

18 December 2013

Paper Title	Strategic principles for planning advice
Paper Reference:	Paper NRW B O 54.13
Paper Sponsored By: Paper Authored By:	Ceri Davies/ Trefor Owen/Graham Hillier/Tim Jones Maggie Hill, Keith Davies, Martin Cox, Sarah Wood, David Cavell

Purpose of Paper:	Decision
Recommendation:	
Decision Required:	<ul style="list-style-type: none"> To endorse the proposed approach to providing planning advice, in particular: (i) the application of our statutory purpose as set out in paragraph 17 and (ii) our strategic objectives for engagement with the planning system in paragraph 28 To agree next steps set out in paragraph 30, including a mandate to investigate charging for non-statutory planning advice, and production of guidance, Memoranda of Understanding, a Publication Scheme and Standards of Service

Impact: To note – all headings might not be applicable to the topic	<p>Impact on the Environment:</p> <p>The proposed approach will help us to influence the siting and design of developments and reconcile the needs of protecting and improving the environment with development.</p> <p>Impact on the Economy:</p> <p>The proposed approach is based on positive and proactive engagement with the planning system, as well as economic development and regeneration initiatives. We will help to</p>
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	<p>find solutions that allow developments to proceed. Our aim is to assist the planning process to stimulate the economy by providing streamlined, well-targeted, consistent and clear advice at the right time.</p> <p>Impact on Community: The purpose of the planning system is to ensure that land is used in the best interests of people. By engaging actively with the planning system, NRW is acting in the public interest and assisting decision-makers to take the environment into account. Clarifying our role and objectives in engaging with the planning system will make it easier for people to work with us and provide greater clarity, certainty and consistency to the decision making process.</p> <p>Impact on Knowledge: The principles in this paper will provide the basis for monitoring the effectiveness of our advice</p>
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Strategic principles for planning advice

Issue

1. The Town & Country Planning system is an important mechanism to deliver our strategic outcomes. The purpose of this paper is to set out the principles of our approach to providing planning advice and engagement with the planning system. In particular, it answers the following questions:
 - What are the implications of NRW's statutory purpose for providing planning advice?
 - What are our strategic objectives in engagement with the planning system?
2. This paper relates to the current situation with respect to the purpose and functions of NRW. It does not address the proposals in the Environment White paper (such as the need to change our functions to align with the new purpose), nor any proposals set out in the Planning Reform Bill and Consultation Paper expected in December. However, it is clear that the implications of the new purpose for NRW's planning responses is particularly in the spotlight and therefore answers to the questions posed above - under the existing legal framework - are an important element in responding to proposals for the future in the Environment White Paper and Planning Reform Bill.
3. This paper has been shaped by discussions with members of the Board Environment, Economy and Communities Groups on 6 and 29 November.

Background

4. NRW has a wide range of duties in the Town & Country Planning system as a statutory consultee. Our main role is to provide advice on the environment and natural resources and how these could be affected by planning policies and development proposals. This role is at both the strategic level and at the level of the individual developments. The strategic role includes Local Development Plans, sector and regional plans along with their statutory Environmental Assessments (Strategic Environmental Assessments and Habitats Regulations Assessments).
5. Whilst not a legal duty, engagement with regeneration and economic development initiatives is a role which NRW can, and does, take on as these initiatives can generate and inform future strategic plans and planning applications.
6. At the individual development level, our statutory consultee role is triggered by the scale and impact of the development, the requirement for an Environmental Impact Assessment, and the location of the development. The latter includes developments in, or likely to affect, natural heritage interests of acknowledged importance such as Natura 2000 sites, SSSIs, National Parks and AONBs; within flood-risk areas; with potential to impact on forestry, a surface water body, groundwater; or where we may have a regulatory role.
7. Our role as a statutory consultee is to provide objective advice as environmental experts. We take account of social and economic factors in the context of our functions. The advice we give needs to be in line with Government (UK and Wales) legislation and policy. We must be able to uphold and defend this advice, if challenged. We are not responsible for making the decision on planning applications. It is the responsibility of the relevant decision maker to consider, and take account of, our advice in making a decision. The decision maker balances economic, environmental and social factors as required by Planning Policy Wales and the relevant development plan.

8. NRW staff input to responding to planning consultations is estimated as between 60 and 100 FTE. Work is led by teams in Operations, but with substantial input from technical specialists in Operations and KSP Directorate.
9. Both EAW and CCW used risk-based approaches to engaging with the planning system. Cases were prioritised to target our limited resources to developments likely to produce significant effects and affecting important and sensitive sites/areas. Interim NRW instructions were put in place for Day 1 to set priorities for staff, categories of response and the processes to achieve one voice responses. These instructions merely combine the legacy body approaches, and are not a new approach. They do not take account, or interpret, NRW's statutory purpose.
10. NRW's Planning Advice Transition Project team have done a comprehensive review of the current situation on providing planning advice and identified issues which need to be addressed if benefits set out in the Single Body Business Case are to be realised. These have been derived from reviews of recent cases, feedback from staff and from the initial business mapping. The major issues relevant here are:

Understanding of NRW's roles and aims	No shared understanding of what NRW is trying to achieve in its involvement in planning and development cases. This leads to different interpretations and approaches eg use of the word "object", scope of advice and when to get involved
Interpreting NRW's purpose	Staff are unclear whether they should be interpreting NRW purpose in their advice and, if so, how
Language	There are cultural differences in the way in which the legacy bodies write responses to planning applications eg "yes if" or "no until"; inclusion of standard conditions

11. The risks of this current situation were identified as inconsistency in responses; missed response deadlines; missed shared experience and best practice; missed process development and improvement; increased pressure on staff; business case benefits not realised; not delivering the right outcomes; not meeting customer needs; and overall our reputation.

How does our new purpose apply to planning?

The legal framework

12. The Establishment Order sets out the statutory purposes of NRW (below). The purpose is a guiding principle, not a specific duty.

Purpose of the Body

4.—(1) The purpose of the Body is to ensure that the environment and natural resources of Wales are—

- (a) sustainably maintained;
- (b) sustainably enhanced; and
- (c) sustainably used.

(2) In this article—

(a) "sustainably" ("*yn gynaliadwy*") means—

- (i) with a view to benefitting, and
- (ii) in a manner designed to benefit, the people, environment and economy of Wales in the present and in the future;

(b) "environment" ("*amgylchedd*") includes, without limitation, living organisms and ecosystems.

13. This provision does not give NRW the power to do anything that it would not otherwise have power to do, or to exercise its functions in a manner contrary to the provisions of any other enactment or EU obligation.
14. The Establishment order also gives powers to Welsh Ministers to issue guidance to NRW (such as the remit letter) on how it should exercise its functions to deliver its purpose. NRW has a duty to have regard to such guidance in discharging its functions.
15. The Functions Order sets out new duties for NRW (see Annex 2) which bring together and integrate the original functions of the legacy bodies. Some of these duties are in specific, mandatory terms, others are "having regard" to specified objectives. These duties include:
- Nature conservation and natural beauty – duty to further nature conservation and the conservation and enhancement of natural beauty. For the pollution control functions of NRW this duty is a "have regard to" duty. For forestry functions, NRW is required to provide a reasonable balance between the needs of forestry and nature conservation/natural beauty/amenity. Note that the term "natural beauty" relates to landscape in its broadest sense including its character, geological and physiographic features, aesthetic qualities, wildlife, cultural and historical aspects.
 - Access and recreation – duty to promote the provision and improvement of opportunities for access and enjoyment of the countryside and open spaces; open-air recreation; study, understanding and enjoyment of the natural environment. For the pollution control functions of NRW this duty is a "have regard to" duty.
 - Historic sites – duty to have regard to protection and conservation of, and access to, historic sites
 - Well-being – duty to have regard to the health and social well-being of individuals and communities and the economic well-being of individuals, businesses and communities.

16. The specific functions of CCW, EA and FC as statutory consultees in the Town & Country Planning regime have been transferred to NRW.

Legal opinion

17. David Elvin QC was instructed by NRW Legal Services to provide an opinion on the role of NRW in the context of the Town & Country Planning regime. This opinion was sought in the context of specific planning cases but gives a comprehensive basis for the general approach which NRW should adopt. In particular:

- NRW must apply its own independent expertise and reach its own judgement in responding to planning applications or appeals
- None of NRW's statutory duties compel it to a particular conclusion, NRW's approach in each case depends on its own appraisal of the issues. A case-by-case approach is needed
- NRW must have regard to the remit letter and other guidance from WG. However, it may not apply this guidance without also discharging its other statutory duties. It is not bound to apply that guidance if there are other issues of greater significance in the specific case
- The statutory purpose requires a balance to be struck between the various elements of sustainability and does not ascribe weight to any one aspect (eg the economy or the environment). A judgement must be made on individual cases as to whether the objectives will be met. Economic benefits which impact on the environment and natural resources do not satisfy the statutory purpose unless NRW considers that the development is sustainable, as defined
- NRW has been established with the aim of improving the environmental, economic and social outcomes for Wales through its wide range of services and responsibilities. It has been given new statutory objectives plus a series of duties and powers from its legacy bodies which must each be exercised by reference to specific purposes or issues.
- NRW must have a structured approach to weighing its duties in individual planning cases. This involves identifying which purposes, duties and powers are relevant to the case, as well as any guidance from WG which applies.
- NRW must first ensure that it complies with any specific duties that are relevant to the case and which override "have regard to" duties. The weight given to specific duties as opposed to "have regard to" duties is for NRW to judge on a case-by-case basis, informed by Operational Guidance which is to be prepared (see below).
- Representations to the decision-maker can range from observations on certain issues, to advice on conditions or other obligations, and to outright objection if the proposals are unacceptable – for example if they have impacts on natural resources and the environment that raise issues of national importance.
- The duty to have regard to must be carried out conscientiously and a judgement reached, weighing up the competing factors.

18. The conclusion to be drawn from this legal opinion is that it is NRW's specific (prescriptive) duties and powers, rather than the new purpose, which are likely to be

determinative of decisions we make with respect to planning, and that any legal challenge would focus on compliance with these specific duties.

19. A further conclusion is that NRW must develop staff guidance on the structured approach to weighing its duties both at a strategic level (eg in setting priorities) and in individual cases.
20. Scottish Natural Heritage have produced and published guidance to their staff on applying their specific “balancing duties”. This applies to the discharge of their full remit, with certain exceptions. These exceptions include advising on projects or plans which may affect Natura 2000 sites, notifying SSSIs and proposing Natura 2000 sites. A similar model would seem appropriate for NRW, focussing first on planning.
21. We recommend that NRW should work with WG Planning Division and key professional stakeholders such as RTPI, RICS, Planning Inspectorate, WLGA, Planning Officers Society Wales and planning consultants during preparation of this guidance. We would not recommend a formal external consultation on the guidance. We would provide briefings to the wider stakeholder community to raise awareness and explain our approach and ensure our role is understood.

The context for NRW's strategic objectives in providing planning advice and engagement with the planning system

The purpose of planning.

22. Before we can define our own strategic objectives it is important to set out the current and likely future purpose of the planning system in Wales, as this is the context for our work in this area. The decision making framework and policy landscape are shown in Figure 1.
23. The purpose of the planning system in Wales is set out in Planning Policy Wales (edition 5, 2012). This reproduced in full in Annex 1. Of particular relevance to NRW is the role of planning in achieving sustainable development, reconciling the needs of development and conservation, protecting natural resources and deciding whether development is appropriate for particular locations. This demonstrates that engagement with the planning system, at both the strategic and individual development level, is an important tool that NRW has to deliver its purpose and many of the objectives in our emerging Corporate Plan.
24. As part of the evidence base for the Planning Reform Bill and Consultation Paper, WG commissioned the Independent Advisory Group, chaired by John Davies, to review the delivery of the planning system in Wales. Their report explores the role and purpose of planning. Of particular relevance here, is the emphasis that planning is more than a regulatory activity and can be used to deliver a wide range of positive outcomes. Also, that the challenge is to seek out imaginative solutions for overcoming barriers to sustainable development, rather than setting the environment and economic development against each other. The report proposes a statutory purpose for planning "The purpose of town and country planning is the regulation and management of the development and use of land in a way that contributes to sustainable development." Whilst we do not yet know the content of the Planning Reform Bill, this report provides the evidence base and gives an indication of the direction of travel in terms of the role of the planning system in Wales.
25. The changes that will be proposed in the Planning Reform Bill are likely to focus on ensuring that the planning system is proactive, processes are quicker, the system is fair and inclusive and outcomes are consistent. The broad direction of travel is likely to cover:
- who does what in the planning system - roles of Welsh Ministers; Local Planning Authorities (LPAs), developers and communities
 - helping LPAs to work together to address issues that are of more than local importance
 - making the planning application process more efficient to stimulate the economy and provide more homes

The needs of our customers in planning work

26. Our strategic objectives in providing planning advice and engaging with the planning system should reflect the needs of our customers in this area of work. We should aim for a planning service within Natural Resources Wales that provides clarity, certainty and consistency to our customers. At the pre-application stage the direct customer (for our advice) is primarily the developer. Once the application has been made, the direct customer (for our response) is the Local Planning Authority (LPA) or the Planning Inspectorate (PINS). We respond to WG on requests for call-in and also report to WG on

our planning performance and compliance with deadlines. More broadly, the people of Wales are our customers as the aim of the Planning system is to ensure that the land is used in the public interest.

27. NRW's Planning Advice Transition project team have undertaken an analysis of customer needs. This has been assembled from studies commissioned by WG, CCW, EA and similar agencies. The main needs are:

- Timeliness – meeting deadlines, keeping LPA/PINS/developer informed, early identification of additional information needs, provision of right information at the right time
- Communication – good working relationships with LPA, single point of contact in Planning Teams, one to one discussions with officers, meetings with senior staff.
- Clarity – unambiguous and consistent advice, reasoned justification for position with concerns highlighted and recommendations for mitigation
- Bespoke advice – specific advice tailored to individual cases, especially complex ones. Standing advice has value but does not replace need for bespoke advice
- Place-based advice – good local environmental knowledge crucial, understanding local needs and context
- Pre-application advice – identifying key issues/constraints and data requirements with developers and LPA
- Training and skills - planning expertise required in planning teams to facilitate planner to planner conversations. Training requirements in LPAs and developers on specialist areas and role of statutory consultee

NRW's proposed strategic objectives for engagement with the planning system

28. Based on the above, we propose a new approach, with increased emphasis on working at the strategic level and adopting a solutions-based culture. The recommended strategic objectives are as follows:

(i) Principles

We will:

- Engage proactively with the planning system - this is an important means of delivering sustainable development, natural resource management and positive outcomes for Wales' natural heritage
- Engage proactively with regeneration and economic development initiatives - to ensure that initiatives take account of environmental constraints and natural resource management and that consequential developments are sustainable
- Focus our efforts on providing evidence and advice on strategic and spatial plans – to steer development to appropriate locations and minimise future conflicts at the individual application level
- Use the same natural resource evidence base throughout NRW – to ensure consistency of advice
- Encourage early engagement with developers - to influence and identify any problems and creative solutions at an early stage.
- Ensure our statutory advice is a reasoned opinion reached after due consideration, weighing our full range of relevant purposes, duties and guidance – to ensure we comply with our legal duties. Specific duties must be complied with, where these are engaged
- Provide objective and expert environmental advice, based on good place-based knowledge - to assist decision makers in discharging their duties. We recognise that in balancing their duties, decision-makers may come to a different conclusion to NRW on the acceptability of any residual risk or impact of a particular development.

(ii) Ways of working

We will:

- Ensure our responses are as clear, unambiguous, and consistent as possible
- Ensure that our internal processes in providing statutory planning advice are designed and implemented to prevent conflicts of interest (for example where we are the applicant or landowner as well as the statutory consultee)
- Ensure transparency of decisions by being able to explain the reasoning behind our advice, and by publication of decision documents in contentious cases
- Adopt a positive approach. This means trying to find the right solution for the environment and the developer. It means avoiding objecting if we can. However, if it is not possible to find the right solution for the environment, either because the

applicant is unwilling or unable to modify proposals, or because the development is sited in the wrong place, we may need to object. If the impact raises issues of national importance, we would need to object.

- Use a risk-based approach in our reactive work, responding to individual applications. This means directing our resources to developments likely to produce significant effects and affecting important and sensitive sites/areas
- Use standing advice where appropriate as it has value in responding to less complex applications and can reduce workloads; however, this does not replace the need for place-based and bespoke advice, particularly in more complex cases
- Charge for non statutory (eg pre-application) advice - where we can demonstrate that this will deliver improved customer service and better environmental outcomes
- Work in partnership with the LPAs and PINS - to deliver joint outcomes, training initiatives and to manage the consultations which are sent to NRW
- Work with developers and their sector groups to clarify the role of NRW (viz providing advice not making decision); identify common evidence needs and solutions
- Work with other statutory consultees such as Cadw to clarify our respective roles in planning and share evidence

(iii) Outcomes:

- Developers seek and take our advice at an early stage so that the siting and design of new development is influenced, encouraging development which avoids negative impacts, is within environmental limits and sustainable
- Decision-makers are taking natural resources into account as a result of our clear and well-targeted advice, so protecting these resources and achieving sustainable development
- Opportunities for environmental enhancement are identified and delivered through the planning system
- Improved relationships and customer satisfaction due to the quality and clarity of our responses and provision of the right information at the right time.
- NRW's role in the planning system is understood by our customers and stakeholders
- Improved compliance with response deadlines

Next steps

29. The Planning Transition project has a forward work programme of process reviews, production of guidance and establishing governance around our planning work. This includes producing comprehensive new Operational Procedures for staff including priorities, categories of response and governance.

30. In particular, related to the issues in this paper, we will

- Produce and publish guidance to staff on our statutory purpose and weighing our duties, as applied to the planning system. This will include our strategic objectives. Liaise with WG and the planning profession in developing this guidance and run briefings to raise awareness with stakeholders. Timescale: draft March 2014, final April 2014. Briefings April onwards.
- Investigate and report on the options, benefits and costs of charging for non-statutory advice, learning from the models being used and developed by the LPAs, Natural England, the Marine Management Organisation and the Environment Agency. Consult with stakeholders and make a decision on whether NRW should proceed with this approach. Timescale: Investigate/report by July 2014. NRW charging group will consult in 2014-15 for charges for FY 2015-16. Charging for non-statutory planning advice will need to fit into this timescale if decision is made to proceed.
- Set out standards of service which customers can expect of NRW with respect to engagement with the planning system and publish performance against these standards. In place July 2014.
- Produce and agree with Welsh Ministers a publication scheme, identifying circumstances where formal publication of decision (reasoned opinion) documents will be required relating to our planning responses. In place by September 2014
- Produce Memoranda of Understanding with WLGA, LPAs and other statutory consultees such as Cadw to set out our respective roles in planning. April – December 2014

31. We will keep the Board updated on progress to enable them to oversee our effectiveness as part of their scrutiny role.

Risks

32. Interim instructions to staff for Day1 do not cover the implications of NRW's statutory purpose or our strategic principles. To carry on in this way would bring significant reputational risks due to lack of clarity, both internally and externally, and inconsistency of approach.
33. Risks of adopting these strategic principles will be managed by working with key professional stakeholders in preparation of our guidance, plus briefings to the wider stakeholder community to raise awareness and ensure our approach is understood.

Financial/staffing implications

34. Actions set out in this paper will require investment of staff time now to produce efficiencies later. Estimated staff time input is 0.5FTE (legal), 1-2 FTE (planning); 5-8 FTE (process improvement and operational guidance). This will be obtained largely from deployment of existing resources and will require some existing planning and transition work to be re-programmed. Some support from external consultants may be required estimated maximum £20,000. Legal costs maximum £3,000.

Equalities Impact Assessment (EqIA)

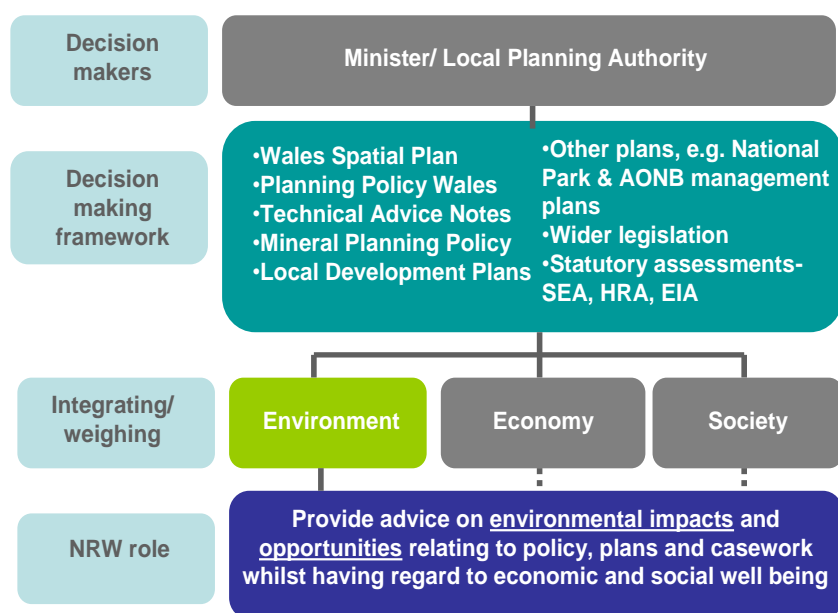
35. No implications

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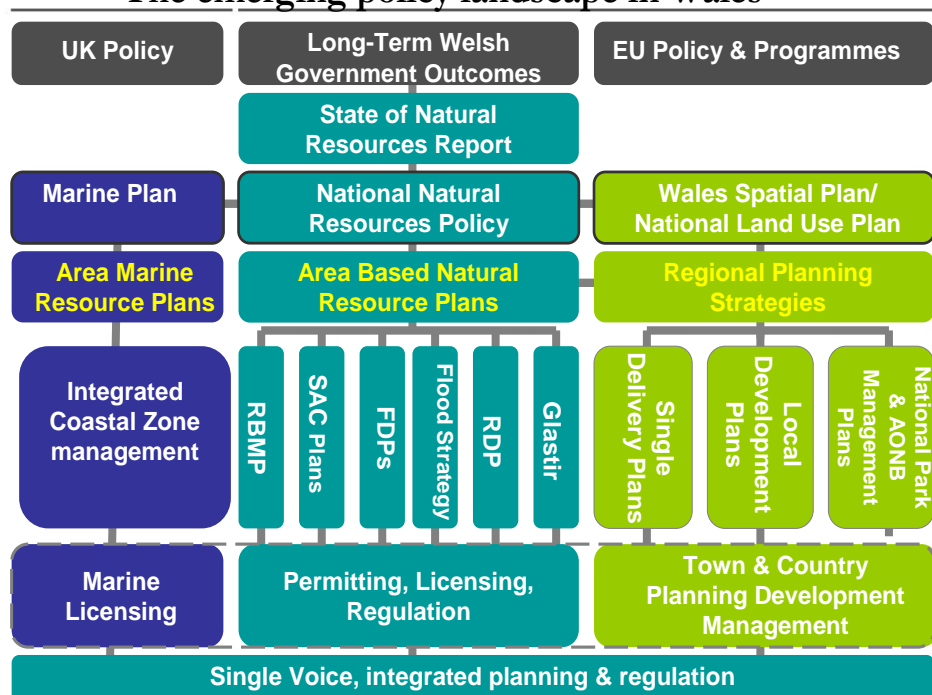
Annex 1. What the planning system is for (Extract from Planning Policy Wales)

Annex 2. Natural Resources Body for Wales (Functions) Order 2013. Schedule 1.

Figure 1 The decision making framework and emerging policy landscape in Wales



The emerging policy landscape in Wales



Annex 1

What the planning system is for (extract from Planning Policy Wales)

1.2.1 The planning system manages the development and use of land in the public interest, contributing to the achievement of sustainable development. It should reconcile the needs of development and conservation, securing economy, efficiency and amenity in the use of land, and protecting natural resources and the historic environment. A well functioning planning system is fundamental for sustainable development.

1.2.2 The planning system must provide for an adequate and continuous supply of land, available and suitable for development to meet society's needs. It must do this in a way that pays regard to:

- overall sustainability principles (see 4.3), outcomes (see 4.4) and objectives (see 4.4 and 4.6), paying particular attention to climate change as a key sustainability concern (see 4.5);
- the Wales Spatial Plan (see 2.1.3 and 4.7.1);
- detailed policies on the different topic areas set out in this document.

1.2.3 The planning system should be efficient, effective and simple in operation. It is not the function of the planning system to interfere with or inhibit competition between users of and investors in land or to regulate development for other than land use planning reasons.

1.2.4 The planning system should not normally be used to secure objectives achievable under other legislation. The principle of non-duplication should be maintained even though the powers and duties resulting from other legislation may also be the concern of local authorities.

1.2.5 Provided that a consideration is material in planning terms (see 3.1.2 to 3.1.4) it must be taken into account in dealing with a planning application even though other machinery may exist for its regulation. Even where consent is needed under other legislation, the planning system may have an important part to play, for example in deciding whether the development is appropriate for the particular location. The grant of planning permission does not remove the need to obtain any other consent that may be necessary, nor does it imply that such consents will be forthcoming.

Annex 2

Natural Resources Body for Wales (Functions) Order 2013, Schedule 1

“Nature conservation duties

5A.—(1) The Body must exercise its functions so as to further nature conservation and the conservation and enhancement of natural beauty and amenity.

(2) The duty in paragraph (1) does not apply to the Body's pollution control functions or its functions under the Forestry Act 1967.

(3) In exercising its pollution control functions, the Body must have regard to the desirability of nature conservation and of conserving and enhancing natural beauty and amenity

(4) Section 1(3A) of the Forestry Act 1967(1) makes provision about the balance between nature conservation and other matters which the Body must endeavour to achieve in exercising its functions under that Act.

5B. In exercising any function relating to nature conservation, the Body must have regard to actual or possible ecological changes.

Access and recreation duties

5C.—(1) The Body must exercise its functions so as to promote the provision and improvement of opportunities for—

(a) access to, and enjoyment of, the countryside and open spaces;

(b) open-air recreation; and

(c) the study, understanding and enjoyment of the natural environment.

(2) The duty in paragraph (1) does not apply to the Body's pollution control functions.

(3) In exercising its pollution control functions, the Body must have regard to the desirability of maintaining the availability to the public of existing opportunities of the kinds mentioned in paragraph (1).

(4) Section 2 of the Countryside Act 1968(2) makes further provision about the Body's duties relating to facilities for the enjoyment of the countryside, the conservation and enhancement of the natural beauty and amenity of the countryside, and public access to the countryside for recreation.

Duties relating to historic sites

5D. In exercising its functions, the Body must have regard to—

(a) the desirability of protecting and conserving buildings, structures, sites and objects of archaeological, architectural, engineering or historic interest;

(b) the desirability of maintaining the availability to the public of any facility for visiting or inspecting any such building, structure, site or object, so far as consistent with sub-paragraph (a) and

article 5A.

Duties relating to well-being

5E. In exercising its functions, the Body must have regard to—

- (a) the health and social well-being of individuals and communities;
- (b) the economic well-being of individuals, businesses and communities.

Duties of Welsh Ministers in relation to proposals relating to the Body's functions

5F.—(1) The duties in articles 5A to 5E apply to the Welsh Ministers when formulating or considering any proposals relating to the Body's functions, as they apply to the Body in exercising those functions.

(2) But the duty in article 5A(1) applies to the Welsh Ministers when formulating or considering such proposals only to the extent that the duty is consistent with—

- (a) the objective of achieving sustainable development; and
- (b) the Welsh Ministers' duties under section 2 of the Water Industry Act 1991(1).