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Llywodraeth Cymru
Welsh Government

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Alun Ffred Jones AM
Chair
Environment and Sustainability Committee
National Assembly for Wales
Ty Hywel
Cardiff Bay
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26th February 2015

Dear Alun Ffred Jones AM

Planning (Wales) Bill

During the general principles debate on 10 February I committed to write to you in response to the Stage 1 Committee Reports from the Environment and Sustainability Committee and the Constitutional and Legislative Affairs Committee, on the Planning (Wales) Bill.

I have detailed below, my response to all the recommendations of both Committees, although where both Committees made the same recommendation I have only addressed the recommendation of the Responsible Committee.

I outline how I intend to respond to the recommendations and clearly state where I agree that there is a need to make an amendment to the Bill. I also outline where I have already tabled Government amendments in response to the Committee recommendations.

I trust the Committee will find my responses useful in further scrutiny of the Bill.

Recommendations from the Environment and Sustainability Committee's Stage 1 Report on the Planning (Wales) Bill

Recommendation 1 - We recommend that the Assembly supports the general principles of the Bill.

I thank the Committee for recommending that the Assembly accept the general principles of the Bill and I was pleased to see the Bill receive unanimous support during the vote on 10 February.

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.

I have instructed my officials to explore Place Plans further to ensure communities are able to retain maximum flexibility in the preparation of Place Plans that can be varied to suit the aspirations and the capabilities of different communities. I propose a consistent approach for communities working with local councils as part of Supplementary Planning Guidance. I believe this approach would assist local communities in engaging with the plan making process and would be a quicker, more cost effective and less bureaucratic process than giving Place Plans development plan status. The IAG report considered that there was a benefit in adding consistency to the Place Plans process and that this could be achieved through Supplementary Planning Guidance.

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.

I committed to issue a revised Regulatory Impact Assessment before the Assembly; however, my intention is to lay a revision before Stage 3 as required by Standing Order 26.28, to reflect the changes to the Bill as a result of Stage 2 amendments. I will also use this opportunity to rectify the minor errors identified during Stage 1 and on which, I wrote to the Finance Committee on 13 November 2014.

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.

And

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

It is not my intention to insert a statutory purpose for planning and sustainable development on the face of the Planning Bill. I stand by my previous statements to the Committee that my Well-being of Future Generations Bill provides the overarching framework and goals for all public bodies, which includes local planning authorities and Welsh Ministers when undertaking their functions under the Planning Acts. The IAG report predates the Well-being of Future Generations Bill and you will be aware that they recommended that any definition of SD should be contained in that Bill.

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 amendments should be clarificatory and not change the position as to weight.

I have tabled a number of amendments which strengthen the Welsh language through the plan making process. I am currently considering this recommendation in terms of its legal effect and policy intention.

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

I tabled a government amendment on 11 February to strengthen Welsh language consideration as part of the sustainability appraisal for Development Plans. Therefore I consider that an amendment with regard to major planning applications would represent duplication of effort, as the Development Plan and the impact assessment which accompanies it provides a firm basis for rational and consistent decisions on planning applications and appeals. The approach which I have outlined allows the cumulative impacts of development to be considered thoroughly and suitable mitigation measures to be identified and secured. However I accept that there may be limited situations where major development proposals come forward outside the LDP and have not been subject to an impact assessment. In response to this recommendation, I have instructed officials to update planning policy and guidance to set out the circumstances in which LPAs should carry out a Language Impact Assessment at the planning application stage.

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.

I agree that the Welsh Language Commissioner should continue to be consulted by local planning authorities during LDP preparation when they undertake the Sustainability Appraisal, as set out in TAN 20, and acknowledged by the committee at paragraph 55 of their report.

Further, I have asked officials to update planning policy and guidance to make it clear how and when developers and LPAs should notify the Welsh Language Commissioner of potentially sensitive developments. It is my view that the Commissioner's role should continue to be on a non-statutory basis, a position which is supported by the Commissioner.

However if the National Assembly decides that there should be a wider remit for impact assessment than that proposed in my response to recommendation 8 I would wish to give further consideration to making the Commissioner a statutory consultee for all planning applications subject to such an assessment.

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

I thank the Committee for making it clear that it is seeking an amendment to the Planning Bill through the Environment Bill, once it is introduced to ensure that there is a clear link between the area-based Natural Resource plans and the planning regime. I have instructed my officials to work together to draft an amendment to the appropriate planning legislation through my Environment Bill.

Planning Policy will articulate the relationship between the NDF, SDP, LDPs and Natural Resources Policy once the Environment Bill is introduced.

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.

Development plans set the context for decision making for an LPA area, in line with national policies and must set out the LPA's objectives for the development and use of land in its administrative area. Plans must be based on evidence and prudent use of resources, meeting social, environmental and economic needs. Planners are required to take into account all other plans or strategies with implications for the coastal area, such as the Marine Spatial Plan or Integrated Coastal Zone Management Plans.

A European Union Directive (2008/56/EC, marine environmental policy) has been transposed into UK legislation. It requires the Secretary of State to prepare a marine strategy and the Welsh Ministers "in exercising any functions so far as affecting the marine strategy area, (to) have regard to any marine strategy".

The European Union is also bringing forward Directive 2013/0074 establishing a framework for maritime spatial planning and integrated coastal management. This stipulates that integrated coastal management is a tool for the integrated management of all policy processes affecting the coastal zone, addressing land-sea interactions of coastal activities in a coordinated way with a view to ensuring the sustainable development of both coastal land and marine areas.

Chapter 5 of Planning Policy Wales already identifies that Integrated Coastal Zone Management is a material consideration in formulating land use plans and strategies, and in taking decisions on development in the coastal area.

Therefore it is not necessary to legislate for this in the Planning Bill.

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

National Development Framework

Development plans must be based on evidence and a prudent use of resources; meeting social, environmental and economic needs. Planners are required to take into account a variety of plans and strategies when producing development plans including transport, minerals and waste and biodiversity for example. These plans and strategies will also inform the production of the National Development Framework.

The Bill requires the Welsh Ministers to set out their policies in relation to the development and use of land in Wales as they consider appropriate. This will include the national transport plan ensuring alignment of both plans will enable the delivery of key infrastructure projects.

I do not consider that it would be prudent to identify specific plans in primary legislation as these could change over time, or may expire. The current approach enables flexibility to cover new policies of the Welsh Ministers as they emerge in the future.

Strategic Development Plans

Current powers within the PCPA, section 62(5)(g) enable transport plans to be listed as a matter that LPAs must have regard to when developing their LDP. The same

approach will be adopted for SDPs, and section 5, 60(6)(f) of the Planning (Wales) Bill gives the regulation making power to achieve this in a proportionate and responsive manner.

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.

It is my intention to use regulations to ensure that the local well-being plans are specific additional matters that must be taken into account during the plan making process of SDPs. The Well-Being of Future Generations (Wales) Bill makes an amendment to the Planning and Compulsory Purchase Act 2004 to ensure LDPs have regard to local well-being plans.

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.

I thank the Committee for this suggestion. I am currently considering this recommendation.

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.

The Strategic Environmental Assessment (SEA) Regulations already require health impacts to be comprehensively considered during the preparations of all plans and strategies. It currently applies to LDPs and would also apply to the proposed SDPs and NDF. Creating a stand alone Health Impact Assessment would therefore add unnecessary duplication.

The SEA, which forms part of the Sustainability Appraisal, is part of the evidence base which justifies and demonstrates the robustness of the plan.

We are working with key stakeholders, including health colleagues and the British Medical Association to ensure that the objectives of the health impact assessments can be achieved without recourse to primary legislation.

The new European Environmental Impact Assessment (EIA) Directive will result in improved emphasis on health consideration as part of the Environmental Assessments to accompany applications for EIA development. The assessment of

health will therefore be built into the EIA process when the new Directive is transposed.

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.

The Bill does not prescribe the detail on how the Assembly should scrutinise the NDF, other than the time period. It is for the Assembly to determine if, for example, assistance from a planning expert would be advantageous to its deliberations. The precise mechanism is open for the Assembly to determine.

A specified period is felt to be necessary in order to ensure that the Assembly conclude its consideration of the NDF and that it is undertaken in a reasonable period. The current time period is 60 days, beginning with the day on which the draft is laid before the Assembly and disregards anytime when the Assembly is dissolved or in recess for more than 4 days. As I mentioned to the Committee, I am happy to consider a different time period but am of the view that a specified time period is necessary.

Recommendation 19 - We recommend that the Minister must amend the Bill to require Assembly approval of the National Development Framework.

It remains to be my view that the process set out in the Bill ensures robust scrutiny by the Assembly of the National Development Framework, but enables the Welsh Ministers to reflect and shape the NDF according to the Government's policies and priorities.

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.

I do not consider it appropriate to include the pre-application arrangements for Developments of National Significance on the face of the Bill. These are detailed procedural issues, which have not been consulted upon and are more appropriately contained in secondary legislation. To set out these procedures in primary legislation would be inconsistent with arrangements for the pre-application process for major applications.

It is my intention to prescribe in secondary legislation enhanced pre-application arrangements for DNS which will be subject to consultation.

The Committee received evidence from stakeholders, including Energy UK that these processes need to be responsive to allow for changes to the DNS consenting process or to align it to changes to the consultation process for regular applications.

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.

I do not agree that this provision should apply the affirmative procedure, as I consider the negative procedure is appropriate, as it is a technical matter of detail which may change from time to time. The use of these provisions will be informed by consultation and engagement with stakeholders. The level of engagement and consultation will ensure that the process will be transparent and open to comment from all. A consultation on the detailed aspects of the pre-application consultation procedure has recently closed.

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.

I have asked officials to bring forward existing programmed work to make Water and Sewerage Companies Statutory Consultees, on the basis that agreement can be reached between them as to the type and scale of applications that they will be consulted upon. They will be required to provide substantive responses within a specified time period for both pre-applications, and planning applications. I will report back to the Committee by the end of March 2015 on the progress of this matter.

Recommendation 25 - We recommend that the Minister amends the Bill to include the definition of what constitutes 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.

The purpose of prescribing the thresholds for DNS in secondary legislation is to ensure that the process can respond quickly to changing circumstances, such as where further devolved powers in relation to energy or other planning consents come to Wales or as new technologies and categories of development are introduced over time. I will be issuing further consultation to establish what should constitute DNS before these are defined in secondary legislation.

It is my view that having the original definitions and subsequent changes in separate legislation has the potential to confuse. The proposal in the Bill retains the criteria and thresholds in one place and provides more clarity.

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 Development of National Significance process; or whether some other process will apply.

Energy projects above 50MW are within the remit of the Minister for the Economy, Science and Transport. I have passed your comments onto my colleague as the Minister with portfolio responsibility. Nonetheless, the proposed system for DNS will be capable of handling on-shore energy projects above 50MW, should they become subject to planning permission.

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 Development of National Significance associated developments as well as secondary/ancillary consents.

My statement of policy intent makes it clear that the proposals for secondary consents will be able to handle planning permissions (associated development) connected to the DNS project and a selection of other key secondary consents. I replicate the statement here for ease of reference:

A number of secondary consent types have been identified, which may be appropriate to supplement an application for DNS. This section allows for those consents to be prescribed in secondary legislation, subject to the conditions at subsection 62H(3).

Those which are likely to be initially prescribed by regulations are:

- *Control of works affecting scheduled monuments, grant of scheduled monuments consent (Ancient Monuments and Archaeological Areas Act 1979 (s.2));*
- *Works on common land (Commons Act 2006 (s.38));*
- *Exchange of common land (Commons Act 2006 (s.16 and s.17));*
- *Restriction on placing rails, beams etc. over highway (consent) (Highways Act 1980 (s.178));*
- *Applications for hazardous substance consent; applications for consent without condition attached to previous consent and application to continue consent on change of control of land (Planning (Hazardous Substances) Act 1990 (s.4, s.13 and s.17));*

- *Control of demolition in conservation areas and authorisation of work, listed building consent Planning (Listed Buildings and Conservation Areas) Act 1990 (s.8 and 74);*
- *Requirement for planning permission & grant of planning permission (Town and Country Planning Act 1990 (s.57 and s.58)); **[associated development]***
- *CPO acquisition of land for development (Town and Country Planning Act 1990 (s.226));*
- *Stopping up or diversion of highway (Town and Country Planning Act 1990 (s.247));*
- *Highways crossing or entering route of proposed new highway, etc. (Town and Country Planning Act 1990 (s.248));*
- *Extinguishment of rights of way over land held for planning purposes (Town and Country Planning Act 1990 (s.251));*
- *Acquisition of land in connection with highways (Town and Country Planning Act 1990 (s.254)); and*
- *Order-footpaths, bridleways or restricted byways affected by development (Town and Country Planning Act 1990 (s.257)).*

Additional regulations may add, amend or remove a consent from this list.

Recommendation 29 - We recommend that the Minister clarifies whether he intends to take responsibility for the issuing of environmental permits for Development 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 Development of National Significance process.

The proposals for what should be included as a secondary consent will be consulted on and contained in secondary legislation (I have agreed to explore an amendment to the Bill to make this subject to affirmative procedure). The consenting process for DNS and secondary consents will also be set out in secondary legislation, and will be subject to consultation.

The question of whether or not to include environmental permits will be considered as part of that consultation exercise.

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.

A number of responses to the recent consultation suggested that there is a need for some local flexibility within the national scheme of delegation.

I have asked my officials to engage further with stakeholders to identify suitable measures that provide for a degree of consistency while remaining responsive to local circumstances. Notwithstanding this action, an approval process for local authority delegation schemes adds complexity to the planning system. It raises issues of how schemes would be assessed and the criteria to be used in that assessment. The criteria against which a scheme could be considered would need to be published, and this would in effect be a 'scheme of delegation' in itself. I therefore intend to look further at how local flexibility can be built into the delegation proposals but I do not intend to pursue a formal government approval process.

Recommendation 32 - We recommend that the Minister amends the Explanatory memorandum to the Bill to clearly explain how he intends to use the powers in Section 37 of the Bill.

In response to your recommendation, the Explanatory Memorandum will be updated before Stage 3 to provide further clarity in respect of how I intend to use the proposed powers in section 37. Further to this, a list of the application types that are to be prescribed in regulations and consequently included in the national scheme of delegation is attached at annex A.

As I mentioned above, officials will be engaging with stakeholders to identify specific application characteristics such as development size that will be subject to delegation requirements.

Regulations will not prescribe how the Local Planning Authority makes decisions about its other functions (such as discharging planning conditions, enforcement, Tree Preservation Orders etc.). LPAs will continue to make their own arrangements as they do now, in terms of delegation of these other functions.

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.

A consultation on delegation proposals has recently closed and a wide range of stakeholders have responded. I have asked my officials to engage further with these stakeholders with an aim to issue an additional consultation in the autumn to inform the proposals to be prescribed in regulations.

It would therefore be premature to agree to such a detailed recommendation at this stage, however, the views of stakeholders concerning the merits and practical effect of the inclusion of an exception relating to objections by town or community councils will be sought.

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.

I do not accept this recommendation as this would be contrary to the provision in the Bill which have been designed to encourage better working relationships and more productive negotiations between applicants and local planning authorities and promote fairness in the appeals process for all parties.

There is an expectation that the local planning authority should have explored any potential amendments with the applicant that could have made the application acceptable before it came to a decision to refuse. Subsequently an appeal should be the course of last resort once that process has been followed and once an appeal is made the community has an expectation that a decision will be issued within a prescribed timescale. This recommendation will reduce the certainty that this will happen.

Further, this process could be used several times by an applicant thus creating inconsistency in how applications and appeals are handled and causing uncertainty and confusion for third parties and the community generally; in effect creating a revolving door for the application.

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.

It is my intention to update Circular 23/93 prior to the introduction of new costs provisions.

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.

I would argue that time limits for requests for information are a detailed procedural issue and are more appropriately prescribed in secondary legislation rather than on the face of the Bill. The powers are more appropriate in secondary legislation as they need to allow different time limits commensurate with differing complexities of appeals and applications.

Further, this recommendation does not promote timely decision making as a minimum time limit for supplying additional information on appeals, call-ins or direct applications would mean that in practice an applicant who is in possession of all the

relevant information would have to delay providing this information until after the minimum time period had expired.

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.

In my view one year is a fair time to allow for an application for registration to be made. Once the application has been made there is further time for the preparation and evidence gathering required for the determination of the application, which is a separate process. I attach at Annex B an explanation of the procedures for registering an application for town or village green status and the evidence basis for the proposed change to the registration period.

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.

There is already provision at section 24 of the Commons Act 2006 that enables the Welsh Ministers to prescribe a fee to be payable to the authority to whom the application to register a Town and Village Green is made. The proposal in Section 50 in relation to fees is a fair change. It allows the Welsh Ministers to make regulations for fees also to be payable to the determining authority for an application to register a Town and Village Green, if that is different from the registering authority.

The purpose of this provision being included in the Bill is to ensure that I can future-proof the process to allow for fees to be charged should economic or other circumstances change. This will safeguard services for the future.

Recommendations from the Constitutional and Legislative Affairs Committee's Stage 1 Report on the Planning (Wales) Bill

Conclusion 1 - We believe that it would have been helpful for the Explanatory Memorandum to have outlined in detail how the Bill has taken account of human rights issues given their relevance to matters of planning.

Human rights issues in respect of the Bill have been considered as part of the overall legal advice provided to Ministers. The Welsh Government consider the proposals contained in the Bill are compatible with Convention Rights given that planning is by its very nature required to balance the rights of the individual and the interests of the wider community.

Conclusion 2 - We believe that more detail should be placed on the face of Bill, particularly in relation to significant policy matters.

I have made no apologies for this Bill creating a framework; I would argue that framework legislation should not be condemned in all circumstances, there are instances where the detail of the legislation is simply too complex and lengthy to be contained in an Act, or because the details are constantly having to change to reflect a rapidly changing world. The exercise of powers contained in this Bill in many circumstances will require review and refreshing when the real world changes. These changes are not something which I am prepared to speculate on or attempt to wrongly enshrine in primary legislation, which would then require further primary legislation to ensure we as a legislature can keep up with the real world.

Prescribing such detail on the face of the Bill would at best require frequent revision of primary legislation and at worst reduce the lifespan of the Bill itself. In these circumstances therefore, I am firmly of the view that the balance between primary and secondary legislation is not only proportionate, but necessary.

A major Bill of this sort needs to create a framework. This Bill is needed to deal with the challenges, economic, social and environmental, that we face now. The subordinate legislation which follows will provide detail and will quite properly face scrutiny in its turn. In response to comments made about the Bill being a framework piece of legislation, this Bill either creates a framework for laws about planning in Wales or works within the existing framework. That is what a Bill of this nature should do.

I would further argue that there are good reasons for having so many provisions which rely on delegated powers. This Bill is the first part of a wider reform of Planning laws in Wales and we are using this Bill, as our first opportunity to use primary legislative powers, to make substantive changes to the existing legislative framework to ensure that planning functions in Wales work with devolved planning policy and deliver for the people of Wales.

Recommendation 1 – We recommend that the Minister should table an amendment to the Bill applying the affirmative procedure to the making of regulations under section 60D(1) of the Planning and Compulsory Purchase Act 2004.

This power enables the establishment of a Strategic Development Plan area and corresponding Panel, the establishment of which is subject to work by the responsible authority or the Welsh Ministers and will require consultation. The regulations will specify the details that cannot be known in advance of this process, allowing the LPAs to have the democratic responsibility to lead the process.

What is reserved for subordinate legislation are technical matters of detail relating to numbers of members and name of a Strategic Planning Panel that will be different depending on the individual circumstances of each panel. The negative procedure is

considered appropriate as this will require flexibility as the defined area or make up of the Panel may need changing in the future.

Recommendation 5 - We recommend that the Minister explains and clarifies during the Stage 1 debate on this Bill, the purpose of section 20 and how it will operate in practice, including:

- the criteria to be used in determining whether a local authority is underperforming;
- the types of developments to which it will apply;
- what assessment he has made of whether a provision similar to that contained in section 62B of the Town and Country Planning Act 1990 would be appropriate.

My statement of policy intent provides the majority of the detail sought in relation to the criteria to be used in determining whether a local authority is underperforming and the types of development to which it will apply. I replicate that information here for ease of reference:

The criteria to be applied in assessing and determining whether an LPA is underperforming, and should therefore be designated by the Welsh Ministers for that purpose, is likely to be drawn from the indicators contained in the proposed performance framework that establishes what constitutes a good LPA, which was set out in the Positive Planning consultation paper.

They are likely to focus on the LPA's performance in terms of efficiency and quality of determining planning applications, which could be assessed on the speed within which applications for major development are determined, and the extent to which such decisions are overturned at appeal.

The criteria to be applied in assessing and determining whether or not to revoke the designation could include the consideration of:

- *the capacity of the designated LPA to deal effectively with applications for major development in the future;*
- *the effectiveness of the designated LPA in dealing with those major applications that were submitted to them during the period of designation;*
- *the degree of improvement against areas of weakness identified in the initial performance assessment; and,*
- *the designated LPA's performance administering applications that are submitted direct to the Welsh Ministers for determination, e.g. their performance as a consultee on such applications, and in undertaking any actions required by the Welsh Ministers to assist them in the processing and consideration of such applications.*

It is anticipated that the type of development to which the option to make direct applications applies will be limited to major development, as these types of proposals drive economic growth and have the greatest bearing upon communities.

The definition of major development is likely to be similar to that contained in article 2(1) of the DMPWO 2012, which formed part of the hierarchy of development consulted upon in the Positive Planning consultation paper issued in December 2013 and includes:

- *houses of 10 or more units or site areas 0.5ha or more;*
- *buildings with proposed floor space of 1,000 sq metres or more;*
- *development on a site of 1 hectare or more.*

The Bill specifies that a 'qualifying application' includes full, outline and reserved matters applications.

It excludes the ability for applications that fall within Section 73 of the TCPA 1990 (applications to vary or remove conditions) to be treated as a 'qualifying application', unless specified otherwise in regulations.

Applications to renew planning permission for major development deal with the principle of development. It is therefore proposed through regulations that renewal applications are to be considered as a 'qualifying application'.

Other types of applications that fall within Section 73 of the TCPA 1990, such as to vary or remove other conditions and in making material amendments to planning permissions, will continue to be submitted to the LPA for determination.

We will work with stakeholders to operate a continuous incremental approach to setting targets. Publishing the criteria supports this flexible approach rather than following section 62B.

Recommendation 8 - We recommend that the Minister should table an amendment to the Bill to apply the negative procedure to orders made in accordance with section 54(5)(b)(ii) of the Bill.

It is a longstanding principle of law that commencement orders are not subject to any procedure. This is because the legislature has already considered and approved the relevant provisions and the commencement order gives effect to the intention of the legislation. Further scrutiny, in my view, would be unnecessary on provisions that have recently been subject to such detailed scrutiny.

The transitional, transitory and savings provisions flow from commencement and are intended to provide for a smooth and fair transition between the 'old' and the 'new' law. This will be particularly relevant for planning matters as there will be many applications that are live and going through the decision making process under the 'old' law when the 'new' law comes into force. Without the use of transitional and

savings provisions, these applications would be subject to the 'new' law when they have already started a process using the 'old' law. This would be unfair and could cause considerable additional costs and delay, with some applicants effectively having to start the process again.

I am happy to amend the Explanatory Memorandum before Stage 3 to provide more detail on how the Welsh Government intends to use the transitional, transitory and savings provisions that will result from commencement orders made in connection with the coming into force of a provision of this Bill.

Recommendation 9 - We recommend that the Minister confirms categorically during the Stage 1 debate that the Queen's or Prince's consent is not required in respect of the Bill and that in so doing, he sets out the reasons for his view, taking account of the views we express at paragraphs 130 to 134 of this report.

As mentioned during the General Principles debate I have instructed my officials to write to Her Majesty, The Queen to seek express consent in relation to the Bill. The First Minister's Office wrote to the Her Majesty, The Queen on 25 February 2015. I will update the Assembly prior to the end of Stage 3 proceedings as required by Standing Order 26.67.

I have also tabled a number of Government amendments, some of which relate directly to recommendations made by the Committee and I would like to take this opportunity to outline these below:

Environment and Sustainability Committee

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.

I have tabled a Government amendments (amendment numbers 1 to 3) to Section 60-62 of the PCPA 2004, making the Welsh language a mandatory element of the sustainability appraisal in the development of the National Development Framework and at all levels of the plan making process.

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.

I have tabled a Government amendment (amendment numbers 7 to 9) to remove the voting rights for non-elected members of the Strategic Planning Panels. Further to

this I have also tabled Government amendments (amendment numbers 5 and 6) to remove the requirement for locally elected members to choose the non-elected members from a list published by the Welsh Ministers. This will allow for locally elected members to select the nominated members based on local needs and circumstances.

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.

I have tabled a Government amendment (amendment numbers 19 to 22) to limit the right to register land as a town or village green only where a planning decision has been made.

Further, I have asked my officials to consider amendments in relation to the following recommendations, and subject to their approval, it is my intention to table these as soon as possible during Stage 2 (unless otherwise specified):

Environment & Sustainability Committee

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.

I have committed to making a formal link between the Planning Bill and the Well-being of Future Generations Bill. It is my intention to make a formal link to the Well-being goals and the National Development Framework on the face of the Planning Bill. My officials are working together to achieve this during Stage 3 of the Planning Bill as this will allow for the National Assembly for Wales to have considered the Well-being of Future Generations Bill at Stage 3 and this will ensure the Planning Bill to makes correct reference.

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.

I agree with the Committee that it would be useful to specify a statutory length of time for the formal consultation period for the draft National Development Framework. I have asked my officials to prepare an amendment for introduction during Stage 2.

However, I consider that a 12 week timescale for consultation is appropriate; as this is the period of statutory consultation and would not be the only consultation and

engagement exercise when preparing the National Development Framework. Currently, the Local Development Plan process has a statutory 6 week consultation period but in reality the pre-consultation engagement covers a significantly longer period.

As with the progression of Local Development Plans there will be a series of consultation and engagement events undertaken to inform the emerging National Development Framework. Details of these events including how and when they will take place will be set out in the statement of public participation. The consultation and engagement events will include a variety of different approaches depending on the audience and stage of plan development but could include, roadshows, questionnaires etc.

These events will help to shape the draft National Development Framework that would be formally consulted upon over the statutory 12 week period. The statement of public participation will also set out the details of how this consultation will take place and will set out a clear timetable for preparing the plan to give all stakeholders advance warning of key engagement dates, thereby ensuring they are prepared to engage at the appropriate time.

A variety of engagement techniques could be used to ensure everyone who wants to be involved has the opportunity to engage in the preparation of the National Development Framework. The type of engagement used may vary by target audience such as members of the public, development industry, environmental groups etc., time of plan production and part of plan production i.e. designation or broad policy. This could include:

- Exhibitions & Roadshows;
- Website;
- Launch by Minister;
- Social Media; and
- Press adverts

Focused engagement with Stakeholders could include:

- Direct correspondence; and
- Targeted stakeholder meetings & workshops.

Focused engagement with members of the public could include:

- Ensuring a plain language approach to documents and website;
- Ensuring documents are bi-lingual;
- More informal way of commenting such as social media, map based response form;
- Ensuring key information is presented in a user friendly format;
- Online Q&A with Minister; and
- Roadshows in particular areas of change.

These approaches could be interchangeable for different groups but give a broad outline of the types of engagement techniques available to steer the production of the draft National Development Framework.

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.

In line with other plans, I consider it would be consistent for the National Development Framework to specify the period for which it has effect. I have asked my officials to explore a Government amendment to the Planning (Wales) Bill to ensure that the time period and end date of a National Development Framework (NDF) for Wales are specified.

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.

I am grateful to the Committee for providing an option in respect of the application of this recommendation. I am of the view that it would not be appropriate to set out the list of secondary consents that could be decided in connection with DNS applications because this process needs to be responsive to ensure that it captures the consents that will be relevant to the DNS applications in the future. For that reason, I have asked my officials to explore an amendment to Bill to require the affirmative procedure for prescribing the secondary consents in relation to DNS applications.

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.

I have considered this to be a fair expectation and have asked my officials to consider a Government amendment to the Bill to prescribe a maximum statutory timescale for determining Developments of National Significance on the face of the Bill. I have also asked my officials to explore a Government amendment which will require the Welsh Ministers to lay an annual report to the National Assembly on the

Welsh Minister's performance against the statutory time scale. I believe this would be consistent with arrangements for local planning authorities and statutory consultees to report on their annual performance.

Recommendation 34 - We recommend that the Minister brings forward amendments to Section 37 of the Bill to make the regulations under Section 319ZB 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.

Due to the impact on local planning authorities I have asked my officials to prepare a Government amendment to prescribe that the regulations relating to the size and composition of planning committees will be subject to the affirmative resolution procedure.

Recommendation 35 - We recommend that the Minister brings forward amendments to the Bill to make the planning committee protocol statutory.

I have asked my officials to explore an amendment which will introduce a statutory basis for the planning committee protocol on the face of the Bill.

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.

The recent consultation on Design in the Planning Process identified substantial support for the retention for Design and Access Statements for larger developments and those in sensitive locations. In light of this significant support for their retention, and the recommendation of the Committee, it is proposed that a Government amendment is tabled that seeks to remove Section 27 of the Bill.

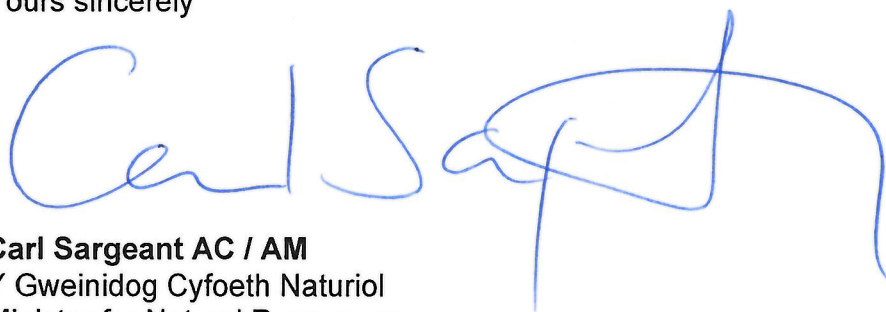
Constitutional & Legislative Affairs Committee

Recommendation 7 - We recommend that the Minister should table an amendment to section 53(1) of the Bill to delete the words "as they consider appropriate in connection with" and insert in their place "as they consider necessary for the purpose of, or in consequence of giving full effect to any provisions of".

I am considering an amendment to amend the wording in Section 53(1) to reflect the comments of the Committee.

I hope that the information provided in this letter will assist Committee Members in their scrutiny of the Planning (Wales) Bill at Stage 2. I look forward to working with you and the Committee as the Bill progresses through Stage 2 and I would like to offer a meeting to clarify any of the issues raised above and to discuss how we can work together to progress the Bill.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Carl Sargeant', with a stylized flourish extending from the end.

Carl Sargeant AC / AM
Y Gweinidog Cyfoeth Naturiol
Minister for Natural Resources

CC: Chair Constitutional & Legislative Affairs Committee

Annex A - list of the application types that are to be prescribed in regulations and consequently included in the national scheme of delegation

Town and Country Planning Act 1990:

S62 & S70 – Applications for planning permission

S73 – Applications to vary/remove conditions (including renewals and minor-material amendments).

S73A – Retrospective applications for planning permission

S92 – Outline planning permission

S96A – Applications for non-material amendments

S316 – Applications for planning permission made by LPAs, or relating to land of interest to LPAs.

S191 – Application for certificate of lawfulness of existing use of development

S192 – Application for certificates of lawfulness of proposed use or development

S220 – Applications for advertising consent (made under the Town and Country Planning Applications (Control of Advertisements) Regulations 1992

Planning (Listed Building and Conservation Areas) Act 1990:

S16 – Applications for Listed Building Consent.

S19 – Applications for variation or discharge of conditions

S74 – Applications for Conservation Area Consent (for demolition).

S82 – Applications relating to land and works of LPA

Planning (Hazardous Substances) Act 1990:

S9 – Applications for hazardous substances consent.

S13 – Applications to vary or remove conditions on hazardous substances consent.

S18 – Applications for continuation of hazardous substances consent.

Section 47 Planning (Wales) Bill: The reduction of the period for making certain applications for registration

Provision in the Planning (Wales) Bill

Section 47 of the Planning Wales Bill amends section 15(3)(c) of the Commons Act 2006 so as to reduce the period within which a town or village green (“TVG”) application can be made (after the requisite 20 years of recreational use “as of right” has ceased) from two years to one year. It also repeals existing law applicable to England only.

Environment and Sustainability Committee recommendation

Recommendation 41 of the Planning (Wales) Bill Stage 1 Committee Report by the Environment and Sustainability Committee recommends that the Minister brings forward amendments to the Bill to remove Section 47 from the Planning (Wales) Bill. The report does not present a reason for this change.

Supporting evidence for change

As part of their consultation on reforms to the TVG registration system¹, DEFRA had received evidence which suggested that while some felt that the two year period of grace for registering new greens was too short; the majority felt it was too long². This change was taken forward in the Growth and Infrastructure Act 2013, which amended section 15 of the Commons Act 2006 to reduce the period in which a TVG application can be made (after the requisite 20 years of recreational use “as of right” has ceased) from two years to one year.

Evidence has been received in Wales which suggests that the TVG registration system is used to frustrate development rather than for the purpose of protecting an important area of land³. The provision at section 47 of the Planning (Wales) Bill forms a package of reforms which seeks to remedy the negative way in which the TVG registration system is used.

In their evidence to the Committee, the Open Spaces Society’s main objection to the proposals was their fear that people will not know that the land that they have used “as of right” is under threat from a proposed development until it is too late to save it⁴. This evidence makes no specific mention of the reduction of the period of grace from two years to one year, and relates mainly to the trigger and termination events at Schedule 1B. Their evidence does not counter the view that the planning process

¹ DEFRA: Consultation on the registration of new town or village greens, July 2011

² DEFRA: Town and Village Green consultation: Summary of responses, November 2012

³ Welsh Government: Positive Planning, November 2013

⁴ Open Spaces Society: Evidence to the Environment and Sustainability Committee, 27 November 2014

LF/CS/0214/15 – Annex B - Town & Village Greens

provides ample opportunity for the community to comment on the future use of land, where a proposal to develop a site is made.

We consider that our proposal to change the 2 year period of grace will have a positive impact in removing a prolonged period of uncertainty for developers and communities where land has ceased use “as of right”.

One of the perceptions of the TVG registration system is that significant time and resources are required to compile and submit an application to register a TVG. Hence, there is a perceived requirement for a two year period of grace. It is our view that the work required to produce an application to register a TVG does not merit a two year period of grace as one year provides ample opportunity for the community to produce an application and to become aware that land is no longer used “as of right”.

The Commons (Registration of Town or Village Greens) (Interim Arrangements) (Wales) Regulations 2007 sets out the requirements to be contained in applications to register TVGs. Those requirements are⁵:

- The TVG application form and statutory declaration⁶, signed by the applicant or duly authorised officer of applicants which are bodies;
- A map of the site at a scale of at least 1:2,500; and
- A copy of any other documents which support the applicant’s case.

We consider the requirements of the application to be less onerous than that to produce a planning application, as there is no requirement for technical information or surveys. The more complex information required by the application form comes in the form of a justification of the proposed registration from the applicant. This is simply a statement, and others may be provided from witnesses.

The bulk of the work relating to applications to register TVGs is undertaken by the Commons Registration Authority following the presentation of an application to register a TVG which complies with the minimum standards set out in the Regulations. At this point, an application to register a TVG would have already been made within the period of grace. The remit of the Commons Registration Authority will be to look carefully at the evidence supplied with the application, and they may accept or invite further evidence from the applicant or third parties after the submission of the application. They may also decide to inquire into the application

⁵ Commons (Registration of Town or Village Greens) (Interim Arrangements) (Wales) Regulations 2007; Regulation 3

⁶ TVG application form and statutory declaration:

<http://wales.gov.uk/topics/environmentcountryside/farmingandcountryside/common/commonsact2006/guidelines-on-the-commons-act-2006/section-15-application-form/?lang=en>

LF/CS/0214/15 – Annex B - Town & Village Greens

through either a hearing, inquiry or a case before the Council's relevant committee of the authority, to test the evidence impartially.

The DCLG issued a call for evidence in their consultation on the registration of new town or village greens in July 2011 asking TVG applicants to quantify the time spent gathering evidence from potential users of an application site. In response to that consultation the time taken ranged from 9 days to 22 days⁷. This time is taken to include the information gathered before the making of an application as well as after the submission of an application to register a TVG.

We therefore consider the change at section 47 of the Planning (Wales) Bill gives a proportionate amount of time to gather sufficient evidence to submit an application to register a TVG.

⁷ Reforms to the town and village green registration system: Impact Assessment No: Defra1470, September 2012.

