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15 January 2014

Dear Sirs,

**Welsh Government White Paper *Towards the Sustainable Management of Natural Resources*: Response from Natural Resources Wales**

This letter contains Natural Resources Wales' response to the consultation on proposals for a Wales Environment Bill, set out in the October 2013 White Paper 'Towards the Sustainable Management of Natural Resources'. Our replies to the specific consultation questions are set out in the attached Annex.

We strongly agree with the Minister that Wales' environment and natural resources are the foundation of our economy and society. The social and economic well-being of the people of Wales, of both current and future generations, therefore depend on securing and improving the health and resilience of our ecosystems and the many services they provide. We therefore welcome the opportunity to comment on these proposals which represent a once-in-a-generation opportunity to significantly improve the statutory framework for the management of the environment and natural resources in Wales.

We greatly welcome the underlying intention of the White Paper to ensure that there is a legal framework that supports a 'joined up' approach to the planning and management of natural resources in Wales, to the benefit of the environment, communities and businesses. In particular, we strongly support the proposal that the policy and priorities for natural resources should be set out at a national level, in a statement which is owned, agreed and published by Welsh Ministers and which has weight and authority in the consideration of other national plans and strategies. Our view is that this alignment across Government is fundamental to the overall success of these proposals. Similarly, there needs to be synergy between the Environment Bill and other legislation coming forward, particularly the Planning (Wales) Bill and the Future Generations Bill. It is essential that these separate pieces of legislation are complementary and mutually supportive.

We believe that the existing legal framework for the management of the environment and natural resources has served us well, but that it is entirely appropriate to review it, to identify areas for improvement, and address the challenges we now face. These challenges include the social, economic and environmental effects of climate change, the depletion and deterioration of natural resources, the continuing decline in biodiversity, and the inequalities in the access that the people of Wales have to the benefits that ecosystem services provide. We also look forward to working with Welsh Government and other partners to consider how best we can halt the decline of biodiversity in Wales, including through the protected sites network.

We are enthusiastic advocates for legislative change where there is robust evidence that current legislation is hindering progress towards more sustainable planning, management and regulation of natural resources. Opportunities in existing legislation should be fully exploited before new legislation is introduced. Where evidence demonstrates new legislation is needed but the detailed requirements are less clear, we recommend high level legislative frameworks. This then allows the finer detail to be set out in, for example, guidance, codes of practice or if necessary, secondary legislation, perhaps after a period of piloting or trials. We believe the main benefit of this approach is that guidance can be more easily changed in response to learning from a period of operation. It is also a way to avoid enshrining in primary legislation provisions that may lead to unintended consequences after a period of operation. If Welsh Government is minded to adopt a high level approach, we recommend that careful consideration is given to ensuring that appropriate scrutiny arrangements are in place for any secondary legislation. We would also strongly urge Welsh Government to consult on the development of any codes of practice or guidance.

The provisions of the Environment Bill, if enacted, will sit within a wider legal and policy framework consisting of numerous obligations under EU directives and regulations, other primary legislation (Wales and UK), secondary legislation, and the policies and operational frameworks of the public bodies responsible for implementation. In taking forward the development of the Environment Bill, as well as ensuring the robustness of the individual Bill provisions themselves, care needs to be taken to ensure that they will work effectively and in synergy with the wider existing legislative and policy context. A good example of this is the series of detailed legislative measures proposed in Chapter 4 of the White Paper in relation to waste management. These need to complement the existing regulatory, policy and operational arrangements that are already working towards reduction and improved management of waste. Current problems may be due to the way in which existing legislation is implemented, rather than weaknesses in the legal framework itself. Legislative amendments need to be applied only where improvements in outcomes cannot be achieved within the existing legal framework.

The legal framework for natural resources is also only part of the solution to achieving a sustainable Wales. There are other factors which will influence whether the desired outcomes are achieved. It is therefore important to look beyond environmental legislation to identify and seek solutions to the underlying causes and drivers of the unsustainable use of natural resources. The White Paper focuses on ensuring the sustainable use of Wales' natural resources. However, the way we consume natural resources in Wales has significant environmental, social and economic impacts elsewhere, for example through the importation of goods and resources produced elsewhere and the export of waste. We need to ensure that, in developing a new approach to management of natural resources in Wales, we do not simply transfer adverse environmental impacts or unsustainable resource consumption to elsewhere in the UK or further afield. We hope that the Welsh

Government's wider legislative programme, particularly measures under the proposed Future Generations Bill, will address this issue.

The Welsh Government's 2012 Green Paper "Sustaining a Living Wales" emphasised the intention of moving towards the ecosystem approach as the basis for managing natural resources in Wales. We strongly support Welsh Government's policy position that the ecosystem approach should be at the heart of how we plan for, manage and use our natural resources. The White Paper has moved away from explicit references to the ecosystem approach. Our understanding is that this decision has been made only in the interests of clarity of language and avoiding unfamiliar terminology. We would be happy, therefore, to contribute to discussions about how the ecosystem approach could be better communicated and thus better understood.

Finally, whilst we are very supportive of the great majority of the proposals in the White Paper, their affordability – for all those who will be affected by them - needs to be considered alongside their desirability. A number of the proposals would place significant new responsibilities on Natural Resources Wales, in particular our central role in the development of integrated natural resource planning (Chapter 2) and the new regulatory responsibilities in relation to waste management (Chapter 4). In addition, a number of the proposals in Chapter 3 aim to provide some welcome improvements to our legislative 'toolkit', which will need to be properly resourced in order to be effective. We appreciate the confidence that the Welsh Government places on Natural Resources Wales as being central to the delivery of policy aspirations, and developing the tools, skills and evidence base for these new work areas will be a significant but very worthwhile investment. The business case to create Natural Resources Wales sets out the synergies and efficiencies that the organisation must achieve to allow some of this additional work to be absorbed. We look forward to working with Welsh Government to establish the full extent of these new responsibilities and how best to resource them so as to maximise our effectiveness in delivering the Welsh Government's policy objectives.

We look forward with keen interest to the next stages of development of this important piece of legislation and to continuing to work with Welsh Government and other stakeholders to develop further the detail of the proposals.

Yours sincerely,



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Chief Executive

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## Towards the Sustainable Management of Wales' Natural Resources

### Environment Bill White Paper – Consultation Responses

**This is Natural Resources Wales' response to the consultation questions. See also the covering letter dated 15 January 2014 from Emyr Roberts, Chief Executive.**

We want your views on our proposals for an Environment Bill.

Your views are important. We believe the new legislation will make a difference to people's lives. This White Paper is open for public consultation and we welcome your comments. The consultation will close on 15 January 2014.

To help record and analyse the responses, please structure your comments around the following questions. You do not need to comment on all questions.

The Welsh Government will run a series of engagement events across Wales on the White Paper during the consultation period.

Please submit your comments by 15 January 2014.

If you have any queries on this consultation, please email:  
[NaturalResourceManagement@Wales.gsi.gov.uk](mailto:NaturalResourceManagement@Wales.gsi.gov.uk)

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#### Data Protection

**Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.**

**The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tick the box below. We will then blank them out.**

**Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.**



In line with Natural Resources Wales' standard practice, we intend to publish our response in full on our website.

## Environment Bill White Paper

23 October 2013 – 15 January 2014

<b>Name</b>	Emyr Roberts	
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<b>Type</b> <i>(please select one from the following)</i>	<b>Businesses</b>	<input type="checkbox"/>
	<b>Local Authorities/Community &amp; Town Councils</b>	<input type="checkbox"/>
	<b>Government Agency/Other Public Sector</b>	<input checked="" type="checkbox"/>
	<b>Professional Bodies and Associations</b>	<input type="checkbox"/>
	<b>Third sector (community groups, volunteers, self help groups, co-operatives, enterprises, religious, not for profit organisations)</b>	<input type="checkbox"/>
	<b>Academic bodies</b>	<input type="checkbox"/>
	<b>Member of the public</b>	<input type="checkbox"/>
	<b>Other (other groups not listed above)</b>	<input type="checkbox"/>

## Chapter 2 - Natural Resource Management

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### Question 1

Do you agree with the overall package of proposals in relation to natural resource management in chapter 2?

Yes ✓

No

***Please provide comment:***

We welcome the intention to develop a new integrated approach to the planning and management of natural resources. Taken together with proposals set out in the Welsh Government's consultation *Positive Planning - Proposals to reform the planning system in Wales*, the draft Planning (Wales) Bill, the thinking on a Future Generations (Wales) Bill and the *Wales Marine and Fisheries Strategic Action Plan*, it provides a legislative platform to integrate the planning and management of terrestrial and marine natural resources with the frameworks for ensuring the economic, social and environmental well being of Wales.

There is clearly much work to be done in developing the practical arrangements for the proposed integrated area-based approach, including its relationship with existing planning processes for the management of land, water and other natural resources, and in particular the town and country planning system and proposed Welsh National Marine Planning process. It will also be necessary to address the resource implications, particularly for Natural Resources Wales in the short to medium term, while we develop the new approach alongside continuing to deliver our existing functions.

We agree that natural resource management should be underpinned by a statutory framework. However, we suggest that the legislation should set out only the high level statutory framework under which the best approach can then be developed. This would allow the opportunity for the detail to be informed by practical experience of pilots and early efforts at implementation. If necessary, the details could be set out in statutory guidance or secondary legislation at a later date. It is also likely that the capability of Natural Resources Wales and others to develop and apply this new approach and new thinking will need to develop over time.

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### Question 2

Do you agree with the approach to define natural resources, sustainable management of natural resources and integrated natural resource management in Wales?

Yes ✓

No

***Please provide comment:***

We agree with the principle of developing definitions for these terms, which need very careful consideration. We recommend that the definition of the term ‘natural resources’ should be as short and broad as possible, encompassing the whole of the physical and living environments and all the resources and ecosystem services they provide. We make this recommendation because the ecosystem approach is only compatible with the consideration of all classes of natural resource. The alternative approach of defining natural resources by listing what is included runs the risk of missing items from the list, which could undermine efforts to apply the ecosystems approach. We would be happy to assist with the development of a suitable definition.

A broad definition would also recognise that a truly integrated approach is the collective responsibility of all those who manage or impact on any natural resources in Wales. The different roles of Natural Resources Wales and other bodies in relation to different types of natural resources, and the fact that some matters (such as energy and ports) are not devolved to Welsh Ministers, could then be addressed through the various ways in which an all-encompassing definition would have legal and practical effect, rather than attempting to reflect such complexities in the definition itself.

If however the intention remains to identify specific categories of natural resources in the definition, we have some detailed comments on the proposition in the White Paper:

- We suggest that ‘geology and geomorphology’ should be used in place of ‘geologic’ in order to include the full range of geological resources, landforms and geomorphological processes. This is because ‘geologic’ is an unfamiliar term and arguably does not represent the wide-range of geo-resources. Alternatively ‘geodiversity’ could be used as a catch-all term which would also include soils. We also consider that there need to be greater recognition of the importance of geodiversity and the ecosystem services that it provides, both directly (for example rock aggregate, building material, metal ores), and indirectly (through pollution control, flood regulation, landscapes and cultural values).
  - It needs to be clear what the term ‘biomass’ refers to, and how it is distinguished from ‘biological resources’. Does it for example include waste materials (of biological origin)?
  - It needs to be clear why ecosystems could be considered a class of natural resource. Under the ecosystem approach, ecosystems are more properly thought of as the source of all natural resources.
  - The discussion in Chapter 2 of the White Paper makes clear the links between natural resources, green growth, sustainable use of resources, and sustainable management of waste, but it is not clear whether resources from waste fall clearly within the proposed definition of ‘natural resources’ and ‘natural resource management’. We suggest that the role of materials management should be recognised as a key component of the sustainable and integrated
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management of natural resources in Wales.

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### **Question 3**

**Do you agree that climate resilience and climate change mitigation should be embedded into our proposed approach to integrated natural resource management at both national and local levels?**

Yes

No

***Please provide comment:***

We agree that measures to promote resilience (environmental, economic and social) to the effects of climate change should be embedded into natural resource management at both national and local scales.

The UK Climate Change Act and Wales' Climate Change Strategy set the legislative and policy aspirations for climate change mitigation and carbon reduction in Wales. The land-use sector is one of the sectors of devolved competence for Wales and as such is a key means of delivering the 3% per annum emissions reduction target. Success will depend on systematic effort involving a multitude of both large and small scale projects such as large scale renewables, community scale biomass projects, cycle-to-work initiatives and so on. These projects all have environmental synergies and trade-offs that mean that their deployment needs to be considered within the integrated natural resource management framework, in order to minimise conflicts and maximise emissions reduction and complementarity with other policy priorities. The proposals in Chapter 2 of the White Paper represent a key opportunity to deliver a coordinated approach to climate change mitigation that will help ensure that the right solutions are deployed in the right places. The proposed national natural resource policy should set out the links to the Sectoral Adaptation Plans (SAPs) and the Welsh Government's emission reduction targets, while the delivery of most adaptation measures will be at a local scale and should be reflected in the proposed area based approach.

Embedding climate change resilience should not be seen as a one-off, fixed term process of 'climate proofing', but other complementary climate change adaptation responses should also be developed. In particular, these should include monitoring and adaptive management, where management goals are reviewed in the light of monitoring data and emerging climatic information. We suggest that such review would be an important part of the review process for the national natural resources policy and the area based natural resource approach.

Climate change is a cross-cutting theme, requiring coordinated action across all sectors of society and Government. It is important that natural resource management is not perceived as the sole vehicle for delivering actions for climate change resilience,

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adaptation and mitigation: climate change is not an issue ‘owned’ by the environment sector and is not only a natural resource management issue. However, embedding climate change resilience and adaptation within the natural resource management process should largely deliver for the Natural Environment SAP, one of five SAPs (Natural Environment, Business & Tourism, Infrastructure, Communities and Health) proposed to address the breadth of adaptation measures.

Finally, the relationship between the Environment Bill, the Future Generations Bill, the Planning (Wales) Bill and the development of marine planning under the Marine & Coastal Access Act is also critical, so that action on emissions reduction occurs as a result of carefully designed synergy between these pieces of legislation and the measures taken under them.

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#### **Question 4**

**Do you agree that the setting of national outcomes and priority actions for natural resource management should follow the five-year cycle for national outcome setting as proposed in the Future Generations Bill?**

Yes ✓, subject to the following comments      No

***Please provide comment:***

We agree that this is sensible. However it does raise the question of the anticipated review cycle for the area based statements prepared by Natural Resources Wales (proposals NRM3 and NRM4). We recommend that the timetabling aspect of the proposals needs further consideration in terms of alignment with other processes and look forward to working with Welsh Government on this.

The timetable for the area based approach should align closely with the national policy statement. This would suggest that a review of the area based statements follows the review of the national policy statement. However it could also be desirable for the review cycle for the area based statements to tie with the six yearly timescale for the review of River Basin Management Plans under the Water Framework Directive particularly if, as seems likely, the area based approach in relation to Wales’ land area is to be developed primarily on a river catchment basis. Meanwhile the reporting and review cycle for marine plans under the Marine & Coastal Access Act is three years and the anticipated review period for the proposed National Development Framework for Wales is five years. This issue needs further consideration to make sure that the timetables work together as effectively and efficiently as possible.

We would also welcome clarity about the timescale over which Welsh Government would expect the new framework to become fully embedded and ‘operational’. This will help avoid unrealistic expectations in view of the amount of practical detail that has still to be worked out. This is also a key area where alignment is needed between the provisions of the Environment Bill, the Future Generations Bill, the Planning (Wales) Bill and the marine planning framework. For example, the proposed National

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Development Framework under the Planning (Wales) Bill will set out proposals for how to proactively accommodate change for the benefit of the nation over a minimum period of 20 years. Notwithstanding the need for periodic reviews on a shorter timescales, it will be important for the national natural resources policy and the area based approach to adopt a similarly long term perspective.

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### **Question 5**

**Do you agree that the area-based approach will help provide a clear, prioritised and focussed approach to delivery?**

Yes ✓

No

***Please provide comment:***

The ultimate outcome for the area based approach must be a clear, prioritised and focussed approach to delivery leading to tangible change ‘on the ground’. The over-riding requirement must also be to maximise the added value of the new framework and to increase the efficiency and integration of decision making. The approach will have failed if it simply adds another ‘layer’ of complexity or another set of ‘plans’. We have already started to consider, therefore, whether any current plans that we are responsible for might be stopped or subsumed within the area based approach.

The national natural resources policy (proposal NRM2) will be the key driver for the new approach. We believe that it must include a clear statement that all public sector bodies who make decisions that affect natural resources deliver their obligations in a way that delivers the policy aspiration for change ‘on the ground’.

We therefore welcome the intention that the national natural resources policy will be ‘owned’ by the Welsh Ministers collectively, as it will be essential to ensure that all Departments and existing and developing legislation across Welsh Government deliver the objectives of the natural resources policy. The White Paper does not address this issue in practical terms but we suggest, for example, that there should be a requirement for strategic delivery mechanisms such as the Rural Development Plan, the Wales Marine Plan and the National Development Framework proposed under the Planning (Wales) Bill, to have regard to, or be in accordance with, the national natural resources policy. The *Positive Planning* consultation document accompanying the Planning (Wales) Bill indicates that the proposed National Development Framework and Strategic Development Plans should be informed by the national natural resources policy and the area based approach for natural resource management. However the draft Planning (Wales) Bill does not make the necessary legislative provision. The interaction between the measures in the Environment Bill and the proposals in the Planning Reform Bill and Future Generations Bill is critical and will need to be considered as these separate pieces of legislation take shape. It is essential that these three pieces of legislation, together with the Rural Development Plan and the Marine Plan, are mutually supportive.

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It will be essential to establish an appropriate geographic framework for the proposed area-based approach. We would recommend using river catchment boundaries as the starting point for internal delivery of the area-based approach for the land area of Wales. This would allow us to build on existing planning processes, in particular River Basin Management Planning under the EU Water Framework Directive. However, the information from the approach must be readily accessible to those who will use it in decision making. For example, some partners will be comfortable with catchment boundaries but others will be more receptive to information organised around political boundaries or at a landscape scale. It will also be necessary to address cross-border relationships, where catchment land uses in England have impacts in Wales, and vice versa.

In practice therefore, while moving towards organising our internal work around catchments, Natural Resources Wales will also need to further develop our capability to work flexibly across a number of different ecosystem, landscape and political/administrative boundaries, in ways that best meet the needs of key stakeholders and fosters their participation. It is particularly important to recognise that key delivery mechanisms such as land use planning are organised and delivered around political/administrative boundaries. Furthermore different types of evidence about environmental, economic and social factors are currently collected and interpreted at a range of geographical scales. Therefore developing the evidence base and the tools for using that evidence will be a challenging but essential part of the development of the proposed new framework.

The governance and consultation arrangements for the area based approach to natural resource management will need to be carefully designed, particularly to coordinate and align stakeholder engagement across the range of existing and proposed plans and processes.

In relation to the marine environment, we welcome the White Paper's reference to the achievement of Good Environmental Status under the Marine Strategy Framework Directive and we see this as a key focus for natural resource policy in the marine area. However, we would welcome further clarity on the added value that the proposed area-based approach to natural resource management will provide, over and above marine planning as currently being developed. The Welsh Government's intentions in relation to the development of marine spatial planning were recently published in the Wales Marine and Fisheries Strategic Action Plan (November 2013). In that statement, Marine Plans are clearly intended to provide the over-arching planning and management framework for the marine environment, and as such should deliver integrated natural resource planning for the marine environment. However, it would be useful to clarify and confirm that the national natural resources policy proposed in the White Paper will cover both marine and terrestrial Wales, and that the proposed marine planning framework will be a delivery mechanism for the national natural resources policy in relation to the marine environment. We look forward to working closely with Welsh Government to ensure that the two processes for the marine and land areas of Wales are well aligned and add value to the planning and management of the marine area.

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### **Question 6**

**Do you agree that the approach is flexible enough to enable significant elements of the plans for natural resource management to be replaced in the future?**

Yes ✓, subject to the following comments      No

*Please provide comment:*

We agree with the long term aspiration that existing planning processes should be streamlined and / or reduced in complexity. The details of the proposed area based approach need to be further developed and tested in order to inform decisions about replacing existing natural resource-related plans.

We are doing some work to consider whether any plans for which Natural Resources Wales is currently responsible might be stopped or subsumed within the area based approach, whilst also continuing to meet current legal requirements. In the first instance, it seems likely that the process of setting out priorities and opportunities for natural resources on an area basis would be substantially informed by the content of existing plans and the evidence underpinning them. Therefore, it may be preferable in the short term for us and others to explore options for integrating the contents of existing plans with one another and/or with the new area based framework, with a longer term objective of reducing the complexity of natural resource related planning processes. For example there may be scope for integrating stakeholder engagement, evidence gathering and reporting across different plans. Should it be the case that any existing plans contain objectives, evidence, prescriptions or guidance that are unnecessary or redundant, we will seek to rationalise them, and make Welsh Government aware so they can consider any legislative change that might be necessary.

Proposals to repeal or revoke existing plans will need to be considered in the context of the Strategic Environmental Assessment (SEA) Directive and European Court Case C-567/10 ('the Bruxelles case'), and also the Habitats and Species Directive. In many cases, major modifications to a plan, such as revocation or repeal, may only be approved or adopted subject to the undertaking of the assessment processes required under these Directives. The possible need to undertake SEA of the revocation of plans or programmes could have significant resource implications and is likely to affect the timescale of efforts to rationalise natural resource, land use and spatial plans.

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### **Question 7**

**Do you agree with placing a requirement on other public bodies to co-operate in the area-based approach?**

Yes ✓      No

***Please provide comment:***

We consider this is essential, and would refer to our comments under Question 5 above.

A truly integrated approach requires new thinking and new ways of working by all those whose actions, decisions or funding mechanisms impact on natural resources. Natural Resources Wales will clearly be a key player and can support the process as far as our evidence and influence allows, but others will also need to develop their thinking and ways of working. Government will need to ensure that the other public bodies whose activities and decisions impact on natural resources management are also required to deliver the national natural resources policy objectives.

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**Question 8**

**Do you agree that NRW should be the lead reporting authority for natural resources?**

Yes ✓

No

***Please provide comment:***

In practice Natural Resources Wales would appear to be the most appropriate body to bring together information across the range of Wales' natural resources. The technical challenges and resource implications - for us and for other providers of data and information - will need careful consideration and we would welcome further discussions on this aspect.

For example, a broad definition of natural resources – which we believe is necessary for the reasons outlined in our response to Question 2 above - would have significant implications for the proposed duty on Natural Resources Wales' to report on the state of natural resources. We would be heavily reliant on others to provide relevant data and carry out the necessary assessments for some types of natural resources (for example minerals, energy resources, marine fisheries). In theory, the definition of natural resources could be qualified specifically in relation to this reporting duty. However, we believe the desired output is comprehensive reporting on the state of natural resources and this objective will not be achieved if natural resource reporting is constrained to areas in which Natural Resources Wales currently has expertise and evidence gathering responsibilities. Further thinking will be needed on the best way to achieve other organisations' co-operation in this proposed reporting duty, including where data gathering and management is organised at an England and Wales or UK level.

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### **Question 9**

**Do you have any comments on the impact of these proposals (for example, impacts on your organisation)?**

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These proposals have potentially significant resource implications for Natural Resources Wales, which in our view should be seen as a very worthwhile investment.

We accept that the intention is for the new integrated framework and approach to natural resource management to be cost neutral to us, and even to deliver savings where investment in integrated planning leads to more efficient operation of planning and regulatory mechanisms overall. However, we believe that this is a long term aspiration and that until the new framework is in place and delivering at least as well as or better than current systems, Natural Resources Wales must continue to deliver its existing functions. We therefore believe that there will be significant additional resource implications for Natural Resources Wales in the short to medium term, in developing the new framework to the point where we and Welsh Government can be confident in it.

Areas where we would expect to incur significant additional costs include: working with partners to develop the evidence base for integrated planning and management, including the systems for gathering and processing spatial and other data in an integrated way and at appropriate scales; investing in a high level of effective stakeholder engagement in the planning process; developing and embedding new ways of working across all our functions; and the costs of legal support for the process of rationalising, merging or removing existing planning processes.

In the first instance, we would look to absorb these additional costs from the efficiency savings and synergies generated by the creation of Natural Resources Wales as set out in the business case. However, it is likely to be some time before the full resource implications of the proposals can be assessed and the full efficiencies and synergies achieved, so we look forward to continuing dialogue with the Welsh Government to develop our shared understanding of how the transition to the new framework can best be made.

In particular, in relation to the discussion under proposals NRM5 and NRM6, the development and use of a common evidence base for natural resources will be critical but presents some technical challenges, which will need to be properly addressed and resourced. For example, we believe that there are significant gaps in the evidence base, particularly relating to social and economic impacts and drivers. Consideration will need to be given how to resolve this, since focussing on economic and social interactions, as well as environmental factors, is essential in taking forward an integrated approach. It is also likely that data on the environment, and associated social and economic considerations, will be organised on different geographic boundaries across Wales and that this will not necessarily match the geographic boundaries for the area based approach. There will need to be considerable investment in technical systems capable of storing data on different scales and then presenting and using it according to different geographical boundaries.

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In relation to the impact on Natural Resources Wales of proposal NRM6 (reporting on natural resources), we would refer back to our comments under question 8 above.

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## Chapter 3 - Natural Resources Wales – new opportunities to deliver

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### **Question 10**

**Do you agree with the proposals set out in chapter 3 in relation to new ways of working for NRW?**

Yes ✓

No

***Please provide comment:***

We support these proposals, which aim to provide Natural Resources Wales with access to additional tools which can be used towards the delivery of integrated natural resource management.

We suggest that there should be strong synergy between the proposals in Chapter 3 and how these tools are developed and applied, and the aims of the proposals in Chapter 2 for integrated natural resource management.

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### **Question 11**

**What limitations or safeguards on the use of powers might be necessary to enable NRW to trial innovative approaches to integrated natural resource management?**

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We support the proposal to enable Natural Resources Wales to trial innovative approaches to natural resource management. We already have a range of powers in this area, and we would look to optimise our use of these existing powers. This will, in turn, help to identify where innovative approaches and new powers may be needed. We suggest that any exercise of experimental powers is subject to safeguards to ensure that trialled approaches do not become established practice by default or by 'accident', and to ensure continued compliance with EU legal obligations.

We agree with paragraph 3.7 of the White Paper that formal approval from the Welsh Ministers should be obtained for any trial of innovative approaches. We propose that the approval process should include consideration of whether the innovative approach proposed to be trialled is sufficiently aligned with the delivery of the priorities set out in the national natural resources policy and the area based natural resource statements.

We believe that any experimental schemes should have clearly defined objectives, limits, evaluation processes and end points, and it should be clear how and on what basis decisions would be made on whether or not to adopt the trialled approach more widely. Managing the expectations of participants in trial schemes and other stakeholders will be essential in this respect. For example, it will be important to

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ensure that stakeholders are clear that decisions about adopting a trialled approach more widely will include robust and objective assessment of its environmental outcomes.

Specific limitations may be appropriate in relation to the length of time a scheme is run, so that a definite conclusion as to the effectiveness of the innovative approach can be reached. Safeguards may include a role for those affected by the innovative approaches and opportunities for wider community input. In the interests of transparency, we would expect that Natural Resources Wales would ensure that its reports on the outcomes and conclusions of such schemes were made publicly available.

The White Paper rightly identified the need for experimental schemes to respect EU legal requirements and other international obligations, and be consistent with EU State Aid rules including, but not limited to, the agricultural sector. However, it needs to be recognised that this may limit the scope for experimental approaches. Some EU directives impose prescriptive conditions or limits which must be complied with on a site-specific or activity-specific basis. For example, under the Industrial Emissions Directive, the use of prescribed emission limits associated with “Best Available Technique” (BAT), may limit the scope for offsetting of emissions at one site through achieving reductions elsewhere, or other approaches to weighing local impacts against wider net ecosystem benefits. We recognise that there cannot be any lessening of requirements to comply with EU legislation, but there may be scope to explore different approaches to transposition. However, we would like to see encouragement of experimental approaches that could provide evidence to inform future EU policy development and associated legislative reform, with regard to the ecosystem approach, while maintaining standards of environmental protection and complying with legal obligations.

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### **Question 12**

**Do you agree that NRW are an appropriate body to act as facilitators, brokers and accreditors of Payments for Ecosystem Services Schemes?**

Yes

No

***If 'yes', do you consider that there is a need for any new powers to help to further opportunities for PES?***

We support the development of Payment for Ecosystem Services (PES) schemes. We also believe that development of markets for PES should not simply be a 're-packaging' of existing initiatives, but should stimulate innovation and new opportunities, bringing new types of ecosystem services and new participants into the market.

We agree that Natural Resources Wales has an important role in the development of markets for ecosystem services and we look forward to working with Welsh Government to clarify the roles of facilitator, broker and accreditor. In addition, the White Paper does not mention market regulation. We suggest therefore that further consideration is given to whether there should be market regulator and, if so, who would be appropriately placed to take this role.

It will be important to clarify these roles and to develop the structures and institutions needed to support and stimulate the development of PES markets that operate efficiently and in which buyers, sellers and the general public can have confidence and trust. Given that experience of PES is generally limited, it will also be important to look to other UK and international experience in this area to inform the future development of the framework in Wales.

One option might be to use the innovative approaches referred to in proposal NRM7 (Natural Resources Wales' powers to carry out experimental schemes) in order to gain real experience of PES scheme operation, to help define the roles of facilitator, broker, accreditor and potentially market regulator. Natural Resources Wales would welcome involvement in any such schemes

It may be that Natural Resources Wales may not be the most appropriate body to undertake these roles, due to potential conflicts of interest resulting from our desire to be active participants in the PES market itself. If Welsh Government is minded to vest any of these roles in Natural Resources Wales, there would need to be governance structures within Natural Resources Wales to ensure that conflicts of interest are avoided, if necessary backed by appropriate legislation. The critical need is to avoid creating the perception of a conflict of interest that would undermine public confidence in the PES market. This is especially so given the important role that PES could play in funding the provision and maintenance of ecosystem services in future.

Thinking and practice on PES is still largely in its infancy, so any roles that Natural Resources Wales – or indeed any other body - might take on in relation to PES markets will have resource implications in terms of both capacity and capability for the organisation(s) concerned. We would welcome further discussions with Welsh Government about any roles they are minded NRW should take.

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### **Question 13**

#### **What should be the extent of NRW's power to enter into management agreements?**

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We support the proposal to ensure that Natural Resources Wales has the ability to use management agreements with owners or occupiers of land, to support delivery across the full range of our functions. As noted in the White Paper, Natural Resources Wales already has powers to conclude management agreements for a broad range of purposes, but we welcome the intention to remove some of the remaining limitations on the use of this power.

We particularly welcome the proposal to enable management agreements to be registered as local land charges and to bind successors in title, since sustainable development and the integrated management of natural resources are inherently long term aspirations. In many cases, the objectives that Natural Resources Wales would pursue through management agreements are long term ones, and the costs of management agreements should be seen as a long term investment. The value of such expenditure can be undermined if the agreement would cease to have effect as soon as land changes ownership and where the benefits from work carried out by the previous landowner could be lost. Whilst it may be possible to renegotiate management agreements with new owners, that takes time and resources which could ultimately go to waste if an agreement cannot be reached.

While welcoming this proposed legislative measure, its use depends on the availability of resources. Therefore, it will be necessary to consider the relative priority that Natural Resources Wales should attach to using management agreements, alongside other incentive based and regulatory tools at our disposal, in deciding how best to deploy our finite resources. We agree that the improvement of the legal framework for management agreements is cost neutral for Natural Resources Wales, but the availability of funding for management agreements, especially funding which is sufficiently secure in the long term, will remain a constraint irrespective of improvements in the legal framework.

The use of large scale land management agreements to manage flood risk may be less costly than capital flood defence schemes in terms of start up costs, but is likely to incur higher monitoring and enforcement costs than management agreements used to deliver other land management objectives. This is because where management agreements are used as an alternative to traditional flood defences, non-compliance with the terms of an agreement, or where the prescribed land management is being carried out but is not delivering the anticipated flood risk management benefits, could present a risk to life and property that would need to be quickly addressed. This example also highlights the need to consider the whole-life costs of management agreements, including monitoring and enforcement, when weighing up costs and benefits in comparison with other types of intervention, for example traditional flood defences.

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There may also be opportunities for Natural Resources Wales to examine other alternatives which are available but have historically been little used, such as long term covenants on land, although these may be less effective and less ‘tried and tested’ than management agreements, hence their limited use to date. We note in this context that Natural Resources Wales is broadly supportive of the proposals in the recent consultation by the Law Commission for England and Wales on ‘conservation covenants’.

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#### **Question 14**

**Recognising that there are some existing powers in this respect, where are the opportunities for General Binding Rules to be established beyond their existing scope?**

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The introduction of General Binding Rules (GBRs) would fill a gap in sector - based regulatory frameworks allowing a more proportionate approach to be taken to lower risk activities. When used appropriately, GBRs can reduce the regulatory burden placed on businesses and individuals without reducing standards of environmental protection. We already have some experience of GBRs across a number of regulatory regimes: standard rules permits under the Environmental Permitting Regulations are an example. We would wish to see powers for GBR implementation extended to a wide range of environmental media and sectors, since we believe that the regulation of many different types of activity could benefit from this approach both in terms of improving environmental protection and decreasing regulatory burden.

Natural Resources Wales has data showing that the scale of poor land management practices in Wales has resulted in significant numbers of water bodies failing to achieve the standards required by the Water Framework Directive. We believe that the introduction of GBRs that address observed poor practice would require land managers to adopt more sustainable land management practices, and help meet key environmental outcomes.

In order for GBRs to be both successful at delivering environmental outcomes and to support land managers in adopting good practice, each GBR should be complemented by comprehensive guidance that is easily accessible. GBRs would also need to recognise or utilise established best practice frameworks to avoid undermining these and causing conflict or confusion.

Natural Resources Wales would also look to use GBRs alongside and to complement and support other mechanisms such management agreements, payment for ecosystem services, partnership agreements and cross compliance regulations (where receipt of Single Farm Payments is contingent on compliance with specified standards including in relation to environmental protection), as well as more traditional permitting and consenting.

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### **Question 15**

**In relation to Welsh Ministers' amendment powers, do you support: a) the initial proposal to limit it to NRW's functions, subject to conditions as stated; or b) the additional proposal to cover broader environmental legislation, subject to conditions as stated?**

A

B , subject to the following comments

***Please provide comment:***

The rationale for this proposal is to provide a legislative mechanism to resolve any situation where Natural Resources Wales has responsibility to deliver primary legislation that does not sufficiently take account of its high level purpose set out in Article 4 of the Natural Resources Body for Wales (Establishment) Order 2012.

The White Paper proposes the exercise of this power would only be 'where it can be demonstrated that the current law is contrary to the definition, purpose and objectives of integrated natural resource management' (paragraph 3.35). The appropriate framing of this power therefore relies on being able to include in the Environment Bill a robust and unambiguous definition of 'integrated natural resource management' and having an objective and transparent means for being able to demonstrate whether current legislation is contrary to that definition.

The definitions and the practical delivery of integrated natural resources management will be new and will take time to be widely accepted. Particularly in the early years of Natural Resources Wales, any proposed changes to primary legislation should therefore be carefully considered in order to ensure there are no unintended or unforeseen consequential impacts. Having a legal framework that is flexible can be helpful, for example enabling statutory decision takers to be more responsive to new issues and changing circumstances. However, in order to foster public understanding and support, it is essential to have in place robust scrutiny and democratic accountability for any proposals to change primary legislation. It may therefore be appropriate to include provisions to ensure that any changes to primary legislation proposed to be introduced through this power cannot become law unless they are passed by the National Assembly for Wales. Paragraph 3.41 of the White Paper suggests that this may be the intention.

In addition, an alternative approach, particularly in Natural Resources Wales' early years of operation, would be for us to develop internal guidance, with input from Welsh Government, on how we would discharge our purpose when exercising our various functions. We are already intending to develop such guidance on how we should weigh social, economic and environmental considerations, focussing initially on our role in town and country planning. Scottish Natural Heritage (SNH) has adopted guidance along these lines and although their remit is much narrower than ours, we feel that this general approach is a potentially useful one. Having developed such guidance, the experiences of applying it would be expected to help identify real

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legislative barriers to the application of the ecosystem approach and integrated natural resource management, or tensions between different pieces of legislation. That evidence could then inform the development of specific proposals for legislative change.

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### **Question 16**

**Please state any specific evidence of areas of potential conflict or barriers between the objectives of integrated natural resource management and the application of existing legislation.**

We do not currently have evidence of conflict between existing legislation and the objectives of integrated natural resource management that would support amendment to primary environmental legislation at this time. We refer to our comments under question 15 above, and in particular our expectation that our experience in developing an applying guidance on how Natural Resources Wales should weigh social, environmental and economic factors, should help identify such conflicts or barriers to application of the ecosystem approach.

However it may be appropriate to review Natural Resources Wales' duty under the Forestry Act 1967 to promote the development of afforestation, particularly in the context of the transition to more integrated planning and management of natural resources based on the ecosystem approach. The expansion and enhancement of woodlands and woodland habitat, and the sustainable development of timber production in Wales, are clearly very important in social, economic and environmental terms, not least in relation to their role in helping tackle climate change and in the wide range of other ecosystem services that woodlands provide. However, it may be more appropriate to consider the contribution that afforestation - better described as woodland creation - can make alongside other land uses, towards the objective of making best use of Wales' natural resources, rather than to continue with the development of afforestation as a stand alone duty for Natural Resources Wales.

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### **Question 17**

**Do you have any comments on the impact of these proposals, for example, on your business or organisation?**

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The potential resource implications of some of these proposals are significant, particularly for Natural Resources Wales, since creating the right enabling legislation, which is largely cost neutral to us, is only part of the solution. Working with Welsh Government and through our corporate planning process, we will need to look at the full range of powers and tools at our disposal and consider how to achieve the most effective and resource efficient balance between, for example, our use of different types of regulatory approach (permitting, or General Binding Rules for example) and non-regulatory incentive based mechanisms. These kinds of discussions will be an essential part of our evolution as a new organisation over the coming years.

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## Chapter 4 - Resource Efficiency

### Waste Segregation and Collection

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#### **Question 18**

**Do you agree with the package of proposals in chapter 4 in relation to the regulation of waste segregation and approach of combining the 5 measures together?**

Yes

No

***Please provide comment:***

We are very supportive of the intent of these proposals to reduce the amount of waste going to landfill, increase recycling and improve the quality of recyclates. These proposals to further improve resource efficiency, with particular emphasis on the management of waste and recycling, aim to create enduring and high quality business opportunities and jobs which support enterprise and promotion of the circular economy and 'green growth'.

The discussion in Chapter 2 of the proposed national natural resource policy makes clear the links between natural resources, green growth, sustainable use of resources, and sustainable management of waste, but it is not clear whether resources from waste fall clearly within the proposed definition of 'natural resources' and 'natural resource management'. As we have noted in our response to Question 2, materials management should be recognised as a component of the natural resource management.

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**Are there any other materials or waste streams which should be included in the requirements to sort and separately collect?**

Yes

No

***If yes, what are they, and why should they be chosen?***

N/A

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**Question 19**

**Do you agree that the level of segregation asked of individuals / businesses is acceptable?**

Yes ✓

No

*If no, please state why and an alternative.*

Consideration should also be given to what level of co-mingling of dry recyclables might be acceptable as this could make waste collection rounds more efficient and economic whilst not compromising the quality of recycle.

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**Question 20**

**Are there any particular types or sizes of businesses where it would not be technically, environmentally or economically practicable to keep the 7 waste streams separate at source?**

Yes ✓

No

*If yes, please identify them and explain why.*

Some small businesses may have difficulty with space for keeping separate bins for all the waste streams. Also, if only small quantities of some waste categories are produced, small businesses may have difficulty in obtaining a waste contractor at an economic rate.

Early feedback from companies surveyed as part of the 2012 waste arisings survey has indicated that companies are already recycling and segregating where it is economic to do so, whereas small businesses find this more challenging.

Street-level recycling schemes for small businesses, as seen in parts of Europe, could also provide a possible solution.

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**Question 21**

**Do you agree with the materials that we propose to ban from landfill or energy from waste facilities?**

Yes ✓

No

We particularly welcome an increased focus on encouraging food waste segregation because this should further encourage development of anaerobic digestion and composting within Wales. Management of food wastes by these methods delivers significant benefits to the environment in terms of availability of nutrients back to land as well as reducing the environmental impact from landfill disposal. In addition, preventing contamination of dry recyclates by separately collecting food waste would enhance the quality of recyclables in Wales.

**Are there any other materials which should be banned from landfill or energy from waste facilities?**

Yes

No

*If yes, what are they?*

N/A

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### **Question 22**

**Do you agree that developing guidance for acceptable levels of contamination in residual waste for landfill/ incinerator operators and the regulator is a workable approach?**

Yes

No

*If no, what other approach could we adopt?*

There are already a number of landfill bans in place (for example tyres, liquids) with guidance in place for what is expected from site operators. As the regulator for these further bans, Natural Resources Wales would anticipate working with Welsh Government officials and with industry on developing the detailed definitions and guidance relating to these measures.

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### **Question 23**

**Do you agree that there should be a prohibition on the disposal of food waste to sewer?**

Yes

No

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***If yes, should this apply to:***

***a) Households***

***b) Businesses and Public Sector ✓***

***c) Both***

***Please provide comment:***

Aside from the problems created by sewer blockages, especially from fats and oils, there are additional benefits from increasing food waste collection, as outlined in our response to question 21 above.

In relation to business premises, food manufacturers (in the main) would already be disincentivised from disposing of food waste to sewer by their water company trade effluent consent to discharge to sewer. However, smaller businesses, such as restaurants and takeaways, are currently less likely to make such a consideration and it is in this sector where the most benefit could be gained by increasing food waste collection.

The White Paper proposes only to apply a prohibition to business premises (and we assume that this would include public sector bodies). We agree with this and we would not support a similar prohibition applying to households, mainly because it would be very difficult and expensive to enforce.

We recognise that disposal of food waste, particularly fats and oils, to sewers from domestic premises is a significant problem and should be strongly discouraged. Alternatives to statutory prohibition applying to households could include restrictions or disincentives on the installation of in-sink macerators. This might include, for example, the licensing or statutory notification of the sale or installation of in-sink macerators, to enable the sewerage undertaker to apply an additional charge to anyone wishing to use one. We would also advocate increased awareness campaigns, including for alternative food waste collection and the problems that disposal to sewer can cause. We are not aware of any specific studies which consider how much food waste is put to sewer by households or any assessment of householders' level of awareness of the issues arising and the alternatives for disposal.

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#### **Question 24**

**Do you have any comments about how such a prohibition should be enforced with i) businesses and public sector and ii) households?**

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We recognise that differing approaches to enforcing such a prohibition would be necessary for different sectors.

(i) For industrial premises, regulation of disposal of food waste to sewer is already covered by the sewerage undertakers through the trade effluent consents to discharge to sewer. This regime already accounts for the pollutant loading in the discharge and is therefore the appropriate mechanism to provide a disincentive for disposal of food waste to sewer.

For commercial premises, if the charges levied by sewerage undertakers are not providing sufficient disincentive, it may be worthwhile for the water companies to review such charges, along with an education campaign (jointly with the waste industry) to promote food waste segregation and separate food waste collection services. For example, commercial bodies such as food retailers may choose to dispose to sewer food which has passed its sell by date, as this is effectively a free means of disposal as opposed to the cost of waste collection.

In relation to public sector premises, it may also be worth exploring a number of other options to control or discourage food waste disposal to sewer, for example through the body's environmental accreditation scheme or through its remit letter where applicable. It is also worth noting in this context that the application of a sustainable development duty on public bodies under the Future Generations Bill could provide a strong legislative basis for more sustainable waste management practices by the public sector, who should 'lead by example' in any case. Another possibility would be to encourage the exchange of good practice in waste management through the Welsh Government's Sustainable Development Charter scheme.

(ii) For households, a prohibition is not proposed in the White Paper and as we have suggested in our response to Question 23 above, a ban would be difficult and expensive to enforce against households and therefore alternatives should be explored effectively, such as those we have suggested above.

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### **Question 25**

**Do you agree that lead in times for the proposals are reasonable?**

**Yes** ✓

**No**

***If no, what alternative lead in time would you suggest?***

The proposed lead in times seem appropriate. However, during this period, we would like to see the potential consequences of these regulatory interventions explored further.

We support the ambition to improve recyclate quality and to maximise the value of waste resources by ensuring they are not landfilled or burnt. However, the infrastructure and markets in Wales and beyond are not yet sufficiently mature to cope with additional availability of certain materials. This could result in these new regulations having perverse outcomes and unintended consequences which should be further explored to assess whether there are other (non-regulatory) interventions that should be introduced first, or as an alternative. For example, for many of the waste streams, there are few if any economic drivers demanding the use of waste derived materials. Without an increase in demand in the market (possibly with incentives for the incorporation of recyclate), further waste segregation and landfill or incineration bans could result in increased effort on collection with no proposed end use or where the end use does not provide a better environmental solution. Whilst it might be thought that further bans could provide a legislative driver for markets to develop, the market for recycled materials is a global one, and we suggest that the ability of legislative measures taken in Wales to influence that market is negligible. Similarly fluctuations in demand (for example due to recyclate market value) could drive inappropriate stockpiling (creating fire, pollution and amenity risks) or illegal export/disposal activities. We suggest that there is a need to further explore the potential consequences of these proposed regulatory interventions.

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**Question 26**

**Do you agree that NRW are the best placed organisation to regulate the duty to source segregated wastes? If no, please give the reason and propose an alternative regulatory body.**

Yes ✓

No

We note the proposal for Natural Resources Wales to have a regulatory enforcement role in relation to segregation of wastes. We anticipate working with Welsh Government officials in developing the detail and guidance for any proposed arrangements. In particular, we welcome further discussion about Welsh Government's expectations for how these regulations should be enforced. As an example, the 'Duty of Care' provisions relating to the movement of waste give us the power to enforce a duty on a producer, although we do not have a strong regulatory locus to inspect premises. They then provide further tools for us as regulators to apply if there are other environmental concerns at a site.



We would wish to see any duty on Natural Resources Wales considered in the context of a wider discussion about the respective roles of those collecting waste from premises, be they private or public sector bodies.

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### **Question 27**

**In your opinion, who is the most appropriate body to regulate the bans on disposal of food waste to sewer for businesses and the public sector:**

- NRW**
- Local Authorities**
- Sewerage undertaker or**
- Other**

***If 'Other' please propose an alternative regulatory body and state reasons:***

Nearly all sewers (both domestic and commercial) in Wales are owned and operated by the statutory sewerage undertakers. If disposal of food waste to sewer were to be banned, the impact of any unlawful activity would in most cases be a matter for in the day to day management of the company's own assets. On that basis, we do not believe that Natural Resources Wales is well placed to regulate this activity.

We suggest that industrial premises are already adequately covered by trade effluent discharges, which are regulated by the water companies.

We also propose that the relevant water companies are the most appropriate regulators for commercial premises. They may wish to discharge this role in partnership with local authorities who could undertake inspection checks on behalf of water companies and provide information on alternative disposal options, perhaps alongside their existing food hygiene inspection regimes for commercial premises.

In relation to the public sector, there is no distinction between private and public sectors in terms of the regulation of trade effluent by the water companies. As noted in our comments under Question 24 above, there may be additional means by which public sector waste disposal practices can become more sustainable.

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### **Question 28**

**Do you have any comments on the impact of these proposals (for example, impacts on your organisation)?**

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As the potential regulator for these proposed measures, Natural Resources Wales would acquire a significant new enforcement burden. There is no indication in the White Paper whether this would be expected to be funded from within the current Environmental Permitting fees (specifically in relation to landfills and energy from waste facilities) at the expense of other aspects of site regulation, whether we would receive any additional Grant-in Aid or whether we could look to increase charges in future charging scheme years to cover the costs of additional regulatory effort. Equally there is no indication of any mechanism to cover the costs of any new duty on Natural Resources Wales to regulate source segregation of wastes.

We also recognise impacts on the waste industry and other businesses who will need to modify a number of the services they currently provide. Some of these changes are already being considered with the current progress on Technically, Economically and Environmentally Practicable guidance and the Materials Recycling Facility (MRF) Code of Practice.

In addition, when considering Local Authority Recovery Targets, Landfill Allowances Scheme and landfill tax, it is not yet clear that further regulatory interventions are necessary. We would like to see further voluntary measures to increase participation in recycling (for businesses) and by the waste industry to prevent recyclables being landfilled or burnt, considered alongside proposals for regulation and enforcement. All these measures are aiming to change behaviour and so there is also a need for education and campaigns by Welsh Government, waste service providers (private sector and local authorities), and other appropriate bodies, including Natural Resources Wales.

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## Carrier Bags

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### **Question 29**

**Do you agree with the proposal to extend the enabling powers of the Welsh Ministers so that they may, by regulations, provide for minimum charges to be set for other types of carrier bags in addition to single use carrier bags?**

Yes ✓

No

***Please provide comment***

We support this proposal.

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**Question 30**

**Do you agree with the proposal to extend the enabling powers of the Welsh Ministers so that they may, by regulations, require retailers to pass on their net proceeds to any good causes?**

**Yes** ✓

**No**

***Please provide comment***

We support this proposal, and of the Welsh Government’s policy preference for environmental good causes to benefit from the proceeds. We also recognise a possible role for Natural Resources Wales to work with environmental charities to help inform how such monies could be put to best use to maximise the benefits for the environment and people of Wales.

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**Question 31**

**Do you have any comments on the impact of these proposals (for example, impacts on your organisation)?**

We have no further comments on these proposals.

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## Chapter 5 - Smarter Management

### Marine Licensing Management

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#### Question 32

Do you agree with the proposals in relation to Marine Licensing?

Yes ✓

No

*Please provide comment*

We welcome this proposal and we are currently working closely with Welsh Government to assist with the inclusion of additional charging powers for marine licensing in the Bill. We are also liaising with other regulators to inform a fees review.

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#### Question 33

Do you have any comments on whether the Welsh Government should extend NRW's ability to recover costs associated with marine licensing by charging fees for:

- |   |   |
|---|---|
| - pre-application costs?                              | ✓ |
| - variation costs?                                    | ✓ |
| - costs of transferring of licenses?                  | ✓ |
| - covering regulatory costs, via subsistence changes? | ✓ |

We support the creation of powers to enable us to charge fees in all these areas of work, and we would like to move towards full cost recovery for the licensing process.

Proposal SM1 would enable us to provide a better service to applicants in several ways:

- The power to recover the costs of post consent monitoring will enable Natural Resources Wales to grant longer licences through the inclusion of conditions to monitor the environmental impacts and removing the need to re-submit licence applications more regularly.
  - Having the powers to recover costs for variations benefits the licence holder by removing the need to resubmit a new application whenever changes that are
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not within the scope of the original application are required.

- By charging for pre-application advice, we will be able to dedicate more time to helping the customer at the crucial front end of the process by enabling us to resource the team appropriately.

In addition, in the interests of providing a better service overall, we may need to consider the question of whether Natural Resources Wales should develop a charging scheme for marine licence pre-application advice in the wider sense. This could cover charging for advice provided by specialist teams within the organisation, as distinct from recovering the costs of pre-application advice provided by the Marine Licensing Team specifically connected with the preparation of licence applications. Early dialogue with potential applicants for marine licensing is hugely beneficial in terms of the early identification of key issues and avoidance of problems later on. Being able to charge for such advice should enable us to provide a better quality of service and on a more sustainable basis.

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#### **Question 34**

**Do you have any comments relating to the impact of the proposals?**

Our response to this question is covered under question 33.

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## **Shellfisheries Management**

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#### **Question 35**

**Do you agree with the proposal in relation to Shellfishery Orders?**

Yes ✓

No

#### ***Please provide comment***

We support these proposals. In particular, the proposal to introduce enforceable management plans alongside the fishery orders themselves, should bring greater robustness and transparency to the Several and Regulating Order application process and facilitate the making of fishery orders in compliance with EU environmental legislation.

Under current arrangements applicants generally provide an Environmental Statement and a management plan, but neither of these documents are legally integral to the Several/Regulating Order itself. If the grantee acts in a way contrary to the

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management plan then the only legal avenue for enforcement that is open to Welsh Government is under section 5 of the Sea Fisheries (Shellfish) Act 1967. Section 5 requires a grantee to 'properly cultivate the ground'. However, the phrase 'properly cultivate' does not give Welsh Government the scope to enforce measures that are ancillary to the 'cultivation of the ground' but which are potentially damaging to protected sites or wildlife; for example, disturbance to birds or impacts to habitat features caused by gaining access to the fishery. The proposal to establish a legal link between the management plan and the Order could include conditions that seek to control such impacts and how the grantee should operate to avoid them. Under an amended regime to include legally integral management plans, Welsh Government will be able to use their enforcement powers if required in a transparent manner.

We believe that it is appropriate that Welsh Government enforcement officers have full Marine Enforcement Officer powers under the Marine and Coastal Access Act 2009 to enforce the 1967 Act if a grantee is acting outside the limits of their Order.

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### **Question 36**

**Are there any other changes to the Several and Regulating Order regime that you think should be considered (i.e. can you think of any other ways that current practices could be improved)?**

Yes ✓

No

### ***Please provide comment***

We believe that there are some complementary changes to the application process that could be adopted that would not require changes to 1967 Act, but could streamline the Several and Regulating Order application regime. This could include detailed guidance for applicants on the completion of application forms and the development of proforma type documents to encourage consistency and standardisation in the applications received. Examples could include site specific documents to be populated by the applicant to inform the relevant environmental assessment, and a standard proforma for management plans. Natural Resources Wales would welcome the opportunity to work with Welsh Government to develop such documents.

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### **Question 37**

**Do you have any comments on the impact of this proposal (for example, impacts on your business)?**

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We would expect this proposal to have a positive impact on Natural Resources Wales in terms of our engagement with Welsh Government and with fishery order applicants. It will provide a clearer legal and procedural framework for addressing the potential environmental impacts of proposed fishery orders, and how they can be mitigated and managed.

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## Land Drainage Management / Flood and Water Management

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### **Question 38**

**Do you agree with the proposal in relation to changes to Section 29 of the Land Drainage Act (1991)?**

Yes ✓

No

#### ***Please provide comment***

We support this proposal, which addresses a legal gap in the ability for all sources of flooding to be managed appropriately. It seems entirely sensible for Welsh Government or their agents to have powers of entry to determine compliance with an order made by an Agricultural Land Tribunal in relation to land drainage.

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### **Question 39**

**Do you agree with the proposal in relation to changes to Section 47 of the Flood and Water Management Act (2010)?**

Yes ✓

No

#### ***Please provide comment***

We support this proposal, which seeks to remove anomalies and make it easier to consolidate legislation.

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### **Question 40**

**Do you have any comments on the impact of either of these proposals?**

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In relation to proposal SM3, paragraphs 5.35 and 5.39 of the White Paper refer to the inspection role potentially being given to an agent or delegated drainage body. However, it is not clear whether Welsh Government is contemplating delegating this function to Natural Resources Wales. If this is the case, then we suggest that our delegated role should only relate to inspection rather than enforcement, and that the additional resource implications would need to be addressed.

## Implementation / Equalities

### Question 41

**We want to ensure that the Environment Bill is reflective of the needs of Welsh Citizens. As such, we would appreciate any views in relation to any of the proposals in this White Paper that may have an impact on a) Human rights b) Welsh language or c) the protected characteristics as prescribed within the Equality Act 2010. These characteristics include gender; age; religion; race; sexual orientation; transgender; marriage or Civil Partnership; Pregnancy and Maternity; and, disability.**

We have no comments in relation to this question.

### Question 42

**Do consultees have any other comments or useful information in relation to any of the proposals in this White Paper?**

We refer you to the overarching comments on the White Paper that we have provided in the letter accompanying our responses to these consultation questions.

In addition we would like to make the following points:

#### **(i) Natural Resources Wales' Fishery enforcement powers**

In relation to paragraph 5.26 of the White Paper, we note and welcome the current review of fisheries enforcement powers under Part 8 of the Marine and Coastal Access Act 2009, and the intention to include additional enforcement provisions in relation to Several/Regulating Orders if existing powers are found to be lacking. In addition to this, we would like to take this opportunity to suggest that the Environment Bill should also include the necessary provisions for Natural Resources Wales fishery officers to have powers of arrest in relation to cockle fisheries. This is currently a

significant gap in our fishery enforcement functions, and undermines our ability to effectively regulate high profile cockle fisheries such as in the Dee Estuary and Burry Inlet. We would welcome the opportunity to discuss this further with Welsh Government officials.

## **(ii) Natural Resources Wales forestry functions**

Under the Forestry Act 1967, Natural Resources Wales is required to maintain a Regional Advisory Committee to advise on the management by Natural Resources Wales of the Welsh Government's forest estate and on the exercise of Natural Resources Wales' functions concerning the regulation of tree felling and re-stocking under Part II of the Act.

The 1967 Act also requires Welsh Ministers to appoint a committee of reference to consider appeals against decisions by Natural Resources Wales in relation to felling or re-stocking under Part II of Act, and report to the Welsh Ministers before the Ministers determine an appeal. Our long term aspiration is for all appeals against Natural Resources Wales decisions, including in relation to forestry matters, to be made to Welsh Ministers, and possibly handled through a central Tribunals process.

Natural Resources Wales and Welsh Government officials have had some initial discussions about whether a number of existing mechanisms could be modified to fulfil the above requirements under the Forestry Act, including in relation to appeals until such time as the appeal process is established. We have agreed a number of options worthy of further consideration. If these further investigations identify any legal obstacles to the modification of existing mechanisms, or if it is established that modification of existing mechanisms would not be an adequate means of fulfilling the requirements of the Act, we would wish to explore whether the Environment Bill might be used to remove those obstacles or to establish new mechanisms.

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