providing 7 days notice to the person in occupation of the premises;**
- **retains the need for a warrant;**
- **extends the description of information that can be required; and**
- **provides the ability to remove (and retain) material for examination, including information stored electronically?**

6.1 Proposals to improve Natural Resources Wales investigatory and evidence gathering powers appear to benefit both planning and Natural Resources Wales' enforcement activity. However, we would welcome further examination of how this regime would work alongside the operation of planning controls and assessment of planning applications.