

Water Services Team,
Department for Environment, Food & Rural Affairs
Nobel House (Area 3D)
17 Smith Square
London
SW1P 3JR

22nd December 2017

Dear Sir/ Madam,

Consultation on developing a National Policy Statement for Water Resources (NPS) and proposals to amend the definition of nationally significant water resources infrastructure in the Planning Act 2008 (November 2017)

We welcome the opportunity to respond to the above consultation, and on the accompanying Appraisal of Sustainability Scoping Report, and Habitats Regulations Assessment Methodology Report.

The statutory purpose of Natural Resources Wales (NRW) is set out under the Environment (Wales) Act 2016. In the exercise of its functions under the Environment (Wales) Act 2016, NRW must pursue sustainable management of natural resources in relation to all of its work in Wales, and apply the principles of sustainable management of natural resources in so far as that is consistent with the proper exercise of its functions. NRW's duty (in common with the other public bodies covered by the Well-Being of Future Generation (Wales) Act 2015) is to carry out sustainable development. This means, in general terms, looking after air, land, water, wildlife, plants, and soil to improve Wales' well-being, and provide a better future for everyone. NRW is also an advisor to the Welsh Government on the natural heritage and resources of Wales and its coastal waters.

Our comments on the Habitats Regulations Assessment Methodology Report are made in the context of our role under the Conservation of Habitats and Species Regulations 2017.

Our main comments to the draft NPS are in relation to:

- The need for Principle 3 and the NPS as a whole to recognise that certain nationally significant infrastructure projects have the potential to have a significant impact on environmental interests within Wales. Cross border schemes that rely on sourcing water from Wales will need to consider the Welsh Government's objectives for the environment, and relevant planning policies and legislation, including Environment (Wales) Act 2015 and Welsh Government's Natural Resources Policy. These will need

to be considered as part of the water resources management plan process, and at the project stage.

- The need to clarify the relevant consenting regime(s) where schemes involve development which are cross-boundary.

Our main comments to the AoS are to ensure that ecosystem resilience is incorporated into the assessment methodology, and to ensure relevant plans and programmes for Wales are considered.

Our main comments on the Habitats Regulations Assessment Methodology Report relate to the need for greater clarity for certain aspects within the NPS and in the HRA itself.

Our detailed response to your consultation questions are included in the attached Annex 1.

We trust that our advice will be useful to you. If you have any queries in relation to our detailed response, please contact Keith Davies, Planning, Landscape, Energy and Climate Change Manager in the first instance at: keith.davies@cyfoethnaturiolcymru.gov.uk.

Yours faithfully,



Keith Davies

Manager Planning, Landscape Energy & Climate Change

Annex 1

1. Do you have any views or further evidence that could inform the need for resilience in the water sector?

We do not have any further evidence.

2. Do you have any views or comments on these principles for developing the NPS?

Principle 2

Water resources management plans (WRMPs) reflect the preferred water resource schemes of the relevant water company. However, other parties may not consider these to be appropriate e.g. in light of likely adverse impacts. Principle 2 should therefore be amended to read:

“The NPS will reinforce and make clear the role of water companies’ WRMPs in identifying what **they consider to be** the most appropriate water resource schemes, including new water resources infrastructure.”

We also recommend that the final supporting paragraph to principle 2 also confirms that, in addition to WRMP appraisals, relevant and adequate environmental assessments will need to be undertaken at the project stage in support of a development consent order (DCO) application.

Principle 3

Whilst the NPS applies only to relevant schemes located in England (Point 5 and 39 only refer to regional and national schemes), you’ll be aware that certain water resource infrastructure in England currently sources water from Wales. New infrastructure in England, which will source water from Wales has the potential to affect environmental interests within Wales (regardless of whether any new associated development is planned in Wales).

We therefore recommend that Principle 3 (and the NPS as a whole) recognises that DCO applications which involve sourcing water from Wales will need to be supported, as appropriate, with relevant assessments of potential of impacts on environmental features within Wales. In such cases, the applicant will need to consider the Welsh Government’s objectives for the environment in Wales, and relevant planning policies and legislation, including the Environment (Wales) Act 2015 and Welsh Government’s Natural Resources Policy. The NPS will need to recognise that certain schemes (with cross-boundary effects) will need to achieve net environmental benefit within Wales, as well as within England.

3. Do you consider there to be any further principles for developing the NPS?

We have not identified any further principles for developing the NPS.

4. Do you agree with the main issues identified in the topic areas (Section 3.3 of AoS Scoping Report)?

5. Does the AoS Scoping Report set out sufficient information to establish the context for the appraisal, both in terms of the scope of the baseline analysis presented, and the plans and programmes reviewed (appendix B)? If not, which areas do you think have been missed from the baseline analysis and/or what additional plans or programmes should be included?

General Comments on the AoS Scoping Report:

Whilst the AoS has identified a number of plans and programmes relevant for Wales that need to be considered as part of this AoS, it seems that a number have not been considered despite their equivalent for England having been considered. The additional plans and programmes which we advise should be considered as part of this AoS are identified in our detailed comments below.

Detailed Comment on Scoping Report Appendix B:

Review of Plans and Programmes

Page No.	Section	Comment
81	Land use, Geology and Soils: 4.2: UK	The reference made to Environmental Permitting (England and Wales) Regulations 2010 , should be amended to refer to the 2016 regulations.
108	Water Quality: 5.2: England and Wales	The Review of plans and programmes should also describe how the Environmental Permitting (England and Wales) Regulations 2016 regulates discharges that can affect water quality.
108	Water Quality: 5.2: England and Wales	The reference to Shoreline Management Plans should be updated to reflect that reviews (SMP2) have been completed, and set policies for the whole coast of England and Wales for the next 20, 50, and 100 years (2005-2025, 2025-2055, and 2055-2105).
112	Water Quality: 5.2 : Wales	The Review of plans and programmes should also include: <ul style="list-style-type: none"> • The Groundwater (Water Framework Directive) (Wales) Directions 2016; and • The Nitrate Pollution Prevention (Wales) Regulations 2013

127 - 129	Water Quantity: 6.2: Wales	<p>The following plans and programmes for Wales or areas within Wales should be considered as part of the AoS's review of plans and programmes: Welsh water company drought plans : more information on drought and Water company drought plans available on our website: https://naturalresources.wales/guidance-and-advice/environmental-topics/water-management-and-quality/drought/?lang=en</p> <p>Welsh water resources management plans: More information is available on our website: https://naturalresources.wales/guidance-and-advice/environmental-topics/water-management-and-quality/water-resource-management-planning/?lang=en</p> <p>River Basin Management Plans: The published RBMPs (2015-2021) on Natural Resources Wales website where appropriate</p> <p>Catchment Abstraction Management Strategies Managing Water Abstraction (2017): our published CAMS are available on our website where available</p> <p>Water Resources Planning Guidelines : https://naturalresources.wales/guidance-and-advice/environmental-topics/water-management-and-quality/water-resource-management-planning/?lang=en</p> <p>WC drought planning technical guidelines: Public consultation version: https://naturalresources.wales/media/682496/wc-dpg-2017-consultation.pdf</p> <p>Welsh Government guiding principles for development of WRMPs: http://gov.wales/topics/environmentcountryside/epq/waterflooding/waterresources/?lang=en</p> <p>Welsh Government guiding principles for development of drought plans: http://gov.wales/topics/environmentcountryside/epq/waterflooding/drought/?lang=en</p> <p>UK Climate change Risk Assessment (specific Wales summary): https://www.theccc.org.uk/tackling-climate-change/preparing-for-climate-change/uk-climate-change-risk-assessment-2017/</p>
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		<p>Ofwat 2020 policies: https://www.ofwat.gov.uk/publications/towards-water-2020-meeting-the-challenges-for-water-and-wastewater-services-in-england-and-wales/</p> <p>DCWW 2050 consultation: http://www.dwrcymru.com/en/Company-Information/Business-Planning/Welsh-Water-2050.aspx</p>
146 - 147	Flood Risk and Coastal Change 7: UK	<p>Flood Risk Regulations 2009: The AoS should also recognise NRW’s duties in Wales under the Act. The AoS should refer to the provisions within the Marine and Coastal Access Act 2009 as it applies to Wales (in addition to how it applies in England).</p>
149-150	Flood Risk and Coastal Change 7: Wales	<p>The following legislation, plans, and strategies are relevant to Wales and should be considered as part of the AoS’s review of plans and programmes:</p> <ul style="list-style-type: none"> • The National Flood and Coastal Erosion Risk Management Strategy: Sets out the WG’s policies for flood and coastal erosion risk management in Wales and establishes a framework for delivery. The Strategy was supported by a HRA. • The Welsh Government made amendments to the Reservoir Act (1975) in 2015/16. The amendments are intended to ensure the ongoing protection of public safety by reducing the risk of an uncontrolled release of water from large reservoirs and the potentially catastrophic flooding this would cause. Further information can be found on our website. • Recommended non-statutory standards for sustainable drainage (SUDS) in Wales: Recommended standards that promote more natural SUDS systems in new development and aid developers, local authorities and other stakeholders to demonstrate that they have taken account of the Welsh Government’s planning advice on Development and Flood Risk. • Wellbeing and Future Generations (Wales) Act 2015 • Planning (Wales) 2015 Act: Sets out a series of legislative changes to deliver reform of the planning system in Wales.
181	Climatic Factors: 10.2: Wales	<p>The review of plans and programmes should include the duties of Welsh Ministers and public bodies under the Well-being and Future Generations Act (Wales) 2015 to “take account of the report containing an assessment</p>

		<i>of the risks for the United Kingdom of the current and predicted impact of climate change most recently sent to the Welsh Ministers under section 56(6) of the Climate Change Act 2008 (c.27)</i> ” (the UK Climate Change Risk Assessment). This applies to Welsh Ministers under Section 11 of the Act, when preparing their Future Trends Report, and to Public Services Boards under Section 38, when preparing their Local Assessments of Well-being. The Future Trends Report and the Local Assessments of Well-being form part of the context for setting objectives at the Wales and local levels.
235	Landscape and Townscape - 14.2 (UK)	We suggest that you amend to clarify that Natural Resources Wales has the statutory power to designate National Parks and AONBs in Wales.
238	Landscape and Townscape - 14.2 (Wales)	We suggest that you amend to clarify that a significant aspect of the Environment (Wales) Act 2016 is that the link between natural resources and well-being is made explicit

Overview of the Baseline

Page No.	Section	Comment
91	4.3: Land Use, Geology and Soils	The geology description for Wales refers to ‘Carboniferous peat’. However, we query whether relates to carboniferous coal measures, or rather should refer to ‘Carboniferous rocks’, and then expand on modern peat/raise bogs in the soils section. Additionally, reference should be made to Carboniferous Limestone and Devonian sandstones forming important groundwater resources in south Wales. We suggest that the Baseline Overview should clarify that there are approximately 300 SSSI designated for geology, and 485 GCR sites. They are UNESCO Global Geoparks. It should also refer to Regionally Important Geodiversity Sites (RIGS). There are over 800 RIGS in Wales.
124	5.3: Water Quality (Wales)	The final paragraph should also refer to the 17 water bodies of the Severn River Basin District within Wales which are targeted by NRW for improvement.
135	Table 6.3	It seems that the figures used in the Table are based on the 2009 classification. This has been updated by the 2015 classification.

137	6.3 Water Quantity (Wales)	Whilst we welcome the inclusion of information relevant to Dŵr Cymru, we consider similar information should be included for the areas within Wales operated by Severn Trent Water and Dee Valley Water to understand current provision and pressures.
151	6.4: Water Quantity	We suggest that the baseline data for Wales should also refer to the Catchment Abstraction Management Strategies (CAMS) outputs for the relevant cross-border river basins to identify where water resources pressures exist.
151	7.3: Flood Risk and Coastal Change (Wales)	It is estimated that 2,126 properties in Wales are vulnerable to coastal erosion during the next 100 years if there is no active intervention. This figure is reduced to 145 with full implementation of Shoreline Management Plan (SMP)2 polices.
155	7.5: Flood Risk and Coastal Change (Wales)	In this section, risk is referred to in terms of a “1-in-75 or greater chance of flooding in any given year”. This is different to the level of risk previously used in Section 7.3, which refers to high and medium risk (high being > than or = to 1:30, and medium being <1:30, > 1:100). We recommend that risk should be considered consistently throughout the AoS.
155	7.5: Flood Risk and Coastal Change (Wales)	As currently drafted the second sentence of the second paragraph seems to indicate to a SMP for Fairbourne. We suggest this is amended to clarify that Fairbourne is an example of a coastal community at risk from flooding/erosion, and that the SMPs cover the whole coast of Wales.
240	Landscape and Townscape - 14.3 (Wales)	For a full overview of the Welsh landscape it is recommended that the following evidence is incorporated into the AoS: <ul style="list-style-type: none"> • LANDMAP landscape evaluation • National Landscape Character Areas, Seascapes, and • CADW Register of Historic Parks and Gardens
240	Landscape and Townscape - 14.4 (Wales)	Environmental issues affecting well-being in Wales are explored in NRW’s State of our Natural Resources Report (SoNaRR) 2016. For landscape trends in Wales see LANDMAP updates 2017. NRW Tranquillity Mapping is also available for analysis in line with Scotland and England. Specifically produced by Wales’ Designated Landscapes ‘State of the Park / AONB Report’ are also a useful source of evidence on the DL’s special qualities.

242	Landscape and Townscape - 14.5 (Wales)	For an analysis of the likely evolution of the baseline it is recommended that reference be made to UK CP09 Summary for Wales for climate change predictions.
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6. Do the AoS objectives and guide questions (Section 4.3 of scoping report) cover the breadth of issues appropriate for appraising the effects of the draft NPS? If not, which objectives should be amended and how? Or which guide questions should be amended and how? Are there other objectives or guide questions that you believe should be included?

General Comments on the AoS Scoping Report:

- We welcome the clarification paragraph 4.2.4 of the AoS that it will consider the potential effects of the draft NPS on Wales (as well as England). We recommend that the applicants need to consider potential impacts on environmental features within Wales at the project stage is explicitly recognised in the NPS, as well as the need to consult the relevant statutory consultee.
- We welcome the commitment in paragraph 4.4.7 to undertake an appraisal of secondary, cumulative and synergistic effects alongside other plans/ programmes. However, it would be useful to learn which plans/ programmes will be considered as part of this assessment, and what consultation will be held to ensure that relevant plans/programmes are identified before the assessment is undertaken.

Detailed Comment on Scoping Report Appendix B:

Assessing Significance

Page No.	Section	Comment
42/ 43	Biodiversity and Nature Conservation: Table 1.11	We welcome the objective to protect and enhance biodiversity and ecosystems. Under Section 6 the Environment (Wales) Act 2015 public bodies have a duty to protect and enhance biodiversity, and in so doing promote the resilience of ecosystems. To meet the aspirations within Wales, we suggest that the 6 th Guide question is amended to read: <i>“Will the Water Resources NPS affect the structure and function, and resilience of ecosystems?”</i>
43	Table 1.12	Given the objective and guide questions in relation to ecosystem, we consider that Table 1.12 should also include an indicator to monitor the impacts (and their significance) on ecosystem resilience .
126	Table 5.5: Water Quality	Rather referring to a “decrease” in Water Framework Directive (WFD) status, we advise that the table should refer to “deterioration” to be consistent with conventional and widely understood terminology.

		The Table refers to both “significant” ‘decrease’ and ‘increase’ in WFD status for ‘significant negative’ and ‘significant positive’ effects. However, it is not clear how this differs from ‘increases/ decreases’ for ‘negative/ positive’ effects. This should be clarified in the Table. We would consider that <u>any</u> deterioration in WFD status would be significant.
155	Table 7.1: Flood risk and Coastal Change	We recommend that the reasoning of the third Objective/ Guide Question should reflect the aspiration to be consistent with the conclusions of Shoreline Management Plans 2.
243	Tables 14.1 and 14.2	We suggest that the second Guide Question in Table 14.1 should be amended to read: <i>Will the Water resources NPS affect the purposes and/ or special qualities of protected/ designated landscapes?</i> This change should also be reflected in Table 14.2
243	Tables 14.1 and 14.2	We suggest including an additional guide question in Table 14.1 that reads: <i>Will the Water Resources NPS affect public benefits and/ or services provided by landscape?</i> This helps to ensure the text is more reflective of legislative and policy aspirations in Wales. This change should also be reflected in Table 14.2

7. Do you have any comments on the discussion on potential reasonable alternatives to the NPS (Section 2.4 of scoping report)? Should any further alternative scenarios be considered? Please support your suggestion with your reasoning.

With regards to the first question as to whether it is necessary, has there been consideration of whether population and economic growth should be located to areas where there is sufficient water resources available?

8. Do you think that the proposed approach to assessing the NPS against the Habitats Regulations is appropriate?

Please see our response to question 9 below.

9. Do you think that the Methodology Report sets out sufficient information to establish the context for the Screening Report and later Appropriate Assessment? If not, which areas do you think have been missed and where is the information available from?

We welcome and support your commitment to HRA, and for starting consideration of the HRA at this early stage of the NPS’s development - the iterative approach proposed will have the greatest opportunity to influence the developing NPS itself, thereby helping to

avoid and minimise potential impacts on European sites. We also welcome being given the opportunity to comment at this early stage of both the HRA and NPS's development.

Note that from 30th November 2017, references to the Habitats Regulations should now refer to the Conservation of Habitats and Species Regulations 2017.

Our detailed comments to the HRA are set out below:

- It is unclear to us which types of transfers of water resources are to be covered in the NPS. In particular, having read the third bullet point in paragraph 2.3.2 it remains unclear whether water could be transferred from cross border catchments, i.e. catchments that are partly within England and partly within Wales, or from cross border water undertakers' areas i.e. water undertakers' areas that are partly within England and partly within Wales, both of which could therefore have potential effects on European sites in Wales. This needs to be clarified in order to determine which European sites could be affected by policies within the NPS. Please see also our response to Question 14 below.
- We understand that Government will be reviewing the thresholds of the types of water supply infrastructure that are classed as 'nationally significant' during the winter 2017, as described in paragraph 2.3.3. It is our view that any revisions that come out of this review would constitute a material change to the NPS, and would therefore either need to be considered as part of this current HRA, or would need to be the subject of a separate HRA before being adopted, depending on the timetable of the review.
- The geographical coverage of the NPS is set out in paragraph 2.3.5. However, it isn't made clear in this paragraph that the NPS covers proposals that have the potential to affect European sites in Wales (and Scotland). We recommend this clarification is recognised within the NPS and supporting assessments.
- In relation to the in-combination assessment of plans and projects, it is not immediately clear from the information provided in the HRA or the Appraisal of Sustainability (AoS), which plans and projects it is proposed to include. We therefore ask that this is set out more clearly in the subsequent HRA, and opportunity be provided for us to comment on this aspect.
- In relation to the assessment of alternatives set out in paragraph 3.4.4, it would be useful to clarify the potential role of the Statutory Consultation Bodies during this stage.
- We agree that the NPS and accompanying HRA will need to set out the framework for ensuring that any compensatory measures that are required by new water resources infrastructure meet the requirements of the Habitats Regulations (2017) (3.5.2). It is our view that this plan level consideration of compensatory measures should provide a clear overview and agreement of the type of compensation expected for the sites involved, and should include reference to a more detailed set of principles. These can be found in the following publications:

- European Commission (2007/2012) *Guidance document on article 6(4) of the Habitats Directive 92/43/EEC: Clarification of the Concepts of: Alternative Solutions, Imperative Reasons of Overriding Public Interest, Compensatory Measures, Overall Coherence, Opinion Of The Commission*. European Commission, Brussels.
 - DTA Publications (2016) *The Habitats Regulations Handbook* [online]. Available at: <http://www.dtapublications.co.uk/handbook/>
- In relation to the outputs and key stages set out in section 3.6, this should include setting out the approach to compensatory measures, as referred to above.

We emphasise the need for the NPS to be clear that Natural Resources Wales must be consulted, under the Habitats Regulations 2017, regarding the development of lower tier plans or projects that follow this NPS, if they have potential direct or indirect impacts on European sites in Wales.

10. Do you have evidence on the costs of potential supply schemes, especially those other than reservoirs, and potential time and cost savings from NSIP designation, to improve our economic analysis (see Annex B for more detail)?

We do not have evidence of costs and potential time and costs savings from NSIP designation.

11. What are your views on the factors we have set out here for considering if schemes are nationally significant (see also Annex C)?

We have no comments on the factors for considering if schemes are nationally significant.

12. Are there any further factors that we should take into account?

None identified.

13. Which of the two options is your preferred threshold for new nationally significant reservoir schemes?

We do not have a view on the two options for reservoir schemes.

14. Which of the two options is your preferred threshold for new nationally significant water transfer schemes?

We do not have a view on the options for a preferred threshold for new nationally significant water transfer schemes. However, we consider that the NPS should provide clarity on:

- (i) The consenting regimes applicable for water transfer schemes involving development in Wales and (an NSIP) in England.

- (ii) Whether “river basins in England” (as set out in Section 28 of the Planning Act 2008, and again in paragraph 84 of the consultation document) relates to river basins partially and/ or wholly in England. You’ll be aware that the Severn River Basin and the Dee River Basin both include an area of Wales and England.

If the definition extends to river basins partially in England, we recommend that the NPS should clarify that the DCO does not extend to (water transfer) development located outside England, and should clarify the relevant consenting regime for this element of the scheme.

- (iii) Whether “water undertakers’ areas in England” (as set out in Section 28 of the Planning Act 2008, and again in paragraph 84 of the consultation document) relates to water undertakers’ areas partially and/ or primarily/ wholly in England. *Currently*, Dee Valley Water, Severn Trent Water, and Dŵr Cymru are all water undertakers which currently have operational areas which extend to areas in Wales and England.

If the definition extends to water undertakers areas partially or primarily in England, we recommend that the NPS should clarify that the DCO does not extend to (water transfer) development located outside England, and should clarify the relevant consenting regime for this element of the scheme.

15. Do you have any views on whether there would be benefit in including groups of smaller transfer schemes within the threshold?

We do not have a view on including groups of smaller transfer schemes within the threshold.

16. What do you see as the main benefits and risks of setting the same threshold for all infrastructure types? For example, do you see any reasons that the threshold for reservoirs and transfers should be / not be the same?

We do not have a view on the thresholds for the infrastructure types.