

National Assembly for Wales
Environment and Sustainability Committee

Planning (Wales) Bill
Stage 1 Committee Report

January 2015

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



The National Assembly for Wales is the democratically elected body that represents the interests of Wales and its people, makes laws for Wales and holds the Welsh Government to account.

An electronic copy of this report can be found on the National Assembly's website:
www.assembly.wales

Copies of this report can also be obtained in accessible formats including Braille, large print; audio or hard copy from:

Environment and Sustainability Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

Tel: 0300 200 6565

Email: seneddenv@assembly.wales

Twitter: @SeneddEnv

© National Assembly for Wales Commission Copyright 2014

The text of this document may be reproduced free of charge in any format or medium providing that it is reproduced accurately and not used in a misleading or derogatory context. The material must be acknowledged as copyright of the National Assembly for Wales Commission and the title of the document specified.

National Assembly for Wales
Environment and Sustainability Committee

Planning (Wales) Bill
Stage 1 Committee Report

January 2015

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



Environment and Sustainability Committee

The Committee was established on 22 June 2011 with a remit to examine legislation and hold the Welsh Government to account by scrutinising expenditure, administration and policy matters encompassing: the maintenance, development and planning of Wales's natural environment and energy resources.

Current Committee membership:



Alun Ffred Jones (Chair)
Plaid Cymru
Arfon



Mick Antoniw
Welsh Labour
Pontypridd



Jeff Cuthbert
Welsh Labour
Caerphilly



Russell George
Welsh Conservatives
Montgomeryshire



Llyr Huws Gruffydd
Plaid Cymru
North Wales



Julie Morgan
Welsh Labour
Cardiff North



William Powell
Welsh Liberal Democrats
Mid and West Wales



Jenny Rathbone
Welsh Labour
Cardiff Central



Antoinette Sandbach
Welsh Conservatives
North Wales



Joyce Watson
Welsh Labour
Mid and West Wales

Contents

Recommendations	7
Introduction.....	13
Terms of scrutiny	13
The Committee’s approach	14
1. General principles and the need for legislation.....	15
1.1 The Assembly’s legislative competence to make the Bill	15
1.2 General principles and approach to legislation	15
1.3 Complexity and the ‘top down’ approach.....	16
Our view	18
1.4 Costs and benefits.....	20
Our view	21
1.5 Statutory Purpose for Planning.....	21
Our view	23
1.6 Welsh Language	24
Our view	26
1.7 Links with other existing and proposed planning regimes	28
Our view	29
1.8 National Parks	30
Our view	31
1.9 Health Impact Assessments	32
Our view	33
1.10 Planning Inspectorate	33
2. Part 2 – Development Planning: the National Development Framework and Strategic Development Plans	34
2.1 National Development Framework (Section 2)	34
Development Plan status and Scrutiny arrangements	34
Our view	36

Other NDF issues	38
Our view	38
2.2 Strategic Development Plans (Sections 3-9)	39
Need for SDPs	39
Designation of a Strategic Planning Area.....	39
Strategic planning in non-SDP areas.....	40
Strategic Planning Panels	41
Links to transport planning	42
Our view	42
3. Pre-application consultation	44
3.1 Charges for pre-application consultation.....	44
3.2 Costs associated with pre-application consultation.....	45
3.3 Thresholds.....	46
3.4 Definition of statutory consultees	47
Our view	47
4. Part 4 – Welsh Ministers Decision-making powers.....	49
4.1 Developments of National Significance (DNS) (Sections 17-19,24).....	49
DNS definition	49
Planning permission v development consent.....	49
Our view	51
4.2 Timescales and statutory deadlines	53
Our view	54
5. Part 5: Development Management	55
5.1 Planning Committees, role of Members and delegation (section 37) ..	55
Our view	58
5.2 Variation of an application after an appeal notice (sections 42, 45) ...	60
Our view	61
5.3 Award of costs to Welsh Ministers (Section 44).....	61
Our view	62

5.4 Procedures for appeals, call-ins and direct applications (section 45) ..	62
Our view	63
6. Design and Access Statements	65
Our view	66
7. Town and Village Greens	68
Our view	69
Annex 1: List of written evidence	71
Annex 2: Witnesses	74

Recommendations

Recommendation 1. We recommend that the Assembly supports the general principles of this Bill (Page 19)

Recommendation 2. We recommend that the Minister brings forward an amendment to the Bill to give Place Plans a formal development plan status under Section 38 of the Planning and Compulsory Purchase Act 2004 and gives further consideration to how local communities can be given greater opportunities to engage in the preparation of all development plans. (Page 19)

Recommendation 3. We recommend that the Minister lays a revised Regulatory Impact Assessment before the Assembly in advance of the debate on the general principles of the Bill. (Page 21)

Recommendation 4. We recommend that the Minister brings forward an amendment to the Bill in order to insert a statutory purpose for planning. This should be drafted along similar lines to the statutory purpose recommended by the Independent Advisory Group in its report. (Page 23)

Recommendation 5. We also recommend that the Bill is amended to include a provision that would allow the Welsh Ministers to issue guidance to Local Planning Authorities on how to apply the statutory purpose. (Page 23)

Recommendation 6. We recommend that the Minister brings forward amendments to place a requirement on those formulating plans to undertake an assessment of the impact development plans will have on the Welsh Language when preparing Local Development Plans, Strategic Development Plans and the National Development Framework. For Place Plans, a language assessment should form part of a general sustainability appraisal. (Page 27)

Recommendation 7. We recommend that the Minister brings forward an amendment to Section 70 of the Town and Country Planning Act 1990, to make it clear to all involved in planning that decision makers can have regard to the impact on the Welsh Language so far as it is material to an application. Any amendment should be clarificatory and not change the position as to weight. (Page 27)

Recommendation 8. We recommend that the Minister introduces a requirement to carry out Language Impact Assessments for certain major planning applications. (Page 27)

Recommendation 9. We recommend that the Welsh Language Commissioner should be given a formal role in assessing the quality of language impact assessments, both for development plans and for certain major planning applications to ensure consistency. In making this recommendation we wish to be clear that we are calling for a role for the Welsh Language Commissioner in assessing the quality of language impact assessments and not to have a role in the planning application process. (Page 27)

Recommendation 10. We recommend that the Welsh Government clearly explains how the proposed national Natural Resources Policy and area-based Natural Resource plans will interface with the planning regime before the introduction of the Environment Bill. (Page 29)

Recommendation 11. We recommend that the Minister brings forward amendments to the Bill to ensure that marine and terrestrial planning is closely aligned and that plan-makers (including Welsh Ministers) are required to have due regard for the interrelationship between these two environments. (Page 30)

Recommendation 12. We recommend that the Minister brings forward amendments to the Bill to link statutory national and regional transport planning arrangements to the National Development Framework and Strategic Development Plans. (Page 30)

Recommendation 13. We recommend that the Minister brings forward amendments to the Bill to link it to the Well-being of Future Generations Bill. These amendments should include a formal link between the National Development Framework and the well-being goals. (Page 30)

Recommendation 14. We recommend that the Minister confirms that the regulations for Strategic Development Plans will include a requirement for these plans to have regard to the relevant Local Well-being Plans. (Page 30)

Recommendation 15. We recommend that the Minister leaves the Bill as drafted in relation to National Parks and that he reconsiders his intention to bring forward amendments to give Welsh Ministers the power to create Joint Planning Boards that could in future include whole or part of a National Park. (Page 32)

Recommendation 16. We recommend that the Minister considers whether a requirement to undertake Health Impact Assessments should be included in the Bill at the development plan stage and for some types of planning application. Associated policy and guidance should be revised to ensure that the health impacts of development are appropriately considered. (Page 33)

Recommendation 17. We recommend that the Minister brings forward an amendment to the Bill to specify the length of the consultation period for a draft National Development Framework on the face of the Bill. We recommend that such a period should be longer than 12 weeks. (Page 36)

Recommendation 18. We recommend that the Minister brings forward amendments to enable the National Assembly for Wales to determine its own procedure for considering the draft National Development Framework and, as part of these amendments, the Minister removes any restriction on the Assembly's consideration of the draft National Development Framework, in particular the 60-day consideration period specified in Section 2 of the Bill. (Page 37)

Recommendation 19. We recommend that the Minister must amend the Bill to require Assembly approval of the National Development Framework. (Page 37)

Recommendation 20. We recommend that the Minister brings forward amendments to the Bill to specify the period for which the National Development Framework is to have effect. (Page 39)

Recommendation 21. We recommend that the Minister brings forward amendments to the Bill to remove voting rights from non-elected members of Strategic Planning Panels. (Page 43)

Recommendation 22. We recommend that the Minister brings forward amendments to the Bill in order to enhance the pre-application arrangements that apply to Developments of National Significance applications and to outline these arrangements on the face of the Bill. (Page 48)

Recommendation 23. We recommend that the Minister brings forward amendments to the Bill in order to make the regulations setting out which categories of development should be subject to the pre-application procedure are subject to the affirmative resolution procedure. (Page 48)

Recommendation 24. We recommend that subject to any matters of legislative competence, the Minister considers making water undertakers statutory consultees. We ask that the Minister reports back to us on his consideration of this issue by the end of March 2015. (Page 48)

Recommendation 25. We recommend that the Minister amends the Bill to include the definition of what constitutes a Development of National Significance on the face of the Bill, with a provision that would enable this definition to be amended that would be subject to the affirmative resolution procedure. (Page 51)

Recommendation 26. We recommend that the Minister sets out how he intends to decide above 50MW energy schemes in Wales should further devolution occur. In addressing this recommendation, we ask that the Minister is clear about whether the NSIP Development Consent Order process will be replicated for Wales; whether these larger schemes will be included in the Developments of National Significance process; or whether some other process will apply. (Page 51)

Recommendation 27. We recommend that the Minister takes steps to make it clear that Section 18 of the Bill could be used to give the Welsh Ministers the power to decide on Developments of National Significance associated developments as well as secondary/ancillary consents. (Page 52)

Recommendation 28. We recommend that the Minister should bring forward amendments to the Bill in order to include a list of secondary consent that could be decided directly by the Welsh Ministers alongside a Development of National Significance application on the face of the Bill, with a power to amend the list by affirmative resolution. If the Minister is not inclined to make such an amendment, we believe that he should bring forward amendments to ensure that any order made to define these types of consent should be subject to the affirmative procedure. (Page 52)

Recommendation 29. We recommend that the Minister clarifies whether he intends to take responsibility for the issuing of environmental permits for certain Developments of National Significance applications and, if he does, he brings forward amendments to the Bill to require Natural Resources Wales's consent before Welsh Ministers can decide on the issuing of environmental permits alongside the Developments of National Significance process. (Page 52)

Recommendation 30. We recommend that the Minister brings forward amendments to the Bill in order to establish a statutory maximum timescale within which Developments of National Significance and associated secondary consents will be determined by Welsh Ministers after such an application has been formally submitted. In cases where this timescale is not met, these amendments should include a provision that requires Welsh Ministers to lay a statement before the National Assembly for Wales explaining the reasons for this timescale being exceeded. (Page 54)

Recommendation 31. We recommend that the regulations for a national delegation scheme when introduced should follow the model proposed by the Welsh Government's own research – i.e. a national scheme with some local flexibility, with each local scheme still to be approved by Welsh Ministers. (Page 58)

Recommendation 32. We recommend that the Minister amends the Explanatory Memorandum to the Bill to clearly explain the types of planning decisions that are to be delegated to officers using the powers in Section 37 of the Bill. (Page 59)

Recommendation 33. We recommend that the regulations for a national delegation scheme when introduced should require the referral of a planning decision to a committee when a local town or community council objects to an application. (Page 59)

Recommendation 34. We recommend that the Minister brings forward amendments to section 37 of the Bill to make the regulations under Section 3197B of the Town and Country Planning Act 1990 that allow Welsh Ministers to prescribe requirements relating to the size and composition of planning committees subject to the affirmative resolution procedure. (Page 59)

Recommendation 35. We recommend that the Minister brings forward amendments to the Bill to make the planning committee protocol statutory. (Page 59)

Recommendation 36. We recommend that the Minister brings forward an amendment to Section 42 of the Bill to reflect the Law Society's proposal, but this should include a requirement for an amended application to be returned to a Local Planning Authority to be consulted on again. (Page 61)

Recommendation 37. We recommend that, before Section 44 is commenced, Circular 23/93 'Awards of costs incurred in planning and other (including compulsory purchase order) proceedings is updated to reflect the changes to costs recovery in appeal proceedings made by this Bill. (Page 62)

Recommendation 38. We recommend that the Minister brings forward amendments to Section 45 of the Bill to set minimum time limits for responding to requests for information resulting from appeals, call-ins and direct applications. (Page 64)

Recommendation 39. We recommend that the Minister retains the primary legislative requirement for Design and Access Statements by removing Section 27 and that associated secondary legislation should be amended to only require statements for larger developments and listed buildings. (Page 67)

Recommendation 40. We recommend that the Minister brings forward the amendments to Schedule 6 (Town and village greens: new Schedule 1B to the Commons Act 2006) of the Bill to remove trigger events, as outlined in his letter to the Chair dated 7 January 2015 at the earliest opportunity. (Page 70)

Recommendation 41. We recommend that the Minister brings forward amendments to the Bill to remove Section 47 i.e. provisions that would reduce the time for submission of a Town and Village Green application from two years to one year. (Page 70)

Recommendation 42. We recommend that the Minister brings forward amendments to remove Section 50 from the Bill i.e. provisions that would allow Welsh Ministers to set fees for applications to amend registers of common land and town or village greens. (Page 70)

Introduction

1. On 6 October 2014, Carl Sargeant AM, the Minister for Natural Resources (“the Minister”) introduced the Planning (Wales) Bill (“the Bill”) and accompanying Explanatory Memorandum and made a statement on the Bill in Plenary on 7 October 2014.
2. At its meeting on 7 October 2014, the Assembly’s Business Committee agreed to refer the Bill to the Environment and Sustainability Committee for consideration of the general principles (Stage 1), in accordance with Standing Order 26.9.

Terms of scrutiny

3. We agreed the following framework within which to scrutinise the general principles of the Bill:

To consider—

- the general principles of the Planning (Wales) Bill including the need for legislation in the following areas:
 - the requirement to produce a national land use plan, to be known as the National Development Framework;
 - the creation of Strategic Development Plans to tackle larger-than-local cross-boundary issues;
 - changes to Local Development Plan procedures;
 - front-loading the development management process by making provision for pre-application services;
 - introducing a new category of development to be known as Developments of National Significance that are to be determined by Welsh Ministers;
 - streamlining the development management system;
 - changes to enforcement and appeal procedures; and
 - changes in relation to applications to register town and village greens.
- any potential barriers to the implementation of these provisions and whether the Bill takes account of them;

- the Committee's pre-legislative scrutiny of the Draft Planning (Wales) Bill and the extent to which the revised Bill takes account of the Committee's recommendations;
- whether there are any unintended consequences arising from the Bill;
- the financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum, the Regulatory Impact Assessment, which estimates the costs and benefits of implementation of the Bill);
- the appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum, which contains a table summarising the powers for Welsh Ministers to make subordinate legislation); and
- the measurability of outcomes from the Bill, i.e. what arrangements are in place to measure and demonstrate the fulfilment of the Welsh Government's intended outcomes from making this law.

The Committee's approach

4. We issued a consultation and invited key stakeholders to submit written evidence to inform our work. A list of the consultation responses is attached at Annex 1.
5. We took oral evidence from a number of witnesses. The schedule of oral evidence sessions is attached at Annex 2.
6. The following report represents the conclusions we have reached and our recommendations based on the evidence received during the course of our work.
7. We would like to thank all those who have contributed to our work.

1. General principles and the need for legislation

1.1 The Assembly's legislative competence to make the Bill

8. The Assembly has legislative competence over many, but not all aspects of planning. Schedule 7, Part 1 of the Government of Wales Act 2006 lists the subjects which are within the Assembly's competence. The Explanatory Memorandum to the Bill identifies the following subjects in schedule 7 which are relevant to the Bill:

Town and Country Planning

18. Town and country planning [...] Spatial planning. [...] Urban development.

Local Government

12. Constitution, structure and areas of local authorities. [...] Powers and duties of local authorities and their members and officers.

Environment

6. [...] Town and village greens

Public Administration

14. Inquiries in respect of matters in relation to which the Welsh Ministers [...] exercise functions.

9. The Presiding Officer issued a statement on 6 October 2014, which stated that, in her opinion, the Bill would be within the legislative competence of the Assembly.

1.2 General principles and approach to legislation

10. The stated policy intent of the Bill is to create a more consistent planning system that enables development and enhances built and natural environments. The Welsh Government has set out five key objectives for the Bill:

- a modernised framework for the delivery of planning services – the Bill will allow planning applications to be made directly to Welsh Ministers in limited circumstances;

- strengthening the plan led approach – the Bill will introduce a legal basis for the preparation of a National Development Framework and Strategic Development Plans;
- improved resilience – the Bill will allow the Welsh Ministers to direct local planning authorities to work together and for local planning authorities to be merged;
- frontloading and improving the development management system – the Bill will introduce a statutory pre application procedure for defined categories of planning application; and
- enabling effective enforcement and appeals – the Bill will make changes to enforcement procedures to secure prompt, meaningful action against breaches of planning control and increase the transparency and efficiency of the appeal system.

1.3 Complexity and the ‘top down’ approach

11. Some witnesses and consultees have suggested that the new arrangements for development plans are unnecessarily complex and, in effect, will create a four-tier development plan structure (including the non-statutory Place Plans, (although these will not have formal development plan status) in parts of Wales. This, they suggest, creates a complex structure as the starting point for making planning application decisions. There have also been concerns expressed that the new structure is too ‘top-down’, relying heavily on the National Development Framework (‘the NDF’) and will give considerable additional powers to Welsh Ministers.

12. Friends of the Earth told us:

“The Bill seems to me to be like a planning person has gone into the sweetshop for planners and said, ‘I’ll have one of everything, please, and just put them all in the Bill just in case I need them’ so that they can get them out when they want to.”¹

13. Councillor John Williams from Gwynedd Council stated that the Bill needed to strike a balance between consistency in planning decision-making across Wales and the preservation of local democracy.²

14. Some witnesses believe that the changes will make it even more difficult to achieve community engagement in the plan-making system. Planning Aid

¹ RoP 11 December 2014 c.379

² RoP 27 November 2014 c.400

Wales told us that the Bill should be seen as an opportunity “to look structurally at the relationship between the land use planning system and communities in Wales” and also:

“[...] there is work to be done to sufficiently define the new shape of the planning system and the opportunities that communities will have to engage at different levels in the hierarchy of the planning system.”³

15. In his letter of 7 January, the Minister has commented further on the role of Town and Community Councils in the reformed planning system.⁴

16. The Minister’s Chief Planner confirmed that Place Plans will be introduced as non-statutory supplementary planning guidance, rather than as a formal part of the development plan hierarchy.⁵

17. One Voice Wales is concerned that if in future there are to be fewer Local Planning Authorities (“LPAs”) producing Local Development Plans (“LDPs”), as well as new types of development plans; Strategic Development Plans (“SDPs”) and the National Development Framework (“NDF”), then local communities will be further removed from the plan-making process. It would like to see Place Plans as a more formal underlying ‘building block’ for the development plan system, whilst recognising the problem of partial coverage of Town and Community Councils across Wales.⁶

18. The Minister told the committee that despite the introduction of the NDF and SDPs, the decision-making process for most planning applications will still be at the local level. However it is also the case that decisions on planning applications will continue to be made in accordance with the development plan (which will now include the NDF and SDP where relevant), unless material considerations indicate otherwise. The Minister’s 10 December letter to the Chair confirms that the most recently adopted development plan (which could be the NDF or an SDP) will take precedence if plans are not in conformity.⁷

19. There are also concerns about the timing and resource implications arising from the production of the new tiers of plans and subsequent

³ RoP 11 December 2014 c.420

⁴ Letter from the Minister for Natural Resources to the Chair of the Environment and Sustainability Committee, 7 January 2014

⁵ RoP 27 November 2014 c.261

⁶ Ibid c.577

⁷ Letter from the Minister for Natural Resources to the Chair of the Environment and Sustainability Committee, 10 December 2014

revision of existing plans to ensure they are all in conformity. The Minister's 10 December letter to the Chair explains that LPAs will have to consider the NDF once it is adopted and whether or not their adopted LDP needs amending. Also LDPs once adopted will need to be reviewed as soon as possible after the adoption of a Strategic Development Plan (SDP).⁸

20. When the Minister appeared before us on 14 January 2015, he refuted the suggestion that this Bill added complexity and suggested instead that the concerns expressed by stakeholders stemmed from an apprehension caused by the prospect of change:

“I think that what organisations are, perhaps, concerned about is understanding different things. Change is always a challenge for organisations to move forward through [...]”⁹

Our view

21. We have previously called for reforms of the planning system in Wales and are aware of the need for improvements in the performance of the planning system for the delivery of a wide range of policy objectives; not least measures to tackle the challenge of climate change.

22. The Welsh Government has responded to those calls and has introduced the Planning (Wales) Bill as a central element of its response, though there are a range of other actions being taken alongside this including revision of secondary legislation and guidance.

23. The Government has our broad support for attempting to improve the efficiency of the system, but we must temper this support with concerns about aspects of its approach. In relation to the Bill, we are concerned that certain provisions provide the Welsh Government with broad powers that are not sufficiently safeguarded; add additional complexity to the planning system; and potentially make it a less democratic process.

24. It is also important to recognise that, as a piece of legislation, this Bill principally establishes a new framework for planning in Wales. It is remarkably silent on the detail of the reforms that are to be made with these being largely left to policy, guidance and secondary legislation. This includes the granting of 65 subordinate legislation making powers to Welsh Ministers.

⁸ Letter from the Minister for Natural Resources to the Chair of the Environment and Sustainability Committee, 10 December 2014

⁹ RoP 14 January 2015 c.11

25. Alongside these legislative and structural changes, the Welsh Government will need to take steps to change the culture of planning in Wales, a task that may prove more challenging than changing the law.

26. Principal amongst our concerns is that the provisions in this Bill move power away from the communities and individuals affected by development. We accept that this may not be the Government's intention, but the centralising of powers and reforming of processes could have the accumulative effect of eroding local democracy.

27. The Welsh Government's proposals for place plans could go some way towards addressing this. We believe that this Bill offers an opportunity to strengthen local voices, if amended.

28. To address our concerns regarding the complexity of the system, we agree with the Minister that it would be advantageous to have a consolidation bill at a suitable point in the future to replace the increasingly complex planning Acts for England and Wales. This could enhance the transparency and accessibility of the planning system in Wales. We are aware of the Law Commission's work in this area and look forward to considering its conclusions in due course.

29. We appreciate that the Welsh Government has provided additional information about how it intends to use some of the powers that it will gain through the Bill, both through a number of concurrent consultations and by publishing Statements of Policy Intent. However the timing of these consultations has made it difficult for us to consider their implications in this report.

30. Notwithstanding our concerns, which we hope the Minister will consider as areas for potential amendment, we are content to recommend that the Assembly agrees to the general principles of the Bill.

We recommend that the Assembly supports the general principles of this Bill

We recommend that the Minister brings forward an amendment to the Bill to give Place Plans a formal development plan status under Section 38 of the Planning and Compulsory Purchase Act 2004 and gives further consideration to how local communities can be given greater opportunities to engage in the preparation of all development plans.

1.4 Costs and benefits

31. We have received evidence that questions the costs and benefits of the Bill as set out in the Regulatory Impact Assessment ('the RIA'). The main issues raised are around:

- costs associated with new requirements such as pre-application consultation, for developers, LPAs and statutory consultees;
- the costs of producing new types of development plan (NDF and SDPs) and reviewing existing plans to ensure conformity, given the constraints on public expenditure;
- Long-term benefits that may not be achieved without short-term investment to implement the changes required;
- the lack of priority given to planning and it being seen as a 'Cinderella' service within local authorities;
- the loss of skilled local authority planners able to carry out 'strategic planning' work;
- the resource implications for the Welsh Government of producing a NDF and taking decisions on Developments of National Significance ("DNS") given a reducing budget for the planning function.

32. The Welsh Government stated in its Draft Budget 2015-16 narrative document:

"We are continuing to invest over £6m in 2015-16 to support a robust and efficient planning system in Wales."¹⁰

33. All the Welsh Government costs relating to this Bill will be met from the Planning and Regulation spending programme area within the Natural Resources portfolio. The Natural Resources resource allocations show the Planning budget is forecast to decrease by 5.7%, from an allocation of £6.8 million in the June 2014 supplementary budget to £6.4 million in the 2015-16 Draft Budget.

34. We put these concerns to the Minister at our meeting on 14 January 2015.¹¹ In response, the Minister recognised the challenge posed by decreasing budgets but was adamant that this would not prevent the Government from delivering its objectives.

¹⁰ Welsh Government, Welsh Government Draft Budget for 2015-16: Priorities for Wales, September 2014 p.72

¹¹ RoP 14 January 2014

“I’m confident we can do this. I’m confident, with the budget mechanisms we have in place, we will be able to deliver.”¹²

35. The Minister also acknowledged the need to lay a revised RIA before the Assembly.

Our view

36. We are concerned that aspects of the RIA have not accurately estimated the true costs of the changes that this legislation will introduce and hope that the revised RIA will address the concerns raised by stakeholders.

37. We will continue to monitor the financial implications of this Bill through our regular financial scrutiny session and our annual consideration of the Welsh Government’s draft budget.

We recommend that the Minister lays a revised Regulatory Impact Assessment before the Assembly in advance of the debate on the general principles of the Bill.

1.5 Statutory Purpose for Planning

38. The Independent Advisory Group’s (“the IAG”) report recommended a statutory purpose for planning on the face of the Bill¹³ and we endorsed this recommendation after our pre-legislative scrutiny of the Draft Bill.¹⁴

39. In terms of the statutory purpose, the IAG recommended that:

“The purpose of the town and country planning system is the regulation and management of the development and use of land in a way that contributes to the achievement of sustainable development.”¹⁵

40. It also recommended that the Bill should include a provision that would allow the Welsh Ministers to issue guidance to LPAs on application of the purpose.¹⁶

¹² RoP 14 January 2015 c.36

¹³ Independent Advisory Group, *Towards a Welsh Planning Act: Ensuring the planning system delivers*, June 2012 p.13

¹⁴ Letter from the Chair of the Environment and Sustainability Committee to the Minister for Housing and Regeneration, 10 April 2014

¹⁵ Independent Advisory Group, *Towards a Welsh Planning Act: Ensuring the planning system delivers*, June 2012 p.13

¹⁶ Ibid

41. A number of respondents have also called for a statutory purpose (including Wales Environment Link, Cymdeithas yr Iaith Gymraeg, various local authority leaders, Friends of the Earth Cymru, RSPB). It is argued that inclusion of this purpose would ensure that sustainable development is the central principle for all planning decisions, particularly where development plans may be absent, or in conflict.

42. There is already a statutory requirement for LPAs to prepare their Development Plans in accordance with the objective of contributing to the achievement of sustainable development, under Section 39 of the *Planning and Compulsory Purchase Act 2004* (PCPA 2004).¹⁷ However this requirement does not cover the development management side of the planning system.

43. The RTPI suggested in its oral evidence that a statutory purpose could be on the face of the Bill, but the definition could be defined in Planning Policy Wales to allow some flexibility to amend the definition.¹⁸

44. In the evidence session on 27 November the Minister said that a “planning sustainable development duty” will be a part of the Well-being of Future Generations (WFG) Bill and he did not believe it was necessary to reiterate this in the Planning Bill. This is referring to a general duty rather than a planning-specific duty.¹⁹

45. The UK Environmental Law Association (“the UKELA”) made the point to us that:

“[...] there is a fundamental distinction between planning for future generations—or, as we might say, sustainable development—and the idea of positive land use planning. I think that there is quite a distinction there. We are not entirely sure what ‘positive land use planning’ means. We would have preferred to have seen, at the very start of the Bill, a statutory purpose for planning in terms of future generations’ wellbeing.”²⁰

46. The Law Society pointed out that the idea of a statutory purpose as recommended by the IAG was as “a useful fall-back, so that, if you do not have any development plan assistance, or you have an out-of-date provision,

¹⁷ The Planning and Compulsory Purchase Act 2004 c.5

¹⁸ RoP 3 December 2014 c.229

¹⁹ RoP 27 November 2014 c.240

²⁰ RoP 3 December 2014 c.380

you have this underlying, overarching purpose to the system, which is to achieve sustainable land use”.²¹

47. Cymdeithas yr Iaith Gymraeg has suggested that a statutory purpose for planning on the face of the Bill should include a definition of sustainable development and well-being that incorporates the importance of the Welsh Language.²²

48. On 14 January, the Minister explained that he believes that the existence of the Well-being of Future Generations (Wales) Bill, and the linkage that it has with the Planning (Wales) Bill, negates the need for a statutory purpose on the face of the Bill.²³

Our view

49. The IAG recommended that a statutory purpose for planning be included on the face of the Bill. When we considered the draft Bill in 2014, the evidence we took supported this and we made a similar recommendation to the Welsh Government.

50. The evidence we have taken in relation to the Bill has raised further good reasons for the inclusion of a statutory purpose. We do not believe that the inclusion of a statutory purpose would negatively affect the Government’s policy objectives, or conflict with the provisions of the Well-being of Future Generations Bill. In fact, we believe that the inclusion of a statutory purpose could make the linkages between the two Bills more explicit - a step that can only be of benefit to those interpreting this legislation in the future.

We recommend that the Minister brings forward an amendment to the Bill in order to insert a statutory purpose for planning. This should be drafted along similar lines to the statutory purpose recommended by the Independent Advisory Group in its report.

We also recommend that the Bill is amended to include a provision that would allow the Welsh Ministers to issue guidance to Local Planning Authorities on how to apply the statutory purpose.

²¹ RoP 3 December 2014 c.389

²² RoP 11 December 2014 c.263

²³ RoP 14 January 2015 c.75

1.6 Welsh Language

51. We received written submissions calling for the Planning Bill to change the law so that planning permission can be approved or refused on the grounds of the impact of a proposal on the Welsh language alone. This includes the local authority leaders and councillors from eight Councils (Bridgend, Carmarthenshire, Ceredigion, Conwy, Gwynedd, Pembrokeshire, Wrexham, Ynys Môn).²⁴ Cymdeithas yr Iaith Gymraeg states in its written submission that there is no statutory defence for planning authorities or planning committee authorities if they wish to refuse, or permit, an application based on its language impact. It believes that this strengthens the case to make the Welsh language a statutory material consideration which would itself be a sufficient reason to refuse or permit a planning application.²⁵ This approach was highlighted by the Law Society in its evidence as potentially incompatible with other human rights and European law.²⁶ The Minister also drew attention to this in his evidence to the committee.

52. However on 11 December Emyr Lewis representing Dyfodol i'r Iaith said that:

“This is another point that was raised by the Law Society, as a kind of sub-clause. I agree that there has been a misunderstanding—that those who are asking for something to happen in relation to the language in this Bill are asking for the Welsh language to override any other issues, and I do not think that anyone is actually making that request.”²⁷

53. He suggested instead that in some circumstances the Welsh Language needs to be given greater weight in balancing decisions on planning applications and that the current status of TAN 20 as guidance only was inadequate. He said that at present the problem is that the “locus of the Welsh language within that [balancing] equation is very fragile indeed”.²⁸ He also agreed that the Bill needs to be amended and strengthened to make

²⁴ Environment and Sustainability Committee Consultation Response PB 09, *Planning (Wales) Bill; Submission from various local authority leaders*, November 2014

²⁵ Environment and Sustainability Committee Consultation Response PB 51, *Planning (Wales) Bill; Submission from Cymdeithas yr Iaith Gymraeg*, November 2014

²⁶ Environment and Sustainability Committee Consultation Response PB 55, *Planning (Wales) Bill; Submission from The Law Society of England and Wales*, November 2014

²⁷ RoP 11 December 2014 c.302

²⁸ Ibid c.315

clear the planning system's role in delivering the duty imposed by the Well-being of Future Generations Bill to ensure a thriving Welsh language.

54. The potential role of language impact assessments was emphasised by the staff of the Welsh Language Commissioner. They argued that language impact should be considered in the same way and alongside environmental and sustainability impact assessments:

“[...] what we are asking for is for language impact assessments to be held jointly with environmental and sustainability impact assessments. Those assessments would go hand in hand, and you would get a full picture of the effect of a development on those material considerations. So, the Welsh language would not be treated as something separate, but as part of the package.”²⁹

55. The revised Technical Advice Note 20 (“TAN 20”) requires the LPA when preparing its LDP to include an assessment of the impact of the plan and its development proposals on the Welsh language, as part of a wider Sustainability Appraisal.³⁰ However individual applications should not be subject to Welsh Language Impact Assessment, as according to the guidance, this would duplicate the site selection process of the LDP.

56. The WLGA however pointed out the anomaly that exists in current national planning guidance. TAN 20 states that Language Impact Assessments are not necessary for individual planning applications, but TAN 15 does expect Flood Consequence Assessments to be carried out for some individual applications.³¹

57. In England the *Localism Act 2011*³² amended the *Town and Country Planning Act 1990*³³ so that Section 70 now reads as follows:-

70 Determination of applications: general considerations

(1) Where an application is made to a local planning authority for planning permission—

²⁹ RoP 11 December 2014 c.247

³⁰ Welsh Government, Technical Advice Note 20: Planning and the Welsh Language, October 2013

³¹ RoP 27 November 2014 c.448

³² The Localism Act 2011 c.20

³³ The Town and Country Planning Act 1990 c.8

- (a) subject to sections 91 and 92, they may grant planning permission, either unconditionally or subject to such conditions as they think fit; or
 - (b) they may refuse planning permission.
- (2) In dealing with such an application the authority shall have regard [to—
- (a) the provisions of the development plan, so far as material to the application,
 - (b) any local finance considerations, so far as material to the application, and**
 - (c) any other material considerations].

58. The reference to local finance considerations as a ‘material consideration’ was introduced into primary legislation at a late stage by the UK Government and was the subject of some controversy. The Explanatory Notes to the *Localism Act 2011* explain that the provision is to provide clarity and is not changing the legal position as to weight.³⁴ This is because it does not change section 38 of the PCPA 2004 which still requires decisions to be made in accordance with the development plan, unless material considerations indicate otherwise. It does however make it clear that local finance considerations can be a material consideration. Cymdeithas yr Iaith Gymraeg drew attention to the fact that the reference to local finance considerations as a ‘material consideration’ had been added to the primary legislation in England, suggesting that this sets a precedent for making a similar change referring to the Welsh language in Wales.³⁵

Our view

59. This Bill offers an opportunity to support the growth of the Welsh Language across Wales. We heard compelling arguments for utilising this Bill to enhance the duty on planning authorities to assess the impact of plans on the Welsh Language and to make it clearer to those making planning decisions that the Welsh Language can be a material consideration when considering individual planning applications. Additionally, we acknowledge

³⁴ United Kingdom Government, Department for Communities and Local Government, *The Localism Act 2011: Explanatory Notes*, November 2011

³⁵ RoP 11 December 2014 c.298

the evidence we received that suggested that the Welsh Language should not be an overriding material consideration.

60. We believe that the Minister should bring forward amendments to ensure that impacts on the Welsh language are assessed and considered as part of the plan creation process at all levels i.e. NDF, SDP, LDP and Place Plans.

61. Additionally, we believe that the Bill should make it clear to all involved in the planning process that the Welsh Language can be identified as a material consideration. This could be achieved in a similar way to the approach taken by the UK Government to amend the TCPA 1990 (through the Localism Act 2011) to make specific reference to local finance considerations as a material consideration.

We recommend that the Minister brings forward amendments to place a requirement on those formulating plans to undertake an assessment of the impact development plans will have on the Welsh Language when preparing Local Development Plans, Strategic Development Plans and the National Development Framework. For Place Plans, a language assessment should form part of a general sustainability appraisal.

We recommend that the Minister brings forward an amendment to Section 70 of the Town and Country Planning Act 1990, to make it clear to all involved in planning that decision makers can have regard to the impact on the Welsh Language so far as it is material to an application. Any amendment should be clarificatory and not change the position as to weight.

We recommend that the Minister introduces a requirement to carry out Language Impact Assessments for certain major planning applications.

We recommend that the Welsh Language Commissioner should be given a formal role in assessing the quality of language impact assessments, both for development plans and for certain major planning applications to ensure consistency. In making this recommendation we wish to be clear that we are calling for a role for the Welsh Language Commissioner in assessing the quality of language impact assessments and not to have a role in the planning application process.

1.7 Links with other existing and proposed planning regimes

62. Witnesses and consultees have called for more explicit information about how the different types of plans proposed in the Well-being of Future Generations (Wales) Bill, the Planning (Wales) Bill and the forthcoming Environment (Wales) Bill will relate to one another and some have suggested that these linkages should be explicit on the face of each Bill.

63. The Chair has written to the Minister to ask specifically whether or not the intention is to use the Environment Bill to make explicit the links between Natural Resources Planning and Development Plans.³⁶ The Minister's 7 January letter confirms that it is not currently his intention to use the Environment Bill to amend the Planning Bill. Instead the link with natural resources planning will be indirectly through the well-being goals and the local well-being plans to be produced by Public Service Boards. The letter does however say that the Area Statements required by the Environment Bill will be used to inform both local well-being plans and development plans. The letter also suggests that well-being goals will feed directly into the NDF and indirectly into SDPs and LDPs.³⁷

64. The Well-being of Future Generations Bill will introduce a statutory requirement for LDPs to have regard to local well-being plans. It is not clear whether a similar requirement will also be introduced for SDPs. Also it is unclear how National Natural Resources Policy and any 'national environment goals' will feed into preparation of the NDF.

65. The need for linkages with other statutory and non-statutory planning regimes has also featured in the evidence. Links with transport planning are explicit in the regulations for LDPs (the LDP must have regard to any Local Transport Plan prepared under the *Transport Act 2000*) and presumably are likely to be included in similar regulations for SDPs. However there is no specific link made in the Bill between statutory national transport planning arrangements under the *Transport Act 2000/Transport (Wales) Act 2006* and the NDF.

66. The Minister and his Chief Planner told us that the Bill does in fact deal with the linkages between plans through general provisions that require

³⁶ Letter from the Chair of the Environment and Sustainability Committee to the Minister for Natural Resources, December 2014

³⁷ Letter from the Minister for Natural Resources to the Chair of the Environment and Sustainability Committee, 7 January 2015

national policies to be considered when creating the NDF, SDPs and LDPs.³⁸ The Minister's letter, dated 9 January 2015, provided annexes that provide further details of how he sees the relationship between various plans working.³⁹

67. On Marine planning, the Minister said that the Bill was about terrestrial planning only.⁴⁰ Pembrokeshire Coast National Park Authority however pointed out that in parts of Wales where offshore energy infrastructure was being developed, marine and terrestrial planning need to be dovetailed.⁴¹

68. In relation to marine planning, the Minister again pointed to the role guidance will play.⁴²

Our view

69. The Minister's letter to us on 9 January goes some way towards explaining how the Bill will interrelate with the new structures to be created by the Well-being of Future Generations Bill.

70. During the course of our work on this Bill we have also heard some evidence, particularly from the Minister and his officials, that starts to explain how the proposed national Natural Resources Policy and area-based Natural Resource plans will interface with the planning regime. However, some lack of clarity persists and we expect these relationships to be clearly explained before the introduction of the Environment Bill.

We recommend that the Welsh Government clearly explains how the proposed national Natural Resources Policy and area-based Natural Resource plans will interface with the planning regime before the introduction of the Environment Bill.

71. Whilst the Bill offers general powers to the Welsh Ministers that would allow them to consider relevant policies in the formulation of the NDF, it does not specify any particular policies or other statutory planning regimes. We are concerned, particularly given the lack of priority given to marine policy in the past, that terrestrial and marine planning may not dovetail as well as it might unless the Minister takes steps to make his expectations clear in this

³⁸ RoP 14 January 2015 cc.83-90

³⁹ Letter from the Minister for Natural Resources to the Chair of the Environment and Sustainability Committee, 9 January 2015

⁴⁰ RoP 27 November cc.262-263

⁴¹ Ibid c.492

⁴² RoP 14 January 2015 c.98

regard. The Bill will already amend the *Marine and Coastal Access Act 2009* requiring marine plan authorities to have regard to development plans when preparing marine plans. It seems sensible to us for the Bill to include a similar requirement for development plans to have regard to marine plans, where appropriate.

We recommend that the Minister brings forward amendments to the Bill to ensure that marine and terrestrial planning is closely aligned and that plan-makers (including Welsh Ministers) are required to have due regard for the interrelationship between these two environments.

72. Transport planning is another area of concern to us, given its crucial position in any form of strategic or national planning. We believe that the Bill could be improved by specifically linking statutory national and regional transport planning arrangements and the NDF.

We recommend that the Minister brings forward amendments to the Bill to link statutory national and regional transport planning arrangements to the National Development Framework and Strategic Development Plans.

73. We also believe that making the linkages between this Bill and the Well-being of Future Generations Bill explicit would aid understanding of how these laws interrelate.

We recommend that the Minister brings forward amendments to the Bill to link it to the Well-being of Future Generations Bill. These amendments should include a formal link between the National Development Framework and the well-being goals.

We recommend that the Minister confirms that the regulations for Strategic Development Plans will include a requirement for these plans to have regard to the relevant Local Well-being Plans.

1.8 National Parks

74. The Minister has stated his intention to bring forward amendments about the role of National Parks as LPAs. The Minister's letter of 7 January confirms that he is proposing to bring forward an amendment to the Bill that would give the Welsh Ministers the power to create Joint Planning Boards that could in future include whole or part of a National Park.⁴³ Currently such

⁴³ Letter from the Minister for Natural Resources to the Chair of the Environment and Sustainability Committee, 7 January 2015

boards can only be created by merging a LPA with whole or part of at least one other LPA, but specifically excluding any part of a National Park. The Bill would already make it possible to direct a National Park Authority and another LPA to produce a joint LDP.

75. The Minister is not, at present, proceeding with the proposal to remove planning functions altogether from National Park Authorities that was consulted on as a possible option in Positive Planning. He confirmed this at our meeting on 14 January 2015.⁴⁴

76. At that same meeting, the Minister stated that he wanted the power to merge the planning functions of national park authorities with other LPAs to put them on the same footing as all other LPAs in Wales. He also expressed his view that there was no reason why protected landscape considerations could only be considered by national park authorities, citing the example of other LPAs considering development in Areas of Outstanding Natural Beauty (AONBs).⁴⁵

77. The Minister also stated that he had no plans to merge national park authority LPAs at the present time.⁴⁶

78. In his letter to us dated 21 January 2015, the Minister provides more information on this issue. However, his response does not focus on differences in planning performance, more on broader policy issues where LPAs and National Park Authorities have not been joined-up in their approach.⁴⁷

Our view

79. We have not received sufficient evidence to suggest that planning functions should be removed from national park authorities and are pleased that the Minister has confirmed that he is not pursuing this option.

80. Neither have we received evidence to suggest any benefits from merging the planning functions of national park authorities with other LPAs. In fact, the Minister's evidence to us suggested that national park authorities are performing as "exactly as good" as other LPAs in delivering planning

⁴⁴ RoP 14 January 2015 c.42-70

⁴⁵ Ibid

⁴⁶ Ibid

⁴⁷ Letter from the Minister for Natural Resources to the Chair of the Environment Committee, 21 January 2015

outcomes within protected landscapes.⁴⁸ We are not convinced that the Welsh Government's commissioned research on the Delivery of Planning Services in Statutory Designated Landscapes has demonstrated that planning decisions made by LPAs in AONBs were as effective in protecting these landscapes as those made by national park authorities, as was claimed by the Minister's Chief Planner. Our view is that the evidence in the report is less conclusive.

81. We appreciate that the Minister may seek (through amendment to the Bill) the power to create Joint Planning Boards that could in future include whole or part of a National Park and that he is seeking this power so that he has it at his disposal should he consider it necessary to merge authorities in the future i.e. rather than seeking this power for a pre-determined purpose. We can see why the Minister would consider this desirable.

82. However, such is the importance of safeguarding our national parks that we believe that powers which would allow a Government to amend any of the national park authorities' functions should only be granted in light of overwhelming evidence. Whilst we do not doubt this Minister's intentions, we do not believe the case has been made for granting these powers at this time.

We recommend that the Minister leaves the Bill as drafted in relation to National Parks and that he reconsiders his intention to bring forward amendments to give Welsh Ministers the power to create Joint Planning Boards that could in future include whole or part of a National Park.

1.9 Health Impact Assessments

83. Some consultees have called for a statutory requirement for Health Impact Assessments (HIA) to be carried out at various stages in the planning system. The British Medical Association Cymru has argued for a statutory requirement for HIA in relation to larger-scale planning applications.⁴⁹ Tenovus argues that HIA should become a statutory part of LDP preparation and "within planning processes".⁵⁰ Public Health Wales calls for HIA to become a statutory requirement within preparation of the NDF, SDPs and

⁴⁸ RoP 14 January 2015 c.64

⁴⁹ Environment and Sustainability Committee Consultation Response PB 40, *Planning (Wales) Bill; Submission from the British Medical Association Cymru*, November 2014

⁵⁰ Environment and Sustainability Committee Consultation Response PB 1, *Planning (Wales) Bill; Submission from Tenovus*, November 2014

LDPs and also as part of the DNS application process.⁵¹ Sustrans would like to see HIAs made mandatory in the planning system “in certain circumstances”.⁵²

84. Planning Policy Wales states that as part of sustainability appraisals carried out by LPAs when preparing LDPs “the several impacts of plans upon health and its determinants should be considered”.⁵³

Our view

85. We believe that there is merit in the Minister considering whether a requirement to undertake HIAs should be included on the face of the Bill at the development plan stage and for some types of planning application. Associated policy and guidance also needs to be revised to ensure that the health impacts of development are appropriately considered.

We recommend that the Minister considers whether a requirement to undertake Health Impact Assessments should be included in the Bill at the development plan stage and for some types of planning application. Associated policy and guidance should be revised to ensure that the health impacts of development are appropriately considered.

1.10 Planning Inspectorate

86. We have received some evidence to suggest that a separate Planning Inspectorate for Wales could be desirable, rather than as a branch of an England and Wales organisation. This was particularly in the context of the consideration of the Welsh Language in the planning system and the increasingly divergent regimes that are now developing separately in England and Wales as a consequence of devolution.

87. Whilst we do not make a recommendation in this area, we believe that there is merit in the Welsh Government giving this issue some further consideration.

⁵¹ Environment and Sustainability Committee Consultation Response PB 25, *Planning (Wales) Bill; Submission from Wales Health Impact Assessment Support Unit*, November 2014

⁵² Environment and Sustainability Committee Consultation Response PB 57, *Planning (Wales) Bill; Submission from Sustrans*, November 2014

⁵³ Welsh Government, *Planning Policy Wales*, July 2014

2. Part 2 – Development Planning: the National Development Framework and Strategic Development Plans

2.1 National Development Framework (Section 2)

Development Plan status and Scrutiny arrangements

88. The Minister’s 10 December letter confirms that the NDF will have formal development plan status and that sites for Developments of National Significance (DNS) could be identified through the NDF.

According to the letter:

“Such proposals would then be subject to the formal preparation process as proposed by the Bill, be evidence-based and able to stand scrutiny by the National Assembly for Wales. [...] This mirrors the process for the inclusion of allocations in an LDP. Robust evidence to support the inclusion of such development will be critical.”⁵⁴

89. The Bill as currently drafted requires the Welsh Ministers to publish a statement of public participation setting out how it will carry out its own consultation on the NDF. Any subsequent public participation must be in accordance with this statement. However the Bill itself does not specify what these consultation arrangements will be. The EM (paragraph 3.21) states that there will be a “statutory” 12 week consultation period, but this is not on the face of the Bill and there are no regulations to be made specifically about the procedures for the production of the NDF.

90. One Voice Wales argued that, in any case, 12 weeks for consultation on the NDF is far too short a period if it is to engage with local communities.⁵⁵ The WLGA commented on the shortness of the consultation period compared with the process for LDP preparation.⁵⁶

91. The current arrangements for scrutiny by the Assembly require the Welsh Ministers to lay a draft of the NDF before the Assembly and subsequently for them to “have regard to” any resolution passed about the framework or any recommendation made by an Assembly Committee. The NDF does not need to be approved by the Assembly and the Welsh Ministers

⁵⁴ Letter from the Minister for Natural Resources to the Chair of the Environment and Sustainability Committee, 10 December 2014

⁵⁵ RoP 27 November 2014 c. 627

⁵⁶ RoP 27 November 2014 c.459

do not have to explain how they have taken the views of the Assembly into account. Also the period for Assembly consideration is set by the Bill at 60 days.

92. PEBA told the committee:

“[...] at the moment the Bill simply requires the Ministers to have regard to what is said in the National Assembly debate about that. That is obviously quite a low threshold as to what actually goes into that document. That document is clearly going to be fairly site-specific, because the Bill includes provisions for blight notices to be served on the basis of what is included within it. So, there are quite site-specific allocations, if you like, being made at that very, very high level with the only scrutiny, effectively, being through debate in the Assembly and then a duty on the part of the Government to have regard to that, but not necessarily to follow what is said.”⁵⁷

93. There are concerns about the 60 day period for consideration by the Assembly. RSPB Cymru stated in its written evidence:

“Our experience in Scotland with regard to the Scottish National Planning Framework is that a 60 day scrutiny period is insufficient in this respect, and consequently, we advocate a 100 day period. We understand that a number of Members of the Scottish Parliament voiced similar concerns about the 60 day timescale.”⁵⁸

94. The Scottish Parliament’s Rural Affairs, Climate Change and Environment Committee has recently reported on the third version of the Scottish National Planning Framework that:

“[...] stakeholders were concerned that the period of 60 days was insufficient to enable effective scrutiny of the draft NPF3... The Committee recommends that the Scottish Government reviews the process for consideration of the NPF with a view to extending the timescales for future parliamentary scrutiny to a minimum of 90 sitting days.”⁵⁹

⁵⁷ RoP 3 December 2014 c.351

⁵⁸ Environment and Sustainability Committee Consultation Response PB 32, *Planning (Wales) Bill; Submission from RSPB Cymru*, November 2014

⁵⁹ The Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *2nd Report, 2014 (Session 4): Report on the Proposed National Planning Framework 3*, 14 March 2014

95. Commenting on the 60 day period, the Minister told the committee:

“We believe it is appropriate. It does not seem to have been an issue before in terms of scrutinising the spatial plan, but if committee feels it should be longer, it is something I would consider.”⁶⁰

96. The Chair has written to the Presiding Officer about the implications of the Bill for the Assembly, given its role in scrutinising the NDF, particularly as it will have development plan status.⁶¹ The Presiding Officer replied on 8 January. In her reply she suggests that the Assembly should have the power to determine its own scrutiny arrangements. She also raises questions about the 60-day period, the significance of the NDF having development plan status and the different arrangements that are or will be in place for independent scrutiny of LDPs and SDPs. She also points out the difference between the current arrangements for the Assembly to approve the Wales Spatial Plan, whilst the Welsh Government will only be required to ‘have regard to’ the views of the Assembly on the NDF.⁶²

Our view

97. Proposals currently suggest that the Welsh Government’s public consultation period for the draft NDF should be 12-weeks. We believe that this is too short a period for consulting on such a significant plan. We also believe that to provide certainty to stakeholders, the consultation period should be on the face of the Bill.

We recommend that the Minister brings forward an amendment to the Bill to specify the length of the consultation period for a draft National Development Framework on the face of the Bill. We recommend that such a period should be longer than 12 weeks.

98. The creation of the NDF has significant implications for the National Assembly for Wales, if the Assembly is to provide a thorough scrutiny of this plan in a manner that is analogous to the inspection phase in the LDP process and in keeping with parliamentary procedure for the consideration of issues where private interests may be particularly affected.

⁶⁰ RoP 27 November 2014 c.70

⁶¹ Letter from the Chair of the Environment and Sustainability Committee to the Presiding Officer, 11 December 2014

⁶² Letter from the Presiding Officer to the Chair of the Environment and Sustainability Committee, 8 January 2015

99. It is clear to us that it should be for the National Assembly for Wales to determine the scrutiny arrangements that apply to the NDF, including the timescale within which it is considered. The current period of 60 days is grossly inadequate for a thorough scrutiny of this plan. In comparison, the Planning Inspectorate works to a target of 12 months for completing the inspection of an LDP.

100. We make further comment in relation to the accumulative impact this Bill could have on the rights the individual in chapter 5 of this report. In specific relation to the NDF, we believe that restricting the timescale available for the examination of the NDF by the Assembly will increase the risk identified by stakeholders of a 'democratic deficit' in relation to proposals that might have an impact on people's rights, including property rights and their right to family life. Conversely, by removing the restriction on scrutiny that the Bill is currently seeking to impose and allowing the Assembly to undertake a thorough consideration of the NDF, this 'democratic deficit' in relation to the NDF, could be reduced significantly.

We recommend that the Minister brings forward amendments to enable the National Assembly for Wales to determine its own procedure for considering the draft National Development Framework and, as part of these amendments, the Minister removes any restriction on the Assembly's consideration of the draft National Development Framework, in particular the 60-day consideration period specified in Section 2 of the Bill.

101. Currently, the Wales Spatial Plan must be agreed by the Assembly. The NDF carries more significance in planning terms as a formal development plan, yet there is only a requirement for Welsh Ministers to have regard to the views of the Assembly on the NDF.

102. We see no justification for a weakening of the Assembly's role in the approval of this significant plan. Requiring Assembly approval as the last stage of NDF process would add significant legitimacy to the Assembly's consideration and to the NDF itself.

We recommend that the Minister must amend the Bill to require Assembly approval of the National Development Framework.

103. In making the above recommendation, we wish to be clear that provisions requiring Welsh Ministers to have regard to the views of the Assembly on the draft NDF should remain on the face of the Bill.

Other NDF issues

104. Some respondents have argued for the NDF to have a defined lifetime so it can remain flexible. According to the Home Builders Federation: “we recommend that the NDF has genuine engagement and public scrutiny in its preparation and then it is reviewed every three years rather than the five suggested”.⁶³

105. Some witnesses are concerned that it is not clear whether or not the NDF will incorporate environmental constraints, including areas of landscape significance, as well as areas of opportunity for development.

106. The Wales Environment Link:

“We see the National Development Framework as an opportunity to plan, not just for built infrastructure, but for green infrastructure, wildlife, designated landscapes and natural resource management.”⁶⁴

107. The UKELA said:

“[...] we are particularly concerned about how the process of creating the NDF is going to relate to processes for natural resource management.”⁶⁵

108. The Minister’s 10 December letter confirms that the NDF will need to take account of Nationally Significant Infrastructure Projects (NSIPs), where these “could have a bearing on Wales”, but the appropriate consenting regimes would need to be “clearly articulated”. It gives as an example Wylfa Newydd, where the scale of development would have significant wider implications.⁶⁶

Our view

109. We support the provisions of the Bill that seek to ensure that the NDF is considered for review at least once every five years, but we believe that these provisions should be stronger.

⁶³ Environment and Sustainability Committee Consultation Response PB 34, *Planning (Wales) Bill; Submission from the Home Builders Federation*, November 2014

⁶⁴ Environment and Sustainability Committee Consultation Response PB 16, *Planning (Wales) Bill; Submission from Wales Environment Link*, November 2014

⁶⁵ RoP 3 December 2014 c.361

⁶⁶ Letter from the Minister for Natural Resources to the Chair of the Environment and Sustainability Committee, 10 December 2014

110. We believe that the NDF should cease to have effect after five years unless it is revised or Welsh Ministers lay a statement before the National Assembly for Wales explaining why the NDF is not in need of revision.

We recommend that the Minister brings forward amendments to the Bill to specify the period for which the National Development Framework is to have effect.

2.2 Strategic Development Plans (Sections 3-9)

Need for SDPs

111. We received mixed views about the need for this additional tier in the development plan hierarchy, particularly in the light of local government reorganisation proposals and the additional powers for Ministers to either direct LPAs to prepare joint LDPs or to merge LPAs to form a Joint Planning Board that can produce an LDP for the merged area.

112. The need for a larger than local or a 'regional' approach to planning for strategic issues is generally accepted. However some consider that in a small country like Wales this could either be dealt with through the NDF, or through LPAs informally working together on these strategic issues. Larger LPAs will in any case exist after local government reorganisation.

113. NRW suggested that if there were only six LPAs then having plans for these six areas would be sufficient.⁶⁷

114. The UKELA states that "If a strong and comprehensive NDF is to be introduced for a relatively small country such as Wales, there does not appear to be a case for developing SDPs [...] for particular areas".⁶⁸

115. The Minister however argued that SDPs did not represent an additional tier but rather a "redistribution of choice". Also he said that the Bill was future-proofed so that "whatever happens to local government and LPAs in the future, the strategic plan could be developed".⁶⁹

Designation of a Strategic Planning Area

116. He also said that SDPs "will be based on working with local authorities, so they will determine whether they will wish to have an SDP not." However

⁶⁷ RoP 3 December 2014 c.58

⁶⁸ Environment and Sustainability Committee Consultation Response PB 46, *Planning (Wales) Bill; Submission from the UK Environmental Law Association*, November 2014

⁶⁹ RoP 27 November 2014 c. 119

the Bill as drafted gives Welsh Ministers the power to make regulations to designate a strategic planning area (SPA) and establish a Strategic Planning Panel.

117. The Minister's Chief Planner stated that:

"[...] what the evidence has shown from the LDP process is that those strategic issues have been dealt with inadequately through the LDP process. So, this is an opportunity to look at them over a wider area and achieve the best possible planning outcomes."⁷⁰

118. The Minister's 10 December letter has clarified the implications for LPAs where only part of their area is within a SPA, which is a possible outcome from the Bill as drafted.

119. The letter states that "issues relating to data collection or broader consistency are likely to mean that whole LPAs are included. This could be a more pragmatic solution, rather than increase fragmentation and complexity". However he also points out that it would be for those authorities involved in preparation of the SDP to determine. The Bill does enable the Welsh Ministers to change a SPA proposed by LPAs, subject to consultation with the authorities.⁷¹

Strategic planning in non-SDP areas

120. Some witnesses have argued that strategic planning issues exist in areas outside of the three areas suggested in Positive Planning (South East Wales, Swansea Bay, A55 corridor). There is some uncertainty about whether these issues are to be dealt with at the NDF level or in some other way.

121. The WPCF suggested when considering housing numbers:

"[...] there is a question mark; if you are going to have only three SDPs and there is a gap, what happens in those gap areas?"⁷²

122. However Brecon Beacons National Park Authority stated that the NDF:

"[...] has the potential to provide a strategic planning framework for the whole of Wales, including the rural areas. I am not personally

⁷⁰ RoP 27 November 2014 c.120

⁷¹ Letter from the Minister for Natural Resources to the Chair of the Environment and Sustainability Committee, 10 December 2014

⁷² RoP 3 December 2014 c.189

convinced that there is a case for having strategic development plans to cover every part of Wales.”⁷³

123. The Law Society suggested that the designation of a SPA could be a way of dealing with planning and Welsh language issues:

“[...] you could use the strategic planning model, for example, to address issues relating to planning and the Welsh language across those parts of Wales where the language is spoken by the majority of the population.”⁷⁴

Strategic Planning Panels

124. The most controversial aspect of the SDP proposals is about the make-up of the Strategic Planning Panels (SPPs) and in particular that one-third will be non-elected representatives from social, economic and environmental stakeholders.

125. The Minister told the committee:

“Currently, as proposed within the Bill, the whole panel will have voting rights, but, again, I am interested to understand the views of the committee. That is a starting point for us, but, should the committee have a view on that, I would be very interested to understand it.”⁷⁵

126. Some witnesses have emphasised the importance of the selection/recruitment process to be used to select panel members. FSB Wales stated that this process “needs to be scrutinised properly—whether you have a third or not, there needs to be a process by which we know why those people are appointed”.⁷⁶

127. RTPI Cymru stated in its evidence: “We believe transparency in selecting Panel Members will be important to maintain trust and buy-in from local communities, local authorities and businesses.” It argues appointments

⁷³ RoP 27 November 2014 c.520

⁷⁴ RoP 3 December 2014 c.371

⁷⁵ RoP 27 November 2014 c.141

⁷⁶ RoP 11 December 2014 c.111

should be made following Nolan principles.⁷⁷ This is also supported by the Law Society.⁷⁸

128. The Minister's letter of 7 January explains that he is now considering bringing forward an amendment to the Bill to replace the requirement to publish a list of bodies from which nominations can be sought with an illustrative list to be included in guidance. He has also provided a draft list of the types of organisation that could be included. This includes organisations from the social, economic and the environmental sectors.⁷⁹

129. In Scotland, SDPs are prepared by strategic development planning authorities made up of local authority representatives only, although non-voting members can also be co-opted.

130. The PCPA 2004 introduced statutory regional planning in England for the first time. As a result of the Act, a Regional Planning Body was responsible for preparing a Regional Spatial Strategy for each of the nine English regions. These bodies were required to have at least 30% of their members who were not politicians and these members had full voting rights. However the Regional Planning Bodies have now been abolished.

Links to transport planning

131. The Statements of Policy Intent explain that the Regulations for SDPs will follow the same approach as the 2005 LDP Regulations, including setting out the details of the form and content of the plan. They will also set out the procedures to be followed, including procedures for an independent examination of the plan by the Planning Inspectorate on behalf of Welsh Ministers. As noted above, the LDP Regulations require LDPs to have regard to any Local Transport Plans.⁸⁰

Our view

132. We have received mixed views about the need for this additional tier in the development plan hierarchy, particularly in the light of local government reorganisation proposals and the additional powers for Ministers to either

⁷⁷ Environment and Sustainability Committee Consultation Response PB 24, *Planning (Wales) Bill; Submission from the Royal Town Planning Institute*, November 2014

⁷⁸ Environment and Sustainability Committee Consultation Response PB 55, *Planning (Wales) Bill; Submission from the Law Society*, November 2014

⁷⁹ Letter from the Minister for Natural Resources to the Chair of the Environment and Sustainability Committee, 7 January 2015

⁸⁰ Welsh Government, *Planning (Wales) Bill Statements of Policy Intent*, November 2014

directing LPAs to prepare joint LDPs or to merge LPAs to form a Joint Planning Board that can produce an LDP for the merged area.

133. However we also recognise that the need for a 'larger than local' or 'regional' approach to planning for strategic issues is generally accepted.

134. On balance, we conclude that an SDP could prove to be a useful option in some parts of Wales, particularly the south east and we are therefore broadly supportive of the provisions in the Bill that allow for their creation.

135. The Bill as drafted allows part of a Local Planning Authority area to be included in a Strategic Planning Area. However the Minister has indicated in correspondence with the Committee that Strategic Planning Areas would most likely apply to whole Local Planning Authority areas rather than parts of areas. He explained that this was because of "issues relating to data collection or broader consistency" and "could be a more pragmatic solution, rather than increase fragmentation and complexity".

136. We understand that there could be circumstances where splitting a Local Planning Authority area for strategic planning purposes may be appropriate, although we do have some concerns about the implications of this. In particular this could lead to part of a Local Planning Authority area being covered by a Strategic Development Plan and only requiring a 'LDP-light', whilst the remainder of the area would still need a full LDP. This may increase the complexity of the development plan system.

137. Turning to the Strategic Planning Panels, we share the concerns that have been raised around the role of the unelected membership of these panels and the potential this has for further weakening the democratic accountability of the planning system.

138. To strengthen the democratic accountability of the Panels, we believe that the Bill should be amended to remove voting rights from non-elected members of the panels. We also believe that provisions in the Bill that ensure that meetings of the panel are only quorate when a majority of elected members are present are important.

We recommend that the Minister brings forward amendments to the Bill to remove voting rights from non-elected members of Strategic Planning Panels.

3. Pre-application consultation

3.1 Charges for pre-application consultation

139. NRW raised the issue of whether or not, as a statutory consultee, it will be able to charge for providing responses to pre-application consultations, once providing these responses becomes a statutory duty under Section 15 of the Bill. It argued for the need for boundaries around what it is required to deliver in terms of pre-application advice:

“What we are seeing is that a resource implication is identified for local planning authorities, but perhaps the implication for statutory consultees is a bit uncertain at the moment.”⁸¹

140. Section 16 as currently drafted allows for the Welsh Ministers to make regulations about the provision of a pre-application service by LPAs or the Welsh Ministers. The *Frontloading the development management system* consultation states that LPAs should be able to recover the full cost of providing the pre-application service and that the fees should be based on existing discretionary charges, but possibly excluding a charge for householder developments.⁸² As currently drafted, these provisions do not apply to statutory consultees.

141. On 14 January 2015, the Minister explained that, for statutory consultees, there would be no additional work though they would be required to provide their advice earlier in the process.⁸³

142. RenewableUK Cymru pointed out that charging for pre-application advice can be problematic:

“[...] there are concerns that have emerged from elsewhere in the UK, that during the pre-application consultation and advice periods, statutory consultees can charge for some advice—in pilot projects elsewhere in the UK—but it is not sufficiently clear where that advice is charged for and where that advice is part of the pre-application procedure. That is a difficulty, and that can become a difficulty later in the process, where you have been advised by one statutory consultee in advice to do one thing, but the charged-for advice or the

⁸¹ RoP 3 December 2014 c.29

⁸² Welsh Government, Consultation on frontloading the development management system, October 2014

⁸³ RoP 14 January 2015 c.244

statutory advice that you then receive later down the line contradicts that.”⁸⁴

3.2 Costs associated with pre-application consultation

143. Some stakeholders have raised concerns about the costs associated with carrying out pre-application consultation. Redrow Homes consider that the costs to developers of carrying out pre-application consultation with communities has been “grossly underestimated” in the RIA.⁸⁵ The Minister told the committee that this is because the level of consultation carried out by some developers exceeds the minimum requirements likely to be set out in secondary legislation.

144. He said:

“It is a minimum, but it is much more than communities have had in the past. This is about a signposting process and a letter to the local community. I am aware that some private sector contractors go further than that. [...] This is another part of the Bill that I am very flexible on, in terms of what you think would be appropriate for your communities. It is something I would be happy to take advice on.”⁸⁶

145. The Frontloading the development management system consultation explains:

“[...] we do not want this process to overburden developers but we do want to secure effective publicity. Therefore we propose that the minimum publicity requirements will comprise the following:

- Site notice(s)
- Letters to neighbours, all local ward members, any town or parish councils”⁸⁷

146. However there is a concern that this level of pre-application consultation will be inadequate to ensure that communities are properly engaged with

⁸⁴ RoP 11 December 2014 c.29

⁸⁵ Environment and Sustainability Committee Consultation Response PB 21, *Planning (Wales) Bill; Submission from the Redrow Homes*, November 2014

⁸⁶ RoP 27 November 2014 c.203

⁸⁷ Welsh Government, Consultation on frontloading the development management system, October 2014

development proposals. The Minister told the committee that he was flexible about this part of the proposals and would welcome our views.⁸⁸

147. The NSIP process, in contrast, has much more demanding pre-application consultation requirements that are on the face of the Planning Act 2008.⁸⁹ These include preparing a Statement of Community Consultation, agreeing this with the LPA, publicising it and then implementing it.

148. This means an application for a 49MW energy project in Wales would potentially require far less pre-application consultation than a 51MW energy project.

3.3 Thresholds

149. The threshold for the requirement to carry out pre-application consultation is currently proposed to be for ‘major developments’ only. Some witnesses have suggested that this threshold is either too low or too high.

150. Redrow Homes argued that the ‘major development’ threshold of 10 dwellings should be extended to 50 dwellings, although it recognises that this would not work in rural areas.⁹⁰

151. The Law Society suggested that there might be some types of development that communities would expect to be consulted on, such as applications for small numbers of wind turbines.⁹¹

152. The appropriate threshold is not on the face of the Bill but is part of the separate ‘Frontloading’ consultation.

153. The Front-Loading consultation currently suggests that the minimum requirement will be for site notices and letters to neighbours and local politicians for all applications for “major development”. It will also require consultation with specified statutory consultees. The pre application period is also likely to be set at 21 days. It appears that these proposals will also apply to DNS applications and at present there is no requirement for the

⁸⁸ RoP 27 November 2014 c.203

⁸⁹ The Planning Act 2008 c.29

⁹⁰ Environment and Sustainability Committee Consultation Response PB 21, *Planning (Wales) Bill; Submission from the Redrow Homes*, November 2014

⁹¹ Environment and Sustainability Committee Consultation Response PB 55, *Planning (Wales) Bill; Submission from the Law Society*, November 2014

largest developments (including DNS applications) to go beyond the statutory minimum.

3.4 Definition of statutory consultees

154. The Minister's letter of 7 January confirms that for the purposes of Sections 15 and 35 of the Bill that the 'specified persons' are the same as those listed in the Town and Country Planning (Development Management Procedure) (Wales) Order 2012. As well as NRW, the Health & Safety Executive, the Coal Authority and the Sports Council for Wales, the list also includes local highway authorities, local planning authorities and the Welsh Ministers themselves (on applications affecting trunk roads or scheduled monuments or a significant loss of agricultural land).⁹²

155. The Minister indicated that he was considering the role of utility companies in the planning process.⁹³ These companies are not currently listed in the 2012 Order. The current consultation on Front Loading the development management system does not invite comments on the definition of statutory consultees.

Our view

156. We are supportive of the intention behind introducing a pre-application consultation phase as this has the potential to enhance the efficiency of the application process and ensure that communities are notified in good time about potential developments.

157. The evidence we received showed that some stakeholders and statutory consultees have concerns about the implications for them of introducing statutory pre-consultation arrangements. It is difficult for us to arrive at a view in the absence of detailed proposals from the Government. Depending on how the Welsh Government responds to its consultation on frontloading the development management system (which closed on 16 January 2015) these concerns may or may not be addressed. We will monitor this through our general scrutiny work.

158. In terms of the minimum requirements for pre-application consultation, we believe a tiered approach would be preferable so that larger development proposals require a greater level of consultation.

⁹² Letter from the Minister for Natural Resources to the Chair of the Environment and Sustainability Committee, 7 January 2015

⁹³ RoP 14 January 2015 c.101

159. Pre-application consultation arrangements for DNS applications should be more onerous than the currently proposed minimum requirement and we would like to see an outline of these on the face of the Bill.

We recommend that the Minister brings forward amendments to the Bill in order to enhance the pre-application arrangements that apply to Developments of National Significance applications and to outline these arrangements on the face of the Bill.

160. As an additional safeguard, we would like to see the regulations setting out which categories of development should be subject to the pre-application procedure made subject to affirmative resolution.

We recommend that the Minister brings forward amendments to the Bill in order to make the regulations setting out which categories of development should be subject to the pre-application procedure are subject to the affirmative resolution procedure.

161. The Minister has indicated that he is considering whether water companies, and possibly other utility companies, should be statutory consultees. In particular, we can see the merit of making water and sewerage undertakers statutory consultees at the pre-application, application and post-determination stages. We recognise however that there may be difficulties in requiring all water companies operating in Wales to take steps to respond to any consultation as the regulation of any water undertaker whose area is not wholly or mainly in Wales is an exception from the Assembly's legislative competence.

We recommend that subject to any matters of legislative competence, the Minister considers making water undertakers statutory consultees. We ask that the Minister reports back to us on his consideration of this issue by the end of March 2015.

4. Part 4 – Welsh Ministers Decision-making powers

4.1 Developments of National Significance (DNS) (Sections 17-19,24)

DNS definition

162. The definition of DNS will be defined in secondary legislation, subject to affirmative resolution by the Assembly. However the Positive Planning Consultation gave an indication of what is likely to be included. The proposed definition mirrors what is currently covered by the Nationally Significant Infrastructure Project (NSIP) Development Consent Order (DCO) process in England. This covers applications where, before the Planning Act 2008, decisions would have been made by the LPA in England. The exceptions to this are 25-50MW energy projects that are also included and major highway schemes that are excluded. The Planning Act 2008 includes the definitions of NSIPs on the face of the Bill. These can be amended by secondary legislation.

163. We heard some concerns that not having the definition of DNS on the face of the Bill could lead a future Welsh Government amending the definition in order to justify introduction of this new category of development. For example the research commissioned by the Welsh Government into the current volume of DNS applications also included large business and commercial and projects.

Planning permission v development consent

164. The Minister's 10 December letter to the Chair explains that the decision to adopt a planning permission and related secondary consents approach, rather than a single Development Consent Order (DCO) approach to DNS was taken because it was "not considered expedient to create a new consent type" as this would "add further complexity". Also "creation of a new consent type would not be a proportionate solution to infrastructure developments, which are likely to be few in number".⁹⁴

165. However if a decision is taken to devolve further energy consenting powers to Wales, then the number of infrastructure developments where decisions are to be taken by Welsh Ministers would increase and it would be necessary to then decide whether to establish a separate DCO regime

⁹⁴ Letter from the Minister for Natural Resources to the Chair of the Environment and Sustainability Committee, 10 December 2014

specifically for larger energy projects in Wales or to include larger energy schemes in the DNS arrangements currently set out in the Bill.

166. The Silk Commission's Part 2 report recommends devolution of planning powers to approve energy projects of up to 350MW, whilst the Welsh Government has called for all energy consenting apart from nuclear power, to be devolved. The UK Government has promised a response by St. David's day in 2015.⁹⁵

167. The Law Society's written evidence suggested that:

“[...] there should be powers for the Welsh Ministers to adopt a single permission or consent covering both planning permission and the secondary consents, and for this to be a “live” document like the proposed new form of planning permission.”⁹⁶

168. The Minister's 10 December letter confirms that the Bill will allow some secondary (ancillary) consents to be decided by Welsh Ministers at the same time as the planning application for the main DNS through a single decision notice. However this would still comprise a series of separate consents/permissions each made under the appropriate existing Act, rather than a single consent based on a single piece of legislation.⁹⁷

169. Section 18 of the Bill will ensure that connected secondary consents for DNS applications may be decided directly by the Welsh Ministers, if they consider these should be made by them instead of the normal consenting authority. These secondary consents will be described in Secondary Legislation. The Welsh Government's Statements of Policy Intent give further details of the types of secondary consent that could be included (e.g.: exchange of common land, stopping up or diversion of a highway, compulsory purchase of land for development).⁹⁸ These are mostly consents that do not constitute development in themselves.

170. At the last evidence session, on 14 January 2014, the Minister confirmed that this section could also potentially include 'associated' development where the application would otherwise go to the LPA;⁹⁹ for

⁹⁵ The Commission on Devolution in Wales, Part 2 Report, March 2014

⁹⁶ Environment and Sustainability Committee Consultation Response PB 55, *Planning (Wales) Bill; Submission from The Law Society of England and Wales*, November 2014

⁹⁷ Letter from the Minister for Natural Resources to the Chair of the Environment and Sustainability Committee, 10 December 2014

⁹⁸ Welsh Government, *Planning (Wales) Bill Statements of Policy Intent*, November 2014

⁹⁹ RoP 14 January 2015 c.174

example a sub-station for a wind farm. The Statements of Policy Intent do not explain this.

171. Whilst there is no mention of environmental permits within the statements of policy intent, we consider that the definition of a secondary consents under Section 18 could include environmental permits that would normally be issued by NRW. This would mean the Welsh Ministers rather than NRW issuing these permits. The committee and the IAG have both previously recommended that environmental permitting should where possible be run in parallel with the planning application system, but this does not necessarily mean the decision being made by the Welsh Ministers. Environmental permits can already be included as part of the single DCO for NSIPs in Wales (and England), but only with the prior permission of NRW (or the Environment Agency).

Our view

172. We consider that to increase certainty and in line with the legislation for NSIPs that the definition of what constitutes a DNS should be on the face of the Bill rather than to be set out later in secondary legislation.

We recommend that the Minister amends the Bill to include the definition of what constitutes a Development of National Significance on the face of the Bill, with a provision that would enable this definition to be amended that would be subject to the affirmative resolution procedure.

173. To be assured that the provisions in the Bill for establishing Developments of National Significance are sufficiently future proofed, we would like a clear statement of the Welsh Government's intentions regarding how above 50MW energy schemes will be decided in Wales should further devolution occur. For example, would the NSIP Development Consent Order process be replicated for Wales or would these larger schemes be included in the DNS process?

We recommend that the Minister sets out how he intends to decide above 50MW energy schemes in Wales should further devolution occur. In addressing this recommendation, we ask that the Minister is clear about whether the NSIP Development Consent Order process will be replicated for Wales; whether these larger schemes will be included in the Developments of National Significance process; or whether some other process will apply.

174. We have received clarification from the Minister that Section 18 of the Bill could include associated developments that would otherwise be decided by the LPA . However, the statements of policy intent and the Explanatory Memorandum do not make this clear.

We recommend that the Minister takes steps to make it clear that Section 18 of the Bill could be used to give the Welsh Ministers the power to decide on Developments of National Significance associated developments as well as secondary/ancillary consents.

175. We also believe that, for the sake of clarity, the types of secondary consent that could be decided directly by the Welsh Ministers alongside a DNS application should be on the face of the Bill, with a power to amend the list by affirmative resolution. It is worth noting that the Planning Act 2008 does include a non-exhaustive list of ancillary consents for Nationally Significant Infrastructure Projects on the face of the Bill. If the Minister is not inclined to make such an amendment, we believe that any order made listing the consents which will be ‘secondary consents’ should be subject to the affirmative procedure.

We recommend that the Minister should bring forward amendments to the Bill in order to include a list of secondary consent that could be decided directly by the Welsh Ministers alongside a Development of National Significance application on the face of the Bill, with a power to amend the list by affirmative resolution. If the Minister is not inclined to make such an amendment, we believe that he should bring forward amendments to ensure that any order made to define these types of consent should be subject to the affirmative procedure.

176. We are pleased that the Bill enables parallel consenting to take place. Our one reservation is around the lack of a requirement to seek permission from NRW should the Welsh Ministers be minded to take responsibility for the issuing of environmental permits for a DNS application. The Planning Act 2008 requires the Secretary of State to do this for NSIPs.

We recommend that the Minister clarifies whether he intends to take responsibility for the issuing of environmental permits for certain Developments of National Significance applications and, if he does, he brings forward amendments to the Bill to require Natural Resources Wales’s consent before Welsh Ministers can decide on the issuing of environmental permits alongside the Developments of National Significance process.

4.2 Timescales and statutory deadlines

177. A number of witnesses have asked why the DNS process will not be subject to specific timescales and deadlines, unlike the DCO process where there is a statutory requirement for a decision to be issued by the Secretary of State within 12 months of an application being formally accepted.

178. The Minister's Chief Planner told the committee:

“[...] we are not suggesting statutory deadlines, but we have a target of 36 weeks in the statement of policy intent for developments of national significance, and certainly, for the optional direct applications, we are looking to work towards the same targets as local authorities work to, as the Minister described—eight weeks for standard planning applications and 16 weeks where an environmental impact assessment is involved. So, there are targets there. They are not statutory targets, but we do have targets that we are working to.”¹⁰⁰

The WPCF said:

“We are quite content with applications being referred or transferred to Welsh Government to make the decision, provided that the same standards and the same requirements then apply to the Welsh Government as they do to local government. [...] If Welsh Government is going to take on this role, so be it, that is fine, but as I see it, there is no evidence yet that it is going to be increasing its skills base and its ability to meet deadlines. That is the problem. There is nothing at all, historically, that demonstrates to us that, when an application enters this arena, through the Welsh Government, it gets speeded up.”¹⁰¹

179. The Law Society also suggested that decisions on DNS should be made by the Welsh Ministers, rather than delegated to Planning Inspectors, to mirror the NSIP process in England.¹⁰²

¹⁰⁰ RoP 27 November 2014 c.103

¹⁰¹ RoP 3 December 2014 c.276

¹⁰² Environment and Sustainability Committee Consultation Response PB 55, *Planning (Wales) Bill; Submission from The Law Society of England and Wales*, November 2014

Our view

180. We are persuaded by the evidence that we have received that Welsh Government should be bound by a statutory deadline.

181. Such a deadline would provide greater confidence and certainty to applicants and put the Welsh Government in a similar position to LPAs and the Secretary of State.

182. We do not have a specific timescale in mind, though the 36-weeks suggested in the consultation would appear to be sensible. We also note the 12-month timescale for the Secretary of State to determine applications under the NSIP DCO regime.

We recommend that the Minister brings forward amendments to the Bill in order to establish a statutory maximum timescale within which Developments of National Significance and associated secondary consents will be determined by Welsh Ministers after such an application has been formally submitted. In cases where this timescale is not met, these amendments should include a provision that requires Welsh Ministers to lay a statement before the National Assembly for Wales explaining the reasons for this timescale being exceeded.

5. Part 5: Development Management

5.1 Planning Committees, role of Members and delegation (section 37)

183. Section 37 will:

- introduce a national scheme of delegation. This provision will enable Welsh Ministers by means of regulations to require a LPA to make arrangements for the discharge of functions relating to planning applications by a committee, sub-committee or an officer of the Authority. In practice, it will enable Welsh Ministers to set out the circumstances where a planning application is to be determined by a Planning Committee and circumstances where it can be determined by an officer of the Authority; and
- allow for Welsh Ministers by regulations to prescribe requirements relating to the size and composition of planning committees.

184. The Welsh Government has issued a further consultation Planning committees, delegation and joint planning boards about the use of these powers.¹⁰³

185. The consultation also states that the Welsh Government is seeking to agree a national non-statutory planning committee protocol including issues such as site visits, public speaking at committee meetings and Members' involvement in pre-application discussions.

186. The WLGA said in its written evidence:

“[...] we do not understand the desire to legislate on the size of planning committees or for a national scheme of delegation. Only 3 LPAs[...] do not have planning committees within the proposed banding [...] so it should not be an onerous task to work with these LPAs to bring the size of the committee in line with the proposals. Section 3191ZB introduced by Section 37 should therefore be removed.”¹⁰⁴

187. It also questions why a voluntary committee protocol for issues such as public speaking at committees, site visits etc. is acceptable (as proposed in

¹⁰³ Welsh Government, Consultation on planning committees, delegation and joint planning boards, October 2014

¹⁰⁴ Environment and Sustainability Committee Consultation Response PB 54, *Planning (Wales) Bill; Submission from The Welsh Local Government Association*, November 2014

the separate consultation) whilst “it is not acceptable to achieve size of committee and a national scheme of delegation voluntarily”.¹⁰⁵

188. The RTPI commissioned study recommended the introduction of a mandatory national scheme of delegation for Wales which would be incorporated into local schemes, reviewed regularly (at least every three years) and approved by the Welsh Government. The scheme would include applications for ‘significant developments’; the definition of ‘significant’ would be left for local authorities’ schemes to determine.¹⁰⁶

189. The Welsh Government has decided not to adopt this model. It argues that “the continuation of local schemes with individual variations (particularly in relation to the definition of significant development) is contradictory to the overriding aim of introducing a national scheme of delegation”.

190. The Minister told the committee:

“Once you have introduced flexibilities to the system, there seems to be very little point in having defined lists about where these things apply.”¹⁰⁷

191. Other witnesses have argued that a ‘one size fits all’ approach will not work given the current variation in the size and planning caseload of LPAs.

192. Councillor Andrew Morgan from RCT said:

“Under the planning Bill, if we were to use this all-encompassing scheme of delegation, my authority, which is the third largest in Wales, would have dealt with only eight in four months. [...] it would have meant that some committee meetings would have been cancelled, because there would be simply no business. [...] Local authorities need some flexibility on their determinations, or else it could make a farce of the situation.”¹⁰⁸ and

¹⁰⁵ Environment and Sustainability Committee Consultation Response PB 54, *Planning (Wales) Bill; Submission from The Welsh Local Government Association*, November 2014

¹⁰⁶ RTPI Cymru, Study into the operation of Planning Committees in Wales: Final report, July 2013

¹⁰⁷ RoP 27 November 2014 c.229

¹⁰⁸ Ibid c.285

“[...] if in excess of 90% of the applications are dealt with through delegation by officers, you could end up with that 90% simply coming back through to members as appeals.”¹⁰⁹

193. Councillor Giles Howard from Monmouthshire County Council pointed out that reducing the number of applications to be dealt with by committee and as a result reducing the frequency of meetings can produce problems relating to meeting the statutory eight and 13 week targets for determining applications.¹¹⁰

194. The Law Society suggested that an additional trigger for a referral to a committee, not currently included in the Welsh Government’s consultation, could be when a local town or community council objects to an application.

195. The UKELA points out that the powers to regulate planning committees are:

“[...] written very broadly. Welsh Ministers can direct that any planning function be discharged by a committee, subcommittee or officer of the authority; and can ‘prescribe the terms of the arrangements’ for the discharge of functions by a planning committee.”¹¹¹

196. Section 37 will introduce the national scheme of delegation. It will enable the Welsh Ministers by means of regulations to require a LPA to make arrangements for the discharge of functions relating to planning applications by a committee, sub-committee or an officer. The details of the national scheme aren’t on the face of the Bill but the Welsh Government has been consulting about them. The regulations will be subject to the negative procedure.

197. The Welsh Government has proposed a scheme that would be adopted by all LPAs rather than a national scheme that would allow for some local flexibility for the definitions of what is ‘significant’ development to be set locally. This latter proposal was the recommendation of the RTPi commissioned research.

¹⁰⁹ RoP 27 November 2014 c.291

¹¹⁰ Ibid c.307

¹¹¹ Environment and Sustainability Committee Consultation Response PB 46, *Planning (Wales) Bill; Submission from the UK Environmental Law Association*, November 2014

198. We have heard evidence about some of the practical problems associated with a ‘one size fits all’ scheme and also concerns about limiting local democratic input to the making of planning decisions if most applications are to be decided by officers.

199. The UKELA is concerned that this power is very broad as it allows the regulations to specify any planning function and who should be responsible for it, as well as the arrangements for the discharge of that function.¹¹²

200. Section 37 also allows the Welsh Ministers by regulations to prescribe requirements relating to the size and composition of planning committees. The regulations will be subject to the negative procedure.

201. The WLGA argued that this part of Section 37 should be removed as only 3 LPAs (in November 2014) did not already have planning committees within the proposed banding (11-21 members).¹¹³

Our view

202. We are generally supportive of the Welsh Government’s intention to enhance the consistency of the planning process across Wales but believe that this can be achieved in way that allows a degree of local flexibility. The Government’s commissioned research recommended a degree of local flexibility in a national delegation scheme and we believe that the approach recommended by the RTPI would address many of the concerns expressed in relation to this part of the Bill.

203. The fact that local delegation arrangements would still be subject to Welsh Ministerial approval would ensure an appropriate balance is struck between the need for consistency and meeting local needs.

We recommend that the regulations for a national delegation scheme when introduced should follow the model proposed by the Welsh Government’s own research – i.e. a national scheme with some local flexibility, with each local scheme still to be approved by Welsh Ministers.

204. This part of the Bill will grant Welsh Ministers broad powers to prescribe the arrangements for the discharge of planning functions and who should be

¹¹² Environment and Sustainability Committee Consultation Response PB 46, *Planning (Wales) Bill; Submission from the UK Environmental Law Association*, November 2014

¹¹³ Environment and Sustainability Committee Consultation Response PB 54, *Planning (Wales) Bill; Submission from the Welsh Local Government Association*, November 2014

making decisions on planning matters. The Minister needs to clearly explain what he intends to use these powers for, and we believe that including more information in the Explanatory Memorandum to the Bill would assist in this regard.

We recommend that the Minister amends the Explanatory Memorandum to the Bill to clearly explain the types of planning decisions that are to be delegated to officers using the powers in Section 37 of the Bill.

205. We are supportive of the Law Society's suggestion that an additional trigger for a referral to a planning committee, not currently included in the Welsh Government's consultation, could be when a local town or community council objects to an application. This would assist in redressing the democratic balance in this Bill that we have expressed concerns about in earlier chapters of this report.

We recommend that the regulations for a national delegation scheme when introduced should require the referral of a planning decision to a committee when a local town or community council objects to an application.

206. Section 37 of the Bill which inserts Section 319ZB into the Town and Country Planning Act 1990 will allow Welsh Ministers to prescribe requirements relating to the size and composition of planning committees by regulation. We are supportive of this power in principle. Due to the implications this power could have for local democracy, we believe that regulations made under this section should be subject to the affirmative resolution procedure.

We recommend that the Minister brings forward amendments to section 37 of the Bill to make the regulations under Section 3197B of the Town and Country Planning Act 1990 that allow Welsh Ministers to prescribe requirements relating to the size and composition of planning committees subject to the affirmative resolution procedure.

207. We are unclear as to why arrangements for important issues such as site visits, public speaking at committee meetings and member's involvement in pre-application discussions are included in a non-statutory planning committee protocol when other aspects of the process are subject to statutory provision. We believe that these arrangements should also be statutory

We recommend that the Minister brings forward amendments to the Bill to make the planning committee protocol statutory.

5.2 Variation of an application after an appeal notice (sections 42, 45)

208. Some witnesses and respondents have suggested that this section should be amended in order to continue to allow amendments that would make a scheme acceptable, to avoid the whole process having to start again.

209. Boyer Planning states:

“Restricting the Appellant’s ability in this regard could prevent the opportunity for an acceptable form of development to be achieved. It is often the case that Reasons for Refusal are added at the Planning Committee stage that are not substantive matters and can be overcome through negotiation and modification. To deny the ability to achieve this during the Appeal process would seem nonsensical in the context of the priority afforded to sustainable development.”¹¹⁴

210. The WPCF states:

“[...] there are instances where matters arise that are capable of being addressed by minor revisions, and the inspector should have the flexibility to accept those with discretion. In terms of the amendments that are required to the Bill, our comments are purely that: as long as we can have that degree of flexibility, we are satisfied.”¹¹⁵

211. The Law Society suggests a way around the unintended consequence on the prohibition of amendments once an appeal against refusal has been made:

“This prohibition may mean that some applications which have been refused but subsequently rendered acceptable to the local planning authority by the negotiation of amendments with the applicant, would have to start again afresh if they had already entered the appeal system after being refused. This could be avoided by allowing the Inspectorate, with the agreement of the parties, to return an application that has been refused for amendment, re-consultation and re-determination by the local planning authority.”¹¹⁶

¹¹⁴ Environment and Sustainability Committee Consultation Response PB 35, *Planning (Wales) Bill; Submission from Boyer Planning*, November 2014

¹¹⁵ RoP 3 December 2014 c.301

¹¹⁶ Environment and Sustainability Committee Consultation Response PB 55, *Planning (Wales) Bill; Submission from the Law Society of England and Wales*, November 2014

Our view

212. The evidence we have received provides a pragmatic solution to a potentially unintended change to the process that would remove a sensible level of flexibility when it comes to considering a minor variation of an application after an appeal notice.

We recommend that the Minister brings forward an amendment to Section 42 of the Bill to reflect the Law Society’s proposal, but this should include a requirement for an amended application to be returned to a Local Planning Authority to be consulted on again.

5.3 Award of costs to Welsh Ministers (Section 44)

213. Section 44 of the Bill would extend the Welsh Ministers ability to recover their costs where an appeal proceeds by way of written representation. Currently, costs can be recovered where an appeal proceeds to an inquiry or a hearing. Whilst paragraph 3.152 of the Explanatory Memorandum states that the Government’s proposal is that costs should only be recovered where a party has behaved unreasonably, the Bill does not mention unreasonable behaviour.

214. Circular 23/93 ‘Awards of costs incurred in planning and other (including compulsory purchase order) proceedings currently provides guidance as to when costs will be recoverable in planning matters.

215. The Law Society state:

“[...] the Welsh Ministers should only be able to initiate an award of costs if there is unreasonable behaviour by one of the parties: they should not be able charge their costs to the parties on every appeal, whether or not there is unreasonable behaviour. As currently drafted, section 44 does not limit the Welsh Ministers' ability to initiate costs to cases of unreasonable behaviour.”¹¹⁷

216. Boyer Planning state:

¹¹⁷ Environment and Sustainability Committee Consultation Response PB 55, *Planning (Wales) Bill; Submission from the Law Society of England and Wales*, November 2014

“[...] It would be wrong and counter to natural justice if such costs were being sought to administer a legitimate appeal as this would impede and discourage Appeals by increasing the financial burden.”¹¹⁸

Our view

217. We acknowledge that it would be difficult to attempt to define unreasonable behaviour on the face of the Bill.

218. The current guidance is however outdated and would not unless amended apply to the provisions of this Bill.

We recommend that, before Section 44 is commenced, Circular 23/93 ‘Awards of costs incurred in planning and other (including compulsory purchase order) proceedings is updated to reflect the changes to costs recovery in appeal proceedings made by this Bill.

5.4 Procedures for appeals, call-ins and direct applications (section 45)

219. The Statements of Policy Intent indicate that the regulations to be made under this section will allow Ministers or the Planning Inspectorate to direct that certain information is submitted within “certain timeframes”.¹¹⁹ There is no indication of what these timeframes might be.

220. Some witnesses have called for this section to specify minimum time limits to protect the rights of individuals. The EM explains that this section is part of a general package of proposals for reform of the appeals system, some of which do not require new primary legislation (paragraph 3.142-3.146).

221. The UKELA states in its written evidence that this section gives the Welsh Ministers wide powers to prescribe the procedures to be followed in any inquiry, hearing or proceedings by way of written representation:

“There is no provision to protect the basic rights of individuals to make representations in these processes. The focus is only on the efficiency of such proceedings with reference to the power to include in regulations time limits for submitting representations in writing and any supporting documents; and generally for different classes of proceedings or an individual proceeding. [...] This is of crucial

¹¹⁸ Environment and Sustainability Committee Consultation Response PB 35, *Planning (Wales) Bill; Submission from Boyer Planning*, November 2014

¹¹⁹ Welsh Government, *Planning (Wales) Bill Statements of Policy Intent*, November 2014

importance and UKELA is very concerned that there is no reference in the Bill to the setting of minimum time limits in order to protect the rights of interested individuals.”¹²⁰

222. The removal of the right of appellants to a hearing before an appointed person has already been introduced separately in October 2014 using existing powers under the *Planning Act 2008*.¹²¹ A similar provision also applies in England.

223. The Planning and Environmental Bar Association (“PEBA”) made the point to the committee about the cumulative impact of the changes in the Bill, including the NDF, Welsh Ministers making decisions on DNS applications and the general presumption that matters will be dealt with through written procedures:

“PEBA is very concerned that, effectively in the first place, there is, overall, something of a democratic deficit, certainly in relation to proposals that might have a very profound impact on people’s property rights and their right to family life and so on and not being unduly disturbed. [...] There is a concern that a really major proposal could go through affecting somebody’s home and family life very profoundly and they would never have had the right to a hearing at any stage. There is a real concern about that in terms of human rights and Aarhus compatibility.”¹²²

Our view

224. The quote from PEBA above summarises our concern about the accumulative impact that this Bill, if left unamended, could have on the rights of individuals.

225. Throughout this report we have made recommendations that, accumulatively, seek to make the provisions of this Bill more democratic. This includes our recommendations in relation to the NDF and DNS in chapters 2 and 4 of this report. We believe that, when taken together, implementing these recommendations would go some way at least towards addressing the concerns expressed by PEBA.

¹²⁰ Environment and Sustainability Committee Consultation Response PB 46, *Planning (Wales) Bill; Submission from the UK Environmental Law Association*, November 2014

¹²¹ The Planning Act 2008 c.29

¹²² RoP 3 December 2014 c.352

226. We are also supportive of the Law Society's suggestion that minimum time limits should be introduced to protect the rights of interested individuals.

We recommend that the Minister brings forward amendments to Section 45 of the Bill to set minimum time limits for responding to requests for information resulting from appeals, call-ins and direct applications.

6. Design and Access Statements

227. Section 27 will remove the primary legislative provisions that require design and access statements (DAS) to accompany planning applications for certain types of development. However the Welsh Government has said that it remains committed to ensuring good design in development that includes inclusive access arrangements. It has issued a consultation on Design in the Planning Process which also proposes to remove the requirement for DAS from Secondary Legislation but to replace this with a number of other actions that it says “are more likely to achieve good design and inclusive access”.¹²³

228. The research commissioned on DAS by the Welsh Government¹²⁴ found that:

- The general perception of applicants is that the mandatory requirement for DAS has become a box ticking exercise used for validation purposes, having minimal impact on design quality and inclusive access;
- The report indicates a key positive value of DAS is their role as a communication tool for multiple audiences;
- The research found that DAS have raised the profile of design and inclusive access, and give consistency as to how they are considered and presented in the planning process;
- The report recommended that DAS should be retained as a communication tool, but only as a mandatory requirement for applications within certain categories (e.g. listed buildings/designations) and above certain dwelling/size thresholds (e.g. over 10 dwellings).

229. The Welsh Government’s consultation on Design in the Planning Process states:

“While DAS have benefits as a communication tool, we are not convinced that this is sufficient reason to retain them as a mandatory requirement for many planning applications and consider resources

¹²³ Welsh Government, Consultation on design in the planning process, October 2014

¹²⁴ Welsh Government, Review of Design and Access Statements in Wales, November 2013

should be focussed on alternative ways of securing good design and inclusive access.”¹²⁵

230. In England the primary and secondary legislative requirements remain, but the secondary legislation was recently amended to only require DAS to be prepared for ‘major developments’.

231. The Minister told the committee that he was willing to give this issue “further thought” and he would “hate to think that anything is being hidden or buried in the building regulations”.¹²⁶

232. The Minister’s letter of 7 January states that the research found “no significant evidence” that DAS are important in attaining good design and have done very little to broaden applicants’ perception of inclusive access.¹²⁷ The letter also states that he is currently seeking views through the consultation on the benefit of retaining DAS for particular applications. However the consultation document states:

“[...] we propose to remove the need to submit a DAS with any planning application and consider our proposed actions are more likely to achieve good design and inclusive access.”¹²⁸

233. The Minister provided further information in relation to his intention in his letter dated 21 January 2015. This showed his support for retaining DAS for larger developments and in sensitive locations. However he suggestion would still remove the primary legislative requirement for DAS and take forward changes through secondary legislation.¹²⁹

Our view

234. Many of the witnesses that appeared before us during the course of our Stage 1 consideration of the Bill expressed the view that DASs can serve a useful purpose, especially when it comes to larger developments.

235. Whilst we accept that the Minister will wish to consider the outcome of his consultation before taking a final decision on this issue, the evidence we have received leads us to believe that the English model, where the primary

¹²⁵ Welsh Government, Consultation on design in the planning process, October 2014

¹²⁶ RoP 27 November 2014 c.187

¹²⁷ Letter from the Minister for Natural Resources to the Chair of the Environment and Sustainability Committee, 7 January 2015

¹²⁸ Welsh Government, Consultation on design in the planning process, October 2014

¹²⁹ Letter from the Minister for Natural Resources to the Chair of the Environment and Sustainability Committee, 21 January 2015

legislative requirement remains, but the secondary legislation only requires DAS to be prepared for 'major developments', offers a proportionate reform. We consider that retaining the requirement in primary legislation is important as a symbolic statement about design and access issues in planning decisions.

We recommend that the Minister retains the primary legislative requirement for Design and Access Statements by removing Section 27 and that associated secondary legislation should be amended to only require statements for larger developments and listed buildings.

7. Town and Village Greens

236. Sections 47-50 as currently drafted will prohibit applications being made to register land as a Town or Village Green (TVG) where the land has entered the planning system. These replicate changes already introduced in England by the *Growth and Infrastructure Act 2013*.¹³⁰

237. Section 47 will reduce the period within which a TVG application can be made (after the 20 years period of recreational use “as of right” has accrued but has in fact ceased) from two years to one year.

238. Section 48 will enable a landowner to submit a statement and map to the commons registration authority (the local authority) to effectively consent to the use of their land for recreational purposes without risk of an application to register a TVG being submitted.

239. Section 49 will exclude the right to apply to register a TVG in certain circumstances. These include after submission of a planning application for the land, or identification of the land in the NDF, a SDP or a LDP. The Welsh Ministers may amend, remove or add to the list of events that can ‘trigger’ or ‘terminate’ the exclusion of the right to apply for registration.

240. Section 50 will make additional provision in relation to the fees to register a TVG. The Statements of Policy Intent also say that there is no intention to introduce a fee for TVG registrations “at present”. Any such proposal “would be subject to separate consultation and approval”.

241. The Minister has indicated that he is considering introducing amendments that would allow an application for registration of a TVG up until the point that planning permission is granted. This will mean amending Schedule 6 to remove certain ‘trigger’ events. The Minister’s letter of 7 January confirms that the only trigger events that he is proposing to retain are those relating to the granting of planning permission (or its equivalent). This means that applications for registration of a TVG on a site identified in the NDF, or in an adopted SDP or LDP will still be possible.¹³¹

242. The PEBA told the committee:

¹³⁰ Growth and Infrastructure Act 2013 c.27

¹³¹ Letter from the Minister for Natural Resources to the Chair of the Environment and Sustainability Committee, 7 January 2015

“I am absolutely certain that that proposal would simply delay the determination of planning applications, because planning committees would be lobbied to say, ‘There’s an outstanding TVG application here’. [...] All that that is going to do is to continually put off the taking of the planning decision, which, it seems to me, is directly contrary to the culture change that the Government is looking to bring about through this Bill.”¹³²

243. The Law Society has provided additional evidence to the committee in which it says this “would only perpetuate the present situation where a developer is at risk throughout the period when costs are being incurred in progressing the application”.¹³³

244. The Minister said that he would give further consideration to the current proposal in Section 47 of the Bill to reduce the time for submission of a TVG application from two years to one year.¹³⁴

Our view

245. The provisions of the Bill in relation to TVGs, as currently drafted, have caused us some concern. We have repeatedly asked for examples of where TVG applications have been made to deliberately frustrate the planning process. Witnesses have been unable to provide us with any convincing evidence that this is a significant issue in Wales.

246. We are grateful to the Minister for listening to the evidence that has been received and for his willingness to revisit this aspect of the Bill. The amendments he has suggested making will significantly address our concerns, if made.

247. In addition to the amendments the Minister has already committed to bringing forward, we would like to see the Bill amended to remove provisions that would reduce the time for submission of a TVG application from two years to one year.

248. As the Minister has no intention to introduce a fee for TVG applications, we believe that Section 50 is unnecessary.

¹³² RoP 3 December 2014 c.438

¹³³ Environment and Sustainability Committee Consultation Response PB 55, *Planning (Wales) Bill; Additional submission from the Law Society of England and Wales*, November 2014

¹³⁴ RoP 14 January 2015 c.223

We recommend that the Minister brings forward the amendments to Schedule 6 (Town and village greens: new Schedule 1B to the Commons Act 2006) of the Bill to remove trigger events, as outlined in his letter to the Chair dated 7 January 2015 at the earliest opportunity.

We recommend that the Minister brings forward amendments to the Bill to remove Section 47 i.e. provisions that would reduce the time for submission of a Town and Village Green application from two years to one year.

We recommend that the Minister brings forward amendments to remove Section 50 from the Bill i.e. provisions that would allow Welsh Ministers to set fees for applications to amend registers of common land and town or village greens.

Annex 1: List of written evidence

The following people and organisations provided written evidence to the Committee. All written evidence can be viewed in full at:

www.senedd.assembly.wales/mgConsultationDisplay.aspx?ID=147

Organisation or individual	Reference
Tenovus	PB 01
Sian Elin Jones	PB 02
Pembrokeshire Access Group	PB 03
Three	PB 04
Dathlu'r Gymraeg	PB 05
Dyfodol I'r Iaith	PB 06
Brecon Beacons National Park Authority	PB 07
Institution of Civil Engineers Wales	PB 08
Various Councillors	PB 09
Leonard Cheshire Disability	PB 10
Commissioner for Sustainable Futures	PB 11
Institute for Archaeologists	PB 12
Mobile Operators Association	PB 13
Campaign for the Protection of Rural Wales	PB 14
Open Spaces Society	PB 15
Wales Environment Link	PB 16
Ceredigion County Council	PB 17
Association of Convenience Stores	PB 18
Campaign for National Parks	PB 19
Taylor Wimpey UK Limited	PB 20
Redrow Homes	PB 21
RNIB Cymru	PB 22
RenewableUK Cymru	PB 23
Royal Town Planning Institute	PB 24
Wales Health Impact Assessment Support Unit	PB 25

Disability Wales	PB 26
Planning Aid Wales	PB 27
The Llandaff Society	PB 28
RWE Group	PB 29
National Trust Wales	PB 30
Vattenfall	PB 31
RSPB	PB 32
Federation of Small Businesses	PB 33
Home Builders Federation	PB 34
Boyer Planning	PB 35
Welsh Language Commissioner	PB 36
Pembrokeshire County Council	PB 37
Mentrau Iaith Cymru	PB 38
Natural Resources Wales	PB 39
BMA Cymru Wales	PB 40
Tidal Lagoon Power	PB 41
Severn Trent Water	PB 42
Energy UK	PB 43
Friends of the Earth Cymru	PB 44
Community Housing Cymru	PB 45
UK Environmental Law Association	PB 46
Gareth Young	PB 47
Guide Dogs Cymru	PB 48
Cylch yr Iaith	PB 49
Aldi	PB 50
Cymdeithas yr Iaith Gymraeg	PB 51
RICS	PB 52
Planning Officers Society for Wales	PB 53
Welsh Local Government Association	PB 54
The Law Society of England and Wales	PB 55

Welsh Planning Consultants Forum

PB 56

Sustrans

PB 57

CLA

PB 58

Annex 2: Witnesses

The following witnesses gave evidence to the Committee. Transcripts of the meetings can be viewed at:

www.senedd.assemblywales.org/mglIssueHistoryHome.aspx?lId=1308

27 NOVEMBER	
Session 1	
Carl Sargeant AM	Minister for Natural Resources
Neil Hemington	Welsh Government
Dion Thomas	Welsh Government
Sarah Dawson	Welsh Government
Session 2	
Councillor Anthony Jones	Carmarthenshire County Council
Councillor Andrew Morgan	Rhondda Cynon Taf County Borough Council
Councillor John Wyn Williams	Gwynedd Council
Councillor Giles Howard	Monmouthshire County Council
Session 3	
Aled Davies	Gwynedd Council
Eifion Bowen	Carmarthenshire County Council
Marcus Goldsworthy	Vale of Glamorgan Council
Jane Lee	Welsh Local Government Association
Session 4	
Martin Buckle	Brecon Beacons National Park Authority
Jane Gibson	Pembrokeshire Coast National Park Authority
Jonathan Cawley	Snowdonia National Park Authority
Session 5	
Lyn Cadwallader	One Voice Wales
Mike Cuddy	One Voice Wales
Paul Egan	One Voice Wales

3 DECEMBER	
Session 6	
Emyr Roberts	Natural Resources Wales
Sarah Wood	Natural Resources Wales
Rhian Jardine	Natural Resources Wales
Session 7	
Roisin Willmott	RTPI Cymru
Lyn Powell	Wales Planning Consultants Forum
Mark Roberts	Wales Planning Consultants Forum
Session 8	
Morag Ellis QC	Planning and Environment Bar Association
Huw Williams	The Law Society
Tim Morgan	The Law Society
Dr Victoria Jenkins	UK Environmental Law Association
Dr Haydn Davies	UK Environmental Law Association
11 DECEMBER	
Session 9	
Josh Miles	Federation of Small Businesses Wales
Ben Francis	Federation of Small Businesses Wales
Mark Harris	Home Builders Federation
David Morgan	RICS Wales
John Pockett	Confederation of Passenger Transport Wales
Matthew Williams	RenewableUK
Session 10	
Dyfan Sion	Welsh Language Commissioner
Huw Gapper	Welsh Language Commissioner

Session 11	
Colin Nosworthy	Cymdeithas yr Iaith Gymraeg
Tamsin Davies	Cymdeithas yr Iaith Gymraeg
Emyr Lewis	Dyfodol i'r Iaith
Meirion Davies	Dyfodol i'r Iaith
Session 12	
Naomi Luhde-Thompson	Friends of the Earth
Session 13	
Nicola Hodgson	Open Spaces Society
Beverley Penney	Open Spaces Society
Elwyn Thomas	Planning Aid Wales
Matt Hemsley	Sustrans
Lindsey Curtis	Sustrans
14 JANUARY	
Session 14	
Carl Sargeant AM	Minister for Natural Resources
Neil Hemington	Welsh Government
Dion Thomas	Welsh Government
Sarah Dawson	Welsh Government