

Consultation response: Infrastructure (Wales) Bill – Stage 1 scrutiny

11th August 2023

Relevant links:

- Bill: <https://senedd.wales/media/wmlnlrja/pri-ld15880-e.pdf>
- EM: <https://senedd.wales/media/zhxnxhxq/pri-ld15880-em-e>.
- Senedd Bill progress page:
<https://business.senedd.wales/mgIssueHistoryHome.aspx?IID=41502>
- Minister's Stage 1 evidence transcript:
<https://record.assembly.wales/Committee/13393>
- Senedd Research explainer: <https://research.senedd.wales/research-articles/infrastructure-wales-bill-what-does-it-do-and-what-happens-next/>

General Principles of the Bill

CPRW is supportive of the General Principles of the Bill and the broad intention of simplifying and streamlining consenting for significant developments to broadly bring Wales in line with the rest of the UK. However, this streamlining process should not come at the expense of safeguards for nature, not least because these are required by the [Well-being of Future Generations \(Wales\) Act 2015](#) and the [Environment \(Wales\) Act 2016](#). Nor should the process overrule the wishes of local communities.

Wales has declared both a Climate Emergency and a Nature Emergency. Wales presently has targets for net zero greenhouse gas emissions but there are no targets for nature or biodiversity. Therefore, at present, policy decisions are biased towards increasing renewables without due regard to nature, biodiversity, ecosystems, and habitats. The current methodology for protecting specific species (threatened species) takes these in isolation, failing to consider direct and indirect threats to the wider ecosystem, and how that both directly and indirectly affects the biodiversity of the area.

There is already a democratic deficit implicit in the existing Developments of National Significance (DNS) scheme. Communities feel isolated and see their views repeatedly ignored. Without community buy-in, the process loses the social licence that is essential to enact the changes we need and so we must have a system where the communities' views are taken into account.

CPRW welcomes any reduction in the cost of administering the planning process however, there must be adequate resources in place to fulfil duties towards applicants, local communities and other stakeholders. This cannot currently be said of the DNS system overseen by PEDW, who have informed CPRW that they are not sufficiently resourced and cannot cope with the quantity of applications before them. CPRW would welcome further scrutiny on this from the Committee. We would like to see PEDW adequately resourced so they can correct the existing errors found in roughly half of all DNS cases on their Planning Portal.

CPRW hopes that implementation of the Infrastructure Bill brings a much-improved level of long-term planning and strategic thought. The target should be a holistic, UK-wide, approach to the energy and infrastructure needs of the UK, both on land and at sea, with a clear account of Wales' part in this.

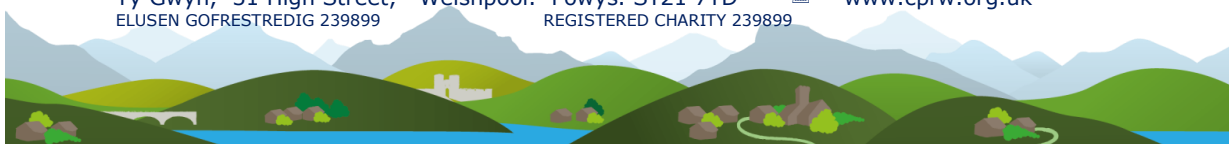
All policy documents that help inform the Infrastructure Bill must be sufficiently up to date. This includes the National Development Framework (NDF), Future Wales 2040 (Future Wales), and Wales National Marine Plan (WNMP). The vision of a transformed Wales where carbon-intensive industries and unsustainable energy generation are reduced and sustainable forms of renewables are encouraged, should be fostered and enforced. However, biodiversity, natural carbon storage, historical landscapes and culturally sensitive sites must not be forgotten in the 'race' to sustainable energy. We cannot ride roughshod over one emergency to resolve the other.

Most forms of renewable energy have either a direct or indirect impact on nature by destroying or degrading habitats during construction or reducing numbers and biodiversity through habitat fragmentation, blade-sweep, light, noise etc. CPRW alongside other environmental NGOs and charities work hard through planning casework to ensure that negative impacts are properly avoided, mitigated or offset. as much as possible.

The balance between renewable energy gain and biodiversity loss is crucial. We hope that a unified process with a 'one stop shop' to engage with it will make it easier for small environment charities, citizen scientists and local residents to engage with the process. All these are important sources of evidence to be weighed in the planning balance.

Achieving policy intentions

Handing oversight of most energy developments under 50MW back to local authorities, as was originally the design of the [Planning Act 2008](#), theoretically frees time and resources for bodies such as PEDW. There are currently 62 live DNS applications: 26 wind and 36 solar. Of these, 8 wind and 26 solar applications would revert to local authorities, leaving only 28 DNS applications. However, this increase in planning workload would need corresponding increases in resources, training and expertise for local authorities.



Welsh Infrastructure Consent (WIC) for applications over 50MW should incorporate opportunities for strategic and spatially aligned developments, with better oversight of cumulative impacts. This would overcome some of the negative impacts and inefficiencies arising from “case by case” decisions.

We’d like to see a more pro-active and strategic approach to renewable energy development in Wales, with Welsh Government actively ensuring that carbon reduction targets can and will be met. For example, there is little national drive or economic support for rooftop solar panels on buildings, even though they are one of the least impactful forms of energy generation, making use of existing development or being an addition to new development. They avoid use of greenfield land and interference with aquatic or terrestrial ecology.

Local Impact Reports and environmental considerations

There are currently countless examples of Planning Inspectors failing to take note of current government planning policy or legislation covering Natural Resources Management, SACs, SSSIs, LDPs etc.. CPRW would like to see a clear direction to Planning Inspectors and Local Planning Authorities to familiarise themselves with current and updated policies made at a government level. In future, net benefit for biodiversity must be embedded in all planning decisions.

Other changes should be made to the current legislation making crucial action mandatory. For instance, we would like to see a requirement that Ministers must add to the regulations specifying what a Local Impact Report (LIR) looks like. As we understand it, without new regulations, an LIR will be limited to the inadequate guidance under the Planning Act which says that an LIR must contain:

- The likely impact of the DNS development on the area,
- Planning history of the site,
- Local designations relevant to the site / surroundings,
- The likely impact of any application in relation to a secondary consent being granted,
- Any relevant local planning policies, guidance or other documents,
- Draft conditions or obligations which the LPA considers necessary for mitigating any likely impacts of the development,
- Evidence of the Publicity undertaken by the LPA in accordance with the Procedure Order, i.e. a copy of the Site Notice, a photograph of the Site Notice on display and a map showing the location of the Site Notice

If there is a local designation for nature nearby, consideration of cumulative impacts should be required, and possible mitigation or offsetting fully explored. Whilst “net benefit” is currently being adjusted in Planning Policy Wales – with ‘biodiversity enhancement as compensation’ providing a last resort if biodiversity damage is unavoidable – the local context should be fully considered early on in

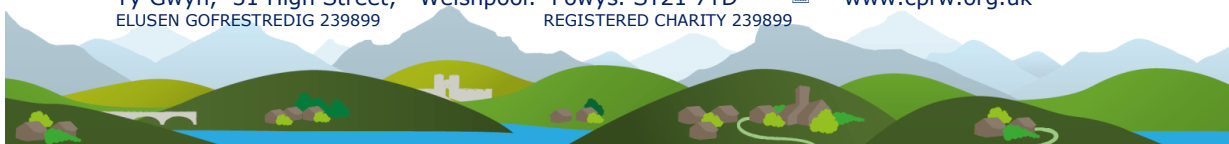
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the development process so that “net gain” is not simply a later, concocted add-on.

At present, an LIR by a Relevant Planning Authority can include a view on the ‘relative importance’ of differing social, environmental, and economic issues, but this is not mandatory. This is a fundamentally difficult choice for LPAs who rarely give much weight to the intrinsic value of nature’s ecosystems for the general health of our environment. LIRs should be made available to the general public before the close of general representations so that the public may be aware of key issues and frame their own submissions accordingly. Bringing the concept to local Community Councils may enable finer examination of environmental impacts.

A fundamental problem with the current Planning Policy pyramid is that the chronology of policy development tends to breed ambiguity in the system. For example, Local Authorities across Wales are beginning to update their LDPs. The next update of the Wales Spatial Plan is anticipated after LDP updates and the next update to Future Wales is not due for several years after that. This entire process is upside down. Future Wales should be updated, which in turn would inform the update of the Wales Spatial Plan. Both of these over-arching policy documents could then inform development of the LDPs at local authority level. As things stand, the LDPs and Wales Spatial Plan updates will inevitably refer to Future Wales - now three years out of date. Ministers making decisions about energy infrastructure will have to decide how to juggle the integration of new and outdated information, which is likely to foster poor confidence and legal challenges.

CPRW agrees with the joint response given from the Future Generations Commissioner and the Wales Infrastructure Commission, that the Bill presents an opportunity to address the common perception that planning decisions are heavily weighted towards economic well-being to the detriment of other Well-being of Future Generations Act Goals. The Bill should address this imbalance both on the face of the Bill and in secondary legislation. It should also be made clear that the Well-being Act requires involvement of the individuals and communities impacted by planning decisions.



Marine consenting

To implement the forward-looking ambitions of the Bill, legislation should be cognisant of, and take into account likely future trends, especially in the need for energy and energy infrastructure in Wales, and in Wales as a part of the UK. This will be influenced by any shifts in legislative competence. CPRW has long predicted that offshore wind developments, both fixed and floating, will become the dominant source of energy production in Wales over the coming years. This was recently reinforced in the [Future Energy Grids Wales report published on the Welsh Government website on 14th July 2023](#). Ideally, this legislation should be drafted in such a way to anticipate potential changes in planning responsibilities for energy development in territorial waters that are not currently devolved to Wales. Otherwise, there is a risk of an additional piece of primary legislation being required in another few years.

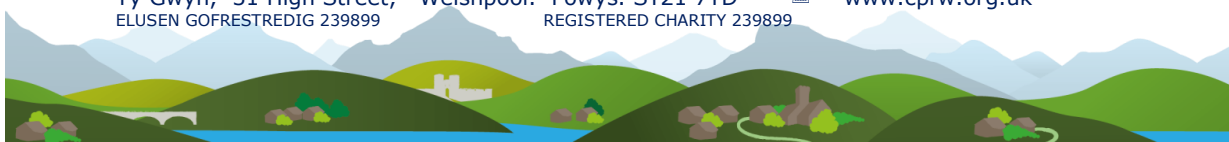
For developments in the sea, the Bill sets out that whilst a local authority 'must' submit a Local Impact Report for a development on land, they only 'may' for the marine area. A way must be found to reflect the concerns of coastal Authorities and Communities

Natural Resources Wales is required to, if it needs a marine licence, and Ministers can direct them to if it's considered necessary. But this can potentially create the adverse consequence of marine developments having less oversight than land developments. The Wales National Marine Plan (WNMP) will become even more important if decisions are made more on a broad policy basis, as opposed to on land where it has more spatial elements as prescribed by Local Development Plans.

A form of Marine Development Plan is planned broadly to sit underneath the WNMP (a written statement from 1st March 2023 highlights that Welsh Government intends to "bring forward further proposals to implement spatial direction through the Welsh National Marine Plan. This will include consideration at a strategic, plan-level of environmental compensation and mitigation requirements"). This is very much welcome, as it can more cohesively give spatial instructions as to where it's safe to develop without impacting negatively on the environment, blue carbon habitats, or other sea-based industries like fisheries and tourism.

In light of Welsh Government having powers devolved to develop the offshore area. It would significantly help with streamlining renewable developments whilst balancing carbon needs in our nature-rich seas. Spatial planning is something that is overdue for the marine area.

Ensuring evidence is shared – potential for this to be included in regulations or for Ministers to add this as part of their WIS decision-making process.



One of the continuous problems for developing at sea is a lack of reliable or recent data, even though many private companies have undertaken exploratory work and have data that isn't shared with NRW or Welsh Gov. If and when a Marine Development Plan is progressed, we hope it could also drive improvements in the evidence base and publicly available data. This, in turn, would help developers to more easily create proposals for offshore energy which doesn't infringe on marine protected areas.

We believe it would also be possible to use this Bill, in terms of its regulation-making powers, to improve our evidence by making it necessary for developers to share any private developers' surveys (i.e. biodiversity assessments) with NRW and Welsh Government in perpetuity, to be in the public domain, so that data can be used for future spatial planning for energy. This can be done through a duty or part of the application process for permission.

Increasing offshore renewables without designating Marine Conservation Zones

There is some concern that we are embarking on a Bill that explicitly hopes to increase renewables when we still do not have an ecologically coherent network of marine designations. The Welsh Government, as part of the UK Marine Strategy's aims of achieving 'Good Environmental Status' in our seas, has been committed to designating further Marine Conservation Zones (MCZs) for some years, but only in November 2022 did the Minister announce the start of the pre-consultation engagement process.

We would strongly urge for MCZs to be designated before 2026, at the end of this Senedd term, so they can be used to drive progress in marine development that fully considers important ecosystems, species and particularly those protected under Section 7 in the Environment Act.

