



Economy, Infrastructure and Skills Committee Inquiry into the State of Roads in Wales Evidence from RSPB Cymru

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Introduction

1. The RSPB welcomes the Committee’s inquiry into the state of roads in Wales. Our submission is focused on the third point of the terms of reference for this inquiry – whether Wales is adopting a sustainable approach – with specific reference to the Welsh Government’s current proposal for an M4 Relief Road (the M4 Corridor Around Newport (M4CaN))..

The proposed M4CaN does not meet the sustainable development requirements in Welsh legislation

2. The RSPB is opposed to the M4CaN scheme, and we set out our objection in evidence to the local public inquiry which recently closed. Our objection is based on the impact the proposed scheme would have on a number of Sites of Special Scientific Interest, and on a number of species which depend on the habitats of the Gwent Levels. **We consider the scheme to be incompatible with the Welsh Government’s fulfilment of its duties under its own recent legislation including the Environment (Wales) Act and the Well-being of Future Generations (Wales) Act.**
3. The Welsh Government’s preferred ‘Black Route’ for the M4 relief road would destroy large areas of habitat within four Sites of Special Scientific Interest (SSSIs), severing their northern parts and thereby fragmenting precious habitats. These SSSIs are designated for their nationally important wildlife. Under the Wildlife and Countryside Act 1981 (as amended) the Welsh Government has a duty to take reasonable steps, consistent with the proper exercise of its functions, to further the conservation and enhancement of features for which SSSIs are designated.
4. The Environment (Wales) Act, 2016, establishes a framework for the sustainable management of natural resources (SMNR), the objective of which is to maintain and enhance the resilience of ecosystems and the benefits they provide, and in so doing contribute to achievement of the Well-being Goals¹. The Act is clear that SMNR means both ‘taking action that promotes’ maintaining and enhancing the resilience of ecosystems, *and* ‘not taking action that hinders’

¹ Well-being of Future Generations (Wales) Act, 2015, Section 4
<http://www.legislation.gov.uk/anaw/2015/2/section/4>

maintaining and enhancing the resilience of ecosystems². The M4CaN fails on both counts. The Environment Act recognises that resilient ecosystems are fundamental to human well-being, because of the services and benefits we gain from nature. The 2016 State of Natural Resources Report, which NRW has produced under the Act, found that none of Wales' ecosystems is resilient. The Welsh Government's Natural Resources Policy is the second key part of the SMNR framework. It sets out Welsh Government's commitment to reversing the decline of biodiversity and improving ecosystem resilience, and highlights the importance of Wales' protected sites (like SSSIs) in delivering this: *'Building on the protected sites Wales has, our aim is to improve resilience and reverse the decline of biodiversity in Wales'*³.

5. In our engagement with the public inquiry we have focused on the impacts the Scheme would have on three species in particular. The Scheme would destroy the habitat of the first pair of common cranes to breed in Wales for 400 years, and 22% of Wales' population of Cetti's warbler.
6. The Scheme would also jeopardise the future in the UK of one of our rarest bumblebee species. The shrill carder bumblebee only has five populations left in the UK, and only two of these are thought to be large enough to be genetically sustainable in the long term. These are the populations of the Gwent Levels and the Thames Estuary – devastatingly, *both* are threatened by major road schemes. The shrill carder bumblebee is a feature of the SSSIs, and a 'priority species' under the Environment (Wales) Act. Section 7 of that Act places a duty on the Welsh Ministers to publish a list of the living organisms and types of habitat which in their opinion are of principle importance for the purpose of maintaining and enhancing biodiversity in relation to Wales. It goes on to require the Welsh Ministers to take all reasonable steps to maintain and enhance the listed living organisms and types of habitat, and encourage others to do so. In doing this, Ministers are required to apply the principles of SMNR, which include taking account of the intrinsic value of natural resources (including biodiversity) and taking action to prevent significant damage to ecosystems. Coastal and floodplain grazing marsh – the main habitat that will be destroyed should the new motorway be built – is also listed under section 7.
7. This special duty is in addition to the 'biodiversity and resilience of ecosystems' duty placed on Welsh Government as well as other public authorities by section 6 of the Environment (Wales) Act. **The M4 proposal represents a dramatic failure by Welsh Government in delivering these duties.**
8. The Explanatory Memorandum to the Environment Bill made clear that the fulfilment of the section 6 Biodiversity and Resilience of Ecosystems duty is integral to public bodies (including the Welsh Government) meeting their obligations to carry out sustainable development under the Well-being of Future Generations Act. Paragraph 77 of the Explanatory Memorandum states:

² Section 3 (1) (b) (c) <http://www.legislation.gov.uk/anaw/2016/3/section/3/enacted>

³ Natural Resources Policy p10 <http://gov.wales/docs/desh/publications/170821-natural-resources-policy-en.PDF>



“The intention is to achieve integration [of] benefits for those bodies that fall under the Well-being of Future Generations (Wales) Act 2015 as they will be able to report on how they are delivering the biodiversity duty in their reports on how they are meeting their well-being objectives. For these bodies this will also ensure that the requirement is joined-up and embedded within the Well-being of Future Generations (Wales) Act 2015 obligations”.

9. The RSPB considers that promoting **the M4CaN scheme is wholly incompatible with the Welsh Government’s responsibilities under the Well-being of Future Generations Act (WFG Act)**. We are aware that this has been the subject of considerable debate within the Assembly, as well as through evidence submitted to the local public inquiry. The development of the proposed scheme pre-dates the passing of the WFG Act, but the final decision over the scheme will be a litmus test of the Welsh Government’s commitment to leading the successful delivery of the Act. It is disappointing that the Welsh Government has invested so heavily (through the public inquiry) in arguing, against the advice of the Future Generations Commissioner, that the scheme can be justified in the context of the Act, rather than using the new framework provided by the Act to reconsider the proposal.
10. Part of the need for this ground-breaking legislation was the tendency for public goods, like the environment and nature, to be traded-off by decision makers in favour of actual or perceived economic benefits. The Future Generations Commissioner, Sophie Howe, has made clear in her correspondence with the public inquiry that this sort of trade-off is no longer acceptable: contrary to the approach taken by the Welsh Government, ‘Balancing’ considerations does not simply mean deciding that benefits to one pillar of sustainable development make it worthwhile accepting damage to others. In her second submission to the public inquiry (September 2017) the Commissioner said *“the balancing in this revolutionary Act means giving as equal as possibly weight to each element and not allowing one to tip the scale”*⁴. Solutions that advance all of the pillars, and minimise negative impacts, must be sought. In our view it cannot be credibly argued that were the problem of congestion around Newport to be considered afresh with the framework of the WFG Act in place, the currently proposed solution would be identified.

Mitigation proposed in relation to the M4CaN scheme

11. Without prejudice to our strong objection to the scheme we have been working with the Welsh Government team to identify and promote measures that would help to compensate for habitat losses that would result should the scheme proceed, particularly in relation to the three species listed above. As a result we are more confident in the measures that are now being proposed, but we would emphasise that seeking to compensate for destroyed habitats is a risky business and that there is no guarantee of success. Our position remains that the Welsh Government should withdraw this damaging scheme and seek a solution to the problem of congestion around Newport that aligns with the WFG Act and the Environment (Wales) Act.

⁴ Letter from Sophie Howe to Public Inquiry, September 2017, p3 <http://bailey.persona-pi.com/Public-Inquiries/M4-Newport/E%20-%20PI%20Documents/PID/ID109a.pdf>



12. Welsh Government argues that the ecological mitigation package for the scheme, which will aim to create some new habitats to replace those that will be lost, would represent an enhancement for nature – **we strongly refute this claim**. This argument is based in part on the fact that the SSSIs are not currently in favourable condition. Welsh Government states that high quality habitat will be created to replace habitat which is currently degraded. However, the poor condition of the SSSIs represents a statutory failing – it should not be used to downplay the impacts of the M4 Scheme. “Mitigation” must be over and above delivering existing statutory duties.

13. There is risk inherent in creating new habitat – there are no guarantees of success. This is often addressed by seeking to supply a much greater extent of compensatory habitat than that which is being lost – but that is not the case in this instance. Furthermore, our current understanding is that much of the habitat to be created as mitigation will not be in place before the loss of existing habitats should the Scheme go ahead, contrary to principles set out by Professor John Lawton in his 2010 review of England’s wildlife sites and ecological network⁵ (Professor Lawton submitted written evidence during the scrutiny of the Environment (Wales) Bill in which he stated that the scientific principles underpinning its recommendations apply broadly to any kind of habitats anywhere in the UK)⁶. This increases the risks to wildlife, especially species like the shrill carder bee which have short lifespans.

Consideration of Value for Money

14. We note that the Committee is considering the question of value for money in relation to the maintenance of Wales’ road networks. This has not been within the scope of our evidence to the public inquiry in relation to the proposed M4CaN scheme. However, we note that the predicted cost of the scheme – much discussed and debated in public as well as in the Assembly – has risen considerably. Based on this, a conservative estimate of cost would seem to be £1.4 billion. Under current Department for Transport Guidelines (used by Weitag⁵), this cost figure would yield low value for money under low and central benefit scenarios (see table 1 below); surely an important consideration given the reliance on borrowing powers and costs to Welsh tax-payers.

⁵ Making Space for Nature – a review of England’s wildlife sites and ecological network. Chaired by Professor Sir John Lawton CBE FRS
<http://webarchive.nationalarchives.gov.uk/20130402151656/http://archive.defra.gov.uk/environment/biodiversity/documents/201009space-for-nature.pdf>

⁶ <http://www.senedd.assembly.wales/documents/s42266/Paper%209.pdf>



Table 1

	Low	Central	High	Source
Net Present Benefit	1.5	2	2.8	⁷
Cost		1.4		⁸
Ratio	1.07	1.43	2	<i>calculated</i>
Value For Money Category	Low	Low	Medium	⁹

15. We also note the comments of the Future Generations Commissioner in her written evidence to the public inquiry: **I believe that using the Welsh Government’s borrowing powers to finance one scheme that will, at best, result in geographically, economically and socially disproportionate benefits to one part of Wales is ill conceived¹⁰.**

⁷ <http://www.m4newport.com/assets/business-case-20142.pdf>

⁸ <http://www.bbc.co.uk/news/uk-wales-politics-42716981>

⁹ <https://beta.gov.wales/sites/default/files/publications/2017-09/welsh-transport-appraisal-guidance-weltag.pdf>

¹⁰ <http://bailey.persona-pi.com/Public-Inquiries/M4-Newport/Third%20Parties/M4%20-%20Proofs/Future%20Generations%20Commissioner/17%2002%2007%20Full%20Proof%20of%20Evidence%20-%20FINAL%20version.pdf>