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Dear Petitions Committee Members,

Thank you very much for the opportunity to respond to the Minister's letter of the 7th of May 2024. We provide this response in order to assist Committee in its deliberations.

Summary:

**Whilst this is much to commend in the Minister's letter, there remain very serious concerns which, in our view, would lead to continued and increased pressure on the Gwent Levels SSSI from significant build development, notwithstanding the Minister's assurances. We therefore advocate the following steps in order to ensure that the planning system delivers on, rather than frustrates, the Minister's laudable ambitions to protect the Levels:**

1. If the Minister is unwilling to issue standalone clarification on how the new chapter 6 of Planning Policy Wales (PPW) should be interpreted with regard to development and SSSIs, then either the forthcoming guidance on net benefit for biodiversity NBB should be broadened to include the Chapter 6 SSSI policy clarification, or such clarification should be issued in the form of a "Dear CPO" letter.
2. A short inquiry should be held under the auspices of Petitions Committee or another suitable committee of the Senedd.
3. A "light touch" rapid preview of Future Wales should be initiated by the Welsh Government, with regard to renewable energy development and SSSIs.

Please see below for more detail in relation to these proposed steps.

## MAIN BODY OF PETITIONERS' RESPONSE

We respond as follows to each point made raised by the Minister :-

### 1. Clarification on Chapter 6 of Planning Policy Wales, with regard to SSSI Protection:

We accept that the Minister has adopted a strong policy position with regard to SSSI protection via Planning Policy Wales, and we commend her for this. Indeed, we have been vocal in support of it, and we acknowledge that chapter 6 constitutes the strongest national planning policy guidance for SSSIs of the four UK countries.

However, the Minister's intention in adopting chapter 6 is being frustrated by the very lack of guidance which she appears unwilling to produce. Indeed, developers and their legal advisors have explicitly pointed to this lack of guidance in defence of their efforts to bypass chapter 6. For example, in addressing the "wholly, exceptional circumstances" in a recent case, the developers' legal team stated at a hearing that, in the absence of guidance, each case should be addressed on its individual merits. They continue to use the same arguments that they have always used to support their development on an SSSI and appear confident (perhaps with good reason) that the Inspector will agree. This is precisely the opposite of what is intended by the new chapter 6, and if the Inspector in this case is persuaded by this argument, a recommendation of approval will critically undermine chapter 6, and thereby SSSI protection across the whole of Wales, through the power of precedence.

Sadly, we foresee that, in the absence of clarification/guidance on chapter 6, the Minister's intentions will, over the coming months, be so eroded as to be merely a tokenistic hoop to be jumped through by developers in pursuit of development on SSSIs throughout Wales.

Therefore, in the spirit of compromise, we advocate that : –

a. Forthcoming committed guidance on net benefit for biodiversity (NBB), which we welcome, is broadened to include the "wholly exceptional circumstances" and "site selection and the sequential approach" tests for SSSIs in Chapter 6.

If NBB is deemed worthy of guidance, then it makes no sense to us to exclude wholly exceptional circumstances and site selection, since these are themselves related to the "avoid harm first" primary intention of chapter 6, and are arguably more important than NBB, as a starting point.

### b. A "Dear CPO" Letter:

Petition committee members may be aware of this planning tool, which would be a very good fit for producing this clarification, as clarification of existing policy is its aim. Dear CPO letters are issued to all of the local planning authority chief planning officers throughout Wales, by the Welsh Government's chief planning officer. They apply to the Welsh government itself, as it is a planning authority in its own right. They must not make new policy, but merely clarify existing policy. A Dear CPO letter could draw Inspectors' attention to the game-changing nature of the new Chapter 6 and make it clear that it is not 'business as usual' for development on SSSIs.

In conclusion to this section, nature (and planning) abhor a vacuum, and this policy vacuum threatens the very existence of the Gwent Levels SSSI, and we consider that it would be a small matter to correct this.

## 2. Policy Nine of Future Wales, the National Development Framework:

The Minister refers to Policy 9 as a likely solution to the issues we raise in our position. We welcome the ground-breaking work currently being carried out by the Welsh Government on Policy 9 of Future Wales – indeed, we are active participants in its formulation. However, officials tell us that it will be "many months" before this work is formally adopted. Meanwhile two very large development proposals are currently lodged with the Welsh Planning Inspectorate, and hearings could well take place in a matter of two to three months. If these developments are approved, then it will be too late to save the Gwent Levels SSSI and its fate would be sealed long before Policy 9 starts to take effect.

## 3. Policy 18 of Future Wales:

We advocated in our briefing note to the Petition Committee that Policy 18 (Development and Renewable Energy) of Future Wales is reviewed in order to bring it in line with Chapter 6 of PPW. The Minister states in her response that a review of Future Wales with regard to these policies cannot be undertaken without the due processes of consultation and adoption. We are aware of this, are supportive of it and would participate fully in this process. Approximately five years have now elapsed since the 2019 consultation version of Future Wales was produced, and given the long lead-in period for development plan reviews, we believe it would be feasible and practical for a "light touch", rapid and partial review of Future Wales to be started now, in order to bring it in line with the new Chapter 6 of PPW. We accept that this would not satisfy our immediate concerns, but nevertheless are of the opinion that such a review would be an important tool in the toolkit of safeguarding the Gwent Levels.

We therefore advocate this to Committee and to the Minister.

## 4. The Welsh Government's Post-Construction Monitoring Study:

We welcome the Minister's commitment to release the Welsh Government's post-construction monitoring study.

## 5. The Infrastructure (Wales) Act and UK-Nationally Significant Infrastructure Projects:

We welcome the Minister's restatement of Welsh Government policy that all major development proposals should be decided upon in Wales.

## 6. Welsh Government Powers to Intervene in LDP Formulation:

We welcome the Minister's restatement of Welsh Government powers to intervene in local planning authority local development plan (LDP) formulation.

Thus in conclusion we respectfully advocate a Dear CPO letter and/or the broadening of the guidance on Net Benefit for Biodiversity, as set out above, as a matter of urgency, along with a short inquiry and a timely review of Future Wales.

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