

Number: WG23184



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Welsh Government

## Consultation Responses – Part 2

# The Use of Planning Conditions for Development Management

October 2014



The Use of Planning Conditions for Development Management		
Date of consultation period: 29/01/2014 – 25/04/2014		
Name		
Organisation		
Address		
E-mail address		
Type (please select one from the following)	Businesses/Planning Consultants	<input checked="" type="checkbox"/>
	Local Planning Authority	<input type="checkbox"/>
	Government Agency/Other Public Sector	<input type="checkbox"/>
	Professional Bodies/Interest Groups	<input type="checkbox"/>
	Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations)	<input type="checkbox"/>
	Other (other groups not listed above) or individual	<input type="checkbox"/>

Q1	Do you think an updated circular on conditions is required?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments:

**A fit for purpose development management system is the underlying theme of current legislative planning reform in Wales.**

**Much time has passed since the publication of circular 35/95; including the devolution of power to the National Assembly for Wales and two overhauls to the development plan system.**

**The need for comprehensive, but not wholesale, change is set out in the body of evidence which underpins this consultation. It is also a theme that runs through current legislative reforms which run parallel to this consultation, towards a Planning Bill for Wales.**

**We therefore wholeheartedly agree in the need for an updated circular on conditions: making it consistent with broad current planning practices; wider legislative reforms and requirements (most notably the Community Infrastructure Levy); and the challenges facing the built environment in Wales.**

Consultation reference: WG19178

<b>Q2</b>	Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p><b>Redrow Homes agree that some information from Circular 35/95 should be retained, recognising that the proposed document itself amounts to a comprehensive revision.</b></p> <p><b>In particular we agree that the "tests" should be retained and are still relevant and applicable to contemporary issues, and compliment the thrust of Positive Planning (WG Consultation reference WG20088) which seeks to change entrenched and out-dated practice. Further comment on this matter is given below in Q3.</b></p>				

<b>Q3</b>	Do you consider:	Yes	Yes (subject to further comment)	No
	(i) that all six tests are still relevant today and should be retained?			
	(ii) that there are additional tests that could be used (demonstrate with case law if possible)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p><b>Whilst Redrow Homes believes that the six tests are still relevant to today, we would like to see the CIL-compliance tests currently in use in England to be incorporated into the assessment of planning conditions in Wales in this Circular. This will help to reflect the gradual implementation of CIL in Wales and minimise the risk of 'double counting' on large strategic sites. Applicants may be liable for CIL in the later phases of such sites, but aren't liable for it now and could end up paying twice. Incorporating CIL-compliance into the tests would future-proof the circular and avoid unnecessary changes to it once it is in place.</b></p>				

<b>Q4</b>	Do you consider that any significant pieces of recent case law have been overlooked, which would provide better examples than those used, to support the text?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Consultation reference: WG19178

Comments:

**Whilst we have no case law to hand, would like to point out that from our general experience, permissions granted at appeal tend to have less conditions than those determined by a LPA.**

Q5	Are there any topic areas in Chapter 5.0 which should be expanded on, or, are there any new topic areas you consider should be included?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments:

**With reference to Section 5 of the Draft Circular we have the following comments and suggestions:**

**Design (paragraph 5.57)**

While reference to Technical Advice Note (TAN) 12 is useful, regard to conditions imposed in relation to a Design and Access Statement (DAS) is not, particularly in light of the Welsh Government's intention to remove the statutory requirement for Design and Access Statements as part of application submissions (see Welsh Government consultation reference WG20088). We consider that reference to a DAS should be removed, but whilst they are still in place, we would like them listed in conditions so applicants have the ability to vary details in the DAS at a later point, if necessary. This will resolve the problem of not being able to change matters of material importance that were set out in the DAS, as is currently the case.

**Drainage (paragraph 5.59 - Conditions 39 - 42)**

Paragraphs 5.59 to 5.62 should be updated to take account of the forthcoming implementation of Schedule 3 of the Flood and Water Management Act 2010 which will see Lead Local Flood Authorities (LLFAs) taking on the role of Sustainable Urban Drainage Systems (SuDS) and the Adopting and Approving Body (SAB) role in relation to SuDS.

In this role LLFAs will be responsible for both approving the original design of the SuDS and adopting and maintaining the finished system.

Failure to accurately reflect the new procedures may result in duplication of controls or unenforceable conditions.

It is therefore suggested that upon publication the new circular reflect this change and provide the necessary guidance and practice.

Consultation reference: WG19178

**Renewable Energy (paragraph 5.108)**

The application of conditions to enforce maintenance of renewable technologies and its removal for non-performance may be enforceable where the building or housing stock are under the control of a management organisation (i.e. RSLs, ESCO etc), but unenforceable for private households.

**Sustainable Buildings (Paragraph 5.113; conditions 122 - 124 in Appendix A)**

To avoid duplication of controls, conditioning must recognise the move to regulation through Part L, which will be equivalent to ENE1 of the Code for Sustainable Homes and the outcomes for the review of TAN 22 consequently made necessary. The review is currently in hand.

Redrow Homes would like to see the new Circular have further guidance to the phased discharge of conditions, we are involved in a number of large projects across Wales and being able to phase conditions is very important to allowing phased delivery. We are worried about the lack of regard paid to such large sites and mixed use sites which will required phased development and hence a phasing of conditions. The final circular must address this issue more closely when published.

Q6	Do you agree that decision notices should be structured in the manner proposed? If you do not, please suggest an alternative.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments:

We agree that decision notices should be structured in the manner set out in Box 2 (page 20) of the Draft Circular, with a few changes:

We recognise that it gives greater consideration to the whole development and planning process and remphasises the role of the LPA post determination; consistent with the move towards "development management" outlined in the draft Welsh planning Bill.

With reference to paragraphs 4.20 and 4.21 (Reasons for Conditions) of the Draft Circular we consider that there is also the opportunity to improve clarity and consistency further - at present there is a divergence in practice whereby some LPAs list reasons for conditions on a decision notice seperately to the condition itself. Like conditions, the reasons "also need to to be specifically tailored to the development type and context" (para 4.21).

We therefore suggest that reasons for conditions should be set aside from the condition to which they relate. This principle should be applied across all LPAs in Wales to ensure consistency of practice.

Consultation reference: WG19178

We would like a new section within this structure that gives greater reference to the phasing of more complex and larger schemes. This section would be situated between the 'Approved Plans' and 'Pre-Commencement Conditions' and make reference to a phasing plan, facilitate the ability to change the phasing plan and clarify how phased conditions can be implemented and organised. pre-commencement and pre-occupation conditions that follow should not be site-wide requirements and hence minimise the problems with implementation.

<b>Q7</b>	Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments:

We agree that the approved plans and drawings relevant to a decision should be identified in a condition.

We consider that this will embed a significant element of flexibility in the system, aligned with proposals to standardise material and non-material amendment procedures. It will also provide an expedient route for changes to consents through existing legislative provisions such as Section 73 of the Town and Country Planning Act.

However, in the interests of clarity we consider that additionally, the full suite of documents and drawings should be listed, not just the plans/drawings associated with the development. As described at para 4.19 (Box 2, no. ii) of the consultation document, the listing of such documents will also provide a reference for all other conditions attached i.e. contamination and drainage.

Moreover, since it is the intention to make decision notices "live" documents (see WG Planning Bill consultation WG20088, para 6.116) this also makes the administration and reference of information all the more critical.

We therefore consider that all documents relevant to the determination of a planning application should be referenced in addition to the drawings and plans proposed by this consultation.

<b>Q8</b>	Do you agree with the approach taken towards the term 'unless otherwise agreed by the Local Planning Authority' discussed in paragraph 3.36 of the draft circular? If not, please suggest your	Yes	Yes (subject to further	No

Consultation reference: WG19178

	preferred approach.	<input type="checkbox"/>	comment) <input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p>Redrow Homes agree that the use of language to create vague and ambiguous conditions presents a barrier to development and represents a breach of LPA power. Such conditions cause costly delays and should rightly be removed from decision notices. Such phrases however, do try to achieve flexibility in conditioning permissions and that principle should not be lost in the new Circular.</p> <p>Redrow Homes believe that advance notice to applicants of conditions prior to determination is crucial to delivering a more effective and certain planning system as prior conversation between LPA and applicant on the issue of conditions can save time.</p> <p>Moreover, Redrow Homes has suggested that the proposed Planning Advisory and Improvement Service (PAIS; see WG consultation reference WG20088) could mediate and advise both LPAs and applicants where disputes arise or where it is evident that a condition(s) need greater clarity/detail.</p> <p>With reference to paragraph 3.37 applicants should be left in no doubt as to why the condition is relevant and the action required for its discharge.</p> <p>Redrow Homes welcomes the acknowledgement that over-precise conditions can be unreasonable and that a balance must be struck to enable flexibility to increase the deliverable planning permissions. Achieving this balance correctly is crucial to increasing the deliverability of permissions.</p>				

Q9	Do you agree that Local Planning Authorities should provide applicants with advance notice of conditions before an application is due to be determined?	Yes <input type="checkbox"/>	Yes (subject to further comment) <input checked="" type="checkbox"/>	No <input type="checkbox"/>
<p>Comments:</p> <p>We agree that LPAs should provide applicants with advance notice of conditions prior to an application's determination. Some LPAs already adopt this approach and we consider there is great merit in doing so, however, a consistent approach is required across all LPAs.</p> <p>We would like the Circular to go one step further in securing deliberative planning by allowing applicants to submit their own draft conditions.</p> <p>LPAs must also review the proposed conditions of statutory consultees to ensure that they pass not only the six tests of reasonableness but also for CIL compliance. LPAs should not be accepting these conditions as submitted, but</p>				

Consultation reference: WG19178

**should work with the statutory consultees to producing reasonable conditions that enable deliverable, viable development.**

**The circular will by definition remain as a non-statutory reference guide used to amplify legislation. It would be useful to have a requirement for LPAs to consult with applicants on the use of conditions before their issue referenced in this Circular and elsewhere without the need for change to statutory instruments.**

**With reference to consultation WG20088 (Planning Bill) we suggest that this element should be emphasised and consolidated through the Planning Advisory Improvement Service (PAIS); its remit including disseminating and educating planning officials as to development management policies and procedures. This we consider will encourage the mainstream practice of this procedure more widely.**

<b>Q10</b>	Should guidance be provided in the circular with regards to any other conditions related matter?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p><b>The Circular must reiterate the need to minimise the number of conditions as a matter of procedure, reducing the number of pre-development, commencement and occupation conditions. Furthermore it is important that the Circular ensures that there are sufficient procedures for the effective and efficient discharge of conditions.</b></p> <p><b>It would be beneficial to give a time limit for conditions to be discharged introducing a four week time limit for authorities to discharge conditions would aid. Should the authority fail to discharge the conditions within four weeks or fail to give reason why the conditions will not be discharged in that time, the applicant should be able to consider the conditions to be discharged.</b></p>				

<b>Q11</b>	Does Appendix A of the draft circular contain sufficient examples of model conditions?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p>				

Consultation reference: WG19178

**Redrow Homes agree that the model conditions set out at Appendix A of the Draft Consultation Document are relatively sufficient but could include additional references or applications for clarity:**

**With reference to Appendix A, conditions 108 - 111; the consultation draft makes reference only to electricity and ignores the prospect of renewable heat. Redrow Homes consider that the Draft Consultation Document would benefit from an example citing renewable heat systems.**

**With reference to conditions 119 - 121 (Sustainable Buildings) Redrow Homes consider that any conditioning for new non-residential buildings must recognise the requirements of new Building Regulation Part L2A, and therefore be drafted with this in mind.**

**As a general point, Redrow would like further model conditions regarding the phasing and phased discharges.**

<b>Q12</b>	Do you consider that any of the conditions used should be reworded? If so, which conditions and why? Please suggest alternatives if you are able.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments:				

<b>Q13</b>	Do you believe any of the conditions fail any of the six tests identified in the circular?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments:				

<b>Q14</b>	Should any conditions be totally removed from Appendix A of the draft circular?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments:				

## **General**

**Q15**

We have asked a number of specific questions throughout this consultation. If you have any related queries or comments which we have not specifically addressed, please use this space to report them:

**With reference to Appendix A, Condition 36 (Decentralised Energy Supply) the upfront capital cost and logistical issues make it extremely unlikely in large or multi-phase district heating or CHP developments that the energy delivery system will be fully completed and operational ahead of the majority of completions.**

**For instance, early phases of a development may need to employ temporary, on-line gas boilers until the scheme has reached a sufficient scale for the installation of the permanent alternatively fuelled systems (i.e. biomass, biofuel etc.).**

**Conditions and guidance for them should recognise the practical limitations in these cases.**

**By their nature renewable energy systems may be subject to improvements through innovative advances during the life of the development. Conditioning should not obstruct the installation and operation of such modifications.**

**We would like to reiterate our belief that the Circular should ensure that LPAs consult with applicants on the the preparation of conditions in order to provide sufficient measures for their discharge.**

**We would like to suggest a change to the name of the Circular to "The Preparation of, Use of and Discharge of Planning Conditions for development Management." This wil place greater emphasis on the two-way LPA-applicant relationship and help to provide the culture change towards development management that the Welsh Planning Bill aims to deliver.**

I do not want my name/or address published with my response (please tick) ☒

The Use of Planning Conditions for Development Management		
Date of consultation period: 29/01/2014 – 25/04/2014		
<b>Name</b>		
<b>Organisation</b>	Welsh Government	
<b>Address</b>		
<b>E-mail address</b>		
<b>Type</b> (please select one from the following)	Businesses/Planning Consultants	<input type="checkbox"/>
	Local Planning Authority	<input type="checkbox"/>
	Government Agency/Other Public Sector	<input checked="" type="checkbox"/>
	Professional Bodies/Interest Groups	<input type="checkbox"/>
	Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations)	<input type="checkbox"/>
	Other (other groups not listed above) or individual	<input type="checkbox"/>

Q1	Do you think an updated circular on conditions is required?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

Q2	Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

Consultation reference: WG19178

<b>Q3</b>	Do you consider:			
	(i) that all six tests are still relevant today and should be retained?	Yes	Yes (subject to further comment)	No
	(ii) that there are additional tests that could be used (demonstrate with case law if possible)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>no additional test required</b>				

<b>Q4</b>	Do you consider that any significant pieces of recent case law have been overlooked, which would provide better examples than those used, to support the text?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments: <b>not aware of any</b>				

<b>Q5</b>	Are there any topic areas in Chapter 5.0 which should be expanded on, or, are there any new topic areas you consider should be included?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments:				

<b>Q6</b>	Do you agree that decision notices should be structured in the manner proposed? If you do not, please suggest an alternative.	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>This will just make the Planning process much clearer to those who are not used to the process and will provide consistency across Wales.</b>				

<b>Q7</b>	Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>Where possible as this potentially simplifies the number of conditions</b>				

<b>Q8</b>	Do you agree with the approach taken towards the term 'unless otherwise agreed by the Local Planning Authority' discussed in paragraph 3.36 of the draft circular? If not, please suggest your preferred approach.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments: <b>This type of condition does ensure the applicant is aware of additional issues and that they need to seek additional licences and approvals. If left as a condition it would ensure the applicant addressed the issues relating to technical approvals and maintain liaison with the relevant bodies (planning authority, highway authority, etc)</b>				

<b>Q9</b>	Do you agree that Local Planning Authorities should provide applicants with advance notice of conditions before an application is due to be determined?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: <b>Aware that some Planning Authorities do already do this, but would have concerns that there may be scope for changes to conditions to be made during the Committee process.</b>				

<b>Q10</b>	Should guidance be provided in the circular with regards to any other conditions related matter?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Consultation reference: WG19178

Comments:

**Nothing additional required that is not already covered or about to be covered in the various new Planning legislation initiatives.**

Q11	Does Appendix A of the draft circular contain sufficient examples of model conditions?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments:

**The level of detail provided in the examples of best practice are regarded as sufficient to provide conditions that are adapted to a site specific situation.**

Q12	Do you consider that any of the conditions used should be reworded? If so, which conditions and why? Please suggest alternatives if you are able.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Comments:

Q13	Do you believe any of the conditions fail any of the six tests identified in the circular?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Comments:

Q14	Should any conditions be totally removed from Appendix A of the draft circular?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Consultation reference: WG19178

Comments:

**They are examples of good practice.**

## **General**

**Q15**

We have asked a number of specific questions throughout this consultation. If you have any related queries or comments which we have not specifically addressed, please use this space to report them:

I do not want my name/or address published with my response (please tick) ☒

The Use of Planning Conditions for Development Management		
Date of consultation period: 29/01/2014 – 25/04/2014		
<b>Name</b>	Jonathan Parsons	
<b>Organisation</b>	Bridgend County Borough Council	
<b>Address</b>	Civic Offices Angel Street BRIDGEND CF31 4WB	
<b>E-mail address</b>	jonathan.parsons@bridgend.gov.uk	
<b>Type</b> (please select one from the following)	Businesses/Planning Consultants	<input type="checkbox"/>
	Local Planning Authority	<input checked="" type="checkbox"/>
	Government Agency/Other Public Sector	<input type="checkbox"/>
	Professional Bodies/Interest Groups	<input type="checkbox"/>
	Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations)	<input type="checkbox"/>
	Other (other groups not listed above) or individual	<input type="checkbox"/>

<b>Q1</b>	Do you think an updated circular on conditions is required?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

<b>Q2</b>	Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

Consultation reference: WG19178

<b>Q3</b>	Do you consider:			
	(i) that all six tests are still relevant today and should be retained?	Yes	Yes (subject to further comment)	No
	(ii) that there are additional tests that could be used (demonstrate with case law if possible)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

<b>Q4</b>	Do you consider that any significant pieces of recent case law have been overlooked, which would provide better examples than those used, to support the text?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments:				

<b>Q5</b>	Are there any topic areas in Chapter 5.0 which should be expanded on, or, are there any new topic areas you consider should be included?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: <b>Nature conservation &amp; biodiversity with reference to the raft of conditions suggested in BS 42020 Biodiversity - Code of Practice for Planning and Development. Also, the removal of invasive species should be covered e.g. Japanese Knotweed.</b>				

<b>Q6</b>	Do you agree that decision notices should be structured in the manner proposed? If you do not, please suggest an alternative.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: <b>Where practicable</b>				

<b>Q7</b>	Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: <b>Provided there is an element of flexibility</b>				

<b>Q8</b>	Do you agree with the approach taken towards the term 'unless otherwise agreed by the Local Planning Authority' discussed in paragraph 3.36 of the draft circular? If not, please suggest your preferred approach.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments: <p><b>The inclusion of the term allows some flexibility to agree minor variations in the development without strict adherence to the condition and the formal submission of a section 73 application, which may take some time. For example, a situation where a condition restricting wind turbine component delivery to certain times of the day may not be complied with due to some externality such as weather, traffic hold-ups etc. thus losing the delivery window and ultimately delaying the project. The flexibility afforded to the "unless otherwise agreed" approach allows the development to proceed and reduces the administrative burden on the LPA of having to formally determine a Section 73 application and in some cases a completely fresh application.</b></p> <p><b>LPAs should be trusted to make the judgement as how far the flexibility of the condition should go and to ensure that the overall nature of the consent is not changed. Paragraph 4.5 of the draft circular encourages flexibility and it is noted that model condition 27 includes the phrase "...unless the local planning authority agrees to any variation". There would appear to be some contradiction in advice with that contained in paragraphs 3.37 and 3.38.</b></p> <p><b>It is further noted that the Planning Inspectorate does not favour the "unless otherwise agreed approach" although it is clearly a matter for the LPA to ensure compliance with conditions imposed by Inspectors. It is considered that this approach would provide a degree of flexibility for both the developer and the LPA and it may be more appropriate for the circular to provide further advice as to when it is appropriate to use such a condition rather than dismissing it use altogether.</b></p>				

Consultation reference: WG19178

Q9	Do you agree that Local Planning Authorities should provide applicants with advance notice of conditions before an application is due to be determined?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments:

**Sometimes this is not practical particularly with regard to listed building applications that are referred to Cadw. Also, conditions added later in the process e.g. as part of a Committee decision.**

**We are also mindful of any additional administrative burden placed on the LPA if this is to become a formal requirement although in practice it is common for conditions to be discussed with applicants prior to determination particularly where there is some requirement imposed by a consultee. There is also concern that if the procedure is formalised then it could be seen as an opportunity for developers to negotiate the terms of conditions.**

Q10	Should guidance be provided in the circular with regards to any other conditions related matter?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments:

**The guidance should include the role of statutory consultees in the drafting and agreement of conditions.**

Q11	Does Appendix A of the draft circular contain sufficient examples of model conditions?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Comments:

**See comments under Q5**

Q12	Do you consider that any of the conditions used should be reworded? If so, which	Yes	Yes (subject to	No

Consultation reference: WG19178

	conditions and why? Please suggest alternatives if you are able.		further comment)	
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments:

**Condition 44 relating to the retention of garages/ parking spaces for the parking of motor vehicles is imprecise as a motor vehicle could include a lawn mower, moped or lorry. There is also concern about the practical enforcement of such a condition and the realistic prospect of compliance.**

**Condition 46 (glazing) could refer to the Pilkington Scale of obscurity i.e. Level 3 is usually applied to obscure glazing.**

<b>Q13</b>	Do you believe any of the conditions fail any of the six tests identified in the circular?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments:

**Yes, see above. Also, condition 20 (affordable housing) refers to tenure and may not be appropriately controlled by way of a condition.**

<b>Q14</b>	Should any conditions be totally removed from Appendix A of the draft circular?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments:

**Condition 45 (parking) does not appear to be necessary and the removal of permitted development rights may be a more appropriate approach. The issue of practical realistic enforcement is also raised.**

## General

<b>Q15</b>	We have asked a number of specific questions throughout this consultation. If you have any related queries or comments which we have not specifically
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Consultation reference: WG19178

addressed, please use this space to report them:

The comments made in paragraph 4.20 regarding the reason for conditions are noted however, it would be helpful if reasons could be added to the model conditions. Some further explanation as to why it is appropriate for planning inspectors to avoid putting reasons on conditions as part of their decisions should be included or it should be made clear that inspectors are subject to the same guidance.

There is no guidance on the imposition of conditions on Section 73 applications to relax the time period for commencement of development in the standard condition. Case law would suggest that all conditions imposed on the parent consent should be re-iterated on the relaxation consent.

The advice contained in paragraph 4.22 regarding planning obligations is queried and would appear to be weighted in favour of developers. In some case legal agreements are the only way to achieve some community benefit or other improvements as part of a development. Also, it is not practical to rely on the breach of condition notice procedure to ensure compliance with a condition as it does not necessarily remedy the breach rather it is a punitive process. An enforcement notice is usually more effective but would require more input and potentially the inclusion of a scheme or details as some expense to the LPA.

The draft circular does not provide guidance on whether it is appropriate to impose a condition preventing development until a unilateral undertaking has been submitted.

I do not want my name/or address published with my response (please tick) ☐

Conditions Consultation  
Development Management Branch  
Planning Division  
Welsh Government  
Cathays Park  
Cardiff  
CF10 3NQ

24 April 2014

Dear Mr Williams,

## **Consultation on the Use of Conditions in Development Management**

Thank you for the opportunity to comment on this consultation.

### **The Institute for Archaeologists**

The Institute for Archaeologists (IfA) is a professional body for the study and care of the historic environment. It promotes best practice in archaeology and provides a self-regulatory quality assurance framework for the sector and those it serves.

IfA has over 3,000 members and more than 70 registered practices across the United Kingdom. Its members work in all branches of the discipline: heritage management, planning advice, excavation, finds and environmental study, buildings recording, underwater and aerial archaeology, museums, conservation, survey, research and development, teaching and liaison with the community, industry and the commercial and financial sectors.

IfA's Wales / Cymru Group has over 300 members practising in the public, private and voluntary sector in Wales.

### **The Use of Conditions in Development Management**

IfA's response is set out in the completed Consultation Response Form which accompanies this letter.

If there is anything further that I can do to assist please do not hesitate to contact me.

Yours faithfully,



Tim Howard LLB, Dip Prof Arch  
Policy Advisor

The Use of Planning Conditions for Development Management		
Date of consultation period: 29/01/2014 – 25/04/2014		
<b>Name</b>	Tim Howard	
<b>Organisation</b>	Institute for Archaeologists	
<b>Address</b>	Miller Buidling University of Reading Whiteknights PO Box 227 Reading, RG6 6AB	
<b>E-mail address</b>	tim.howard@archaeologists.net	
<b>Type</b> (please select one from the following)	Businesses/Planning Consultants	<input type="checkbox"/>
	Local Planning Authority	<input type="checkbox"/>
	Government Agency/Other Public Sector	<input type="checkbox"/>
	Professional Bodies/Interest Groups	<input checked="" type="checkbox"/>
	Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations)	<input type="checkbox"/>
	Other (other groups not listed above) or individual	<input type="checkbox"/>

<b>Q1</b>	Do you think an updated circular on conditions is required?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments:

IfA welcomes the opportunity to update and revise conditions relating to the historic environment and, in particular, archaeology, which no longer fully reflect current policy and practice. The comments below relate to conditions insofar as they affect the historic environment.

<b>Q2</b>	Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments:

Consultation reference: WG19178

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<b>Q3</b>	Do you consider:			
	(i) that all six tests are still relevant today and should be retained?	Yes	Yes (subject to further comment)	No
	(ii) that there are additional tests that could be used (demonstrate with case law if possible)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: <b>The six tests remain relevant today and IfA proposes no additional tests.</b>				

<b>Q4</b>	Do you consider that any significant pieces of recent case law have been overlooked, which would provide better examples than those used, to support the text?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments:				

<b>Q5</b>	Are there any topic areas in Chapter 5.0 which should be expanded on, or, are there any new topic areas you consider should be included?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments: <b>Save that paragraph 5.46 might helpfully make clear that, where sites contain both scheduled and unscheduled land, planning conditions in relation to the unscheduled part of the site might need to mirror or supplement conditions attached to scheduled monument consent.</b>				

<b>Q6</b>	Do you agree that decision notices should be structured in the manner proposed? If you do not, please suggest an alternative.	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Consultation reference: WG19178

Comments:

**This may help to facilitate the more nuanced approach to the imposition and discharge of archaeological conditions advocated below.**

<b>Q7</b>	Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

<b>Q8</b>	Do you agree with the approach taken towards the term 'unless otherwise agreed by the Local Planning Authority' discussed in paragraph 3.36 of the draft circular? If not, please suggest your preferred approach.	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

<b>Q9</b>	Do you agree that Local Planning Authorities should provide applicants with advance notice of conditions before an application is due to be determined?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

<b>Q10</b>	Should guidance be provided in the circular with regards to any other conditions related matter?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Consultation reference: WG19178

		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>No Comment.</b>				

<b>Q11</b>	Does Appendix A of the draft circular contain sufficient examples of model conditions?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: <b>Subject to the additions suggested below.</b>				

<b>Q12</b>	Do you consider that any of the conditions used should be reworded? If so, which conditions and why? Please suggest alternatives if you are able.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: <b>Archaeology Conditions (22 to 24)</b> <b>General Comments</b>  The key role which the planning system plays in the management and protection of the historic environment (and particularly that part of the historic environment - the vast majority - which is undesignated) is underpinned by the use of conditions to secure public benefit. For the system to work effectively in this regard it is important that <ul style="list-style-type: none"> <li>• conditions are formulated clearly, recognising the nature of archaeological evidence and the multi-staged nature of most programmes of archaeological work (including post-excavation analysis, archiving and dissemination)</li> <li>• conditions are effective to secure the carrying out of all stages of necessary archaeological work</li> <li>• all necessary archaeological work is carried out to professional standards and by practitioners with appropriate expertise</li> <li>• the early discharge of conditions does not undermine the local planning authority's ability to ensure that all necessary archaeological work is carried out.</li> </ul> <b>Specific Comments</b> <b>Proposed Model Condition 22</b> IfA supports the inclusion of this condition save that the reference to 'an archaeologist' in the second line of the draft condition needs to be clarified in				

Consultation reference: WG19178

order to avoid ambiguity. Those words should be replaced by 'a suitably qualified accredited archaeologist'. This largely mirrors the reference in draft model condition 27 to a 'suitably qualified competent person' but provides greater precision and avoids difficulties in defining competence. IfA accredits archaeologists, individually, through its validation process: see <http://www.archaeologists.net/regulation/accreditation>. (IfA also accredits archaeological organisations through registration under its Registered Organisations scheme: see <http://www.archaeologists.net/regulation/organisations>. All four Welsh Archaeological Trusts, for instance, are IfA Registered Organisations.)

#### Proposed Model Condition 23

This condition should be deleted. It no longer reflects current policy or practice (informed by the polluter pays principle). It does not require a developer to obviate, mitigate or compensate for the impact of development upon the historic environment and ultimately places an unwarranted burden on local authorities.

Nor is this proposed condition effective in dealing with unexpected discoveries. Proposed model condition 78 could be used to cover such an eventuality although this should be identified in Appendix A as having a wider application than 'Listed Building (protection of features)'.

#### Proposed Model Condition 24

This proposed condition needs to be substantially reworded more fully to reflect the multi-staged nature of most programmes of archaeological work. Such programmes typically include

- site investigation, prior to, or sometimes integrated with, construction ground works
- an assessment of the discoveries on completion of the site investigation, with proposals for their analysis
- the analysis and publication of the discoveries, and the deposition of the site archive (a process which can take some years to complete in the case of large or complex investigations).

Not all these stages can reasonably be implemented before development commences. Furthermore, the failure clearly to articulate them on the face of planning conditions has produced uncertainty as to when archaeological conditions can be discharged and the risk that such conditions will be discharged before the public benefits from later stages of programmes have been secured.

The following suggested condition(s) recognise(s) the need to avoid unduly constraining development while providing mechanisms to ensure that the later stages of a programme are implemented:

'A) No demolition/development shall take place/commence until a Written Scheme of Investigation has been submitted to and approved by the local planning authority in writing. The scheme shall include an assessment of significance and research questions; and:

1. The programme and methodology of site investigation and recording

Consultation reference: WG19178

2. The programme for post investigation assessment
3. Provision to be made for analysis of the site investigation and recording
4. Provision to be made for publication and dissemination of the analysis and records of the site investigation
5. Provision to be made for archive deposition of the analysis and records of the site investigation
6. Nomination of a suitably qualified accredited archaeologist or archaeologists / archaeological organisation to undertake the works set out within the Written Scheme of Investigation.

B) No demolition/development shall take place other than in accordance with the Written Scheme of Investigation approved under condition (A).

C) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under condition (A) and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.'

Given Welsh Government's proposed approach to the structuring of decision notices (an approach which IfA endorses - see question 6), the above suggested provisions should be framed as separate (but linked) conditions.

IfA would expect adherence to professional standards and the use of suitably qualified accredited archaeologists to be covered in the Written Scheme of Investigation.

#### Additional Suggested Condition

Proposed model condition 71 provides for fencing to protect listed buildings from inadvertent damage during development. Although archaeological sites are also vulnerable to such damage there is no similar provision in this respect. This should be remedied either by extending model clause 71 to refer in its title (and in the square brackets in the text itself) to archaeological assets, or by the inclusion of a separate, similarly-worded model condition relating specifically to archaeological assets.

#### Listed Buildings (71 to 80)

See above in relation to proposed model condition 71.

The concerns expressed above in relation to proposed model condition 23 are similarly applicable to proposed model condition 73. This should be deleted and replaced by the following which can be adapted to apply to both planning permissions and listed building consents:

'No development / works to which this permission / consent relates shall commence until an appropriate programme of historic building recording and analysis has been secured and implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.'

Consultation reference: WG19178

**See above in relation to proposed model condition 78.**

<b>Q13</b>	Do you believe any of the conditions fail any of the six tests identified in the circular?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: <b>Insofar as issues of enforceability, precision and reasonableness are raised above.</b>				

<b>Q14</b>	Should any conditions be totally removed from Appendix A of the draft circular?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: <b>Yes - See above.</b>				

## **General**

<b>Q15</b>	We have asked a number of specific questions throughout this consultation. If you have any related queries or comments which we have not specifically addressed, please use this space to report them:
<b>If A would be happy further to engage with Welsh Government and other stakeholders in order to ensure that fit-for-purpose conditions relating to the historic environment are formulated.</b>	

I do not want my name/or address published with my response (please tick) ☐

The Use of Planning Conditions for Development Management		
Date of consultation period: 29/01/2014 – 25/04/2014		
<b>Name</b>	Hannah Powell	
<b>Organisation</b>	Powys County Council	
<b>Address</b>	County Hall Llandrindod Wells Powys	
<b>E-mail address</b>	hannah.powell@powys.gov.uk	
<b>Type</b> (please select one from the following)	Businesses/Planning Consultants	<input type="checkbox"/>
	Local Planning Authority	<input checked="" type="checkbox"/>
	Government Agency/Other Public Sector	<input type="checkbox"/>
	Professional Bodies/Interest Groups	<input type="checkbox"/>
	Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations)	<input type="checkbox"/>
	Other (other groups not listed above) or individual	<input type="checkbox"/>

Q1	Do you think an updated circular on conditions is required?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

Q2	Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

Consultation reference: WG19178

<b>Q3</b>	Do you consider:			
	(i) that all six tests are still relevant today and should be retained?	Yes	Yes (subject to further comment)	No
	(ii) that there are additional tests that could be used (demonstrate with case law if possible)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>Answer relates to Q3 (i) above.</b>				

<b>Q4</b>	Do you consider that any significant pieces of recent case law have been overlooked, which would provide better examples than those used, to support the text?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>Don't know.</b>				

<b>Q5</b>	Are there any topic areas in Chapter 5.0 which should be expanded on, or, are there any new topic areas you consider should be included?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>5.7 Outline Permissions</b> Where ecological impacts and mitigation are identified and agreed during establishing the principle of development, then some of the reserved matters suggested can not be reserved, such as layout, which may be determined by the available developable area once ecological features have been considered. Suitable planning conditions must be attached to outline permissions to deal with ecological impacts and agreed mitigation.  In addition, given that biodiversity enhancements should be secured for all development proposals in order to meet planning policies and the NERC Biodiversity duty, the details of biodiversity enhancements in developments, should be added to the list of matters to be addressed in a reserved matters application.  5.21 Another reason for refusing a Section 73 application would be in the absence of updated ecology surveys, particularly for protected species, where the potential for protected species is reasonably likely or were identified during previous surveys.				

Consultation reference: WG19178

**5.27 & 5.107** Trial run permissions for Renewable Energy could be granted for single wind turbine or wind farm developemnts where the ecological impact is unknown and where monitoring survey work could identify unacceptable imapcts to birds or bats. For example, monitoring could be undertaken for 2 years following the commencement of the turbine (s) operation based on a temporary permission being changed to a longer permission (expected operational timescales) if monitoring confirms that unacceptabel imapcts are unlikely.

**5.30** Approved Plans and Drawings should include the Approved Protected Species Mitigation Strategies and Method Statements.

**5.50** Details of new or replacement native species-rich hedgerows comprising species typical of the local area should also be secured by a planning condition for boundary treatments.

**5.60** SuDS also have the potential added benefit of enhancing biodiversity (wildlife) value.

**5.77** Whilst usually required up-front, update protected species surveys can be conditioned for phased developments such as mineral permissions, which could be considered as an exception to the norm. See 9.2.4 of British Standard BS42020:2013 Biodiversity - Code of practice for planning and development.

**5.79** In addition to TAN 5: Nature Conservation and Planning, further advice on planning conditions relating to nature conservation and trees (ecological features)is detailed in the British Standard BS42020:2013 Biodiversity - Code of practice for planning and development, particularly Section 9 and the model conditions provided at Annex D. In addition, a model condition that requires pre-commencement confirmation that any ecology mitigation and enhancements have been implemented and are fit for purpose, would be useful.

**5.112** Sustainable Buildings - Conditions 119 - 124 - Why do these only consider energy emisisions and none of the other aspects of BREEAM and Code for Sustainable Homes, such as the Eco credits. Sustainable buildings should include protected species mitigation and enhancements. The RIBA publication 'Biodiversity for Low and Zero Carbon Buildings:A technical guide for new build' provides further information.

**5.116** In certain areas, particularly rural areas, planning conditions should also be used to secure the type of trees to be planted, such as native trees of local provenance.

<b>Q6</b>	Do you agree that decision notices should be structured in the manner proposed? If you do not, please suggest an alternative.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: It might be beneficial to the applicant/developer if planning condions which are				

Consultation reference: WG19178

**limited to works being undertaken at a particular time of year, including pre-commencement conditions, such as the application for an EPS licence for bats or great crested newts, demolition works to avoid nesting bird season or roosting bats, landscape planting in the winter. If the 'window' for these types of works are missed then delays until the following year will occur.**

<b>Q7</b>	Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>This is particularly important where approved plans provide details of protected species mitigation, such as the provision of a bat loft of certain dimensions.</b>				

<b>Q8</b>	Do you agree with the approach taken towards the term 'unless otherwise agreed by the Local Planning Authority' discussed in paragraph 3.36 of the draft circular? If not, please suggest your preferred approach.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments: <b>I consider this term to be generally useful in ecology related planning conditions as it enables the LPA to retain control whilst also allowing the applicant/developer some flexibility. For example, where a pre-commencement planning condition stipulates that "vegetation/site clearance can not be undertaken during the nesting bird season unless otherwise agreed in writing by the LPA" this safeguards nesting birds but also allows the applicant to submit a method statement setting out how they will undertake the clearance works without affecting nesting birds, i.e. they will undertake a nesting bird survey and seek the advice of an ecological consultant. Depending on the vegetation type present, then this approach could be acceptable but it is quite onerous to require further information for this reason. Another example, is where the LPA ecologist stipulates the tree species to be planted in a scheme where details have not been submitted with an application, thus avoiding requesting further information, or a pre-commencement landscaping plan but also allowing the applicant/developer some flexibility. The BS42020:2013 Biodiversity provides model conditions using this term. I was unaware that the Court of Appeal ruled that use of the term was unlawful. Would it be lawful and appropriate to continue to use the term in certain circumstances, such as the examples given above?</b>				

Consultation reference: WG19178

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<b>Q9</b>	Do you agree that Local Planning Authorities should provide applicants with advance notice of conditions before an application is due to be determined?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: <b>But this may involve further detailed consultation with the applicant to discuss any conditions which the applicant disagreed with and may also lengthen the processing time for applications.</b>				

<b>Q10</b>	Should guidance be provided in the circular with regards to any other conditions related matter?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

<b>Q11</b>	Does Appendix A of the draft circular contain sufficient examples of model conditions?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments:  <b>There is only one condition related to Nature Conservation (except Trees) but ecology can be quite a complicated issue on many development sites with several different aspects requiring to be secured by a planning condition. Therefore, more examples of model conditions for ecology-related conditions would be useful for Planning Officers and Planning Ecologists.</b>  <b>Usually the implementation of an agreed protected species mitigation strategy, such as a bat mitigation strategy is conditioned.</b>  <b>A consistent approach to the wording would be useful for the regularly used ecology-related planning conditions such as hedgerow and tree protection plans,</b>				

Consultation reference: WG19178

**protected species mitigation strategies, native landscape planting schemes, nesting bird restrictions on the timing of certain works, construction ecological mitigation plan or construction ecological method statements, presence of an Ecological Clerk of Works on site for the larger schemes, wildlife friendly external lighting schemes, and biodiversity enhancement plans.**

**Section 9 and Annex D of the British Standard BS42020:2013 Biodiversity - Code of Practice for Planning and Development provides examples of model planning conditions.**

<b>Q12</b>	Do you consider that any of the conditions used should be reworded? If so, which conditions and why? Please suggest alternatives if you are able.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>Not answered</b>				

<b>Q13</b>	Do you believe any of the conditions fail any of the six tests identified in the circular?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>Sorry, I haven't tested them so I'm unable to comment.</b>				

<b>Q14</b>	Should any conditions be totally removed from Appendix A of the draft circular?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>I have only commented on the conditions relevant to ecology so I'm unable to answer this question.</b>				

## **General**

**Q15**

We have asked a number of specific questions throughout this consultation. If you have any related queries or comments which we have not specifically addressed, please use this space to report them:

**Condition 133 Wildlife Protection refers to 'Wildlife Protection Zones' whilst I understand the clarity of this term, this is not a standard term used by ecologists. Usually a specific habitat feature which is of importance to a protected species or habitat is protected, such as a Hedgerow Protection Plan, Tree Protection Plan, Woodland Protection Plan, Pond, River or Species-rich grassland Protection Plan.**

**With regard to planning conditions for trees, reference is made to compliance with BS5837:2012 Trees in Relation to Design, Demolition and Construction - Recommendations. Similarly reference should be made in relevant Nature Conservation conditions that mitigation strategies, method statements and biodiversity enhancement plans, etc should be prepared and implemented in accordance with the BS42020:2013 Biodiversity - Code of Practice for Planning and Development.**

I do not want my name/or address published with my response (please tick) ☐

Conditions Consultation  
Development Management Branch  
Planning Division  
Welsh Government  
Cathays Park  
Cardiff CF10 3NQ



25<sup>th</sup> April 2014

Dear Sirs

**RE: THE USE OF PLANNING CONDITIONS FOR DEVELOPMENT MANAGEMENT**

The Law Society is the representative body of over 166,000 solicitors in England and Wales. The Society negotiates on behalf of the profession and lobbies regulators, governments and others. This consultation response has been prepared by members of the Law Society's Planning & Environmental Law Committee. The Committee comprises 20 practitioners expert in these areas of law from a cross section of the profession, both public and private sectors, and from across the UK nations.

As a general point from our members' perspective, it needs to be borne in mind that the use of delegated powers means that legal advisers do not see all of the conditions planning colleagues formulate and attach to consents. That tendency will increase with the commitment of the Welsh Government to standardising and extending delegated powers within Welsh local planning authorities.

**Q1 Do you think an updated circular on conditions is required?**

The need for a Circular on the use of planning conditions remains. However, the existing Circular 35/95 is out of date. It needs to be updated to reflect current legislation and the type of standard conditions it presents as meeting the six tests also need to be updated. The Independent Advisory Group recommended that priority be given to updating the guidance on planning conditions and providing model conditions reflecting current best practice.

**Q2 Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular?**

Much of the information in Circular 35/95 remains valid and can be retained in the new Circular. As far as possible there should be continuity in the advice extended to local planning authorities in the new circular as compared to Circular 35/95.

However, the draft circular contrasts starkly with the minimal guidance on the use of planning conditions in England, to be found on the new digital only Planning Practice Guidance issued by DCLG in England in March 2014.

We therefore question whether the traditional Circular format retained from 35/95 remains appropriate. The document is now a comprehensive and potentially useful practical guidance for both planning authorities and applicants for permission in Wales and we suggest that it should be viewed in this light in future.

The circular aspects appear to be relatively slight and mainly cover commending the guidance in the interests of ensuring uniformity of approach across Wales.

We suggest that the future evolution of the guidance in the current draft Circular is a task eminently suited in future to the Planning Advisory and Information Service with input from Stakeholders.

In view of the IAG recommendation that the Circular be updated as a priority, we support the re-issue of the Circular but consideration should be given to pointing the way to the manner in which future updates will be handled.

**Q3 Do you consider:**

**i) that all six tests are still relevant today and should be retained?**

**ii) that there are additional tests that could be used (demonstrate with case law if possible)?**

The six tests remain relevant criteria for the validity of planning conditions and are firmly based in case law.

Having regard to the placing on a statutory basis of the tests for the validity of a section 106 planning obligation in the CIL Regulations, but originally developed by the Courts, there is a case for placing the “six tests” on a statutory basis through the Planning (Wales) Bill. The tests developed by the Courts would thus be fixed and would have the benefit of certainty for LPA’s and applicants.

**Q4 Do you consider that any significant pieces of recent case law have been overlooked, which would provide better examples than those used, to support the text?**

The judgement of Beatson LJ in *Telford and Wrekin Council v Secretary of State for Communities and Local Government v Growing Enterprises Ltd* [2013] EWHC 79 (Admin) contains a useful analysis derived from case-law of the rules developed by the Courts for the interpretation of planning conditions at paragraph 33, which could usefully be incorporated into the Circular.

**Q5 Are there any topic areas in Chapter 5.0 which should be expanded on, or, are there any new topic areas you consider should be included?**

There is no guidance or any draft conditions dealing with phasing, or the related matter of the partial discharge of conditions. Such examples would support the guidance at paragraphs 4.5 and 4.6 of the draft circular on the importance of assisting a developer to get on site.

There is a particular problem with many extant permissions arising from the practice of many local authorities of allowing “partial discharge” of conditions where there is no express phasing or flexible approval mechanism in the conditions. For example, there might be a pre-commencement condition relating to a remediation scheme for a site to be redeveloped for a new school and housing. It is envisaged that the local authority will develop the school and a private developer the housing. The pre-commencement condition covers the whole site. If the local authority accept a “partial discharge” by approving a remediation scheme for the school site, there may be questions raised by a subsequent purchaser and developer of the housing site as to whether the permission has been validly implemented.

The discussion of time limit conditions should cover the submission of applications to extend time and, in particular, the calculation of the time when permission expires so that an extension application can no longer be made.

The presentation of Chapter 5.0 should be reconsidered. It would be more accessible to users if the draft conditions related to the topic appeared after the topic rather than being consigned to an appendix. Alternatively, in order to facilitate a digital version of the guidance, the topic related text could be reproduced as noted to each model condition.

Given the emphasis that Welsh policy now places on a uniform service across all planning authorities in Wales, the circular should explicitly commend the model conditions unless the circumstances of a particular application dictates a different approach.

**Q6 Do you agree that decision notices should be structured in the manner proposed? If you do not, please suggest an alternative.**

The standardised approach to the structure of decision notices across Wales will be a considerable improvement.

There are two issues that should be considered and guidance given:

- Many developers' advisers now put forward draft conditions, especially for complex applications, where words and expressions used several times in the conditions are defined in an introductory definitions provision. This is an accepted drafting convention both for legislation and legal transactional documents, but attitudes among local planning authorities vary with many resisting the use of definitions due to concern about the severability of conditions. On the other hand the use of definitions promotes the internal consistency of a set of conditions as a whole. Guidance on this point would assist parties in arriving at agreed conditions expeditiously. Similarly repetition could further be avoided by the adoption of blanked interpretation provisions, such as:

*"Unless otherwise stated any requirement that the approval of the local planning authority is to be obtained means approval in writing"*

- We question the practicability of the approach to dual purpose conditions suggested at paragraph 4.18 and think that the "most significant contribution" principle set out at paragraph 4.19 may be difficult to apply in practice. We suggest that wherever possible matters are split out in accordance with the proposed categorisation on conditions. Applying the approach to the example of a dual purpose condition at paragraph 4.18 produces separate conditions as follows:

***"Pre-commencement***

*No development shall take place (including any work of demolition) until a Construction Method Statement has been submitted to and approved in writing by, the local planning authority"*

***"Regulatory***

*The Construction Method Statement [approved under condition [ ] above] shall be adhered to throughout the construction of the development."*

The guidance in the Circular should take care to pave the way for the proposed form of continuously updated permission proposed in the Welsh Government's White Paper.

**Q7 Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition?**

It is important to bear in mind that a permission will be relied upon and will be relevant in future to parties who were not privy to the original application and who will not be aware of

the circumstances surrounding the original grant of permission. Future purchasers and lenders may all be concerned to establish what exactly has been approved and need to know if what has been built conforms to what was approved. It should not be necessary to have to attempt to obtain original application documents.

Accordingly, it should be established as a principle that a person reading a permission should be able to readily identify the approved documents and be certain that once they have obtained copies of those plans they are in possession of all the material comprising the permission.

It should be noted, however, that these considerations do not only apply to plans. There are frequently requirements for schemes and statements (for example a construction Method Statement) some of which may be approved as part of the consent and these should similarly be noted along with the plans.

**Q8 Do you agree with the approach taken towards the term ‘unless otherwise agreed by the Local Planning Authority’ discussed in paragraph 3.36 of the draft circular? If not, please suggest your preferred approach.**

Yes, judicial disapproval of the use of “tailpieces” is clear. The proposals to introduce a procedure for minor material amendments should meet the need that the “unless otherwise agreed” formulation has been used to meet.

**Q9 Do you agree that local planning authorities should provide applicants with advance notice of conditions before an application is due to be determined?**

It would help developers to have sight of the conditions the local planning authority proposes to attach to a permission in advance of determination to allow, if necessary, for negotiations between developers and authorities.

However, we recognise that there is a tension between the wish of LPA’s to determine applications and developers who may enter into detailed and protracted negotiations with the LPA.

It seems to us that the following principles could be applied:

- An applicant should be offered the opportunity to comment on conditions.
- If the offer is taken up then it should “stop the clock” in terms of local authority targets until the applicant responds.
- There should be one round of comments “as of right”.

**Q10 Should guidance be provided in the circular in relation to any other conditions related matter?**

Guidance could usefully be provided on:

- The drafting of reasons for refusal, which could usefully be referred to for the guidance of members when refusing permission contrary to advice.
- Guidance or at least a summary and cross-reference on breach of condition procedure.
- Best practice examples of reasons for conditions.

**Q11 Does Appendix A of the draft circular contain sufficient examples of model conditions?**

We suggest the following could usefully be added:

- Phasing and flexible discharge conditions.
- Decommissioning renewable energy schemes (in addition to wind power).
- Amplitude modulation (for on-shore wind energy developments).
- Wording of retrospective conditions.
- Biodiversity and environmental management conditions.
- Lighting.

**Q12 Do you consider that any of the conditions used should be reworded? If so, which conditions and why? Please suggest alternatives if you are able.**

The model conditions show disparate drafting styles and uniform drafting conventions should be adopted. For example pre-commencement conditions should adopt a uniform formulation of pre-commencement, such as: "The development must not begin until....."

Condition 24 (Archaeology) requires a provision requiring the pre-commencement submission of a programme.

Condition 26 (Boundaries) requires a reference to "dimensions" to be included

Condition 27 (Contaminated Land (Investigation)) should be annotated to make clear that the edition of the BS current at the date of permission must be cited.

**Q13 Do you believe any of the conditions fail any of the six tests identified in the circular?**

No

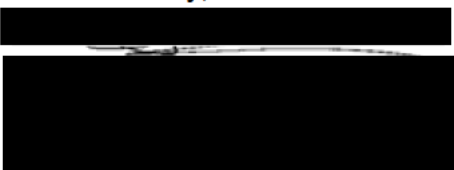
**Q14 Should any conditions be totally removed from Appendix A of the draft circular?**

No

**Q15 Are there any other types of condition/topic areas which you think should be included within Appendix A of the draft circular? Please give examples.**

We note that draft Condition 109 limiting the duration of a renewable energy permission is in a form that is common to many permissions for windfarms and single turbines. However, there appears to be some confusion among the Inspectorate regarding the appropriateness of such a condition where the application is not specified to be for a temporary installation. An example can be found in the decision on an appeal for a single 50 kw turbine at Clegyrn Farm near Fishguard in Pembrokeshire – see appeal APP/N6845/A/13/2200679 at paragraph 18. Guidance on the circumstances when such a condition can properly be attached to a permission would help to clarify this.

Yours faithfully,

A large black rectangular redaction box covering the signature and name of the official.

Defnyddio Amodau Cynllunio i Reoli Datblygu		
Dyddiad y cyfnod ymgynghori: 29/01/2014 – 25/04/2014		
Enw		
Sefydliad	Cyngor Gwynedd	
Cyfeiriad		
Cyfeiriad e-bost		
Math (dewiswch un o'r canlynol)	Ymgynghorwyr Busnes/Cynllunio	<input type="checkbox"/>
	Awdurdod Cynllunio Lleol	<input checked="" type="checkbox"/>
	Asiantaeth y Llywodraeth/Corff Sector Cyhoeddus Arall	<input type="checkbox"/>
	Cyrff Proffesiynol/Grwpiau â Diddordeb	<input type="checkbox"/>
	Sector gwirfoddol (grwpiau cymunedol, gwirfoddolwyr, grwpiau hunangymorth, mentrau cydweithredol, mentrau cymdeithasol, crefyddol a sefydliadau nid er elw)	<input type="checkbox"/>
	Arall (grwpiau eraill nas rhestrir uchod) neu unigolyn	<input type="checkbox"/>

<b>C1</b>	A ydych yn credu bod angen cylchlythyr wedi'i ddiweddararu ar amodau?	Ydw	Nac ydw (yn amodol ar sylwadau pellach)	Nac ydw
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sylwadau: <b>Croesawir y diweddariad er mwyn cael cysondeb rhwng yr amodau a ddefnyddir gan bob ACLL a'r Arolygaeth Gynllunio.</b>				

<b>C2</b>	A ydych yn cytuno y dylid trosglwyddo gwybodaeth a gadwyd o Gylchlythyr 35/95 i'r cylchlythyr newydd?	Ydw	Nac ydw (yn amodol ar sylwadau pellach)
		<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sylwadau: <b>Cytuno - bydd yn fodd i symleiddio a diweddararu'r wybodaeth sydd ar gael a'i gyflwyno ar ffurf un ddogfen.</b>			

<b>C3</b>	A ydych yn credu:			
	(i) bod pob un o'r chwe phrawf yn dal i fod yn berthnasol heddiw ac y dylid eu cadw?	Ydw	Ydw (yn amodol ar sylwadau pellach)	Nac ydw
	(ii) bod profion ychwanegol y gellid eu defnyddio (dangoswch gan ddefnyddio cyfraith achosion os yw'n bosibl)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Sylwadau:  
**Cytuno fod y chwe prawf yn parhau i fod yn berthnasol er mwyn llunio amodau cynllunio.**

<b>C4</b>	A ydych yn credu bod unrhyw ddarnau pwysig o gyfraith achosion ddiweddar wedi'u diystyru, a fyddai'n rhoi gwell enghreifftiau na'r rhai a ddefnyddiwyd, i ategu'r testun?	Ydw	Ydw (yn amodol ar sylwadau pellach)	Nac ydw
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Sylwadau:

<b>C5</b>	A oes unrhyw feysydd pwnc ym Mhennod 5.0 o'r cylchlythyr drafft y dylid ymhelaethu arnynt, neu, a oes unrhyw feysydd pwnc newydd y dylid eu cynnwys, yn eich barn chi?	Oes	Oes (yn amodol ar sylwadau pellach)	Nac oes
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Sylwadau:  
**Mae angen eglurdeb a chadarnhad am y cyfnod a ystyrir yn 'gyfnod dros dro'. Yn gyffredinol ystyrir 3 mlynedd yn gyfnod dros dro ond mae cyfeiriad yma at gyfnod hirach na fyddai o bosibl yn cael ei weld yn 'dros dro'.**

<b>C6</b>	A ydych yn cytuno y dylid strwythuro hysbysiadau o benderfyniad fel y cynigir? Os nad ydych yn cytuno, awgrymwch opsiwn arall.	Ydw	Ydw (yn amodol ar sylwadau pellach)	Nac ydw
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Cyfeirnod yr ymgynghoriad: WG19178

Sylwadau:

**Cytuno gyda hyn er mwyn cael dyfarniadau sydd yn gyson o fewn yr ACLL ac hefyd yn gyson gyda ACLL eraill.**

<b>C7</b>	A ydych yn cytuno y dylid nodi'r cynlluniau a'r lluniadau a gymeradwywyd sy'n berthnasol i benderfyniad mewn amod?	Ydw	Ydw (yn amodol ar sylwadau pellach)	Nac ydw
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Sylwadau:

**Yn cytuno ac mae hyn eisoes yn cael ei wneudgan y Cyngor. Fodd bynnag, gall amodau o'r fath gael eu hystyried yn anhyblyg e.e. os oes manylion pellach yn cael ei derbyn - unai er mwyn cydymffurfio gyda amod arall o fewn y caniatad neu os y cyflwynir man newidiadau eraill.**

<b>C8</b>	A ydych yn cytuno â'r ffordd yr ymdriniwyd â'r term 'oni chytunwyd fel arall gan yr Awdurdod Cynllunio Lleol' a drafodir ym mharagraff 3.37 o'r cylchlythyr drafft? Os nad ydych yn cytuno, awgrymwch sut yr hoffech ymdrin ag ef.	Ydw	Ydw (yn amodol ar sylwadau pellach)	Nac ydw
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Sylwadau:

**Mae hyn yn galluogi man newidiadau i faterion sydd angen eu hamodi ond all hefyd fod yn dderbyniol mewn ffurf arall (ac sydd heb fod yn newid sylweddol na materol). Derbyd yr hyn a ddywedir yn 3.37 ond yn hytrach na'i weld fel rhywbeth amwys credir ei fod yn rhoi hyblygrwydd i addasu mewn ffordd derbyniol (ac heb gais) fel bo angen. Gall un amod hefyd effeithio amod arall ac felly gall gymeryd yr agwedd yma hwyluso'r broses ddatblygu (o fewn rheswm).**

<b>C9</b>	A ydych yn cytuno y dylai Awdurdodau Cynllunio Lleol hysbysu ymgeiswyr ymlaen llaw o amodau cyn y dyddiad y disgwylir i gais gael ei benderfynu?	Ydw	Ydw (yn amodol ar sylwadau pellach)	Nac ydw
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Sylwadau:

**Ni chredir y dylai hyn fod yn broses statudol ond yn hytrach yn 'ymarfer da' ar rai ceisiadau yn enwedig rhai mawr. Pwysleisir na ddylai gael ei weld fel cyfle i negodi amodau. Ar geisiadau mwy mae'r ymgeisydd yn aml yn cael ei wybyddu**

Cyfeirnod yr ymgynghoriad: WG19178

**o'r amodau tebygol drwy broses cyngor cyn cais neu drafodaethau yn ystod y cais. Ni chredir fod hyn yn ymarferol ar ffurf mwy ffurfiol ond mae eisoes yn cael ei wneud ar lefel anffurfiol. Yn ogystal, mae pob cais a gyflwynir i'r Pwyllgor Cynllunio yn rhestru'r amodau yn fras.**

<b>C10</b>	A ddylid darparu canllawiau yn y cylchlythyr drafft ar unrhyw fater arall sy'n ymwneud ag amodau?	Dylid	Dylid (yn amodol ar sylwadau pellach)	Ni ddylid
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Sylwadau:

**Byddai o fudd darparu canllawiau ar amodau i ymgynghorwyr statudol sydd yn rhoi sylwadau a chynnig amodau ar geisiadau, yn ogystal ac amlinellu eu rol wrth ryddhau amodau cynllunio.**

<b>C11</b>	A yw Atodiad A i'r cylchlythyr drafft yn cynnwys digon o enghreifftiau o amodau enghreifftiol?	Ydy	Ydy (yn amodol ar sylwadau pellach)	Nac ydy
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Sylwadau:

**Efallai fod hefyd cyfle i greu templed ar gyfer amodau mwy cyffredinol er mwyn sicrhau cysondeb rhwng ACLL e.e. amodau cyn cychwyn neu amodau i'w cytuno yn ysgrifenedig gyda'r ACLL ayb**

<b>C12</b>	A ydych yn credu y dylid aileirio unrhyw un o'r amodau a ddefnyddir? Os felly, pa amodau a pham? Awgrymwch eiriad amgen os gallwch.	Ydw	Ydw (yn amodol ar sylwadau pellach)	Nac ydw
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Sylwadau:

**Amod 92 - pwy sy'n cynnal a chadw'r gofrestr?**

Cyfeirnod yr ymgynghoriad: WG19178

<b>C13</b>	A ydych yn credu bod unrhyw un o'r amodau yn methu unrhyw un o'r chwe phrawf a nodir yn y cylchlythyr drafft?	Ydw	Ydw (yn amodol ar sylwadau pellach)	Nac ydw
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sylwadau:				

<b>C14</b>	A ddylid dileu unrhyw amodau yn llwyr o Atodiad A i'r cylchlythyr drafft?	Dylid	Dylid (yn amodol ar sylwadau pellach)	Ni ddylid
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sylwadau:				

**Cyffredinol**

<b>C15</b>	Rydym wedi gofyn nifer o gwestiynau penodol yn ystod yr ymgynghoriad hwn. Os oes gennych unrhyw ymholiadau neu sylwadau cysylltiedig nad ydym wedi ymdrin â hwy yn benodol, defnyddiwch y lle hwn i'w nodi:
<p><b>Cymal 5.82 a 5.86 yn glir o safbwynt barn y Llywodraeth ond nid yw'n glir ar sail pa dystiolaeth a chyngor cyfreithiol mae'r sylwadau yma'n cael eu gwneud.</b></p> <p><b>Ystyrir ambell amod enghreifftiol yn rhy gaeth/sbesiffig/ddisgrifiadol/cymhleth neu amwys e.e. rhif 9, 10, 15, 133. A ddylai'r materion yn amodau 131-133 gael eu datrys cyn rhyddhau penderfyniad h.y. oni ystyrir y wybodaeth yma yn allweddol/angenrheidiol er mwyn gallu asesu'r cais?</b></p> <p><b>Yn ddiweddar mae rhai datblygwyr wedi crybwyll problem gyda cydymffurfio gyda amodau 119-121 oherwydd y geiriad ac nad yw'n bosibl cwrdd gyda gofynion yr amod cyn meddiannu'r adeilad.</b></p> <p><b>Nid oes amod yn ymwneud gyda rhywogaethau wedi'u gwarchod.</b></p>	

Cyfeirnod yr ymgynghoriad: WG19178

Nid wyf yn dymuno i'm henw/cyfeiriad gael ei gyhoeddi gyda'm hymateb (ticiwch) ☐

The Use of Planning Conditions for Development Management		
Date of consultation period: 29/01/2014 – 25/04/2014		
Name		
Organisation	Gwynedd Council	
Address		
E-mail address		
Type (please select one from the following)	Businesses/Planning Consultants	<input type="checkbox"/>
	Local Planning Authority	<input checked="" type="checkbox"/>
	Government Agency/Other Public Sector	<input type="checkbox"/>
	Professional Bodies/Interest Groups	<input type="checkbox"/>
	Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations)	<input type="checkbox"/>
	Other (other groups not listed above) or individual	<input type="checkbox"/>

Q1	Do you think an updated circular on conditions is required?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: The update is welcome in order to ensure consistency between the conditions used by each LPA and the Planning Inspectorate.				

Q2	Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: Agree - it will be a way of streamlining and updating the information available and presenting it in single document format.				

<b>Q3</b>	Do you consider:			
	(i) that all six tests are still relevant today and should be retained?	Yes	Yes (subject to further comment)	No
	(ii) that there are additional tests that could be used (demonstrate with case law if possible)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>We agree that the six tests remain relevant in formulating planning conditions.</b>				

<b>Q4</b>	Do you consider that any significant pieces of recent case law have been overlooked, which would provide better examples than those used, to support the text?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments:				

<b>Q5</b>	Are there any topic areas in Chapter 5.0 which should be expanded on, or, are there any new topic areas you consider should be included?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>Clarification and confirmation are needed in relation to the period of time considered to be a 'temporary period'. Generally a temporary period is considered to be 3 years but reference is made here to a longer period of time that may not be considered to be 'temporary'.</b>				

<b>Q6</b>	Do you agree that decision notices should be structured in the manner proposed? If you do not, please suggest an alternative.	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>We agree with this in order to ensure decisions are consistent within the LPA and also consistent with other LPAs.</b>				

Consultation reference: WG19178

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Q7	Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments:

**Agree - this is already done by the Council. However, such conditions can be considered inflexible, e.g. if further details are received - either to comply with another condition within the consent or if other minor changes are submitted.**

Q8	Do you agree with the approach taken towards the term 'unless otherwise agreed by the Local Planning Authority' discussed in paragraph 3.36 of the draft circular? If not, please suggest your preferred approach.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments:

**This permits minor changes to matters that require conditions but that can also be acceptable in another format (and which do not constitute a substantial or material change). We accept what is said in 3.37 but rather than seeing it as something ambiguous, we believe it provides flexibility to make adaptations in an acceptable manner (and without an application) as required. One condition can also impact on another and therefore taking this approach could facilitate the development process (within reason).**

Q9	Do you agree that Local Planning Authorities should provide applicants with advance notice of conditions before an application is due to be determined?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Comments:

**We do not believe this should be a statutory process but rather 'good practice' for some applications, particularly major ones. We emphasise that it should not be seen as an opportunity to negotiate conditions. On larger applications the applicant is often informed of the likely conditions through the pre-application advice process or in discussions during the application. We do not believe this is practical in a more formal format but is already done at an informal level. In**

Consultation reference: WG19178

**addition, all applications submitted to the Planning Committee broadly list the conditions.**

<b>Q10</b>	Should guidance be provided in the circular with regards to any other conditions related matter?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>It would be advantageous to provide guidance on conditions for statutory consultees who provide comments and propose conditions on applications, as well as outlining their role in discharging planning conditions.</b>				

<b>Q11</b>	Does Appendix A of the draft circular contain sufficient examples of model conditions?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Comments: <b>There may also be an opportunity to create a template for more general conditions in order to ensure consistency between LPAs, e.g. pre-commencement conditions or conditions for agreement in writing with the LPA etc.</b>				

<b>Q12</b>	Do you consider that any of the conditions used should be reworded? If so, which conditions and why? Please suggest alternatives if you are able.	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>Condition 92 - who maintains and keeps the register?</b>				

<b>Q13</b>	Do you believe any of the conditions fail any of the six tests identified in the circular?	Yes	Yes (subject to	No

Consultation reference: WG19178

			further comment)	
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

<b>Q14</b>	Should any conditions be totally removed from Appendix A of the draft circular?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

## General

<b>Q15</b>	We have asked a number of specific questions throughout this consultation. If you have any related queries or comments which we have not specifically addressed, please use this space to report them:
<p><b>Clause 5.82 and 5.86 are clear in terms of the Welsh Government's stance but it is not clear on what evidence and legal advice these comments are made.</b></p> <p><b>Certain model conditions are considered to be too strict/specific/descriptive/complex or ambiguous e.e. number 9, 10, 15, 133. Should the issues in conditions 131-133 be resolved prior to issuing a decision i.e is this information not considered key/necessary in order to assess the application?</b></p> <p><b>Some developers have recently highlighted a problem with compliance with conditions 119-121 due to the wording and it is not possible to meet the requirements of the condition prior to occupying the premises.</b></p> <p><b>There is no condition relating to protected species.</b></p>	

Consultation reference: WG19178

I do not want my name/or address published with my response (please tick) ☐

The Use of Planning Conditions for Development Management		
Date of consultation period: 29/01/2014 – 25/04/2014		
<b>Name</b>	Sarah Edwards	
<b>Organisation</b>	Persimmon Homes West Wales	
<b>Address</b>	Dragon House, Parc y Ddraig, Penllergaer Business Park, Penllergaer, Swansea, SA4 9HJ	
<b>E-mail address</b>	sarah.edwards@persimmonhomes.com	
<b>Type</b> (please select one from the following)	Businesses/Planning Consultants	<input checked="" type="checkbox"/>
	Local Planning Authority	<input type="checkbox"/>
	Government Agency/Other Public Sector	<input type="checkbox"/>
	Professional Bodies/Interest Groups	<input type="checkbox"/>
	Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations)	<input type="checkbox"/>
	Other (other groups not listed above) or individual	<input type="checkbox"/>

Q1	Do you think an updated circular on conditions is required?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

Q2	Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

Consultation reference: WG19178

<b>Q3</b>	Do you consider:			
	(i) that all six tests are still relevant today and should be retained?	Yes	Yes (subject to further comment)	No
	(ii) that there are additional tests that could be used (demonstrate with case law if possible)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

<b>Q4</b>	Do you consider that any significant pieces of recent case law have been overlooked, which would provide better examples than those used, to support the text?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments:				

<b>Q5</b>	Are there any topic areas in Chapter 5.0 which should be expanded on, or, are there any new topic areas you consider should be included?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments:				

<b>Q6</b>	Do you agree that decision notices should be structured in the manner proposed? If you do not, please suggest an alternative.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: <b>As well as listing the approved documents/drawings, the Decision Notice should be updated and re-issued when any subsequent S73 applications are granted permission so that it is easy to see what is approved on each site regardless of how many subsequent s73 applications have been submitted.</b>				

<b>Q7</b>	Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>And updated when any subsequent s73 applications are submitted.</b>				

<b>Q8</b>	Do you agree with the approach taken towards the term 'unless otherwise agreed by the Local Planning Authority' discussed in paragraph 3.36 of the draft circular? If not, please suggest your preferred approach.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments: <b>The planning process, if used correctly, has already agreed what is to be approved so the inclusion of the term 'unless otherwise agreed by the LPA' could be construed as superfluous. However, the ability to vary things is useful, i.e. if a specific phasing of development has been identified that for economic reasons isn't viable then the phasing can be changed without having to submit a s73 application.</b>				

<b>Q9</b>	Do you agree that Local Planning Authorities should provide applicants with advance notice of conditions before an application is due to be determined?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: <b>This will enable applicants to collate the relevant information required to discharge the pre-commencement conditions whilst waiting for the Decision Notice to be issued as well as speed up the discharge of conditions if they are going to be subject to a time limit as per the Planning Wales Bill.</b>				

<b>Q10</b>	Should guidance be provided in the circular with regards to any other conditions related matter?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: <b>Where else would it go? If it's not included in the circular then it's obviously not relevant.</b>				

<b>Q11</b>	Does Appendix A of the draft circular contain sufficient examples of model conditions?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

<b>Q12</b>	Do you consider that any of the conditions used should be reworded? If so, which conditions and why? Please suggest alternatives if you are able.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: <b>22 - Archaeology states that the LPA have to confirm that the Archaeologist is suitable when the condition could, for instance, just state that the Archaeologist must be a member of or work for a company registered with The Institute for Archaeologists therefore avoiding the need for work on site to go on hold until the LPA have replied in writing that the appointed Archaeologist is suitable.</b>				

Consultation reference: WG19178

<b>Q13</b>	Do you believe any of the conditions fail any of the six tests identified in the circular?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>35 - Construction Method Statement.</b> Sometimes we are asked for a Construction Method Statement and sometimes for a Pollution Prevention Method Statement. There appears to be no consistency across LPAs and I believe that construction isn't a planning issue and so this condition should not be included in the Decision Notice as it can be suitably dealt with by building regulations.				

<b>Q14</b>	Should any conditions be totally removed from Appendix A of the draft circular?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>122 to 124 - Sustainable Buildings.</b> In England this is no longer a planning issue but falls under building regs. Is the same proposed for Wales? If so, there is no need for these conditions and they should be removed accordingly in order to streamline the process and avoid unnecessary duplication of legislation.				

## **General**

<b>Q15</b>	We have asked a number of specific questions throughout this consultation. If you have any related queries or comments which we have not specifically addressed, please use this space to report them:
<p><b>The term 'submitted to and approved in writing by the LPA' can be onerous as some LPAs are notoriously slow at confirming things in writing. Examples of where this term is used on the Archaeology, Contamination, Drainage and Tree conditions are included below along with reasons why the wording is superfluous.</b></p> <p><b>Condition 24 (archaeological investigation) states that the written scheme of investigation has to be approved in writing by the LPA yet it will automatically follow The Institute for Archaeologists' detailed Standards and Guidance for Archaeological Watching Briefs.</b></p>	

Consultation reference: WG19178

Conditions 27 (contaminated land investigation) states that an assessment of the nature and extent of contamination has to be submitted and approved in writing by the LPA even though it must be carried out by or under the direction of a suitably qualified competent person in accordance with BS10175. Therefore, why does it need to be approved in writing if it is already being done to recognised British Standards.

Conditions 30 and 31 (imported aggregates/soils) states that a scheme of investigation must be submitted to and approved in writing by the LPA but that the scheme shall be undertaken in accordance with WLGA guidance.

Condition 38 (drainage) states that details of a scheme for the disposal of foul and surface water must be submitted to and agreed in writing by the LPA despite Dwr Cymru Welsh Water being a statutory consultee and being able to comment on/approve any submitted drainage plans during the planning consultation process removing the need for the LPA to approve them at a later date.

Condition 125 (trees) states that a scheme for the protection of trees to be retained is submitted to and approved in writing by the LPA but that the scheme will be undertaken in accordance with BS5837:2012.

I do not want my name/or address published with my response (please tick) ☐

## **Consultation on model planning conditions**

### **CLAS Cymru response on behalf of the Federation of City Farms and Community Gardens**

#### **Introduction**

The Federation of City Farms and Community Gardens is asking Welsh Government to ensure that the valuable role of local food growing to the Welsh Economy is very much something the whole of Welsh Government is supporting.

The support of a number of policy areas of Welsh Government now needs to be taken to the next level with the planning division following the trend, acknowledging the important role of community food growing to Wales and recognising the need for a holistic approach.

The Welsh Government Annual State of the Environment Paper<sup>1</sup> is a paper that shows how Wales is getting on with meeting its Environment Strategy objectives. In 2012 it showed a further increased need for access to ample high quality green space as the percentage of people who are able to access a park or open space keeps falling. This is the one statistic that is deteriorating here in Wales year on year.

The Adaptation to Climate Change Paper (Adaptation Delivery Plan 2010)<sup>2</sup> advises of the need of Welsh Government to support and enable community and third sector projects that help their communities adapt to climate change.

In July 2010 the Welsh Government produced the Food Strategy for Wales. This document provides the basis for an integrated approach to food policy by taking into consideration cross-cutting issues like;

- health
- food culture and education
- food security
- environmental sustainability
- community development

Under the Food Strategy for Wales the Community Grown Food Action Plan was produced in July 2010 and a Task and Finish Group was appointed to help achieve the stated actions.

On 11<sup>th</sup> February this year the Minister for Natural Resources and Food, Alun Davies wrote to CLAS Cymru and advised that an 'updated and informed food action' : based on recent research and the development of CLAS Cymru, will be published for consultation, later this year. The Minister went on to state that, in order to ensure that Wales benefits from the full and very positive impacts of community growing it is vital that the Welsh Government works across Ministerial portfolios.

CLAS Cymru has recently submitted responses to the Environment Bill and Planning Bill consultations to urge the Welsh government to ensure that this cross portfolio work actually happens.

---

<sup>1</sup> <http://wales.gov.uk/topics/statistics/headlines/environment2012/120725/?lang=en>

<sup>2</sup> <http://wales.gov.uk/topics/environmentcountryside/climatechange/publications/adaptationplan/?lang=en>

In planning terms, we are asking Welsh Government to widen Permitted Development Rights so that community groups are able to build small structures and small irrigation ponds without needing to submit a full planning application. We are also pointing to good practice examples of policy where developers are being asked to provide community growing spaces as part of schemes. In this context model planning conditions need to be provided so that local planning authorities are increasingly aware of the agenda and that they are encouraged to suggest community growing spaces as part of new housing and employment development schemes. They also need to know how such a planning condition might be most appropriately worded. The Federation of City Farms and Community Gardens are experts in this field and the new Community Land Advisory Service (CLAS Cymru) now combines these skills with those of planning and land management to actively increase access to land for community growing projects and spaces. The following wording and changes to wording are suggested.

## **Questions 11 – 15**

### **P43 conditions on landscaping**

#### **Conditions 66 to 70**

##### **Landscaping**

###### **66**

###### **(To be applied with below landscaping condition).**

No development or site clearance shall take place until there has been submitted to and approved in writing by the local planning authority a scheme of landscaping **which includes provision for community growing spaces.** The scheme shall include indications of all existing trees (including spread and species) and hedgerows on the land. **The scheme shall** identify those to be retained and set out measures for their protection **and enhancement. The existing elements will in integrated accordingly within the new landscaping and community growing provision** throughout the course of development.

###### **67**

###### **(To be applied with above landscaping condition).**

All planting, seeding or turfing **or preparing of land for community growing purposes** comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons **substantial occupation of the development**,

###### **68**

No development shall take place until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include (for example):

- i) a statement setting out the design objectives and how these will be delivered;
- ii) earthworks showing existing and proposed finished levels or contours;
- iii) means of enclosure and retaining structures;
- iv) other vehicle and pedestrian access and circulation areas;
- v) hard surfacing materials;
- vi) minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, etc.), and vii) water features.

#### vii) Allocation of a suitable space for community growing

Soft landscape works shall include [planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants noting species, edible plants, edible perennial plants, plants to encourage pollinators, plants for wildlife habitat creation, plant supply sizes and proposed numbers/densities where appropriate; an implementation programme (including phasing of work where relevant).

69

The landscaping works shall be carried out in accordance with the approved details within [x] months/during the first planting season immediately following completion/occupation of the development or in accordance with the agreed and consulted upon implementation program. (The completed scheme shall be managed and/or maintained in accordance with an approved scheme of management and/or maintenance).

#### Landscaping (management plan)

70

A landscape management plan, including management responsibilities and maintenance schedules for all landscaped areas, other than privately owned domestic gardens or spaces designated for communal growing, shall be submitted to and approved in writing by the local planning authority prior to the occupation of any of the dwellings on the site. The landscape management plan shall be carried out as approved.

The Use of Planning Conditions for Development Management		
Date of consultation period: 29/01/2014 – 25/04/2014		
<b>Name</b>	Lucie Taylor	
<b>Organisation</b>	Federation of City Farms and Community Gardens	
<b>Address</b>	Community Land Advisory Service 46 Ninian Park Road Riverside Cardiff CF11 6JA	
<b>E-mail address</b>	lucie@communitylandadvice.org.uk	
<b>Type</b> (please select one from the following)	Businesses/Planning Consultants	<input type="checkbox"/>
	Local Planning Authority	<input type="checkbox"/>
	Government Agency/Other Public Sector	<input type="checkbox"/>
	Professional Bodies/Interest Groups	<input type="checkbox"/>
	Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations)	<input checked="" type="checkbox"/>
	Other (other groups not listed above) or individual	<input type="checkbox"/>

<b>Q1</b>	Do you think an updated circular on conditions is required?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: Please see question 15				

<b>Q2</b>	Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: Please see question 15				

<b>Q3</b>	Do you consider:			
	(i) that all six tests are still relevant today and should be retained?	Yes	Yes (subject to further comment)	No
	(ii) that there are additional tests that could be used (demonstrate with case law if possible)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

<b>Q4</b>	Do you consider that any significant pieces of recent case law have been overlooked, which would provide better examples than those used, to support the text?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>Please see question 15</b>				

<b>Q5</b>	Are there any topic areas in Chapter 5.0 which should be expanded on, or, are there any new topic areas you consider should be included?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: <b>Please see question 15</b>				

<b>Q6</b>	Do you agree that decision notices should be structured in the manner proposed? If you do not, please suggest an alternative.	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>Please see question 15</b>				

<b>Q7</b>	Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

<b>Q8</b>	Do you agree with the approach taken towards the term 'unless otherwise agreed by the Local Planning Authority' discussed in paragraph 3.36 of the draft circular? If not, please suggest your preferred approach.	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

<b>Q9</b>	Do you agree that Local Planning Authorities should provide applicants with advance notice of conditions before an application is due to be determined?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

<b>Q10</b>	Should guidance be provided in the circular with regards to any other conditions related matter?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: <b>Please see question 15</b>				

<b>Q11</b>	Does Appendix A of the draft circular contain sufficient examples of model conditions?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: <b>Please see question 15</b>				

<b>Q12</b>	Do you consider that any of the conditions used should be reworded? If so, which conditions and why? Please suggest alternatives if you are able.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: <b>Please see question 15</b>				

<b>Q13</b>	Do you believe any of the conditions fail any of the six tests identified in the circular?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: <b>Please see question 15</b>				

<b>Q14</b>	Should any conditions be totally removed from Appendix A of the draft circular?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments:				

## **General**

**Q15**

We have asked a number of specific questions throughout this consultation. If you have any related queries or comments which we have not specifically addressed, please use this space to report them:

### **Consultation on model planning conditions**

#### **CLAS Cymru response on behalf of the Federation of City Farms and Community Gardens**

##### **Introduction**

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- community development

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CLAS Cymru has recently submitted responses to the Environment Bill and Planning Bill consultations to urge the Welsh government to ensure that this cross portfolio work actually happens.

In planning terms, we are asking Welsh Government to widen Permitted Development Rights so that community groups are able to build small structures and small irrigation ponds without needing to submit a full planning application.

Consultation reference: WG19178

We are also pointing to good practice examples of policy where developers are being asked to provide community growing spaces as part of schemes. In this context model planning conditions need to be provided so that local planning authorities are increasingly aware of the agenda and that they are encouraged to suggest community growing spaces as part of new housing and employment development schemes. They also need to know how such a planning condition might be most appropriately worded. The Federation of City Farms and Community Gardens are experts in this field and the new Community Land Advisory Service (CLAS Cymru) now combines these skills with those of planning and land management to actively increase access to land for community growing projects and spaces. The following wording and changes to wording are suggested.

Questions 11 - 15

P43 conditions on landscaping

Conditions 66 to 70

Landscaping

66

(To be applied with below landscaping condition).

No development or site clearance shall take place until there has been submitted to and approved in writing by the local planning authority a scheme of landscaping which includes provision for community growing spaces. The scheme shall include indications of all existing trees (including spread and species) and hedgerows on the land. The scheme shall identify those to be retained and set out measures for their protection and enhancement. The existing elements will be integrated accordingly within the new landscaping and community growing provision throughout the course of development.

67

(To be applied with above landscaping condition).

All planting, seeding or turfing or preparing of land for community growing purposes comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development substantial occupation of the development, whichever is the sooner;

68

No development shall take place until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include (for example):

- i) a statement setting out the design objectives and how these will be delivered;
- ii) earthworks showing existing and proposed finished levels or contours;
- iii) means of enclosure and retaining structures;
- iv) other vehicle and pedestrian access and circulation areas;
- v) hard surfacing materials;
- vi) minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, etc.), and
- vii) Allocation of a suitable space for community growing

Soft landscape works shall include [planting plans; written specifications

Consultation reference: WG19178

(including cultivation and other operations associated with plant and grass establishment); schedules of plants noting species, edible plants, edible perennial plants, plants to encourage pollinators, plants for wildlife habitat creation, plant supply sizes and proposed numbers/densities where appropriate; an implementation programme (including phasing of work where relevant).

69

The landscaping works shall be carried out in accordance with the approved details within [x] months/during the first planting season immediately following completion/occupation of the development or in accordance with the agreed and consulted upon implementation program. (The completed scheme shall be managed and/or maintained in accordance with an approved scheme of management and/or maintenance).

Landscaping (management plan)

70

A landscape management plan, including management responsibilities and maintenance schedules for all landscaped areas, other than privately owned domestic gardens or spaces designated for communal growing, shall be submitted to and approved in writing by the local planning authority prior to the occupation of any of the dwellings on the site. The landscape management plan shall be carried out as approved.

I do not want my name/or address published with my response (please tick) ☐

Royal Town Planning Institute  
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25<sup>th</sup> April 2014

e-mail response sent to: [planconsultations-b@wales.gsi.gov.uk](mailto:planconsultations-b@wales.gsi.gov.uk)

Dear Sir/Madam,

**Response to: Review of Planning Conditions Circular and Model Conditions**

The Royal Town Planning Institute (RTPI) is the largest professional institute for planners in Europe, representing some 23,000 spatial planners. RTPI Cymru represents the RTPI in Wales, with 1,100 members. The Institute seeks to advance the science and art of spatial planning for the benefit of the public. As well as promoting spatial planning, the RTPI develops and shapes policy affecting the built environment, works to raise professional standards and supports members through continuous education, training and development.

Thank you for the opportunity to comment on the Review of Planning Conditions Circular and Model Conditions. This response has been formed drawing on the expertise of the RTPI Cymru Policy and Research Forum which includes a cross section of planning practitioners from the private and public sectors and academia from across Wales.

Please find attached our response form.

If you require further assistance, have any queries or require clarification of any points made, please contact RTPI Cymru on 029 2047 3923 or e-mail Roisin Willmott at [walespolicy@rtpi.org.uk](mailto:walespolicy@rtpi.org.uk)

Yours sincerely,



Dr Roisin Willmott MRTPI  
**Director**  
**RTPI Cymru**

The Use of Planning Conditions for Development Management		
Date of consultation period: 29/01/2014 – 25/04/2014		
Name	Roisin Willmott	
Organisation	RTPI Cymru	
Address	RTPI Cymru PO Box 2465 Cardiff / Caerdydd CF23 0DS	
E-mail address	roisin.willmott@rtpi.org.uk	
Type (please select one from the following)	Businesses/Planning Consultants	<input type="checkbox"/>
	Local Planning Authority	<input type="checkbox"/>
	Government Agency/Other Public Sector	<input type="checkbox"/>
	Professional Bodies/Interest Groups	<input checked="" type="checkbox"/>
	Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations)	<input type="checkbox"/>
	Other (other groups not listed above) or individual	<input type="checkbox"/>

Q1	Do you think an updated circular on conditions is required?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p>RTPI Cymru would welcome an update to the circular on conditions. There has been a growing need for a revised circular that reflects relevant case law since 1995 and also the changes in procedures and practice since then. With the additional changes that this circular proposes it is essential that this is all consolidated in an updated circular that is well laid out and easy to reference.</p> <p>It is also timely that it links with the wider reforms to the planning system in Wales and the wish to create a more positive planning culture and support best practice.</p>				

Q2	Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular?	Yes	Yes (subject to further)	No
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Consultation reference: WG19178

			comment)	
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments:  
**The retained information in the new circular appears to be relevant. See question 15 for comments on some of the additional information.**

<b>Q3</b>	Do you consider:			
	(i) that all six tests are still relevant today and should be retained?	Yes	Yes (subject to further comment)	No
	(ii) that there are additional tests that could be used (demonstrate with case law if possible)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments:  
**We believe that all six tests are still relevant today and are not aware of any case law that challenges that.**

**Reference should be made regarding the need for conditions to take account of current case law in a new paragraph 2.8 in the section entitled “the power to impose conditions” under the subheading “other constraints”.**

<b>Q4</b>	Do you consider that any significant pieces of recent case law have been overlooked, which would provide better examples than those used, to support the text?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments:  
**We believe that the cases referred to in 3.28, where operational development takes place which is materially different to the approved plans could be expanded on. Case law which is relevant here is the Copeland case (Copeland Borough Council v Secretary of State for the Environment (1976) 31 P & CR 403) which might usefully be referenced. This can lead Local Planning Authorities (LPA) into great difficulty where development is found to be unauthorised and the planning permission and conditions imposed have no effect. By way of an example, a recently reported appeal decision in the New Forest National Park (2203144) illustrates the problems this can lead to.**

**Similarly we feel the Whitley principle and its implications could be expanded on, albeit that important cases are referenced in paras 3.29 and 3.30.**

Consultation reference: WG19178

<b>Q5</b>	Are there any topic areas in Chapter 5.0 which should be expanded on, or, are there any new topic areas you consider should be included?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>See above re development materially different to approved plans and the Whitley principle.</b>				

<b>Q6</b>	Do you agree that decision notices should be structured in the manner proposed? If you do not, please suggest an alternative.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: <b>This is a positive step, especially in relation to lengthy decision notices. It will help the applicant who is often seeing a decision notice for the first time focus on the requirements of the conditions in an orderly and timely manner. It will also help focus the mind of those planners preparing the decision notices and should prevent conflicts between the requirements of conditions.</b>  <b>Consideration needs to be given to whether the condition type descriptions are simply informative only or whether the descriptions are or could be interpreted as part of the condition. If it is the latter, then great care will be needed in the wording. There will be conditions which will span categories, e.g. they may impose controls at the start up phase (e.g. noise levels) but are also intended to continue with controls throughout the operational period, and it would be unfortunate if the category descriptions were to be interpreted as to constrain the intentions of the wording of the conditions. If there is any doubt or debate the wording of the condition itself should prevail. A member has provided an example where conflict could arise in this instance:</b> <b>“A complaint was received about noise during construction work at a site and while there was a condition which imposed noise levels there was dispute about whether the condition was intended to cover construction operations or the operational use of the new building once completed or both.”</b> <b>In such an instance clearer wording of the condition was needed and this could be assisted by the use of the new categories, provided they were an accurate match with the intention of the condition. If there is not an accurate match then it should be clear which should prevail for the purposes of interpretation.</b>				

Do you agree that the approved plans and	Yes	Yes	No
--	-----	-----	----

Consultation reference: WG19178

<b>Q7</b>	drawings relevant to a decision should be identified in a condition?		(subject to further comment)	
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments:

This provides clarity over what has consent, especially where an application has involved the submission of amended plans or involves a large number of plans.

Detailing the approved plans and documents in a condition on the decision notice is a more complete and easy to read system of recording what has approval than using the approach of stamping a set of plans. However, stamping plans could act as a useful backup, although it would need to be subject to the proviso that in the case of any discrepancy between the two methods that the details on the decision notice had priority.

However, some flexibility needs to be built into the wording, which does not currently appear in model condition 6, so that the decision can legitimately encompass any changes to the identified plans which come about as a result of the process of complying with other conditions on the same decision notice or a later approval of reserved matters notice.

<b>Q8</b>	Do you agree with the approach taken towards the term 'unless otherwise agreed by the Local Planning Authority' discussed in paragraph 3.36 of the draft circular? If not, please suggest your preferred approach.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments:

As set out in the consultation document (Annex 1) at paragraph 3.37 (not 3.36 - as set out in the above question) the court of appeal has objected to and criticised the use of such phrases declaring them "wholly uncertain and unlawful", however an application under section 73 can be a heavy handed way of dealing with what is often a very minor change that couldn't be foreseen at the time of the submission and determination of the application. It is often such inbuilt lack of flexibility that can result in planning being labeled as a bureaucratic and cumbersome process that holds up and stifles development.

We note that model condition 27 uses a similar phrase "unless the LPA agrees to any variation".

<b>Q9</b>	Do you agree that Local Planning Authorities should provide applicants with advance notice of conditions before an application is due to be determined?	Yes	Yes (subject to further comment)	No
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Consultation reference: WG19178

		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p><b>This is considered a positive step as part of improving the culture of planning, it will help ensure the wording of conditions suits both parties, it could result in the reduction of the number of conditions and could help to speed up the submission of the details required by the conditions. However, this could also lead to extending time periods for decisions if it introduced a period of consultation with the applicant and extended negotiations around conditions and wording, which could be a disadvantage.</b></p> <p><b>The Welsh Government guidance 'Realising the Potential of Pre-application Discussions' notes the benefits of the pre-application process to include amongst other things a reduction in the number of pre-commencement conditions.</b></p>				

Q10	Should guidance be provided in the circular with regards to any other conditions related matter?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p><b>There appears to be no reference to the fact that an applicant can appeal against any conditions that have been imposed on a planning consent rather than going through the process of making an application under section 73 and that again there is the opportunity to appeal if this is refused or the condition is amended in a manner unacceptable to the applicant.</b></p>				

Q11	Does Appendix A of the draft circular contain sufficient examples of model conditions?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Comments:</p> <p><b>Please see our response to question 7 regarding the variation to model condition 6, where a decision notice includes conditions that require further details to be approved by the LPA which could impact on the specified approved plans.</b></p> <p><b>To achieve consistency it would helpful to have some indicative conditions to address the mitigation measures set out in 3.8.2 of TAN 20.</b></p>				

<b>Q12</b>	Do you consider that any of the conditions used should be reworded? If so, which conditions and why? Please suggest alternatives if you are able.	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments:

**RTPI members have made the following suggestions:**

**Model condition 6 should be reworded as follows: "The development shall be carried out in accordance with the following plans and documents (insert plan and document numbers, with revision references if relevant) unless their content is amended by any documents/plans approved by the LPA as required by any provisions of the conditions of this planning permission."**

**Model condition 40ii): Appears to have a word missing - "timetable"? and 40iii): Appears to have a word missing - word missing "lifetime"?**

**Model condition 51 and 52 both need a time limit for the reinstatement work or a reference to another condition that deals with an implementation scheme and timing for the required reinstatement works.**

**Model condition 84: Is this condition necessary if the approved plans are referenced in a condition? There seems to be duplication with condition 6 although there may be some circumstances where its reinforcement is useful or necessary?**

**Model condition 95: The words "or civil partner" need to be added after "widower" to provide consistency with the wording used in conditions 98 and 99.**

**Model conditions 100 and 101 seem vague and leave a lot of uncertainty as to what is required. We question whether it should include the topics to be covered within the required agreement / plan?**

<b>Q13</b>	Do you believe any of the conditions fail any of the six tests identified in the circular?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments:

**No comment**

<b>Q14</b>	Should any conditions be totally removed from Appendix A of the draft circular?	Yes	Yes (subject to	No
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Consultation reference: WG19178

			further comment)	
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>No comment</b>				

## General

<b>Q15</b>	We have asked a number of specific questions throughout this consultation. If you have any related queries or comments which we have not specifically addressed, please use this space to report them:
<p>In paragraph 1.10 of the draft circular it states “Unless otherwise stated, this draft circular does not seek to replace advice in Planning Policy Wales (PPW) or on specialist matters set out in other circulars and Technical Advice Notes (TAN), some of which may also contain suggested wording for conditions”. We assume that this statement is directed at emerging and future advice which may impact on some of the model conditions contained in Appendix A and the advice on various topic areas contained in section 5? Clarity is required so that it is clear that where the content of later editions of PPW or specialist matters set out in future circulars and TANs conflicts with this circular it is clear that PPW or specialist matters will take precedent.</p> <p>In paragraph 2.4 of the draft Circular reference should be made to paragraph 5.31 and not 5.21</p> <p>Paragraph 3.5 discusses overloading of conditions. The example used here relating to specifying plans and specifications is a replica of the standard approach to be used on all applications discussed later in paragraph 5.30, where it states that each decision notice should have a condition identifying the approved plans. The implication in paragraph 3.5 that this would be a particular way of dealing with the specific problem, sends out a very confusing message.</p> <p>In paragraph 4.2 greater stress needs to be made over the fact that it is the LPA who are responsible for the drafting of the conditions, ensuring appropriate wording and construction of the condition, in compliance with the six tests. This is of particular relevance in relation to statutory consultees in imposing and discharging conditions in areas where they hold the expertise.</p> <p>Paragraph 4.19 Box2 ii) has an incorrect reference to paragraph 5.21, it should read paragraph 5.31.</p> <p>Paragraphs 4.28 to 4.30 refer to the discharge of conditions rather than just the approval of details reserved by a condition which is how the relevant 1App</p>	

Consultation reference: WG19178

**standard application form is titled. Confirmation is therefore required that this mechanism can be used to confirm the discharge of conditions where no further details need to be formally approved. This would have particular significance in terms of compliance with the standard time conditions and would provide a formal mechanism for confirming that the implementation of a planning consent has been legally commenced rendering it extant.**

**Paragraph 5.80 on Nature Conservation should include reference to 4.27 rather than 4.29.**

**Paragraph 5.81: Reference to Appendix A in TAN 11 should read Annex C**

I do not want my name/or address published with my response (please tick) ☐

The Use of Planning Conditions for Development Management		
Date of consultation period: 29/01/2014 – 25/04/2014		
<b>Name</b>	Miss Rachael A. Bust (Chief Planner)	
<b>Organisation</b>	The Coal Authority	
<b>Address</b>	Planning and Local Authority Liaison 200 Lichfield Lane Berry Hill MANSFIELD Nottinghamshire NG18 4RG	
<b>E-mail address</b>	planningconsultation@coal.gov.uk	
<b>Type</b> (please select one from the following)	Businesses/Planning Consultants	<input type="checkbox"/>
	Local Planning Authority	<input type="checkbox"/>
	Government Agency/Other Public Sector	<input checked="" type="checkbox"/>
	Professional Bodies/Interest Groups	<input type="checkbox"/>
	Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations)	<input type="checkbox"/>
	Other (other groups not listed above) or individual	<input type="checkbox"/>

Q1	Do you think an updated circular on conditions is required?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Comments:</b> A new Circular offers the opportunity to provide more up-to-date best practice advice and to create model conditions which reflect the topics which present themselves to decision makers today.				

Q2	Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Comments:</b>				

**Information which remains valid should be brought forward.**

<b>Q3</b>	Do you consider:			
	(i) that all six tests are still relevant today and should be retained?	Yes	Yes (subject to further comment)	No
	(ii) that there are additional tests that could be used (demonstrate with case law if possible)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>The standard six tests have proved to be appropriate and fit-for-purpose over a number of decades in Wales as well as in other administrations.</b>				

<b>Q4</b>	Do you consider that any significant pieces of recent case law have been overlooked, which would provide better examples than those used, to support the text?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>No Comment</b>				

<b>Q5</b>	Are there any topic areas in Chapter 5.0 which should be expanded on, or, are there any new topic areas you consider should be included?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>The Coal Authority considers that the topic of unstable land should be included in Chapter 5. We note that Appendix A proposes two model conditions which we welcome, however an explanation in Chapter 5 in a similar manner to contaminated land is suggested.</b> <b>We welcome the inclusion of the issue of minerals in Chapter 5.</b>				

<b>Q6</b>	Do you agree that decision notices should be structured in the manner proposed? If you do not, please suggest an alternative.	Yes	Yes (subject to further comment)	No

Consultation reference: WG19178

			comment)	
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>We would find decision notices more usable if they were in the proposed standardised format.</b>				

<b>Q7</b>	Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>This would aid precision and would be particularly useful when needing to refer back to an approved scheme, for example when consulted on a discharge of condition application.</b>				

<b>Q8</b>	Do you agree with the approach taken towards the term 'unless otherwise agreed by the Local Planning Authority' discussed in paragraph 3.36 of the draft circular? If not, please suggest your preferred approach.	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>The use of such terminology is outdated and imprecise.</b>				

<b>Q9</b>	Do you agree that Local Planning Authorities should provide applicants with advance notice of conditions before an application is due to be determined?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>The Coal Authority has no strong preference on this issue, whilst there are obvious advantages in developers being able to see conditions in advance this could become an administrative burden for LPAs. We are aware of how this practice currently operates in the minerals sector in some LPAs, whilst this does bring positive advantages, for example in avoiding errors in listing approved plans, we have seen applicants and agents seeking to utilise this as an</b>				

Consultation reference: WG19178

**opportunity to negotiate alterations to condition wording or seek not to have conditions imposed. We would be concerned if this process were to become one of 'horse-trading' between the applicant/agent and the LPA. Where model conditions exist they should where relevant be imposed without alteration. We support the front-loading of applications, as a consultee we see many circumstances where applicants could avoid the imposition of conditions if they provided more information/detail in their initial submission.**

<b>Q10</b>	Should guidance be provided in the circular with regards to any other conditions related matter?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments: <b>The new proposed Circular is considered to address the necessary issues.</b>				

<b>Q11</b>	Does Appendix A of the draft circular contain sufficient examples of model conditions?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments: <b>The Coal Authority considers that the issue of unstable land is broadly addressed, however there is another scenario commonly encountered, i.e. where the applicant has already undertaken intrusive site investigations and the condition only needs to secure implementation of the remedial measures. We suggest an additional condition 131A set out below to address this scenario:</b>  <b>131A "The remedial measures set out in paragraph/section/recommendation [X] in document [X] which are necessary to render the site suitable for the development shall be carried out prior to the first beneficial use of the development in accordance with the approved details and retained in perpetuity."</b>				

<b>Q12</b>	Do you consider that any of the conditions used should be reworded? If so, which conditions and why? Please suggest	Yes	Yes (subject to further	No
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Consultation reference: WG19178

	alternatives if you are able.		comment)	
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments:

**Condition 131 could be improved with minor wording changes. We set out our suggested reworded condition below:**

**131 "No development shall take place until a detailed site investigation, including any necessary intrusive site investigations, (as recommended in document [X] submitted with the application) has been carried out in accordance with a methodology first submitted to and approved in writing by the local planning authority. The results of the site investigation shall be submitted to the local planning authority before any development begins. If any land instability issues are found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development shall be submitted to and approved in writing by the local planning authority. Remedial measures shall be carried out prior to the first beneficial use of the development in accordance with the approved details and retained in perpetuity."**

**This change would help to clarify that the reference to site investigations refer to matters which are designed as a follow-on process to desk based studies such as a Phase 1 Geo-technical Report or a Coal Mining Risk Assessment. Some applicants/agents currently try and argue that desk-based assessments can be conditioned, which is inappropriate as they deal with whether the site can or cannot be developed in principle.**

<b>Q13</b>	Do you believe any of the conditions fail any of the six tests identified in the circular?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Comments:

**We have only considered conditions 131 and 132 which we consider meet the tests.**

<b>Q14</b>	Should any conditions be totally removed from Appendix A of the draft circular?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Comments:

## **General**

**Q15**

We have asked a number of specific questions throughout this consultation. If you have any related queries or comments which we have not specifically addressed, please use this space to report them:

**The Coal Authority agrees that the issue of conditions for Minerals remains best placed to be addressed in the relevant Mineral Technical Advice Notes.**

I do not want my name/or address published with my response (please tick) ☐

The Use of Planning Conditions for Development Management		
Date of consultation period: 29/01/2014 – 25/04/2014		
<b>Name</b>	Eifion Bowen / Julian Edwards	
<b>Organisation</b>	Cyngor Sir Gar	
<b>Address</b>	7/8 Spilman Street Carmarthen SA31 1JY	
<b>E-mail address</b>	jdedwards@carmarthenshire.gov.uk	
<b>Type</b> (please select one from the following)	Businesses/Planning Consultants	<input type="checkbox"/>
	Local Planning Authority	<input checked="" type="checkbox"/>
	Government Agency/Other Public Sector	<input type="checkbox"/>
	Professional Bodies/Interest Groups	<input type="checkbox"/>
	Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations)	<input type="checkbox"/>
	Other (other groups not listed above) or individual	<input type="checkbox"/>

Q1	Do you think an updated circular on conditions is required?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments:

**An update was certainly necessary and is to be welcomed given the changes to legislation, practice, process and case law.**

**There is a particular need to develop a body of conditions that are particular to the Welsh Context, and that also form basis for consistent control of development within that context.**

**In providing this update, it is hoped that this will be the subject of a regular, and rolling, programme of review and revision, with LPAs being integral to that.**

Q2	Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular?	Yes	Yes (subject to further comment)	No

Consultation reference: WG19178

		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: <b>Yes, the relevant areas, and broad principles need to be retained.</b>				

<b>Q3</b>	Do you consider:			
	(i) that all six tests are still relevant today and should be retained?	Yes	Yes (subject to further comment)	No
	(ii) that there are additional tests that could be used (demonstrate with case law if possible)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: <b>Yes, the six tests remain relevant and should be retained.</b>  <b>They are prominent in the minds of all involved within the profession, and there is a clear understanding of the broad principles surrounding the tests. They therefore form the basis of focussed debate and negotiation and we see no benefit in dramatically changing this.</b>  <b>There need to be areas of further guidance in some areas. The question of what is reasonable is often a challenge for LPAs, with areas such as the Code for Sustainable Homes being seen as more 'reasonably' falling under the remit of Building Control. Well intentioned initiatives such as this have, to a certain extent, sat a little uncomfortably under the six tests.</b>  <b>Conditioning matters that are subject to legislation outwith the planning remit, remains an area of concern, uncertainty, and potential challenge</b>				

<b>Q4</b>	Do you consider that any significant pieces of recent case law have been overlooked, which would provide better examples than those used, to support the text?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: <b>Not necessarily recent, but guidance as to condition precedent, and also clarification of what is meant by "heart of the permission" would be beneficial. This is informed by older case law such and the "Boot" case, and there still remains a degree of confusion around some of these areas.</b>				

Are there any topic areas in Chapter 5.0 which	Yes		No
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Consultation reference: WG19178

<b>Q5</b>	should be expanded on, or, are there any new topic areas you consider should be included?		Yes (subject to further comment)	
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p><b>The main area that stood out was that in relation to the renewal of planning approvals as indicated within Paragraph 5.21. The potential weaknesses here relate to the timings of submissions on applications that do not meet basic standards of validity. Whilst this would remain the responsibility of the applicant/agent, there does need to be a greater clarity and understanding provided about the impacts of this</b></p>				

<b>Q6</b>	Do you agree that decision notices should be structured in the manner proposed? If you do not, please suggest an alternative.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p><b>There is clear merit in structuring decision notices in a way that focusses attention on certain areas, and also reinforces, the chronology of events and actions to be adhered to. Additionally it is recognised that standardising this across Wales is a positive step in providing a wider clarity for customers.</b></p> <p><b>This broad support comes with the caveat that the structure should not be overly prescriptive. The concept of the "live" decision notice has been supported within previous consultations, and care needs to be given such that the two aspirations do not provide potential areas of conflict.</b></p>				

<b>Q7</b>	Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p><b>Yes, there should be no ambiguity in relation to this as it provides clarity and will help avoid areas of confusion that LPAs will have faced, particularly at appeal situations.</b></p> <p><b>As the use of the Portal increases, and LPAs improve their capacity and ability to process information electronically, there should be no obstacles to being able to clearly, and easily, identify and highlight such plans etc.</b></p>				

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<b>Q8</b>	Do you agree with the approach taken towards the term 'unless otherwise agreed by the Local Planning Authority' discussed in paragraph 3.36 of the draft circular? If not, please suggest your preferred approach.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p><b>The use of the phrase above has become rooted in LPAs seeking to be flexible, and looking to reduce the burden on developers, where there remain areas of ambiguity within a proposal. Whilst it is acknowledged that a purist view would state that such areas should not exist, it remains a clear and practical reality that there will always be changes sought, or circumstances, post decision and during development, that will merit a revisiting of the approval.</b></p> <p><b>Section 73 would not necessarily provide the correct vehicle for addressing these circumstances, as it is, in itself, a formal process that brings a time and resource requirement.</b></p> <p><b>Whilst supporting the broad principle of providing this greater clarity (indeed, case law and decisions made at appeal dictate this) it is considered that it places a stronger emphasis on the need to introduce the concept of non material amendments, and 'de minimis' changes, to introduce a system that can quickly, and effectively, deal with change that will undoubtedly continue to arise.</b></p>				

<b>Q9</b>	Do you agree that Local Planning Authorities should provide applicants with advance notice of conditions before an application is due to be determined?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Comments:</p> <p><b>The principle of openness and full awareness at all stages of the process is one that would be supported.</b></p> <p><b>However, there is concern that the specific area identified above has the capacity to put a 'brake' on the process in that it implies a period of negotiation and debate around such matters. The emphasis should continue to be on the need to deliver effective pre-application processes, charged at an appropriate level, where all potential issues are identified at an early stage.</b></p> <p><b>Clearly, this needs to be supported by clarity and consistency as to what applicants/developers can expect from all LPAs, and an awareness of what this would mean in terms of cost and resource.</b></p>				

Consultation reference: WG19178

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Q10	Should guidance be provided in the circular with regards to any other conditions related matter?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments:

**We would welcome the strengthening of guidance in the circular regarding the role of statutory consultees in the drafting and in the discharge of conditions so it is clear what co-operation LPAs can expect.**

**We would offer the observation that the circular is very much written for for a LPA audience with little to say on the role of the applicant in the process. Whilst the circular rightly argues for "clean" permissions that contain the minimum number of conditions, it does not discuss the role of the applicant/private sector in achieving this. If LPA's are required to meet targets, then the use of planning conditions is likely to increase as a legitimate means of issuing a speedy decision where the applicant has failed to provide the neccessary information.**

**It is considered that consideration should be given towards guidance on the following topics within the Circular:**

**Reason(s) for refusal - it would be beneficial to include a short section on best practice on wording reason(s) for refusal.**

**Breach of Planning Conditions - whilst guidance on Breach of Planning Conditions is included in the Enforcement Circular, it would be prudent in our opinion to include the breach of conditions procedure within the conditions circular.**

**Reasons for Conditions - whilst it is accepted that the reasons for imposing Conditions will vary for each case, it is considered that examples of best practice would be of benefit.**

Q11	Does Appendix A of the draft circular contain sufficient examples of model conditions?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments:

**This consultation exercise, and Circular, provide a timely opportunity to consolidate information and advice and make it clear to users.**

Consultation reference: WG19178

**Thought should be given to providing model conditions on areas such as retrospective applications - this proves to be a source of challenge for all LPAs (particularly elected Members) and there needs to be greater certainty provided.**

<b>Q12</b>	Do you consider that any of the conditions used should be reworded? If so, which conditions and why? Please suggest alternatives if you are able.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p><b>CCC is aware that POSW have provided some detail in their response to this question, and those comments are supported</b></p>				

<b>Q13</b>	Do you believe any of the conditions fail any of the six tests identified in the circular?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p><b>Comments above have referred to areas where conditions imposed, that seek to secure controls that are often replicating other areas of legislation, cannot, by design, therefore meet the tests of the Circular.</b></p> <p><b>This is a potential area of challenge in areas such as the 'Code', biodiversity and licensing, drainage, and hours of operation.</b></p>				

<b>Q14</b>	Should any conditions be totally removed from Appendix A of the draft circular?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Comments:</p> <p><b>The conditions relating to land contamination, and the conditioning of the receipt of surveys etc is welcome. However, case law, and practice, have cast doubt as to whether this approach undermines the principle of establishing extent of contamination prior to determination. Would these conditions be open to challenge?</b></p>				

## **General**

**Q15**

We have asked a number of specific questions throughout this consultation. If you have any related queries or comments which we have not specifically addressed, please use this space to report them:

**LPAs do experience challenges on occasion when seeking to include conditions that are recommended by consultees. It has often been the case that doubt exists whether such conditions meet the tests of the Circular. Whilst a decision, and the conditions imposed thereon, remain the responsibility of the LPA, and they issue as they feel appropriate, the above scenario does test resource and time. The model conditions as outlined must be utilised by statutory consultees.**

**In welcoming the broad principles of this consultation document, CCC would welcome the issue of any fees consultation, and also guidance relating to minor amendments, both of which would support these broad principles.**

**Consideration should also be given if certain requirements, presently secured through a Section106 agreement, could be the subject of control through the imposition of conditions. This would expedite the release of a permission.**

I do not want my name/or address published with my response (please tick) ☐



## **Welsh Government Consultation document WG19178**

### **The Use of Planning Conditions for Development Management**

The CLA is the membership organisation for owners of land, property and businesses in rural England and Wales. We help safeguard the interests of landowners and those with an economic, social and environmental interest in rural land and the rural economy. Between them, our members own and manage about half of the rural land in England and Wales including edge of settlement locations and some urban portfolios.

We have been looking after the interests of our members, as well as promoting the positive aspects of land ownership, land management and rural business activities for the past 100 years. The quality of the countryside and its natural resources are of vital importance to our members. Most objectives for the countryside - economic, social and environmental - rely on landowners and managers for their success. Equally a healthy environment relies upon a thriving rural economy and financially viable agricultural businesses.

We welcome the opportunity to provide feedback on the consultation document. We agree in principle with the need to review guidance that is now 15 years old. CLA Cymru endorses the need for clarity, consistency and transparency in contemporary guidance suited to modern planning practice. We continue to see merit in the principles established by Circular 35/95 and agree that this information should be retained and carried forward. We acknowledge the potential need for the imposition of conditions when they can enhance the quality of development or enable development proposals to proceed where it would otherwise have been necessary to refuse planning permission. We do, however, have concerns about the sheer quantity of conditions being placed on planning permissions in some reported circumstances. We have had instances of questioning how some conditions have satisfied the necessity element of the six tests; numerous onerous conditions can affect the viability of economic development and prevent economic growth. Concerns have been raised by some relating to the drafting of such conditions. As we highlighted in our response to the Positive Planning consultation, instances of “interpretation” have created difficulties with compliance when third party consultees have drafted conditions, but LPA officials have to certify compliance with those conditions. We would hope that the current proposals for co-operation and negotiation in the formulation of planning conditions will overcome these situations.

In the Positive Planning consultation the importance of pre-application advice was highlighted; this would fit well with the now proposed advance notice of conditions prior to an application determination. Our members have consistently reported concerns about the consistency, quality and availability of such advice. We have examples of instances of three different planning officers giving three differing opinions on the same development. We

welcome the emphasis on agreeing the appropriate level of detail to be submitted as part of an application during the pre-application stage, with the aim of keeping conditions to a minimum. However, this pre-supposes that **ALL** LPAs actually provide pre-application advice. As we have set out very clearly in the CLA response to the Positive Planning consultation, the experience of CLA members is that not all LPAs do provide pre-application advice so it is not clear to the CLA how conditions can be kept to a minimum in these circumstances nor how the aims of the consultation can be achieved. Of those LPAs who do provide pre-application advice, some do not charge, whilst others do. The majority of CLA members' development proposals come in the small-scale development category and they sometimes find that the level of charges for pre-application advice can be prohibitive. For small-scale developers who only interact with the planning system periodically, there is a tendency to submit an application which may not include sufficient detail, which means that matters tend to be agreed after the application has been determined and this tends to increase the number of conditions applied to a consent. It must be remembered that small-scale developers, i.e. small businesses, simply do not have the time, knowledge or resources to keep constantly updated with the latest requirements of a rapidly changing system which they view as being unnecessarily opaque and complex.

With regards to the model planning conditions, in the interests of simplification and to ensure that those working cross-border can best serve the community, we suggest alignment with the planning inspectorate standards. This may assist those working in consultative capacities cross-border.

The Use of Planning Conditions for Development Management		
Date of consultation period: 29/01/2014 – 25/04/2014		
<b>Name</b>	Simon Gale	
<b>Organisation</b>	Rhondda Cynon Taf CBC	
<b>Address</b>	Sardis House Sardis Road Pontypridd CF37 1DU	
<b>E-mail address</b>	Simon.Gale@rctcbc.gov.uk	
<b>Type</b> (please select one from the following)	Businesses/Planning Consultants	<input type="checkbox"/>
	Local Planning Authority	<input checked="" type="checkbox"/>
	Government Agency/Other Public Sector	<input type="checkbox"/>
	Professional Bodies/Interest Groups	<input type="checkbox"/>
	Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations)	<input type="checkbox"/>
	Other (other groups not listed above) or individual	<input type="checkbox"/>

<b>Q1</b>	Do you think an updated circular on conditions is required?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

<b>Q2</b>	Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

Consultation reference: WG19178

<b>Q3</b>	Do you consider:			
	(i) that all six tests are still relevant today and should be retained?	Yes	Yes (subject to further comment)	No
	(ii) that there are additional tests that could be used (demonstrate with case law if possible)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: <b>The opportunity to strengthen the guidance to ensure that conditions meet the six established tests, thereby ensuring that conditions are only imposed when wholly warranted is welcomed.</b>				

<b>Q4</b>	Do you consider that any significant pieces of recent case law have been overlooked, which would provide better examples than those used, to support the text?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments:				

<b>Q5</b>	Are there any topic areas in Chapter 5.0 which should be expanded on, or, are there any new topic areas you consider should be included?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: <b>For larger schemes it would be useful to have model conditions and guidance which deal with the 'Phasing' of the development/scheme.</b>				

<b>Q6</b>	Do you agree that decision notices should be structured in the manner proposed? If you do not, please suggest an alternative.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: <b>It is agreed that decision notices should be logically structured, giving clarity to the applicant/developer. Whilst the approach suggested has obvious merit for perhaps the majority of permissions issued it is considered that for larger schemes, with a greater number of conditions, such a structure could result in a</b>				

Consultation reference: WG19178

**decision notice with a lack of coherence, with conditions darting back and forth between subject areas. In these cases the ability to group conditions (ie all the Highway, Ecological, Drainage conditions) together should be retained.**

<b>Q7</b>	Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Comments:</p> <p><b>Whilst given clarity to all involved as to exactly what has been granted permission, it does mean that applicant's will have to make S.73 application for even the most minor of amendments, which may be perfectly acceptable. This would not appear to meet the aspirations of Welsh Government to make the planning system less of a perceived barrier to quick decisions (where appropriate) thereby aiding development and the economy.</b></p>				

<b>Q8</b>	Do you agree with the approach taken towards the term 'unless otherwise agreed by the Local Planning Authority' discussed in paragraph 3.36 of the draft circular? If not, please suggest your preferred approach.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Comments:</p> <p><b>It is considered that local planning authorities use the term (in respect of issues which do not go to the heart of the development permitted) to aid flexibility for applicants/developers in decisions. As with Q.7 above it enables the LPA to deal with minor matters quickly and without the need for applicants/developers having to make further formal submission.</b></p>				

<b>Q9</b>	Do you agree that Local Planning Authorities should provide applicants with advance notice of conditions before an application is due to be determined?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Comments:</p> <p><b>It is considered that discussions around conditions should occur at the pre-application stage in order to support certainty and the wider principles of front</b></p>				

Consultation reference: WG19178

**loading the process. Such an approach should help reduce the number of conditions imposed on decision notices.**

**Whilst there is clear merit in working with an applicant in looking to prepare a set of draft conditions in respect of major applications it is considered that the sharing of a draft conditions before a decision is made in respect of the majority of applications could be onerous and confusing.**

**With the renewed focus on performance and process, it is likely that there will be increased focus to determine applications within 8 weeks in times of diminishing resources. To require LPA's to routinely agree conditions prior to a decision within 8 weeks may conflict with aspirations for speedy decision making**

<b>Q10</b>	Should guidance be provided in the circular with regards to any other conditions related matter?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p><b>Whilst the Draft circular does refer to conditions that should not be imposed it would be useful if the circular were to give specific examples of conditions which should not be imposed so as to avoid duplication with other statutory controls - for example highway and drainage legislation.</b></p> <p><b>It is not evident that the circular acknowledges the important roles of consultees in the use of conditions which comply (or not, in their suggested form) with the six tests. In the context of the planning officer not being likely to have a detailed understanding of all specialist knowledge areas that a development may require input from he/she is often reliant on the consultee request for condition imposition. Circular guidance for consultees would be useful.</b></p>				

<b>Q11</b>	Does Appendix A of the draft circular contain sufficient examples of model conditions?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p><b>It is appreciated that it is difficult to include a draft condition to suit every possible situation. However, in the main the draft circular does appear to cover the main areas (noting Q.5 response regarding Phasing).</b></p>				

Consultation reference: WG19178

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<b>Q12</b>	Do you consider that any of the conditions used should be reworded? If so, which conditions and why? Please suggest alternatives if you are able.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Comments:</p> <p><b>Condition 113 (wind turbine noise) as this does appear to replicate the way Inspectors on Appeal Decision Notices draft noise conditions.</b></p> <p><b>It may be more practical to use a noise level setting condition / compliance condition and a complaint condition.</b></p> <p><b>The example tries to tie it all up in one condition which is a bit wordy and maybe over simplistic, in that it appears to be trying to tie the noise level down to a single figure.</b></p>				

<b>Q13</b>	Do you believe any of the conditions fail any of the six tests identified in the circular?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Comments:</p>				

<b>Q14</b>	Should any conditions be totally removed from Appendix A of the draft circular?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Comments:</p>				

## **General**

**Q15**

We have asked a number of specific questions throughout this consultation. If you have any related queries or comments which we have not specifically addressed, please use this space to report them:

**Guidance on which issues should be dealt with under a S.106 Agreement and which can be dealt with by an appropriately worded condition would ensure a consistent and clear approach. For example the requirement that a site be developed for AH (if the application is a RSL) - we have used a condition, but generally tend to use a S.106.**

**The guidance could offer further emphasis on the inappropriateness of dual controls of conditions on both planning permissions and planning obligations.**

**4.20 of the draft circular deals with 'Reasons for Conditions'. Inspectors do not give reasons for each condition imposed in their Appeal decisions. A consistent approach should be adopted across the board.**

**The discharge of conditions on a major scheme permission requires a significant resource input to process. A fee should be payable to the LPA for each condition discharge submission sought. This may have the added benefit that the applicant will be 'encouraged' to front load their submission with a greater degree of information, thereby alleviating the need to impose the condition/s.**

I do not want my name/or address published with my response (please tick) ☐

The Use of Planning Conditions for Development Management		
Date of consultation period: 29/01/2014 – 25/04/2014		
<b>Name</b>	Richard Lewis	
<b>Organisation</b>	Torfaen County Borough Council	
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<b>E-mail address</b>	richard.lewis@torfaen.gov.uk	
<b>Type</b> (please select one from the following)	Businesses/Planning Consultants	<input type="checkbox"/>
	Local Planning Authority	<input checked="" type="checkbox"/>
	Government Agency/Other Public Sector	<input type="checkbox"/>
	Professional Bodies/Interest Groups	<input type="checkbox"/>
	Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations)	<input type="checkbox"/>
	Other (other groups not listed above) or individual	<input type="checkbox"/>

Q1	Do you think an updated circular on conditions is required?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Comments:</b> <b>The update is needed to take into account planning inspectorate decisions, case law and to clarify some outstanding matters.</b>				

Q2	Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Comments:</b>				

<b>Q3</b>	Do you consider:			
	(i) that all six tests are still relevant today and should be retained?	Yes	Yes (subject to further comment)	No
	(ii) that there are additional tests that could be used (demonstrate with case law if possible)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments:  
**Yes the six tests are well established and still relevant, provided they are clearly understood and there is consistency of interpretation.**

<b>Q4</b>	Do you consider that any significant pieces of recent case law have been overlooked, which would provide better examples than those used, to support the text?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments:  
**Further clarification is sought around the difference between condition precedent and "Grampian" conditions. There needs to be a clear understanding and certainty over conditions precedent in terms of the circumstances in which a consent has been implemented or not. In other words what factors go to the heart of the permission. If this is not properly clarified then an incorrect approach by an LPA could lead to uncontrolled and unrestricted developments.**

**There is a wider issue here over implementation of consents. It is often difficult to establish which particular consent has been implemented, particularly where there may be a number of sec 73's in place. Possibly there should be a requirement on applicants to state which permission they are relying on. An example is at paragraph 5.31 in the consultation document in terms of minor amendments - there could be multiple sec 73's all of which are self contained decisions.**

**In relation to conditioning matters which are subject to legislation outside the planning remit, there is much confusion particularly in ecological issues. Guidance on this would be welcome.**

<b>Q5</b>	Are there any topic areas in Chapter 5.0 which should be expanded on, or, are there any new topic areas you consider should be included?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Consultation reference: WG19178

Comments:

**Conditions in respect of part retrospective applications which are used to make a development acceptable. There are various approaches to this.**

**Para 5.31 - sec 73 applications (see above)**

**Para 5.30 refers to approved plans and drawings, but what about all other supporting documents accompanying an application - Should they also be included in a condition to ensure what they say are enforceable?**

**Para 5.41 (affordable housing) - what approach should be adopted when RSL is the applicant.**

**Para 5.72 - landscaping should be essential to design and submitted as part of the scheme prior to determination, not an afterthought post decision.**

**There should be more guidance on ecological conditions (consistent with the recently published British Standard 42020).**

Q6	Do you agree that decision notices should be structured in the manner proposed? If you do not, please suggest an alternative.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Comments:

**I think there are probably more benefits in having the grouping of conditions by topic area rather than timing of discharge. Having said that there is merit in highlighting trigger (pre commencement) points and this could be done as advisory notes. In either case the time limit on commencement or cessation of development and the list of approved drawings should be listed first.**

Q7	Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments:

**It is essential that approved plans are identified in a condition. However, there may be other supporting documents that are equally relevant that may also need to be included. For example, although proposed to be phased out, the proposals in a DAS could be critical to a proposed development. If not conditioned what status do these sorts of documents have?**

Do you agree with the approach taken towards	Yes	No
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Consultation reference: WG19178

<b>Q8</b>	the term 'unless otherwise agreed by the Local Planning Authority' discussed in paragraph 3.36 of the draft circular? If not, please suggest your preferred approach.		Yes (subject to further comment)	
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Comments:</p> <p><b>If used carefully this term helps to deal with very minor changes to a development without having to make a separate application. For example a condition may specify that the finish on the approved plan should be applied, but an alternative finish could be equally acceptable. use of the 'unless otherwise approved' phrase would allow an applicant to change his/her mind on finishes without having to make a further application.</b></p>				

<b>Q9</b>	Do you agree that Local Planning Authorities should provide applicants with advance notice of conditions before an application is due to be determined?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p><b>This already happens as a discretionary activity in practice and works well. There is no need for a prescribed formal procedure - it is important that this does not unnecessarily delay the time for processing the application.</b></p>				

<b>Q10</b>	Should guidance be provided in the circular with regards to any other conditions related matter?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p><b>It should be a clear objective to get information up front so as to avoid the necessity for conditions in the first place. This speeds up the development process and reduces workload on LPA's. Developers need to get into the habit of not pushing matters of detail to the conditions stage as this is a false economy.</b></p>				

Consultation reference: WG19178

<b>Q11</b>	Does Appendix A of the draft circular contain sufficient examples of model conditions?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments:

**This should not be a finite list but a living document that can be changed and amended to reflect updated thinking and best practice.**

**There should be some way of requiring a developer to notify the LA of commencement of development to trigger conditions monitoring and to record the permission being implemented. We used to do this but the condition was removed by appeal inspectors on every occasion.**

<b>Q12</b>	Do you consider that any of the conditions used should be reworded? If so, which conditions and why? Please suggest alternatives if you are able.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments:

**All "pre-commencement conditions" should be worded in the same way, i.e. either "No development shall take place..." or "Prior to the commencement of development ....". At present the list of model conditions vary significantly and need to be more consistent. Furthermore, all conditions with a requirement to submit a scheme or details should be worded consistently i.e. "submitted to and approved in writing by the Local Planning Authority", at present there is inconsistency in the model conditions.**

**Examples of ecological conditions, conditions dealing with part retrospective applications and conditions dealing with construction stage (eg, CEMP, materials management etc) would be useful.**

**We have specific comments on a number of the model conditions as set out below:**

**07. Should include the word 'only' and possibly remove PD rights. Otherwise the condition would not prevent other accesses being formed.**

**08. completion of access IS the commencement of development. usually access needed prior to occupation.**

**09. is 'development exists' sufficiently clear?**

**11. is the use of 'perpetuity' in conditions legally correct? in other conditions things need to be retained for as long as development exists - conditions need to be consistent. Should be the 'approved' scheme not the 'agreed' scheme.**

**20. Affordable housing - conflicts with your advice at para 5.41.**

**35. details should include materials management**

**47 - 49. My impression is that Grampian type conditions need to be satisfied before any work is commenced, not before occupation.**

**61. is this part of the parameters. should it include maximum areas too?**

**67. would prefer to have a 10 year period rather than 5.**

**69. should include a clause to replace dead or lost plants etc**

**81. should only relate to outlines?**

Q13	Do you believe any of the conditions fail any of the six tests identified in the circular?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p><b>A number of conditions appear to relate to duplicate regimes - building control, drainage etc.</b></p>				

Q14	Should any conditions be totally removed from Appendix A of the draft circular?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Comments:</p>				

**General**

Consultation reference: WG19178

**Q15**

We have asked a number of specific questions throughout this consultation. If you have any related queries or comments which we have not specifically addressed, please use this space to report them:

**What consideration is being given to the introduction of fees for discharge of conditions?**

**Model Planning conditions should be a guide only, not prescriptive. In practice they are adapted to suit individual cases and this flexibility is important. Should also be a way of updating them quickly in response to new case law etc.**

I do not want my name/or address published with my response (please tick) ☐

The Use of Planning Conditions for Development Management		
Date of consultation period: 29/01/2014 – 25/04/2014		
<b>Name</b>	James Caird	
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<b>Address</b>	IHBC Business Office Jubilee House High Street, Tisbury, Wiltshire SP3 6HA	
<b>E-mail address</b>	consultation@ihbc.org.uk	
<b>Type</b> (please select one from the following)	Businesses/Planning Consultants	<input type="checkbox"/>
	Local Planning Authority	<input type="checkbox"/>
	Government Agency/Other Public Sector	<input type="checkbox"/>
	Professional Bodies/Interest Groups	<input checked="" type="checkbox"/>
	Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations)	<input type="checkbox"/>
	Other (other groups not listed above) or individual	<input type="checkbox"/>

<b>Q1</b>	Do you think an updated circular on conditions is required?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>Yes, we think this is sensible given the circumstances explained in the consultation.</b>				

<b>Q2</b>	Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>We believe that Circular 35/95 has been useful. For the sake of continuity what is still relevant in it should be retained. We have some comment on proposed</b>				

Consultation reference: WG19178

<b>standard conditions for the historic environment (see below).</b>
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<b>Q3</b>	Do you consider:			
	(i) that all six tests are still relevant today and should be retained?	Yes	Yes (subject to further comment)	No
	(ii) that there are additional tests that could be used (demonstrate with case law if possible)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: <b>It may be difficult to contrive further tests given the “relevant to planning” test which should be retained.</b>				

<b>Q4</b>	Do you consider that any significant pieces of recent case law have been overlooked, which would provide better examples than those used, to support the text?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments: <b>We have no case law to add.</b>				

<b>Q5</b>	Are there any topic areas in Chapter 5.0 which should be expanded on, or, are there any new topic areas you consider should be included?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: We are interested in the standard conditions for Listed Buildings and for Archaeology. The proposed condition for the protection of historic assets can usefully be applied to archaeological features. We suggest either that these headings are combined to allow for this or a cross-reference or repeated condition is used.				

<b>Q6</b>	Do you agree that decision notices should be structured in the manner proposed? If you do not, please suggest an alternative.	Yes	Yes (subject to further comment)	No

Consultation reference: WG19178

		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>This is a good idea.</b>				

Q7	Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: <b>We agree with this as it adds to the clarity of the permission. However, it will be no substitute for the LPA retaining reference copies of the approved drawings as plans for development are typically worked on further by developers and their designers after the planning stage often without a full audit trail on the timing of amendments.</b>				

Q8	Do you agree with the approach taken towards the term 'unless otherwise agreed by the Local Planning Authority' discussed in paragraph 3.36 of the draft circular? If not, please suggest your preferred approach.	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>Bearing in mind the case law, this seems an unavoidable conclusion.</b>				

Q9	Do you agree that Local Planning Authorities should provide applicants with advance notice of conditions before an application is due to be determined?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>The advice on pre-application discussions seems sound. Part of the discussions on how conditions might be avoided by both scheme design and submission timing and procedure are good practice. A willingness to agree conditions in advance (sometimes these can be suggested by the applicant) forms part of this and the issue of a draft decision notice for information can also help in the process. This should not, however, be allowed to contribute to delays in the</b>				

Consultation reference: WG19178

**process as a whole.**

<b>Q10</b>	Should guidance be provided in the circular with regards to any other conditions related matter?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments: <b>We cannot think of any.</b>				

<b>Q11</b>	Does Appendix A of the draft circular contain sufficient examples of model conditions?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>The standard set will be adequate in the vast majority of circumstances. It is likely that more detailed conditions for use in listed building consents do not readily lend themselves to standardization because of the specific circumstances of individual cases.</b>				

<b>Q12</b>	Do you consider that any of the conditions used should be reworded? If so, which conditions and why? Please suggest alternatives if you are able.	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>We have the following suggestions (please also see our suggestion with regard to the applicability of conditions to the wider historic environment at Q5):</b>  <b>Condition 22. We suggest the wording "...proposed archaeologist is suitably qualified and experienced. A copy...". This wording is supported by Circular 60/96.</b>  <b>Condition 23. We think this "calling card" condition is unclear in its expectations other than ensuring that access cannot be denied. We think the Circular 60/96 approach should be invoked. The following has been suggested to us; you may</b>				

already have seen this suggestion.

Any historic or archaeological features not previously identified which are revealed when carrying out the development hereby permitted shall be retained in-situ and reported to the local Planning authority in writing within [...] working days. Works shall be halted in the area/part of the building affected until provision has been made for the retention and/or recording in accordance with details submitted to and approved in writing by the local planning authority.

Condition 24. This condition has, in the past, given rise to difficulties because of vagueness about what is actually, in practice, being asked for. It is also a Grampian condition whereas, often, the full extent of what is required needs to be ascertained as work proceeds. Again a suggestion has been made to us which would at least set the parameters for the more tailored conditions routinely being used as best practice by LPAs.

A) No demolition/development shall take place/commence until a Written Scheme of Investigation has been submitted to and approved by the local planning authority in writing. The scheme shall include an assessment of significance and research questions; and:

- a. The programme and methodology of site investigation and recording
- b. The programme for post investigation assessment
- c. Provision to be made for analysis of the site investigation and recording
- d. Provision to be made for publication and dissemination of the analysis and records of the site investigation
- e. Provision to be made for archive deposition of the analysis and records of the site investigation
- f. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

B) No demolition/development shall take place other than in accordance with the Written Scheme of Investigation approved under condition (A).

C) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under condition (A) and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

Condition 71. In response to Q5 we point out that this condition should also apply to archaeological features. A similar condition (127) applies to trees and, may we suggest, one may also be needed for wildlife and habitat protection.

Condition 73. This imposes a resource requirement on the LPA. It is often appropriate that the cost of recording historic features should fall on the

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**development and not on the public purse. This condition has been used:**

**73a No works to which this consent relates shall commence until an appropriate programme of historic building recording and analysis has been secured and implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority**

<b>Q13</b>	Do you believe any of the conditions fail any of the six tests identified in the circular?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments:				

<b>Q14</b>	Should any conditions be totally removed from Appendix A of the draft circular?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments:				

## **General**

<b>Q15</b>	We have asked a number of specific questions throughout this consultation. If you have any related queries or comments which we have not specifically addressed, please use this space to report them:
We have no further comments, other than to welcome this initiative.	

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I do not want my name/or address published with my response (please tick) ☐

The Use of Planning Conditions for Development Management		
Date of consultation period: 29/01/2014 – 25/04/2014		
<b>Name</b>	Jenny Emmett, Development Control Archaeologist	
<b>Organisation</b>	Gwynedd Archaeological Trust	
<b>Address</b>	Craig Beuno Ffordd y Garth Bangor Gwynedd LL57 2RT	
<b>E-mail address</b>	jenny.emmett@heneb.co.uk	
<b>Type</b> (please select one from the following)	Businesses/Planning Consultants	<input type="checkbox"/>
	Local Planning Authority	<input type="checkbox"/>
	Government Agency/Other Public Sector	<input checked="" type="checkbox"/>
	Professional Bodies/Interest Groups	<input type="checkbox"/>
	Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations)	<input type="checkbox"/>
	Other (other groups not listed above) or individual	<input type="checkbox"/>

Q1	Do you think an updated circular on conditions is required?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

Q2	Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

<b>Q3</b>	Do you consider:			
	(i) that all six tests are still relevant today and should be retained?	Yes	Yes (subject to further comment)	No
	(ii) that there are additional tests that could be used (demonstrate with case law if possible)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments:

**Enforceability of archaeological conditions can be inherently problematic. For example, where works have resulted in destruction of archaeological remains without a scheme of archaeological mitigation having been implemented, the breach of condition can be identified but is difficult to rectify. Guidance on this matter in the proposed circular would be welcome.**

<b>Q4</b>	Do you consider that any significant pieces of recent case law have been overlooked, which would provide better examples than those used, to support the text?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments:

<b>Q5</b>	Are there any topic areas in Chapter 5.0 which should be expanded on, or, are there any new topic areas you consider should be included?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments:

**Archaeology:**

**5.46 The archaeological resource of a development site containing a scheduled monument may well extend beyond the designated area. The conditions attached to a scheduled monument consent in such cases would not apply to the undesignated areas, which would need management through appropriate planning conditions. Additionally, in some cases it may be necessary to attach a planning condition in order to address concerns not covered by the scheduled monument consent.**

**5.47 We would urge the removal of reference to provision of 'reasonable access' and would delete the last two sentences of this paragraph. 'Reasonable access' is a vague phrase which frequently leads to dispute and invariably results in an**

Consultation reference: WG19178

**inadequate mitigation response out of step with modern practice. Similarly, without adequate advice, the apparent promotion of a watching brief as mitigation response within policy and guidance documents can be misleading for developers - and occasionally local authorities - who often have a poor understanding of the term and mistakenly view it as a low risk, 'catch-all' solution. In fact a watching brief is generally the least favoured approach because of the implications of significant discovery during the construction phase.**

**We would also note that in most cases, these conditions result in the recording of archaeological remains; measures to protect or preserve areas are generally made through design modification or specific conditions intended for this purpose.**

**5.48 should be expanded to indicate the circumstances and means by which permitted development rights might be removed as experience has shown local authorities are reluctant to apply this approach to individual applications or types of development on archaeological grounds.**

**An additional paragraph explaining the timing and procedure for signing off archaeological conditions would be useful as this is a source of uncertainty and inconsistency both within planning authorities and for applicants (see responses to Q10 and Q12).**

Q6	Do you agree that decision notices should be structured in the manner proposed? If you do not, please suggest an alternative.	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>This appears sensible.</b>				

Q7	Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments: <b>It is not clear why this is necessary. It is surely implicit in the granting of consent that the decision relates to all plans and drawings submitted as part of the application.</b>				

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**If this information is felt beneficial, perhaps it could be included in the accompaning details of matters to draw the applicant's attention to.**

<b>Q8</b>	Do you agree with the approach taken towards the term 'unless otherwise agreed by the Local Planning Authority' discussed in paragraph 3.36 of the draft circular? If not, please suggest your preferred approach.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p><b>Due to the unpredictability of archaeology and the continual development of archaeological information, this phrase has hitherto been included to accommodate changes to a mitigation programme in response to new information or altered circumstances. Similar caveats would need to be acceptable within the written scheme of work referred to in a condition in order to retain this flexibility.</b></p>				

<b>Q9</b>	Do you agree that Local Planning Authorities should provide applicants with advance notice of conditions before an application is due to be determined?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p><b>We support the recommendations for early consultation with consultees and expert advisors at both pre-application stage and in the drafting and discharging of conditions.</b></p> <p><b>This is a proactive approach which is likely to improve communication and speed the process. However, the obligation to provide advance notice of conditions may place extra pressure on planning officers and clarity is needed as to how binding the provisional list of conditions would be. There may also be a risk that this may be viewed by applicants as a process of negotiation, to achieve a suite of conditions they are willing to accept.</b></p>				

<b>Q10</b>	Should guidance be provided in the circular with regards to any other conditions related matter?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Consultation reference: WG19178

		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p>In paragraph 4.27, it would be helpful to include specific reference to conditions requiring archaeological assessment or evaluation among the conditions that should not be imposed. These perform the same function as ecological surveys, i.e. providing information that is a material consideration in the planning process, and therefore should not be left until after the granting of permission. In the same way, any archaeological conditions attached then relate to appropriate mitigation measures based on the submitted information. This is not always understood by local authorities or developers and inclusion of this explanation would provide clarity.</p> <p>See also response to Q3 re enforceability.</p>				

Q11	Does Appendix A of the draft circular contain sufficient examples of model conditions?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p>A condition relating to measures to protect archaeological remains should be included. Condition 71, relating to protective fencing, could be readily adapted to suit this purpose.</p>				

Q12	Do you consider that any of the conditions used should be reworded? If so, which conditions and why? Please suggest alternatives if you are able.	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p>(1) We would amend Condition 24 as follows:</p> <p>No development (including any groundworks, demolition or site clearance) shall take place until a specification for a programme of archaeological work has been submitted to and approved in writing by the local planning authority. The development shall subsequently be carried out and all archaeological work completed in strict accordance with the approved specification.</p> <p>This single condition would adequately replace all three proposed model conditions 22, 23 and 24.</p>				

Archaeological work is a staged process and projects can span several years, including considerable off-site work (e.g. scientific analysis and reporting). It would be unreasonable to require that this work is completed before any development work takes place. It is however important to specify the completion of archaeological work to ensure that the public gain from the archaeological programme is achieved, through dissemination of the results and inclusion of new information in the regional historic environment record, which underpins archaeological planning advice.

The above wording has been developed and successfully used in north-west Wales over the past two years to address confusion over when a condition can be discharged. Additional clarity could be achieved by splitting the condition into linked elements, in a similar way to the proposed model conditions 66/67 and 68/69 relating to landscaping work.

ALGAO (the Association of Local Government Archaeological Officers) gave examples of suitable wording for conditions - including a suggested model for a detailed staged condition - in their response to the consultation on the review of model planning conditions in England in 2010 (see [http://www.algao.org.uk/responses/model\\_planning\\_conditions\\_01-03-2010](http://www.algao.org.uk/responses/model_planning_conditions_01-03-2010)).

We support the other recommendations made by ALGAO in this response and consider them to be relevant to the present consultation.

(2) Condition 71, relating to protective fencing, could be readily adapted to encompass the protection of archaeological remains by inclusion of 'Archaeology' in the heading.

Q13	Do you believe any of the conditions fail any of the six tests identified in the circular?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments:

Condition 22 fails the tests of precision, reasonableness and enforceability. It is inappropriate to refer to the approval of an individual, rather than a mitigation programme. An archaeological watching brief is a formal undertaking that can vary in scope, but the wording does not require any approval of the proposed scheme or monitoring of the work until the report is submitted. Additionally, since a watching brief can, like other forms of mitigation, result in an extensive programme of off-site work, it is unreasonable to place a standard 2 month time limit on report submission.

Condition 23 is vague, in terms of what constitutes 'reasonable access' and the scope of archaeological work entailed; and unenforceable, as it provides no parameters for the work, cannot be effectively monitored and does not clearly

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**invest responsibility (including financial responsibility) for fulfilling the condition with the developer.**

**Condition 78 may be unenforceable unless used in conjunction with another condition describing a structured programme of archaeological work, as it is otherwise impossible to monitor whether such discoveries have been reported. In addition, it may be impossible to retain a feature without submitting an amended application.**

Q14	Should any conditions be totally removed from Appendix A of the draft circular?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments:

**Condition 22 is unnecessary if Condition 24 is amended as suggested - there is rarely a need to refer to a specific form of mitigation and indeed this can prove problematic.**

**Condition 23 is outdated and has been shown to be unfit for purpose; it does not provide an appropriate and proportionate response to the archaeological impacts of development. It does not clearly obligate the developer to mitigate the impact of the development on the historic environment as required by PPW and Circular 60/96 and potentially opens the local planning authority up to compensation claims if the archaeological work is not completed satisfactorily. The use of this condition has caused frequent confusion and dispute.**

**Condition 73 suffers from the same problems of imprecision, inadequacy and uncertainty over the burden of responsibility. Recording can be adequately secured with the recommended amended Condition 24 described under Q12 or a variant on this, e.g.:**

**No development (including demolition, site clearance or stripping-out) shall take place until a programme of building recording has been completed in accordance with a specification submitted to and approved in advance in writing by the local planning authority.**

**We have also found the following condition (accompanied by a guidance note) helpful in clarifying the scope of work where a non-specialist photographic record is required:**

**Prior to development (including demolition, site clearance or stripping-out) taking place, a full photographic record of the building(s) must be undertaken. The record must be approved by the local planning authority before being deposited with the regional Historic Environment Record.**

## **General**

**Q15**

We have asked a number of specific questions throughout this consultation. If you have any related queries or comments which we have not specifically addressed, please use this space to report them:

**In general the language and approach of the document as it relates to the historic environment is rather dated. Modern planning recognises that archaeology includes historic buildings (listed and unlisted), parks, gardens, landscapes, wrecks, as well as upstanding monuments and buried archaeology, and takes account of aspects such as setting and conservation. Good practice also now adopts a proactive, informed approach rather than the ad hoc emergency response implied by the 'granting of reasonable access' and similar phrases, which have long since been dismissed as being inadequate. Continued reference to discontinued practices is unproductive and does not aid the smooth facilitation of development.**

I do not want my name/or address published with my response (please tick) ☐

Conditions Consultation  
Development Management Branch  
Planning Division  
Welsh Government  
Cathays Park  
Cardiff  
CF10 3 NQ

25<sup>th</sup> April 2014

Dear Sir or Madam,

We write further to the publication of the consultation document titled 'The Use of Planning Conditions for Development Management', and would offer the following comments in response.

We welcome the opportunity to contribute to the discussion on the use and wording of planning conditions as we are reliant on planning conditions as the principle mechanism for controlling flows to and maintaining the integrity of the public sewerage system. Our reliance on planning conditions, and more widely the provisions of the Town & Country Plan Act 1991 is embodied in the case of *Barratt Homes Limited (Respondents) v Dwr Cymru Cyfyngedig* (Welsh Water) which concluded that the public interest and that of the statutory sewerage undertaker would be protected via the planning process.

Turning now to the consultation document subject of this discussion, we confirm that we have no issues in principle with the substance of the document.

We welcome the efforts to encourage sustainable drainage, which are in line with the Welsh Government's policy outlined in its draft Water Strategy for Wales (currently the subject of a public consultation exercise). In our detailed comments below, we have looked for ways to ensure that planning conditions on sustainable drainage are practical and will help to deliver the best outcome.

Our answers to the particular questions you pose are as follows.

**Q1. Do you think an updated circular on conditions is required?**

We consider that an update of the circular on the use and wording of planning conditions is required in order to reflect contemporary legislative and policy requirements, and welcome the additional information in respect of drainage, which forms an integral part of the infrastructure required to deliver sustainable development.

**Q2. Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular?**

We agree that the information retained from Circular 35/95 should be carried forward into the new circular.

**Q3. Do you consider:**

**(i) that all six tests are still relevant today and should be retained?**

**(ii) that there are additional tests that could be used (demonstrate with case law if possible)?**

We consider that the six tests outlined in Circular 35/95 should be retained as they provide a robust framework for the construction of sound planning conditions.

**Q4. Do you consider that any significant pieces of recent case law have been overlooked, which would provide better examples than those used, to support the text?**

We consider that the circular has adequately addressed all relevant case law.

**Q5. Are there any topic areas in Chapter 5.0 which should be expanded on, or, are there any new topic areas you consider should be included?**

Whilst we welcome the inclusion of a drainage topic area, for completeness we would recommend that this topic area is expanded so as to have regard to the legislative overlap that exists between the provisions of the Town & Country Planning Act (as amended) and section 42 and prospective Schedule 3 of the Flood and Water Management Act 2010. We would also seek confirmation that the interests of the statutory sewerage undertaker will continue to be protected via the planning process post implementation of schedule 3 of the Flood and Water Management Act 2010.

For the avoidance of doubt, we believe that the guidance contained in paragraph 5.60 of the draft circular should be amended to ensure that there is a clear and definite distinction between surface water from buildings and yards appurtenant to buildings in accordance with the Water Industry Act 1991 and ground/surface water outside of that context. This is necessary as we, the statutory sewerage undertaker, do not have land drainage or highway drainage powers.

We have reviewed the paragraph 5.61 of the draft circular and consider that the guidance in its current form of wording risks undermining the hierarchical approach prescribed by the part H of the Building Regulations 2000 in respect of the disposal of surface water. For that reason, we would recommend that this paragraph be re-worded to ensure a greater emphasis on the need to explore and exhaust all other alternatives for the disposal of surface water, with a communication with the public sewer network only considered as a last resort, as this will ensure that sustainable drainage techniques are employed.

The draft circular recognises the importance of drainage in the delivery of development. However, we feel that the draft circular would benefit from the inclusion of an additional heading / sub heading in respect of protection zones. Protection zones play a crucial role in maintaining the

integrity and performance of existing and proposed sewers / water mains and inform the layout and form of proposed development. As such, we believe the draft circular benefit would from a topic area / sub topic area devoted to this.

We would also like the guidance to discuss private sewerage arrangements as they cause disproportionate pollution problems and as such, there is a need for more checks to be put in place to prevent such problems. Perhaps you could include something along the following lines;

**Private Sewerage** (alternatively this could be added to the “**Contamination (water)**” topic area)

We would also like the guidance to say something about private (i.e. non statutory undertaker) sewerage arrangements. In our experience, they cause disproportionate problems, including in terms of environmental impact, and often Dŵr Cymru is eventually called upon to provide a public sewer at not inconsiderable expense to our company and thus our customers. We would therefore like the guidance to encourage local planning authorities, in consultation with Natural Resources Wales, to check that proposed private sewerage arrangements are fit for purpose. For example, we consider that no development should take place involving private sewerage (e.g. septic tanks, soakaways etc) unless the developer has submitted a detailed assessment to the local planning authority, identifying the principles behind the adopted approach, its suitability and demonstrating that the adopted approach provides adequate environmental protection. This assessment could, for example, take the form of data from the British Geological Survey on ground suitability for soakaways or reference to data provided by the Lead Local Flood Authority in relation to fluvial and surface water flood risk. Proposals should also include a management and maintenance plan for the sewerage scheme.

On a point of detail, should paragraph 5.80 cross-refer to 4.27 rather than 4.29?

**Q6. Do you agree that decision notices should be structured in the manner proposed? If you do not, please suggest an alternative.**

We agree with the proposed structure of decisions notices, which we believe will ensure decision notices are constructed in more legible, concise, and weighted manner, which in turn place a greater emphasis on the need to discharge and adhere to planning conditions.

**Q7. Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition?**

We agree that for the purpose of clarification and certainty the approved plans and drawings relevant to a decision should be identified by way of a planning condition. We believe that this approach, coupled with the variation of condition mechanism for amendments thereto will ensure that we are consulted on any pertinent amendment to an approved plan or drawing.

**Q8. Do you agree with the approach taken towards the term ‘unless otherwise agreed by the Local Planning Authority’ discussed in paragraph 3.36 of the draft circular? If not, please suggest your preferred approach.**

We agree with the approach taken in respect of the term unless otherwise agreed by the Local Planning Authority’ discussed in paragraph 3.36 of the draft circular.

**Q9. Do you agree that Local Planning Authorities should provide applicants with advance notice of conditions before an application is due to be determined?**

We agree with the provision of advance notice of conditions prior to determination of an application, as this approach would provide the developer with additional time to ensure that the requirements of the conditions prescribed can be agreed / adhered to in a timely manner. This is particularly true in the case of the statutory sewerage and/or water undertaker as often the conditions recommended for inclusion may place additional requirements on the developer, which can, owing to other legislative and operational constraints serve to delay the implementation of development or the discharge of a condition.

**Q10. Should guidance be provided in the circular with regards to any other conditions related matter?**

We believe that the guidance provided in the circular adequately addresses our needs.

**Q11. Does Appendix A of the draft circular contain sufficient examples of model conditions?**

Whilst we recognise that the model conditions prescribed in the draft circular are not exhaustive, we would welcome the inclusion of further examples of model conditions.

In particular, we would welcome the inclusion of a condition within the circular requiring the installation of a grease trap or suitable dosing unit to prevent entry into the public sewerage system of matter likely to interfere with the free flow of the sewer contents, or which would prejudicially affect the treatment and disposal of such contents. We believe that the inclusion of such a condition will ensure consistency in approach, and enable us to exercise control over uses such as those falling within class A3 of the Use Classes Order, which have the potential to give rise to fat and oil discharges that may have a detrimental impact on the performance on our assets. Such a condition would help to reduce the amount of problematic food entering our sewers and go a long way toward delivering the Minister’s policy set out in the Welsh Government’s White Paper on a proposed Environment Bill (see proposal RE5 in *“Towards the Sustainable Management of Wales’ Natural Resources: Consultation on proposals for an Environment Bill”* WG October 2013).

We would therefore suggest a condition similar to that prescribed below is included:

*The developer shall provide a suitable grease trap or dosing unit to prevent entry into the public sewerage system of matter likely to interfere with the free flow of the sewer contents, or which would prejudicially affect the treatment and disposal of such contents.*

*Reason: To protect the integrity of the public sewerage system, and sustain an essential and effective service to existing residents.*

Whilst we welcome the inclusion of both drainage and sustainable drainage conditions in the draft circular, to ensure a comprehensive approach to the drainage of development we would welcome the inclusion of a suite of conditions, which we believe prescribe the fundamental principles for the drainage of development:

*Foul water and surface water discharges shall be drained separately from the site.*

*Reason: To protect the integrity of the public sewerage system.*

*No surface water shall be allowed to connect, either directly or indirectly, to the public sewerage system.*

*Reason: To prevent hydraulic overloading of the public sewerage system, to protect the health and safety of existing residents and ensure no detriment to the environment.*

*Land drainage run-off shall not be permitted to discharge, either directly or indirectly, into the public sewerage system.*

*Reason: To prevent hydraulic overload of the public sewerage system and pollution of the environment.*

The above conditions will ensure a consistent approach to the drainage of proposed development, and ensure that drainage schemes are developed in accordance with the principles that underpin the Welsh Ministers Standards, thereby ensuring that where applicable drainage schemes can be adopted by the relevant bodies.

**Q12. Do you consider that any of the conditions used should be reworded? If so, which conditions and why? Please suggest alternatives if you are able**

We consider that the model conditions are acceptable in the main. However, for the purpose of clarification, and to ensure the appropriate emphasis we would suggest the following amendments to the wording of the model conditions identified below:

### 35. Construction Method Statement

To ensure that development does not have a detrimental impact on the integrity and performance of our assets during the construction phase we would suggest that the Construction Method Statement condition prescribed in the draft circular should be amended to read as follows:

*No development shall commence, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:*

- i) the parking of vehicles of site operatives and visitors;*
- ii) loading and unloading of plant and materials;*
- iii) storage of plant and materials used in constructing the development;*
- iv) details of any temporary site facilities that would require a foul communication with the public sewer*
- v) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;*
- vi) wheel washing facilities;*
- vii) measures to control the emission of dust and dirt during demolition and construction; and a scheme for recycling/disposing of waste resulting from demolition and construction works*
- viii) measures to ensure the identification and protection of any existing sewerage and potable water infrastructure during the construction period*

### 39 – 42 Drainage (Sustainable Drainage Systems)

We would recommend that condition 40 of the model conditions is re-worded to reinforce the need for developers to explore all alternatives for the disposal of surface water, in accordance with the hierarchical approach prescribed by part H of the Building Regulations 2000. In exploring the options for disposal of surface water such as infiltration, discharge to a watercourse or discharge to a surface water or combined sewer, evidence should be provided where a preferable option has been discounted. This evidence could take the form of data from the British Geological Survey on ground suitability for soakaways or reference to data provided by the Lead Local Flood Authority in relation to fluvial and surface water flood risk. We suggest that the model condition is amended to read as follows:

- 40 *No building shall be occupied until surface water drainage works have been implemented in accordance with details that have been submitted to and approved in writing by the local planning authority in consultation with the statutory sewerage undertaker. Before these details are*

*submitted, the developer shall demonstrate that they have explored all methods for the disposal of surface water through undertaking an assessment which explores and evidences the potential for disposing of surface water by means of a sustainable drainage system, and the results of the assessment provided to the local planning authority. Where a sustainable drainage scheme for the disposal of surface water is to be provided, the submitted details shall:*

- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;*
- ii) include a plan for its implementation; and*
- iii) provide a management and maintenance plan for the of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime*

The references to 'urban' in conditions 41 & 42 should be removed, as the principles of sustainable drainage are applicable in both a rural and urban setting. For that reason, we believe that the distinction should be removed and the conditions amended to read as follows:

- 41 No building shall be occupied until the sustainable drainage scheme for the site has been completed in accordance with the submitted details. The sustainable drainage scheme shall be managed and maintained thereafter in accordance with the agreed management and maintenance plan.*
- 42 No development shall take place until details of the implementation, maintenance and management of the sustainable drainage scheme have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. Those details shall include:*
  - i) a timetable for its implementation, and*
  - ii) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body, statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage system throughout its lifetime*

There is a risk that the conditions could result in the development of fragmented drainage schemes / features that are designed in isolation of the upstream infrastructure, which, owing to differing return period design thresholds may serve to undermine the suitability of the scheme as a whole. To overcome this, we would request that the conditions are worded such that they require developers to adopt a holistic approach to drainage schemes / features that have regard to the relationship between its various components both upstream and downstream of the scheme / feature.

**Q13. Do you believe any of the conditions fail any of the six tests identified in the circular?**

We do not believe that the conditions prescribed in the draft circular fail the six tests identified in the circular. We note that the suite of drainage conditions prescribed in the draft circular are worded in the negative form, recognising the complexities of drainage solutions which can require developers to carry out works on land over which they have no control and/or obtain the authorisation of a third party.

**Q14. Should any conditions be totally removed from Appendix A of the draft circular?**

We do not believe that any conditions should be totally removed from appendix A.

**Q15. We have asked a number of specific questions throughout this consultation. If you have any related queries or comments which we have not specifically addressed, please use this space to report them:**

We would welcome further discussion on the relationship between the drainage conditions proposed as part of the draft circular and the requirements of section 42 and the prospective Schedule 3 of the Flood and Water Management Act 2010, which we understand impose additional legislative requirements on developers in respect of the development and adoption of sustainable drainage features.

The Welsh Government has previously indicated that it intends to make water and sewerage undertakers, such as Dŵr Cymru, statutory consultees in respect of planning applications. This would also go a long way toward ensuring that proposed infrastructure arrangements, including for drainage, are appropriate.

The circular must seek to ensure that water and sewerage undertakers are consulted on any planning application that would involve a connection to the public sewers or water mains, regardless of the size of the development and the proposed connections must satisfy the standards reasonably required by the water and sewerage undertakers.

All connections to public sewers and water mains must be made in accordance with the Water Industry Act 1991.

We trust our response clarifies our position in respect of the draft circular. If however you wish to discuss the matter further please do not hesitate to contact Jason Price on 0800 917 2652 or via email at [developer.services@dwrcymru.com](mailto:developer.services@dwrcymru.com)

Yours faithfully,



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**Jason Price**  
**Development Control Officer**  
**Developer Services**



Welsh Water is owned by Glas Cymru – a not-for-profit company.  
Mae Dŵr Cymru yn eiddo i Glas Cymru – cwmni nid-er-elw.

We welcome correspondence in  
Welsh and English

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Rydym yn croesawu gohebiaeth yn y  
Gymraeg neu yn Saesneg

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The Use of Planning Conditions for Development Management		
Date of consultation period: 29/01/2014 – 25/04/2014		
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<b>Type</b> (please select one from the following)	Businesses/Planning Consultants	<input type="checkbox"/>
	Local Planning Authority	<input type="checkbox"/>
	Government Agency/Other Public Sector	<input type="checkbox"/>
	Professional Bodies/Interest Groups	<input type="checkbox"/>
	Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations)	<input type="checkbox"/>
	Other (other groups not listed above) or individual	<input checked="" type="checkbox"/>

Q1	Do you think an updated circular on conditions is required?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Comments:**

We consider that an update of the circular on the use and wording of planning conditions is required in order to reflect contemporary legislative and policy requirements, and welcome the additional information in respect of drainage, which forms an integral part of the infrastructure required to deliver sustainable development.

Q2	Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Consultation reference: WG19178

**Comments:**  
We agree that the information retained from Circular 35/95 should be carried forward into the new circular.

<b>Q3</b>	Do you consider:			
	(i) that all six tests are still relevant today and should be retained?	Yes	Yes (subject to further comment)	No
	(ii) that there are additional tests that could be used (demonstrate with case law if possible)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Comments:**  
We consider that the six tests outlined in Circular 35/95 should be retained as they provide a robust framework for the construction of sound planning conditions.

<b>Q4</b>	Do you consider that any significant pieces of recent case law have been overlooked, which would provide better examples than those used, to support the text?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Comments:**  
We consider that the circular has adequately addressed all relevant case law.

<b>Q5</b>	Are there any topic areas in Chapter 5.0 which should be expanded on, or, are there any new topic areas you consider should be included?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Comments:**  
Whilst we welcome the inclusion of a drainage topic area, for completeness we would recommend that this topic area is expanded so as to have regard to the legislative overlap that exists between the provisions of the Town & Country Planning Act (as amended) and section 42 and prospective Schedule 3 of the Flood and Water Management Act 2010. We would also seek confirmation that the interests of the statutory sewerage undertaker will continue to be protected via the planning process post implementation of schedule 3 of the Flood and Water Management Act 2010.

For the avoidance of doubt, we believe that the guidance contained in paragraph 5.60 of the

Consultation reference: WG19178

draft circular should be amended to ensure that there is a clear and definite distinction between surface water from buildings and yards appurtenant to buildings in accordance with the Water Industry Act 1991 and ground/surface water outside of that context. This is necessary as we, the statutory sewerage undertaker, do not have land drainage or highway drainage powers.

We have reviewed the paragraph 5.61 of the draft circular and consider that the guidance in its current form of wording risks undermining the hierarchical approach prescribed by the part H of the Building Regulations 2000 in respect of the disposal of surface water. For that reason, we would recommend that this paragraph be re-worded to ensure a greater emphasis on the need to explore and exhaust all other alternatives for the disposal of surface water, with a communication with the public sewer network only considered as a last resort, as this will ensure that sustainable drainage techniques are employed.

The draft circular recognises the importance of drainage in the delivery of development. However, we feel that the draft circular would benefit from the inclusion of an additional heading / sub heading in respect of protection zones. Protection zones play a crucial role in maintaining the integrity and performance of existing and proposed sewers / water mains and inform the layout and form of proposed development. As such, we believe the draft circular benefit would from a topic area / sub topic area devoted to this.

We would also like the guidance to discuss private sewerage arrangements as they cause disproportionate pollution problems and as such, there is a need for more checks to be put in place to prevent such problems. Perhaps you could include something along the following lines;

**Private Sewerage** (alternatively this could be added to the “**Contamination (water)**” topic area)

We would also like the guidance to say something about private (i.e. non statutory undertaker) sewerage arrangements. In our experience, they cause disproportionate problems, including in terms of environmental impact, and often Dŵr Cymru is eventually called upon to provide a public sewer at not inconsiderable expense to our company and thus our customers. We would therefore like the guidance to encourage local planning authorities, in consultation with Natural Resources Wales, to check that proposed private sewerage arrangements are fit for purpose. For example, we consider that no development should take place involving private sewerage (e.g. septic tanks, soakaways etc) unless the developer has submitted a detailed assessment to the local planning authority, identifying the principles behind the adopted approach, its suitability and demonstrating that the adopted approach provides adequate environmental protection. This assessment could, for example, take the form of data from the British Geological Survey on ground suitability for soakaways or reference to data provided by the Lead Local Flood Authority in relation to fluvial and surface water flood risk. Proposals should also include a management and maintenance plan for the sewerage scheme.

On a point of detail, should paragraph 5.80 cross-refer to 4.27 rather than 4.29?

Consultation reference: WG19178

<b>Q6</b>	Do you agree that decision notices should be structured in the manner proposed? If you do not, please suggest an alternative.	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Comments:</b> We agree with the proposed structure of decisions notices, which we believe will ensure decision notices are constructed in more legible, concise, and weighted manner, which in turn place a greater emphasis on the need to discharge and adhere to planning conditions.				

<b>Q7</b>	Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Comments:</b> We agree that for the purpose of clarification and certainty the approved plans and drawings relevant to a decision should be identified by way of a planning condition. We believe that this approach, coupled with the variation of condition mechanism for amendments thereto will ensure that we are consulted on any pertinent amendment to an approved plan or drawing.				

<b>Q8</b>	Do you agree with the approach taken towards the term 'unless otherwise agreed by the Local Planning Authority' discussed in paragraph 3.36 of the draft circular? If not, please suggest your preferred approach.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Comments:</b> We agree with the approach taken in respect of the term unless otherwise agreed by the Local Planning Authority' discussed in paragraph 3.36 of the draft circular.				

<b>Q9</b>	Do you agree that Local Planning Authorities should provide applicants with advance notice of conditions before an application is due to be determined?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Consultation reference: WG19178

**Comments:**

We agree with the provision of advance notice of conditions prior to determination of an application, as this approach would provide the developer with additional time to ensure that the requirements of the conditions prescribed can be agreed / adhered to in a timely manner. This is particularly true in the case of the statutory sewerage and/or water undertaker as often the conditions recommended for inclusion may place additional requirements on the developer, which can, owing to other legislative and operational constraints serve to delay the implementation of development or the discharge of a condition.

Q10	Should guidance be provided in the circular with regards to any other conditions related matter?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Comments:**

We believe that the guidance provided in the circular adequately addresses our needs.

Q11	Does Appendix A of the draft circular contain sufficient examples of model conditions?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**Comments:**

Whilst we recognise that the model conditions prescribed in the draft circular are not exhaustive, we would welcome the inclusion of further examples of model conditions.

In particular, we would welcome the inclusion of a condition within the circular requiring the installation of a grease trap or suitable dosing unit to prevent entry into the public sewerage system of matter likely to interfere with the free flow of the sewer contents, or which would prejudicially affect the treatment and disposal of such contents. We believe that the inclusion of such a condition will ensure consistency in approach, and enable us to exercise control over uses such as those falling within class A3 of the Use Classes Order, which have the potential to give rise to fat and oil discharges that may have a detrimental impact on the performance on our assets. Such a condition would help to reduce the amount of problematic food entering our sewers and go a long way toward delivering the Minister's policy set out in the Welsh Government's White Paper on a proposed Environment Bill (see proposal RE5 in *"Towards the Sustainable Management of Wales' Natural Resources: Consultation on proposals for an Environment Bill"* WG October 2013).

We would therefore suggest a condition similar to that prescribed below is included:

Consultation reference: WG19178

*The developer shall provide a suitable grease trap or dosing unit to prevent entry into the public sewerage system of matter likely to interfere with the free flow of the sewer contents, or which would prejudicially affect the treatment and disposal of such contents.*

*Reason: To protect the integrity of the public sewerage system, and sustain an essential and effective service to existing residents.*

Whilst we welcome the inclusion of both drainage and sustainable drainage conditions in the draft circular, to ensure a comprehensive approach to the drainage of development we would welcome the inclusion of a suite of conditions, which we believe prescribe the fundamental principles for the drainage of development:

*Foul water and surface water discharges shall be drained separately from the site.*

*Reason: To protect the integrity of the public sewerage system.*

*No surface water shall be allowed to connect, either directly or indirectly, to the public sewerage system.*

*Reason: To prevent hydraulic overloading of the public sewerage system, to protect the health and safety of existing residents and ensure no detriment to the environment.*

*Land drainage run-off shall not be permitted to discharge, either directly or indirectly, into the public sewerage system.*

*Reason: To prevent hydraulic overload of the public sewerage system and pollution of the environment.*

The above conditions will ensure a consistent approach to the drainage of proposed development, and ensure that drainage schemes are developed in accordance with the principles that underpin the Welsh Ministers Standards, thereby ensuring that where applicable drainage schemes can be adopted by the relevant bodies.

<b>Q12</b>	Do you consider that any of the conditions used should be reworded? If so, which conditions and why? Please suggest alternatives if you are able.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Comments:**  
We consider that the model conditions are acceptable in the main. However, for the purpose of clarification, and to ensure the appropriate emphasis we would suggest the following amendments to the wording of the model conditions identified below:

**35. Construction Method Statement**  
To ensure that development does not have a detrimental impact on the integrity and performance of our assets during the construction phase we would suggest that the Construction Method Statement condition prescribed in the draft circular should be amended to read as follows:

Consultation reference: WG19178

*No development shall commence, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:*

- i) the parking of vehicles of site operatives and visitors;*
- ii) loading and unloading of plant and materials;*
- iii) storage of plant and materials used in constructing the development;*
- iv) details of any temporary site facilities that would require a foul communication with the public sewer*
- v) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;*
- vi) wheel washing facilities;*
- vii) measures to control the emission of dust and dirt during demolition and construction; and a scheme for recycling/disposing of waste resulting from demolition and construction works*
- viii) measures to ensure the identification and protection of any existing sewerage and potable water infrastructure during the construction period*

### **39 – 42 Drainage (Sustainable Drainage Systems)**

We would recommend that condition 40 of the model conditions is re-worded to reinforce the need for developers to explore all alternatives for the disposal of surface water, in accordance with the hierarchical approach prescribed by part H of the Building Regulations 2000. In exploring the options for disposal of surface water such as infiltration, discharge to a watercourse or discharge to a surface water or combined sewer, evidence should be provided where a preferable option has been discounted. This evidence could take the form of data from the British Geological Survey on ground suitability for soakaways or reference to data provided by the Lead Local Flood Authority in relation to fluvial and surface water flood risk. We suggest that the model condition is amended to read as follows:

*40 No building shall be occupied until surface water drainage works have been implemented in accordance with details that have been submitted to and approved in writing by the local planning authority in consultation with the statutory sewerage undertaker. Before these details are submitted, the developer shall demonstrate that they have explored all methods for the disposal of surface water through undertaking an assessment which explores and evidences the potential for disposing of surface water by means of a sustainable drainage system, and the results of the assessment provided to the local planning authority. Where a sustainable drainage scheme for the disposal of surface water is to be provided, the submitted details shall:*

- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;*
- ii) include a plan for its implementation; and*
- iii) provide a management and maintenance plan for the of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime*

The references to 'urban' in conditions 41 & 42 should be removed, as the principles of

Consultation reference: WG19178

sustainable drainage are applicable in both a rural and urban setting. For that reason, we believe that the distinction should be removed and the conditions amended to read as follows:

*41 No building shall be occupied until the sustainable drainage scheme for the site has been completed in accordance with the submitted details. The sustainable drainage scheme shall be managed and maintained thereafter in accordance with the agreed management and maintenance plan.*

*42 No development shall take place until details of the implementation, maintenance and management of the sustainable drainage scheme have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. Those details shall include:*

*i) a timetable for its implementation, and*

*ii) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body, statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage system throughout its lifetime*

There is a risk that the conditions could result in the development of fragmented drainage schemes / features that are designed in isolation of the upstream infrastructure, which, owing to differing return period design thresholds may serve to undermine the suitability of the scheme as a whole. To overcome this, we would request that the conditions are worded such that they require developers to adopt a holistic approach to drainage schemes / features that have regard to the relationship between its various components both upstream and downstream of the scheme / feature.

Q13	Do you believe any of the conditions fail any of the six tests identified in the circular?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Comments:

We do not believe that the conditions prescribed in the draft circular fail the six tests identified in the circular. We note that the suite of drainage conditions prescribed in the draft circular are worded in the negative form, recognising the complexities of drainage solutions which can require developers to carry out works on land over which they have no control and/or obtain the authorisation of a third party.

Q14	Should any conditions be totally removed from Appendix A of the draft circular?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Comments:

Consultation reference: WG19178

We do not believe that any conditions should be totally removed from appendix A.

## **General**

**Q15**

We have asked a number of specific questions throughout this consultation. If you have any related queries or comments which we have not specifically addressed, please use this space to report them:

We would welcome further discussion on the relationship between the drainage conditions proposed as part of the draft circular and the requirements of section 42 and the prospective Schedule 3 of the Flood and Water Management Act 2010, which we understand impose additional legislative requirements on developers in respect of the development and adoption of sustainable drainage features.

The Welsh Government has previously indicated that it intends to make water and sewerage undertakers, such as Dŵr Cymru, statutory consultees in respect of planning applications. This would also go a long way toward ensuring that proposed infrastructure arrangements, including for drainage, are appropriate.

The circular must seek to ensure that water and sewerage undertakers are consulted on any planning application that would involve a connection to the public sewers or water mains, regardless of the size of the development and the proposed connections must satisfy the standards reasonably required by the water and sewerage undertakers.

All connections to public sewers and water mains must be made in accordance with the Water Industry Act 1991.

I do not want my name/or address published with my response (please tick) ☐

**RE: WG19178 Consultation Document – Annex 1 Draft Circular – The use of Conditions in Development Management**

I wish to state that I fully concur with the views expressed by the Chair of the Freshwater East Residents Association as expressed in this a copy of her letter.

Deeded Rights of Way need to be a material consideration when granting planning permission. If they are held in common, deserve the same rights and protection as public rights of way.

In the 1920's, the estate owner, Ronald Mathias went to great lengths to keep the cultural heritage of the burrows in Freshwater East. He specifically designed deeded rights of way in common, so everyone could have access to the sea shore, springs, wells and public highway, which he set out in their title deeds.

Freshwater East is within the Pembrokeshire Coast National Parks Authority (PCNPA). The PCNPA state that deeded rights of way need not be considered as there is no statutory requirement when considering planning applications. The deed holders would like this rectified within this new planning consultation. This would alleviate the current requirement to pursue civil action to retain vehicular and pedestrian access to the deeded properties.

In 2003 MP Nick Ainger said that deeded rights of way should be a 'material consideration' in the planning process, because he did not think it was right that each time planning was granted the deed holders would have to go to court to fight a civil action. I believe this was discussed by the Welsh Assembly in 2006, with no conclusion. Recent assistance from Assembly Members, Angela Burns and Rebecca Evans and MP Simon Hart has been impeded because of the legal implications. This needs to be remedied.

This is causing the deed holders a great deal of concern. It is costly and time consuming for the deed holders to keep going back to court and we would like a resolution. I would like you give this serious consideration and I look forward to hearing your response.

My comments to the relevant sections of the Consultation Document are in red on the following pages.

Yours sincerely

[Details removed at respondent's request]

**Number: WG19178**

Welsh Government

## Consultation Document - Annex 1

Date of issue: 29 January 2014 Responses by 25 April 2014

### Draft Circular - The Use of Conditions in

### Development Management

#### **Powers for conditions on land outside the application site and temporary permissions**

1. Section 72 of the Act enables local planning authorities to impose conditions regulating the development or use of land under the control of the applicant, even if such land is outside the site which is the subject of the application. The courts have held that the question of whether land is under control of the applicant is to be determined according to the facts of a particular case, and it is not dependent on the existence of a freehold or a leasehold interest: only such control over the land is needed as is required to enable the developer to comply with the condition.

**Deeded Rights of Way should be afforded the same status as public rights of way as they are held in common and have affinity with public rights of way. Deeded Rights of Way become more complicated when there are held in common.**

#### **Other constraints**

**2.7** Planning conditions may have serious implications for the individual, so it is important to bear in mind the human rights implications when considering their use. The critically sensitive areas include the loss of one's home; discrimination, and a serious reduction in the value of one's property. Interference with human rights requires proper justification and the implications to be outweighed by other material considerations.

**The same rights should be afforded to the owners and surrounding properties.**

### **3.0 THE SIX TESTS**

**3.1** The courts have laid down general criteria for the validity of planning conditions. In addition to the courts, the Welsh Government considers that conditions should be necessary, precise and enforceable, ensuring that they are effective and do not make unjustifiable demands of applicants. Conditions should only be imposed where they satisfy all of the tests described in this chapter. In summary, conditions should be:

- (i) Necessary;
- (ii) Relevant to planning;
- (iii) Relevant to the development to be permitted;
- (iv) Enforceable;
- (v) Precise; and
- (vi) Reasonable in all other respects.

**Deeded Rights of Way should be relevant to planning. Where Deeded Rights of Way in common are affected these should not be considered under delegated officer powers moreover should automatically be considered by committee as a matter of course.**

## **Control Over land**

**3.43** It would be unreasonable to expect an applicant to comply with a condition which relates to an area of land or an element not in their control at the time when planning permission is granted. If the land is included in the site in respect of which the application is made, such conditions can be imposed, but the authority should have regard to the points discussed in 3.25 and 3.27.

**Proof of ownership needs to be demonstrated.**

**3.46** Although it would be ultra vires to require work to land over which the developer has no control or which requires the consent of a third party, to carry out, it may be possible to achieve a similar result by a condition worded in a negative form, prohibiting development until a specified action has been taken. Such conditions are often called 'Grampian' conditions.

**We strongly agree and this should be enforced at all times.**

## **Planning Obligations and Community Infrastructure Levy (CIL)**

**4.22** LPA should seek to overcome planning objections, where appropriate, or secure mitigation by condition rather than by a planning obligation. Legal agreements can take considerable time to draw up and it is important to avoid burdening applicants with unnecessary costs and delay.

**What about burdening defendants?**

**4.26** Planning conditions are not an appropriate means of controlling the right of passage over public highways and can be very difficult to enforce. Where it is essential to prevent traffic from using particular routes, the correct mechanism for doing so is an Order under the Traffic Management Act 2004.

**Deeded Rights of Way, with vehicular access, should be incorporated in the Traffic Management Act.**

#### **Applications Made Under Planning Condition and Monitoring of Conditions**

**4.29** If the LPA considers that the details submitted are insufficient to discharge a condition or that it has not yet been complied with, the authority should explain to the applicant in writing what remains to be done and can refuse to determine the application until they are satisfied that the condition has been complied with.

**This should be enforced.**

**4.31** If a condition is attached to a decision as the result of consultation with a specialist body or statutory consultee, a local planning authority may need to consult that same body with regards to the discharge of that condition.

**This should be transparent.**

1. Conditions which will remain in force after the development has been carried out need particular care as they can place onerous and permanent restrictions on what can be done with the premises affected.

**Deeded Rights of Way with vehicular access need to be conditioned until a resolution can be agreed.**

### **The List of Model Conditions**

**5.4** Model conditions need to be treated with caution. Such lists can be made available locally so that developers can take account of possible conditions at an early stage in the drawing up of their proposals, but should contain a warning that they are not comprehensive and that conditions will be devised or adapted where appropriate to suit the particular circumstances of a case.

**Deeded Rights of Way with vehicular access need to be conditioned until a resolution can be agreed.**

1. Amongst the conditions in the list at Appendix A there are some which will be used regularly, such as those in relation to materials, whilst others will be rarely used, for example, conditions in relation to aerodromes and conditions relating to personal permissions (condition 50). However, the less common conditions included in Appendix A provide a useful resource for officers drafting conditions for more rare development scenarios.

**This should include Deeded Rights of Way.**

### **Outline permissions**

**5.7** An applicant who proposes to carry out building operations may choose to apply for either full planning permission, or for outline permission with one or more of the following matters reserved by condition for the subsequent approval of the local planning authority:

- i) access;

ii) appearance;

iii) landscaping;

iv) layout, and

v) scale

**This needs to be enforced.**

#### **Conditions relating to outline permissions**

**5.9** Once outline planning permission has been granted, it cannot be withdrawn except by a revocation order under section 97 of the Act, and any subsequent approval of reserved matters does not constitute the granting of a further planning permission. Any conditions relating to anything other than the reserved matters should be imposed when outline permission is granted. For example, it may be considered necessary to require a building to be constructed within a specified 'footprint' or to retain important landscape features which would affect the setting of the building and its neighbours.

**Deeded Rights of Way are part of the cultural heritage of the area in which they relate.**

#### **Access (Conditions 07 to 11)**

1. Conditions attached to planning applications for outline planning permission can control the location of an access serving a development, the details of which will subsequently be required for consideration as part of the reserved matters application

for consideration. Without such a condition it may not be possible to secure its location at the reserved matters stage.

**Deeded Rights of Way that are held in common would be a reserved matter.**

#### **Boundary Treatment (Condition 26)**

**5.50** Details of boundary treatment for a development can often be reserved for subsequent approval if they are not detailed in the application or unless they affect whether permission should be granted, in which case they should be considered as part of the planning application.

**Where there are known disputes, planning should be refused until such disputes are remedied.**

#### **Design (Conditions 26, 61, 82)**

**5.58** Local planning authorities may wish to use conditions to ensure that important vistas are safeguarded by keeping them clear of obstruction or that landscape features are provided to improve the overall setting of a development.

**Consultation and transparency should be part of this process.**

#### **Grampian Conditions**

**5.64** By their nature, Grampian conditions are drafted negatively and require that the development permitted should not be commenced, or occupied, until a specified obstacle to that development has been

overcome on land that is not in control of the applicant. As with other conditions, Grampian conditions must be constructed having regard to the particular circumstances that exist and which affect or are affected by the development. Grampian Conditions are discussed in more detail above in paragraphs 3.25, 3.26, 3.42 -3.46 and Box 1.

**Deeded Rights of Way are a Grampian Condition.**

**Nature Conservation** (Conditions 125 and 133)

**5.79** Nature conservation can be a significant material consideration in determining many planning applications. But local planning authorities should not refuse permission if development can be permitted subject to conditions that will prevent damaging impacts on wildlife habitats or important physical features.

**Deeded Rights of Way are an important physical feature and are part of our Cultural Heritage.**

The Use of Planning Conditions for Development Management		
Date of consultation period: 29/01/2014 – 25/04/2014		
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<b>Type</b> (please select one from the following)	Businesses/Planning Consultants	<input type="checkbox"/>
	Local Planning Authority	<input type="checkbox"/>
	Government Agency/Other Public Sector	<input checked="" type="checkbox"/>
	Professional Bodies/Interest Groups	<input type="checkbox"/>
	Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations)	<input type="checkbox"/>
	Other (other groups not listed above) or individual	<input type="checkbox"/>

Q1	Do you think an updated circular on conditions is required?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

Q2	Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

Consultation reference: WG19178

<b>Q3</b>	Do you consider:			
	(i) that all six tests are still relevant today and should be retained?	Yes	Yes (subject to further comment)	No
	(ii) that there are additional tests that could be used (demonstrate with case law if possible)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: <b>i - Yes</b> <b>ii - No</b>				

<b>Q4</b>	Do you consider that any significant pieces of recent case law have been overlooked, which would provide better examples than those used, to support the text?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments:				

<b>Q5</b>	Are there any topic areas in Chapter 5.0 which should be expanded on, or, are there any new topic areas you consider should be included?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>Paragraph 5.46 needs to be corrected. There are often cases where a scheduled monument is part of, but not all of, the development area. In such a case there would need to be planning conditions protecting the archaeological resource as well as those attached to the scheduled monument consent as those would not be applicable in non-designated areas.</b>				

<b>Q6</b>	Do you agree that decision notices should be structured in the manner proposed? If you do not, please suggest an alternative.	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

Consultation reference: WG19178

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<b>Q7</b>	Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

<b>Q8</b>	Do you agree with the approach taken towards the term 'unless otherwise agreed by the Local Planning Authority' discussed in paragraph 3.36 of the draft circular? If not, please suggest your preferred approach.	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

<b>Q9</b>	Do you agree that Local Planning Authorities should provide applicants with advance notice of conditions before an application is due to be determined?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				
<b>This would allow discussion with the applicants so they are fully conversant with the obligations they are accepting and can make provision for the time and cost that will need to be included in the development programme.</b>				

<b>Q10</b>	Should guidance be provided in the circular with regards to any other conditions related matter?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Consultation reference: WG19178

Comments:
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<b>Q11</b>	Does Appendix A of the draft circular contain sufficient examples of model conditions?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

<b>Q12</b>	Do you consider that any of the conditions used should be reworded? If so, which conditions and why? Please suggest alternatives if you are able.	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p><b>Condition 22</b>  This wording can lead to confusion in regard to who is an archaeologist? It is suggested that “professionally qualified” should be added before the word archaeologist. This would be in accord with Welsh Office Circular 60/96 paragraph 13</p> <p><b>Condition 24</b>  This condition has proved valuable in securing the obligation on the applicant or developer to mitigate the impact of their scheme on the historic environment. However an archaeological programme of works (whether recording below ground remains or above ground structures) comprises a number of stages, not all of which can, reasonably, be implemented before development commences. Whilst these are partly described in Welsh Office Circular 60/96 paragraph 20, they are not explicit in the wording of the condition. In summary they are:</p> <ul style="list-style-type: none"> <li>• Site investigation, prior to, or sometimes integrated with, construction ground works</li> <li>• An assessment of the discoveries on completion of the site investigation, with proposals for their analysis</li> <li>• The analysis and publication of the discoveries, and the deposition of the site archive</li> </ul> <p>Moreover, these works can take time to progress and therefore it also needs to be noted that</p> <ul style="list-style-type: none"> <li>• Development may commence once the site investigation is complete;</li> <li>• The assessment can take place after the development has commenced</li> </ul>				

Consultation reference: WG19178

- A full analysis, publication, and archive deposition may take some years to complete, particularly for large or complex investigations.

The wording of the standard condition has proved contentious, particularly over what is required by it, and when any obligations on the applicant/developer have been satisfied. Thus, making the timing of the discharge of the condition a matter of debate and uncertainty and therefore could be seen to be un-precise and unenforceable.

This can be addressed by amending the single condition, to provide clarity on what comprises an archaeological programme of works. This could be incorporated into a structured decision notice. The programme could be expressed in stages of a single condition, or in separate, linked, conditions that might refer back to one another, but could be grouped by type on the decision notice, thus:

Recommended wording Programme of Investigation

A) No demolition/development shall take place/commence until a Written Scheme of Investigation has been submitted to and approved by the local planning authority in writing. The scheme shall include an assessment of significance and research questions; and:

- a. The programme and methodology of site investigation and recording
- b. The programme for post investigation assessment
- c. Provision to be made for analysis of the site investigation and recording
- d. Provision to be made for publication and dissemination of the analysis and records of the site investigation
- e. Provision to be made for archive deposition of the analysis and records of the site investigation
- f. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

B) No demolition/development shall take place other than in accordance with the Written Scheme of Investigation approved under condition (A).

C) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under condition (A) and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

#### Condition 71

Archaeological sites including designated monuments are often identified pre-application and developments are designed to leave them in-situ; however, there is a chance that accidental damage can occur to them especially when they are not clearly marked. Surrounding the identified site with fencing is an excellent way of protecting them. No condition for fencing archaeological sites is included in the Archaeology Section of the draft circular (although one was included in W/O Circular 35/95) but this condition is included under Listed Buildings/Conservation (protection) and it is suggested that to clarify that this condition is applicable to archaeology that "Archaeology" should be added to the title i.e. Listed Buildings/Archaeology/Conservation (protection)

#### Condition 73

This appears to put a potentially considerable financial burden on the LPA to carry out recording works. It is suggested that the following conditions to be

Consultation reference: WG19178

**attached to Listed Building Consents to ensure recording is done**

**No works to which this consent relates shall commence until an appropriate programme of historic building recording and analysis has been secured and implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority”**

**In cases where a historic building has not been listed but there is still likely to be a need for recording, the following condition could be attached to planning permission:**

**No development to which this permission relates shall commence until an appropriate programme of historic building recording and analysis has been secured and implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.**

**Condition 77**

**Amend the first sentence to say - Before any work hereby authorised begins, a method statement shall be taken to secure the safety and stability .....**

**Condition 76**

**The last sentence should be moved to the end of condition 77.**

<b>Q13</b>	Do you believe any of the conditions fail any of the six tests identified in the circular?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments:				

<b>Q14</b>	Should any conditions be totally removed from Appendix A of the draft circular?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>Conditon23</b>  <b>This condition should be deleted as it causes confusion. It does not obligate the developer to mitigate the impact of their development on the historic environment and places an undue financial burden on the local planning authority. It also does not allow the nominated archaeologist to carry out any</b>				

Consultation reference: WG19178

**form of investigation except to observe the construction works and record any artefacts that recovered. If the purpose of this condition was for an archaeological watching brief to be carried out then condition 22 should be used. If the purpose is to allow access if an unexpected discovery is made then it is suggested that the condition 78 is used.**

## **General**

**Q15**

We have asked a number of specific questions throughout this consultation. If you have any related queries or comments which we have not specifically addressed, please use this space to report them:

I do not want my name/or address published with my response (please tick) ☐

From: The National Surface Water Management  
and SuDS Group

Conditions Consultation  
Development Management Branch  
Planning Division  
Welsh Government  
Cathays Park  
Cardiff  
CF10 3NQ

25 April 2014

To whom it may concern,

Response to the consultation on the Use of Planning Conditions for Development Management

The National Surface Water Management and SuDS Group was originally established as the SuDS Working Party for Wales. This was in response to the need for policy and legislation to be implemented in Wales that would ensure the use of sustainable drainage to mitigate the risks posed by climate change to our communities and infrastructure. We are a multi-organisation group supporting the implementation of solutions to tackle surface water issues in Wales and encourage collaborative working. We also share best practice and emerging information with our members and beyond. More information on the SuDS technique and the group can be found on our website at <http://www.sudswales.com/>

Our members include practitioners with a wide variety of experience and skills representing Natural Resources Wales, Dŵr Cymru Welsh Water, Consumer Council for Water, CIWEM, the Welsh Local Government Association, the Home Builders Federation and the Welsh Government. Our objectives include:

- Providing a hub of expertise in the field of surface water management;
- Encouraging collaborative working and identifying where benefits can be maximised;
- Ensuring that environmental protection and eco-systems services are at the heart of delivery;
- Supporting Lead Local Flood Authorities in the implementation of SuDS policy and the development of Local Flood Risk Management Plans;

- Providing advice and signposting stakeholders to support the development of the relevant skills and expertise to manage surface water and construct SuDS;
- Providing advice and expertise to the Welsh Government to support the development of emerging policy;
- Developing a resource base for stakeholders and the public to inform them of best practice in relation to managing surface water and the use of SuDS;
- Encouraging the reuse of water where possible; and
- Promoting a better understanding of SuDS and Water Sensitive Urban Design, including the social, economic and environmental benefits that can be derived.

Our response focuses on the parts of the draft circular which relate to sustainable drainage.

### *The role of sustainable drainage systems (SuDS)*

In a time where we are experiencing social, environmental and economic pressures on our communities, we need to ensure that where we are developing, it is done in a sustainable manner. We should not be developing in a way that puts undue pressure on existing communities and any new development should be resilient to the onset of climate change and the extreme weather conditions this may bring. We have recently experienced extreme flooding events across Wales. These extreme weather events are becoming more frequent and we need to become more resilient as a nation to them.

In order to make some headway towards addressing these issues, or at least maintaining the status quo, we need to start developing in smarter, more innovative ways. New developments should be a legacy that can be left to future generations to enjoy, not to exacerbate issues for the future. One way that we can build smarter is to ensure that the basics are considered at the embryonic stage of a development. This should include drainage and green space and decisions should be made that maximise the benefits derived from a development, making the most of investment.

Sustainable drainage is an essential consideration for new developments and redevelopments and should be the normal approach to managing surface water runoff from a site. Along with the obvious benefits that are delivered to mitigate flood risk, the use of SuDS is also a tool to help provide well purposed green space, improve water quality, mitigate air pollution, increase the aesthetic value of a development, create valuable habitat and where planned properly, can result in a range of additional benefits. The Welsh Government indicated in the Environment White Paper consultation that a payment for ecosystems services approach is being considered for Wales. Sustainable drainage is an example of where this approach can be captured.

The ethos of SuDS is to manage surface water as close to its source as possible, above ground and within a development site. By doing this, benefits can be reaped across a catchment by ensuring that a surface water problem is not just simply put into a pipe and displaced from the site to cause flooding or pollution issues further downstream.

### *Better integrating SuDS into the draft circular*

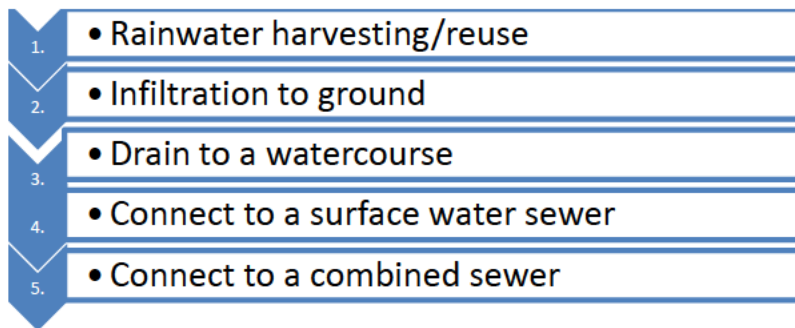
We are supportive of the inclusion of a section on drainage and reference to TAN15 in the draft circular. However, we have a number of comments on this section, which are set out below.

On page 35 and 36 of the draft circular, you have discussed the links between drainage and the conditions you have proposed. We would like to see a clear delineation in this section between foul sewerage and surface water drainage as the two elements should be considered separately. By considering them separately, we can move towards changing current practice and move away from the historical practice of considering putting surface water into the combined sewer as a preferential option.

In 5.62 you have stated that “Developers will need to give good reason why SuDS could not be implemented”. We believe that this sentence is negatively worded and could be entirely removed from the section.

In this part of the circular we would like to see the following:

- Reference to Schedule 3 of the Flood and Water Management Act 2010 – Upon commencement Schedule 3 will introduce a requirement for sustainable drainage applications to be submitted for every new development or redevelopment. It will also establish SuDS Approval Bodies (SABs) who will assess these applications and will have a duty to adopt sustainable drainage systems if a number of conditions are met. This will introduce a new legal process for managing sustainable drainage for a development and will have an impact on how this relates to the planning process.
- Reference to the SuDS hierarchy – There is a hierarchy that looks at the disposal of surface water from a site, in order of preference. This hierarchy consists of five steps, with rainwater harvesting/reuse being the preference for harnessing surface water and infiltration to the ground being the preferred method of disposal. A connection to the combined sewer network should be a last resort. We would like to see reference to this within the document as a positive way to inform developers about other preferential options where a soakaway or infiltration are not appropriate.



- Code of Practice for surface water management for development sites – It may be useful to refer to BS8582:2013 as it contains useful information on when to engage with interested parties when considering options for surface water management on a development site. Drainage, both foul and surface water, should be considered as early in the planning process as possible to ensure that the best cost solution is developed for the development and future residents.
- Geological/topographical restraints – There needs to be acknowledgement that not all SuDS solutions will work in every location across Wales. Quite often, the soakaway option is chosen at outline planning stage, when in practice a soakaway cannot work due to the geological constraints of an area. We would like to see greater interaction between the local planning authority and the land drainage/flood departments of the local authority to ensure that the developer has access to the right information at the right time to allow an appropriate solution for managing surface water on the development site to be developed.
- Multi-use space – It should be made clear that SuDS should be an integral part of a development site. SuDS should not be stand alone systems, but should be integrated into the green space and infrastructure for the development. By making SuDS fully integrated and encouraging multi-use space (for example, using a playing field or play area for storm water retention), development space is not lost and SuDS are more cost effective.
- Whole life costs and benefits – When assessing the cost effectiveness of using SuDS in a development, a whole life costing approach should be used to calculate the full costs of construction and maintenance and then compared with the benefits that can be derived from the use of SuDS. Traditionally we have not monetised these benefits, but there is a great deal of work underway to understand how best to quantify the benefits realised. CIRIA are currently undertaking research to better understand how we can demonstrate the multiple benefits from SuDS. More can be found on this project at the following link: [http://www.ciria.org/Research/Projects\\_underway2/the\\_benefits\\_SuDS.aspx?WebsiteKey=3f18c87a-d62b-4eca-8ef4-9b09309c1c91](http://www.ciria.org/Research/Projects_underway2/the_benefits_SuDS.aspx?WebsiteKey=3f18c87a-d62b-4eca-8ef4-9b09309c1c91)

### *Draft conditions 39-42*

We are broadly supportive of the draft conditions set out in Annex A to the draft circular as they are moving in the right direction to ensure that SuDS are not only used, but consideration is given to the long term operation and maintenance of the systems prior to the commencement of Schedule 3 of the Flood and Water Management Act 2010.

We have a few suggestions and points of clarity in relation to the draft conditions and have set these out below.

- Link to Schedule 3 – Following the commencement of Schedule 3 of the Flood and Water Management Act 2010, there will be a specific legal process for dealing with SuDS and it may no longer be appropriate to use planning conditions to ensure their use.
- Occupation of a building – Draft condition 39 could be made more flexible to reflect the multi-phase nature of many development sites and what is meant by “completion” of a sustainable drainage system. As many large development sites are constructed in phases, it is possible that a full SuDS treatment train may not be completed until the final phase of a development where multiple components are used. It may be appropriate to include a model condition which allows for a phased approach.
- Adoption and maintenance – Draft condition 40 states “which shall include the arrangements for adoption by any public authority or statutory undertaker”. Although adoption of some elements by a public body is generally required by the statutory sewerage undertaker in order for them to adopt other parts of the system, this is not always the most appropriate option. There are an increasing number of organisations, particularly from the third sector who are interested in SuDS and may be more appropriate to manage the system in the long term. We would like to see acknowledgement that the system should be adopted by the most appropriate body, rather than being prescriptive and stifling innovation. Following the commencement of Schedule 3, most SuDS will be adopted by the SAB.
- Consistency of language – Draft conditions 41 and 42 both use the term sustainable urban drainage system. The word “urban” was omitted from SuDS some time ago as the systems can also be used in a rural setting. Legislation also refers to “sustainable drainage systems” and we would like to see a consistent approach to the terminology across the board.

In summary, we welcome the conditions you have set out in the consultation document and believe that they can support the use of SuDS in development until the commencement of Schedule 3 of the Flood and Water Management Act 2010. We have suggested some areas where we believe that there could be some extra information or refinement of the conditions and hope that this will inform the finalisation of the draft circular following consultation.

Yours sincerely,

*The National Surface Water Management and SuDS Working Group*

The Use of Planning Conditions for Development Management		
Date of consultation period: 29/01/2014 – 25/04/2014		
<b>Name</b>	Vicki Hirst	
<b>Organisation</b>	Planning Officers Society Wales	
<b>Address</b>	c/o Pembrokeshire Coast National Park Authority Llanion Park Pembroke Dock Pembrokeshire SA72 6DY	
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<b>Type</b> (please select one from the following)	Businesses/Planning Consultants	<input type="checkbox"/>
	Local Planning Authority	<input type="checkbox"/>
	Government Agency/Other Public Sector	<input type="checkbox"/>
	Professional Bodies/Interest Groups	<input checked="" type="checkbox"/>
	Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations)	<input type="checkbox"/>
	Other (other groups not listed above) or individual	<input type="checkbox"/>

Q1	Do you think an updated circular on conditions is required?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments:

**POSW welcomes the update of this Circular to take account of relevant and recent legislation, processes and case law. It also needs to reflect the Welsh context.**

**It is suggested the model conditions are reviewed on a 5 year rolling basis to ensure that they remain up-to-date and consistent.**

Q2	Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Consultation reference: WG19178

Comments:

**Yes we agree unless rendered inaccurate or no longer relevant as a result of court cases.**

<b>Q3</b>	Do you consider:			
	(i) that all six tests are still relevant today and should be retained?	Yes	Yes (subject to further comment)	No
	(ii) that there are additional tests that could be used (demonstrate with case law if possible)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments:

**Yes the six tests are well established and still relevant, however the reasonable test can be open to interpretation and could be more focused.**

<b>Q4</b>	Do you consider that any significant pieces of recent case law have been overlooked, which would provide better examples than those used, to support the text?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments:

**Further clarification is sought around the difference between condition precedent and "Grampian" conditions. Hart Aggregates, Henry Boot and others are relevant here. Some guidance on the difference between the two particularly in terms of misinterpretation and enforcement and what is meant be "heart of the permission" would be welcome together with practical examples.**

**Technoprint Plc & Anor, R (on the application of) v Leeds City Council & Anor [2010] EWHC 581 (Admin) (24 March 2010) is particularly helpful in relation to land contamination issues and clarifies that any reasonable authority must obtain sufficient information to understand the extent of contamination prior to the determination of applications.**

**In relation to conditioning matters which are subject to legislation outside the planning remit, the advice set out in a case known as the Halkyn case is beneficial in that it clarified that in some circumstances a condition that requires the developer to submit an European Protected Species Licence prior to the commencement of development can be imposed. (Duke of Westminster vs WAG (Case No: CO/1872/03).**

**Telford and Wrekin BC v SSCLG [2013] EWHC 79 (Admin) sets out that conditions must be clearly expressed and plain for all to read.**

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<b>Q5</b>	Are there any topic areas in Chapter 5.0 which should be expanded on, or, are there any new topic areas you consider should be included?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p><b>There appears to be a conflict of approach in this consultation and Positive Planning. Positive Planning advocates consolidating PPW and mineral guidance whereas this consultation states that further guidance on mineral conditions should be found in MTANs.</b></p> <p><b>Clarity is sought on paragraph 5.21 regarding renewal of planning permission provided a valid renewal application is submitted before the expiry of the time limit. There have been instances recently from LPAs where applicants have submitted applications on the day the permission expires when the application was not valid in accordance with the requirements of List 4 as set out in WG guidance for the validation of applications.</b></p> <p><b>There is no reference in 5.97 - 5.99 regarding the provision of active travel facilities which are being promoted in the Active Travel Act.</b></p> <p><b>POSW offers comment on specific wording in a number of paragraphs - in paragraph 5.102 the phrase "to preserve an exceptionally attractive open plan estate" is open to interpretation and also in paragraph 5.108 the use of the word "maintained" has resource implications as it could be taken literally and could mean a visit by enforcement officers to ensure that it had been properly assembled and serviced!</b></p>				

<b>Q6</b>	Do you agree that decision notices should be structured in the manner proposed? If you do not, please suggest an alternative.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p><b>It is also unclear how this proposed structure would sit with regard to the proposals in the Positive Planning consultation on having "live" decision notices which are updated as conditions are discharged. This will need careful attention and should be considered at this stage to avoid a two phase approach.</b></p> <p><b>POSW recognises the benefits of a structured decision notice however suggests consideration is given to a further breakdown of conditions into sections for ease of use and to aid LPAs with discharging conditions. Also on major schemes a hybrid approach may be more appropriate where conditions are sorted by subject but ordered by type within that category.</b></p>				

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Q7	Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments:

**Yes this will provide clarity for developers. It is to be noted that at Appeal, conflicting decisions have been issued from Inspectors with some stating that the condition is unnecessary whilst others include the condition.**

**POSW has concerns that the proposals appear to be encouraging the variation of development, minor or otherwise, via a variation of condition. If it is not the scheme that has permission and the changes that they wish to make are material, a new full application should be required. By introducing the process as proposed, it introduces significant scope for argument and disagreement about what should or should not be considered via the section 73 process and introduces a potentially unsound basis for altering planning permissions by way of making material changes to approved development. It also raises financial issues that Local Planning Authorities will need to consider. If this is to be implemented, Authorities will require guidance from Welsh Government so LPAs know how to deal with it consistently and the public know what to expect from it.**

**It is not clear from the circular what the Welsh Government potentially consider "minor" and an example would be beneficial in this section. Certainly, fundamental changes to drawings should require a fresh submission with the appropriate consultation and consideration and a fee equivalent to the full application rather than the potentially much lower fee of £166 that a variation of condition application incurs. What is or is not minor will ultimately be the judgement of the Local Planning Authority or courts and may be subject to disagreement. This will not provide the certainty and consistency sought under the emerging Planning Bill.**

Q8	Do you agree with the approach taken towards the term 'unless otherwise agreed by the Local Planning Authority' discussed in paragraph 3.36 of the draft circular? If not, please suggest your preferred approach.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments:

**We agree in principle, however there are occasions on very minor matters**

Consultation reference: WG19178

where it would be unduly onerous to require the submission of a Section 73 application. The ability for authorities to allow small changes without further application enables a more flexible and positive approach to be adopted. The proposals by WG to allow non material and minor material amendments may address this but if this is not the case, we would suggest the term "unless otherwise agreed by the Local Planning Authority as a minor amendment" or "The development hereby permitted shall be carried out in accordance with the plan(s) and specifications (which are listed in the 'Notes to Applicant' below), unless specified otherwise by the conditions of this permission, or otherwise agreed in writing by the local planning authority"

Q9	Do you agree that Local Planning Authorities should provide applicants with advance notice of conditions before an application is due to be determined?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Comments:

POSW disagrees that this should be referred to as an expectation for developers. It should be at the Local Planning Authority's discretion whether or not it deems it appropriate and efficient to engage with the applicant about the wording of planning conditions on a Notice. In some cases, it is seen as beneficial to all parties and Authorities will undertake discussion in advance of a Notice being issued. However, this is not always possible or appropriate. It is the LPA in the first instance who determines whether a condition meets the relevant tests. If the condition is considered unnecessary by the recipient it can be the subject of a s73 or an appeal (with an award of costs) if the condition is attached unreasonably.

Providing advance notice of the wording of conditions to applicants will also have the effect, in some cases, of delaying the decision making process to the detriment of all parties. In practice, officers work to tight deadlines and will rarely have reports and conditions fully prepared weeks in advance of a Committee for example. Consequently, a requirement to engage an applicant in the drafting of conditions will be time consuming and will delay decision making. Furthermore, such engagement may well be seen as inappropriate by third parties in particularly controversial cases. It should be for the Authority to decide, rather than for the applicant to expect, whether or not advance discussion of conditions is necessary and beneficial.

With the renewed focus on performance and process, it is likely that there will be increased focus to determine applications within 8 weeks in times of diminishing resources. To require LPA's to routinely agree conditions prior to a decision within 8 weeks fails to recognise the staffing/resource pressures faced by LPA's across Wales. "Advance notice" implies a process of negotiation and subsequent (dis)agreement. If the Welsh Government considers this liaison would result in a better outcome, then we would advise that it revisits its emphasis on decision speed in the Planning Bill, or at least set realistic decision-

**making targets.**

Advance sight of conditions happens in any event in the case of reports published in advance of Planning Committee meetings for example. Officers themselves may recommend changes to published wording of conditions at a Committee meeting having considered it further or received further advice. Occasionally, an applicant may suggest changes to conditions that the Authority agrees with. However, advance sight of conditions will increase the expectation of applicants to engage in discussions on the wording of conditions and place undue pressure on case officers that will likely lead to delays in processing of submissions. This could involve additional work for planning staff in having to draft perhaps a series of decision notices during the course of processing an application, each slightly different as matters progress and therefore the value of any advance version would be questionable.

The proposals in Positive Planning to offer a pre-application service would provide the opportunity for applicants to be made aware of the types of conditions likely to be imposed and this then gives the applicant the opportunity to provide information with the application thus reducing the number of conditions.

Q10	Should guidance be provided in the circular with regards to any other conditions related matter?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Comments:**

POSW would welcome the strengthening of guidance in the circular regarding the role of statutory consultees in the drafting and in the discharge of conditions so it is clear what co-operation LPAs can expect. The inclusion of statutory consultees in pre-application advice where potential conditions are discussed should be clarified.

POSW would offer the observation that the circular is very much written for a LPA audience with little to say on the role of the applicant in the process. Whilst the circular rightly argues for "clean" permissions that contain the minimum number of conditions, it does not discuss the role of the applicant/private sector in achieving this. If LPA's are required to meet targets, then the use of planning conditions is likely to increase as a legitimate means of issuing a speedy decision where the applicant has failed to provide the necessary information.

It is considered that consideration should be given towards guidance on the following topics within the Circular:

**Reason(s) for refusal** - it would be beneficial to include a short section on best

Consultation reference: WG19178

**practice on wording reason(s) for refusal.**

**Breach of Planning Conditions** - whilst guidance on Breach of Planning Conditions is included in the Enforcement Circular, it would be prudent in our opinion to include the breach of conditions procedure within the conditions circular.

**Reasons for Conditions** - whilst it is accepted that the reasons for imposing Conditions will vary for each case, it is considered that examples of best practice would be of benefit.

<b>Q11</b>	Does Appendix A of the draft circular contain sufficient examples of model conditions?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Comments:</b> <b>The Circular provides an opportunity to consolidate advice on conditions found in a number of guidance documents into one document. Further conditions on retrospective planning conditions and biodiversity would be helpful.</b>				

<b>Q12</b>	Do you consider that any of the conditions used should be reworded? If so, which conditions and why? Please suggest alternatives if you are able.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Comments:</b> <b>In general, to provide consistency, all "pre-commencement conditions" should be worded in the same way, i.e. either "No development shall take place..." or "Prior to the commencement of development ....". At present the list of model conditions vary significantly and need to be more consistent. Furthermore, all conditions with a requirement to submit a scheme or details should be worded consistently i.e. "submitted to and approved in writing by the Local Planning Authority", at present there is inconsistency in the model conditions. It is also considered that clarification on the definition of "development" for the purposes of implementation should be provided as this can be open to interpretation.</b>  <b>We have specific comments on a number of the model conditions as below:</b>  <b>5. The use of the word "paraphernalia" is imprecise and open to interpretation. Also requiring the land to be restored to its "former condition" gives rise to the issue of requiring a condition survey if the historical condition of the land cannot</b>				

be easily determined.

6. The condition requiring the development to comply with specific plan nos needs a caveat along the lines of "unless otherwise required by conditions below". Often a plan will show a detail that needs to be omitted, revised or added to. Without the caveat, this condition will potentially conflict with other conditions on the same permission. It is suggested that the date of the plan is included.

20. Affordable housing - at 5.41 the circular states that conditions should not be used to "control matters such as tenure, price or ownership". It states planning obligations are the normal means of achieving affordable housing. However, model condition 20 in the appendix states that development shall not begin "until a scheme for the provision of affordable housing as part of the development...". This appears contradictory advice. It is suggested that conditions could avoid delays where applications are submitted by HA's but at the moment this LPA requires s106 obligations purely to secure affordability in perpetuity in the event that the site is sold to a private developer. 108 & 109 - Condition should be amended to also require confirmation of "first export of electricity to grid" date to LPA.

24. the words "submitted to and" needs to be inserted before "approved in writing by"

26. suggest the inclusion of "height" in the list of matters to be submitted and approved

27. this condition needs to specify the area to which the condition relates, i.e suggest inserting the words "affecting the application site area" after "extent of contamination"

28. there is concern that this condition would not meet the six test in that the words "if contamination is found" is not precise and renders the condition unenforceable

35. suggest the inclusion of the hours of working in the items to be submitted and approved

36. should define "decentralised", "renewable" and "low carbon" through reference to national policy advice

41. & 42. should refer to sustainable drainage systems not sustainable urban drainage systems. Re condition 41, this should specify the reference of the submitted details to be sufficiently precise eg "in accordance with the submitted details on plan X/drawing X received on X"

60. this needs an implementation clause to secure compliance

66/67 and 68/69 - suggest combining these

69 should include a clause to replace where plants die

Consultation reference: WG19178

**77 "steps shall be taken to secure" is open to interpretation and is not considered sufficiently precise to meet the relevant test. This condition should also require those steps to be submitted to and approved by the LPA.**

**91/92. it is not considered that the condition 91 is precise and should include a maximum occupancy period for a holiday. This will ensure that the accommodation is only used for short term holiday purposes and not for longer letting.**

**105. to be sufficiently precise the condition should refer to Schedule 2 as well as the relevant Part and Class of the GPDO. It is also suggested that the model condition does not refer to the to particular Part or Class but leaves this blank for completion by the LPA**

**106. it is suggested that this condition should refer to the notion of a principal elevation as introduced in the new householder PDR to be more precise and accurate**

**113. Wind - the condition is overly complex and wordy. Its needs simplification. The condition could specify that the applicant provides certification or validation from a suitably qualified professional. The letter of certification from a qualified professional gives the LPA comfort that matter has been addressed and reduces bureaucracy and cost for the Council.**

**128. this condition could be included with 66,67,68 and 69**

<b>Q13</b>	Do you believe any of the conditions fail any of the six tests identified in the circular?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments:

**There is discussion around the issue of planning conditions replicating controls of other regulatory regimes. One such issue is drainage. There is reference to control of drainage through building control but there is inconsistency across LPAs on the materiality of drainage generally. The delayed SUDS regime will further complicate the process as a separate regulatory system will be introduced. It is unclear when drainage related conditions are then necessary to the development management process. Some clearer guidance in the circular would assist and introduce a consistency of approach. The control of hours of A3 uses is another area where there is a separate licensing regime and one could question whether this issue is duplicated through the planning process.**

<b>Q14</b>	Should any conditions be totally removed from Appendix A of the draft circular?	Yes	Yes (subject to	No

Consultation reference: WG19178

			further comment)	
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments:

Concerns are raised in relation to the land contamination conditions which seem to suggest that contamination surveys can be condition despite case law such as *Technoprint Plc & Anor, R (on the application of) v Leeds City Council & Anor* [2010] EWHC 581 (Admin) (24 March 2010) that considers that any reasonable Authority should request as much information as possible at the outset to ensure that the true extent of contamination is known prior to the determination of the planning permission.

There is also concern at the wildlife protection condition which gives a message that matters concerning protected species can be dealt with under condition. Legislation (and TAN 5) clearly advise that the precautionary principle should apply where there may be damage to protected species/habitats and conditions should not be used in this instance. The use of this condition needs to be clearly stated (or removed totally).

## General

<b>Q15</b>	We have asked a number of specific questions throughout this consultation. If you have any related queries or comments which we have not specifically addressed, please use this space to report them:
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POSW awaits the release of the Planning Application Fees Consultation and the inclusion in that document of proposals for widening the scope of fees to include the discharge of conditions.

General point - the advice in para 5.57 is to tie the design of a scheme to the DAS. Clarification is needed on the status (and future) of DAS.

General point - many of the conditions are very wordy and much of the text might be more appropriate to an informative note. Good examples of this are to be found in the section on contaminated land. The latter part of condition 27 is also overly precise requiring compliance with documents that may be superceded.

There is also reference in the Circular with regard to the role of statutory consultees in the formulation and discharge of conditions. It is essential that statutory consultees are required to work to the model conditions as many that are suggested by such consultees at present do not meet the 6 tests. Furthermore, the role of statutory consultees in discharging conditions needs to be clear, and that specified time periods for responses be monitored by Welsh

Consultation reference: WG19178

**Government to avoid undue delay at this stage of the process.**

POSW would welcome clarification on reasons for conditions as this impacts on consultees when discharging conditions. For example, in cases where a contamination remediation type condition is imposed, is it to safeguard human health or ground water or both raising queries re the discharge of condition.

I do not want my name/or address published with my response (please tick) ☐



Ymgynghoriad Amodau Cynllunio  
Cangen Rheoli Datblygu  
Is-adran Cynllunio  
Llywodraeth Cymru  
Parc Cathays  
Caerdydd, CF10 3NQ

14 Ebrill 2014

Annwyl Syr / Madam

### Ymgynghoriad Amodau Cynllunio – WG19178

Mae Comisiynydd y Gymraeg yn croesawu'r cyfle i gyfrannu sylwadau ar yr ymgynghoriad dan sylw.

Prif nod y Comisiynydd yw hybu a hwyluso defnyddio'r Gymraeg. Gwneir hyn drwy ddwyn sylw at y ffaith bod statws swyddogol i'r Gymraeg yng Nghymru a thrwy osod safonau ar sefydliadau. Bydd hyn, yn ei dro, yn arwain at sefydlu hawliau i siaradwyr Cymraeg. Mae dwy egwyddor yn sail i waith y Comisiynydd:

- Ni ddylid trin y Gymraeg yn llai ffafriol na'r Saesneg
- Dylai personau yng Nghymru allu byw eu bywydau drwy gyfrwng y Gymraeg os ydynt yn dymuno gwneud hynny.

Dros amser fe fydd pwerau newydd i osod a gorfodi safonau ar sefydliadau yn dod i rym trwy is-ddeddfwriaeth. Hyd nes y bydd hynny'n digwydd bydd y Comisiynydd yn parhau i arolygu cynlluniau iaith statudol trwy bwerau y mae wedi eu hetifeddu o dan Ddeddf yr Iaith Gymraeg 1993.

Crëwyd swydd y Comisiynydd gan Fesur y Gymraeg (Cymru) 2011. Caiff y Comisiynydd ymchwilio i fethiant i weithredu cynllun iaith, ymyrraeth â'r rhyddid i ddefnyddio'r Gymraeg yng Nghymru ac, yn y dyfodol, i gwynion ynghylch methiant sefydliadau i gydymffurfio â safonau.

Un o flaenoriaethau'r Comisiynydd yw craffu ar ddatblygiadau polisi o ran y Gymraeg. Felly, prif rôl y Comisiynydd yw darparu sylwadau yn unol â'r cylch gorchwyl hwn gan weithredu fel eiriolwr annibynnol ar ran siaradwyr Cymraeg yng Nghymru y gallai'r

Comisiynydd y Gymraeg  
Siambrau'r Farchnad  
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Croesewir gohebiaeth yn y Gymraeg a'r Saesneg

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Welsh Language Commissioner  
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Comisiynydd y  
Gymraeg  
Welsh Language  
Commissioner

diwygiadau arfaethedig effeithio arnyn nhw. Mae'r ymagwedd hon yn cael ei harddel er mwyn osgoi unrhyw gyfaddawd posibl ar swyddogaethau'r Comisiynydd ym maes rheoleiddio, a phe bai'r Comisiynydd yn dymuno adolygu'n ffurfiol berfformiad y sefydliad yn unol â darpariaethau'r Mesur.

Mae'r ymgynghoriad yn ymwneud â chylchlythyr diwygiedig ar y defnydd o amodau mewn rheolaeth datblygu. Eglurir mai'r prif reswm dros ddiwygio'r cylchlythyr yw fod y gwreiddiol wedi ei gyhoeddi 18 mlynedd yn ôl a bod angen diweddarau'r canllawiau yn unol â deddfwriaeth a Nodiadau Cyngor Technegol newydd.

Mae'n siomedig felly nad oes unrhyw gyfeiriad yn y cylchlythyr drafft at amodau mewn perthynas â'r Gymraeg. Mae atodiad A y cylchlythyr yn cynnwys 133 o amodau enghreifftiol mewn perthynas â nifer o feysydd sydd yn berthnasol i wahanol Nodiadau Cyngor Technegol. Er hynny, mae'n ymddangos na chaiff Nodyn Cyngor Technegol 20 ar y Gymraeg a gafodd ei ddiwygio a'i gyhoeddi gan y Llywodraeth ym mis Hydref 2013 ei ystyried. Mae'r rhestr o fesurau lliniaru a gynigir yn adran 3.8 Nodyn Cyngor Technegol 20 yn cynnig man cychwyn ar gyfer amodau enghreifftiol allasai fod yn addas ar gyfer y Gymraeg.

Gofynnaf i'r Llywodraeth roi sylw i ddatrys y bwlch yma sy'n bodoli yn y cylchlythyr drafft fel mae'n sefyll. Os nad oes bwriad gwneud hynny, yna gofynnaf am eglurhad ynghylch y rhesymau dros beidio.

Yn gywir



**Meri Huws**  
Comisiynydd y Gymraeg

Planning Conditions Consultation  
Development Control Branch  
Planning Division  
Welsh Government  
Cathays Park  
Cardiff, CF10 3NQ

14 April 2014

Dear Sir / Madam

**Planning Conditions Consultation – WG19178**

The Welsh Language Commissioner welcomes the opportunity to comment on the consultation concerned.

The principal aim of the Commissioner is to promote and facilitate the use of the Welsh language. This entails raising awareness of the official status of the Welsh language in Wales and by imposing standards on organisations. This, in turn, will lead to the establishment of rights for Welsh speakers. The Commissioner's work is underpinned by two principles:

- The Welsh language should be treated no less favourably than the English language
- Persons in Wales should be able to live their lives through the medium of the Welsh language if they choose to do so.

Over a period of time new powers to set out and impose standards on organisations will come into force through subordinate legislation. Until then, the Commissioner will continue to monitor statutory language schemes under powers inherited from the Welsh Language Act 1993.

The role of the Welsh Language Commissioner was created by the Welsh Language (Wales) Measure 2011. The Commissioner may investigate the failure to implement a language scheme; interference with the freedom to use Welsh in Wales and, in the future, complaints relating to an organisation's failure to comply with

standards.

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02/02



One of the Commissioner's priorities is to scrutinise policy development affecting the Welsh language. Therefore, the principal role of the Commissioner is to provide comments in accordance with these terms of reference acting as an independent advocate on behalf of Welsh speakers in Wales who may be affected by the proposed reforms. Such an approach is advocated to avoid any potential compromise of the Commissioner's regulatory functions and should the Commissioner wish to conduct a formal review of the organisation's performance in accordance with the provisions of the Measure.

The consultation relates to a revised circular on the use of conditions in planning management. It is clarified that the principal reason for revising the circular is due to the fact that the original was issued 18 years ago and that there is a need to revise the guidance in accordance with legislation and new Technical Advice Notes.

It is disappointing, therefore, that no reference is made in the draft circular to conditions relating to the Welsh language. Annex A of the circular contains 133 model conditions in relation to a number of areas that are relevant to different Technical Advice Notes. Nonetheless, it appears that no consideration is given to Technical Advice Note 20 on the Welsh language that was revised and published by the Welsh Government in October 2013. The list of mitigation measures proposed in section 3.8 of Technical Advice Note 20 offers a starting point for model conditions that may be relevant to the Welsh language.

I ask that the Welsh Government address the matter of remedying this void that exists in the draft circular as it currently stands. If there is no intention of doing so, clarification is sought as to the reasons why not.

Yours faithfully

**Meri Huws**  
Welsh Language Commissioner

The Use of Planning Conditions for Development Management		
Date of consultation period: 29/01/2014 – 25/04/2014		
Name	STEVE BALL	
Organisation	NEATH PORT TALBOT CBC - PLANNING	
Address	THE QUAYS BRUNEL WAY PORT TALBOT S11 2GG	
E-mail address	S.BALL@NPT.GOV.UK	
Type (please select one from the following)	Businesses/Planning Consultants	<input type="checkbox"/>
	Local Planning Authority	<input checked="" type="checkbox"/>
	Government Agency/Other Public Sector	<input type="checkbox"/>
	Professional Bodies/Interest Groups	<input type="checkbox"/>
	Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations)	<input type="checkbox"/>
	Other (other groups not listed above) or individual	<input type="checkbox"/>

Q1	Do you think an updated circular on conditions is required?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: <b>Provided it is accompanied by an acceptance that a regular review of the Circular and /or Model Conditions would be required to ensure that it remains up-to-date and relevant.</b>				

Q2	Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular?	Yes	Yes (subject to further comment)	No
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

<b>Q3</b>	Do you consider:			
	(i) that all six tests are still relevant today and should be retained?	Yes	Yes (subject to further comment)	No
	(ii) that there are additional tests that could be used (demonstrate with case law if possible)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

<b>Q4</b>	Do you consider that any significant pieces of recent case law have been overlooked, which would provide better examples than those used, to support the text?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments:				

<b>Q5</b>	Are there any topic areas in Chapter 5.0 which should be expanded on, or, are there any new topic areas you consider should be included?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p><b>Ecology / Biodiversity - the commentary of nature conservation is very limited, given the significant issues that continue to arise from ecology and biodiversity, and the number of conditions that are often required to mitigate such impacts. It is considered this section needs enhancement, and attention is drawn to the recent British Standard relating to Biodiversity (BS42020) which includes a raft of standard conditions. There is also very little on Protected Species and the relationship with the WG Licensing regime.</b></p> <p><b>Cond 35 (construction method statement) advice is under 'contaminated land' (p.34) - should be separate advice section on why and when required and what should be covered.</b></p> <p><b>No guidance on condition 36 (decentralised energy supply) at all</b></p> <p><b>PARAS 3.28 - 3.31 need to be enhanced to provide more guidance on where conditions go to the 'heart of a permission'. There is also a need for the</b></p>				

Consultation reference: WG19178

**wording of associated conditions to be consistent, with the examples of condition no's being 'pre-commencement' only referring to some which use same wording and not others.**

<b>Q6</b>	Do you agree that decision notices should be structured in the manner proposed? If you do not, please suggest an alternative.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p><b>There seems to be a logic in structuring a decision notice in the manner suggested, provided this is compatible with the 'living' decision notice anticipated by the Planning Bill. There are, however, potential difficulties when dealing with significant/major applications, including minerals, where categorising the 'type' of condition is often incredibly useful. Therefore there should be sufficient flexibility for LPAs to order their decisions in such a manner to reflect the nature of consent, albeit structuring each section as indicated in the revised circular.</b></p>				

<b>Q7</b>	Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p><b>this is an area where the applicant should be expected to issue updated issue sheets alongside amended or additional plans/ documents for major applications to ensure agreement and accuracy.</b></p>				

<b>Q8</b>	Do you agree with the approach taken towards the term 'unless otherwise agreed by the Local Planning Authority' discussed in paragraph 3.36 of the draft circular? If not, please suggest your preferred approach.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Comments:</p> <p><b>The tenet of the paragraph is accepted.</b></p>				

Consultation reference: WG19178

It is noted, however, that paragraphs 1.4 and 4.5 refer to the need for conditions to remain FLEXIBLE (although not to the extent that they become ambiguous and imprecise)

And yet, without conditions allowing some flexibility (for example to allow an applicant to deviate from an approved list of materials should they consider it necessary, and the LPA consider it acceptable) there is a danger that applicants would prefer to see more conditions set which require subsequent approval, thus allowing further submissions of alternative details as opposed to a s73 application. This could also lead to applicants not submitting such details upfront and relying on conditions to give them that flexibility.

An alternative may be to consider advice on such matters, for example the use of wording such as "unless an alternative schedule/scheme etc has been submitted to and approved in writing by the Local Planning Authority" OR given the likelihood of minor and non-material amendments the conditions could include wording "unless the local planning authority has formally approved an alternative as a minor / non-material amendment to the permission .. or words to that effect

<b>Q9</b>	Do you agree that Local Planning Authorities should provide applicants with advance notice of conditions before an application is due to be determined?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Comments:</p> <p>Ongoing dialogue between LPAs is to be encouraged and in practice often works well. Positive pre-application discussions can often involve discussions on such matters also, including the need to avoid conditions wherever possible. It is, however, for the LPA to determine whether a condition meets the relevant tests.</p> <p>Instead I would recommend that advice is given that, in certain circumstances, LPAs may at their discretion choose to share conditions with developers where such discussions could prevent future disagreements, applications or appeals. Introducing this as a mandatory requirement would likely lead to disagreements and delays in determining applications in a climate where staff resources are stretched and performance expectations are increasing.</p>				

<b>Q10</b>	Should guidance be provided in the circular with regards to any other conditions related matter?	Yes		No
			Yes (subject to further	

Consultation reference: WG19178

			comment)	
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments:

**The important role of Consultees in providing technical feedback on applications to approve/ discharge details of conditions that they recommend are imposed should be covered. In addition, the role of applicants / developers in engaging at the earliest stage and ensuring the quality of submissions are acceptable and seek to minimise conditions should be emphasised in greater detail.**

<b>Q11</b>	Does Appendix A of the draft circular contain sufficient examples of model conditions?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Comments:

**greater emphasis and examples of Biodiversity conditions are necessary (see above). Very little on ecological mitigation / habitat plans / biodiversity- and yet there is a new british standard being discussed which includes a raft of such conditions . nothing about 'positive' conditions requiring additions/ enhancements (e.g. bat / bird boxes etc).**

**also consider it would have been entirely appropriate to incorporate Minerals conditions into this updated Circular to ensure they are contained as a single source for such information.**

<b>Q12</b>	Do you consider that any of the conditions used should be reworded? If so, which conditions and why? Please suggest alternatives if you are able.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments:

**It would be useful to have example(s) (such as those adopted in the past by PINS) for retrospective permissions, which effectively state that in the event the applicant fails to submit a scheme within a set period, then it effectively requires the use to cease, for example.**

**26 (boundary treatment)- doesn't really need to be worded as such (unnecessarily restricting ability to start) - could be prior to their erection/ installation on site or similar**

83 (sample materials) - could quite easily use "before their use ..."

There is also inconsistency in conditions, with some using "prior to development commencing" and others "no development shall commence". The latter is a much 'harder' pre-commencement that could be considered to go to the heart of a permission while the former is 'softer' and probably doesn't. yet the conditions don't reflect this.

6. The condition requiring the development to comply with specific plan nos needs a caveat along the lines of "unless otherwise required by conditions below".

condition 20 (affordable housing) - there is a need for greater clarity over the use of s106 versus conditions to control affordable housing and in what circumstances a condition can be used (and how). at present there is a risk that the advice creates further confusion with a (continued) variation in adoption of different methods across LPAs.

35. suggest the inclusion of the hours of working in the items to be submitted and approved PLUS location of portacabins/site offices

36. should define "decentralised", "renewable" and "low carbon"

37 - max density. Why not minimum ?

Fume extraction (43) - no reference to maintained in accordance with manufacturers instructions ALSO no condition relating to when a scheme is required to be submitted by condition.

60. Needs an implementation clause

70. as long as development exists? or other time scale?

78 - what details are the LPA approving? The suitably qualified person or the retention/recording? Recommend amending last part to .. "Works shall be halted in the area/part of the building affected until details of provision for the retention and/or recording of the feature by a suitably qualified person have been submitted to and approved in writing by the local planning authority, and such works have been implemented in accordance with the approved details".

Occupancy - condition 98 and 99 refer to civil partner, 95 doesn't.

105. No standard conditions for removal of other PD rights. Suggest leaving relevant sections blank and adding alternative text in brackets.

113. Wind - There is a need for simplifying this condition given the need for significant expert input into its wording and enforcement.

Very little on ecological mitigation / habitat plans / biodiversity- and yet there is a new british standard being discussed which includes a raft of such conditions . nothing about 'positive' conditions requiring additions/enhancements.

Consultation reference: WG19178

<b>Q13</b>	Do you believe any of the conditions fail any of the six tests identified in the circular?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments:				

<b>Q14</b>	Should any conditions be totally removed from Appendix A of the draft circular?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments:				

## **General**

<b>Q15</b>	We have asked a number of specific questions throughout this consultation. If you have any related queries or comments which we have not specifically addressed, please use this space to report them:
<p><b>para 4.13 refers to minor material amendments and cross-references para 5.21 (which relates to time limits). should be 5.31</b></p>	

I do not want my name/or address published with my response (please tick) <input type="checkbox"/>
--

The Use of Planning Conditions for Development Management		
Date of consultation period: 29/01/2014 – 25/04/2014		
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Type (please select one from the following)	Businesses/Planning Consultants	<input type="checkbox"/>
	Local Planning Authority	<input type="checkbox"/>
	Government Agency/Other Public Sector	<input checked="" type="checkbox"/>
	Professional Bodies/Interest Groups	<input type="checkbox"/>
	Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations)	<input type="checkbox"/>
	Other (other groups not listed above) or individual	<input type="checkbox"/>

Q1	Do you think an updated circular on conditions is required?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: <b>My response to this question is in relation to land contamination matters only. The Group welcomes appropriately worded model conditions to address land contamination issues.</b>				

Q2	Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments: <b>My response to this question is in relation to land contamination matters only. Model conditions 56-59 in Circular 35/95 are brief and do not sufficiently reflect the significant changes in this discipline that have taken place over the last</b>				

Consultation reference: WG19178

<b>decade or so.</b>
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<b>Q3</b>	Do you consider:			
	(i) that all six tests are still relevant today and should be retained?	Yes	Yes (subject to further comment)	No
	(ii) that there are additional tests that could be used (demonstrate with case law if possible)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>No comment</b>				

<b>Q4</b>	Do you consider that any significant pieces of recent case law have been overlooked, which would provide better examples than those used, to support the text?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>No comment</b>				

<b>Q5</b>	Are there any topic areas in Chapter 5.0 which should be expanded on, or, are there any new topic areas you consider should be included?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>No comment</b>				

<b>Q6</b>	Do you agree that decision notices should be structured in the manner proposed? If you do not, please suggest an alternative.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>No comment</b>				

Consultation reference: WG19178

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<b>Q7</b>	Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>No comment</b>				

<b>Q8</b>	Do you agree with the approach taken towards the term 'unless otherwise agreed by the Local Planning Authority' discussed in paragraph 3.36 of the draft circular? If not, please suggest your preferred approach.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: <b>The nature of land contamination assessments are highly variable and to have flexibility in what works are undertaken to ensure that they are specific to the situation at the site in question and the development proposed is an appropriate approach. However, the wording of the conditions themselves require agreement to be obtained so it is possible that this flexibility can be ensured anyway.</b>				

<b>Q9</b>	Do you agree that Local Planning Authorities should provide applicants with advance notice of conditions before an application is due to be determined?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments: <b>Officers dealing with land contamination issues through the planning regime welcome discussion on the issue at an early stage.</b>  <b>Where an officer considers that there is the potential that contamination constraints may be present at a site which may mean it can not be safely developed to the proposed use, or that addressing contamination issues may be such a significant cost which should be considered in terms of the overall economic viability of the scheme, then an officer would recommend a decision is postponed and/or refused until such a time that contamination investigations</b>				

Consultation reference: WG19178

**have been undertaken and submitted to the Council to demonstrate the development is feasible.**

**It is felt that advance notice of the conditions to the applicant (from only a land contamination point of view) is not necessary.**

<b>Q10</b>	Should guidance be provided in the circular with regards to any other conditions related matter?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>No comment</b>				

<b>Q11</b>	Does Appendix A of the draft circular contain sufficient examples of model conditions?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: <b>Mostly yes, however we feel that Condition 28 should be removed and replaced with 3 conditions as prepared by the Welsh Land Contamination Working Group in consultation with Joanne Smith at Welsh Government since these would be more effective in ensuring any remedial measures identified as necessary by Condition 27 can be enforced and any unidentified contamination is addressed. Further details on the 3 conditions that we feel should replace Condition 28 are detailed below.</b>				

<b>Q12</b>	Do you consider that any of the conditions used should be reworded? If so, which conditions and why? Please suggest alternatives if you are able.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: <b>Yes, as referred to in Qu. 11 above, we feel that condition 28 should be re-worded and effectively be split into 3 separate conditions as follows:</b>				

**Condition A:**

No development shall take place until a detailed remediation scheme and verification plan to bring the site to a condition suitable for the intended use by removing any unacceptable risks to human health, controlled waters, buildings, other property and the natural and historical environment has been submitted to and approved in writing by the local planning authority. The scheme shall include all works to be undertaken, proposed remediation objectives and remediation criteria, a timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

All work and submissions carried out for the purposes of this condition must be conducted in accordance with DEFRA and the Environment Agency's 'Model procedures for the Management of Land Contamination, CLR 11' (September 2004) and the WLGA guidance document - 'Development of Land Affected by Contamination: A Guide for Developers' (2012), unless the local planning authority gives written consent to any variation.

**Condition B:**

The remediation scheme approved by Condition A (above) must be fully undertaken in accordance with its terms prior to the commencement of the development hereby approved, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.

Within (x) months (timescale to be specified by the LPA) of the completion of the measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out shall be submitted to and approved in writing by the local planning authority.

**Condition C:**

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing and received by the local planning authority within 1 day, all associated works must stop, and no further development shall take place unless otherwise agreed in writing until a scheme to deal with the contamination found has been approved. An investigation and risk assessment must be undertaken in accordance with the requirements of Condition 27, and where remediation is necessary a remediation scheme and verification plan shall be prepared in accordance with the requirements of Condition A (above) and submitted to and approved in writing by the local planning authority.

Following completion of measures identified in the approved remediation scheme, a verification report shall be submitted to and approved in writing by the local planning authority in accordance with Condition B (above).

All work and submissions carried out for the purposes of this condition must be

Consultation reference: WG19178

conducted in accordance with DEFRA and the Environment Agency's 'Model procedures for the Management of Land Contamination, CLR 11' (September 2004) and the WLGA guidance document 'Development of Land Affected by Contamination: A Guide for Developers' (July 2012), unless the local planning authority gives written consent to any variation.

Other than the comments above, I have noted a few updates to guidance that I feel should be referred to rather than those cited in the conditions.

- 1) BS10175 has been revised since 2001 - the most recent version is 2011 (Condition No. 27 on p52)
- 2) There is an asterisk on Condition No. 27 but no detail of what it means. The liaison with Welsh Government in the past involved a suggestion by them that a description of a suitably qualified person could be as follows:  
\* A 'suitably qualified competent person' would normally be expected to be a chartered member of an appropriate professional body (such as the Institution of Civil Engineers, Geological Society of London, Royal Institution of Chartered Surveyors, Institution of Environmental Management) and also have relevant experience of investigating contaminated sites.
- 3) The WLCWG's Developers Guide is referred to in the last part of Condition No. 27 - but it references the older version - it should be the WLGA & EAW document 'Development of Land Affected by Contamination: A Guide for Developers', 2012.
- 4) The Groups guidance is referred to in Condition No.'s 30 & 31 but the title isn't quite correct - "Requirements for the Chemical Testing of Imported Materials for Various End Uses and Validation of Cover Systems".
- 5) The last section of Condition No. 32 refers to gas guidance and maybe BS8576:2013 'Guidance on investigations for ground gas - permanent gases and VOCs' should also be included now?

<b>Q13</b>	Do you believe any of the conditions fail any of the six tests identified in the circular?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>No comment</b>				

<b>Q14</b>	Should any conditions be totally removed from Appendix A of the draft circular?	Yes	Yes (subject to further comment)	No

Consultation reference: WG19178

			comment)	
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments:</p> <p><b>Yes, Condition 28 - provided it is replaced by the 3 conditions (A-C) detailed in the response to Question 12 above.</b></p>				

## **General**

<b>Q15</b>	<p>We have asked a number of specific questions throughout this consultation. If you have any related queries or comments which we have not specifically addressed, please use this space to report them:</p>
<p><b>Where we have provided comments they are only in relation to land contamination issues i.e. other parts of the Circular haven't been reviewed and commented on since they do not relate to land contamination issues. This is why No Comment has been provided in relation to Questions 3-7, 10 &amp; 13.</b></p>	

<p>I do not want my name/or address published with my response (please tick) <input type="checkbox"/></p>
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The Use of Planning Conditions for Development Management		
Date of consultation period: 29/01/2014 – 25/04/2014		
<b>Name</b>	Helen Bradshawe	
<b>Organisation</b>	Wrexham County Borough Council	
<b>Address</b>	Housing, Public Protection & Environment Department, Wrexham County Borough Council, Ruthin Rd, Wrexham, LL13 7TU	
<b>E-mail address</b>	helen.bradshawe@wrexham.gov.uk	
<b>Type</b> (please select one from the following)	Businesses/Planning Consultants	<input type="checkbox"/>
	Local Planning Authority	<input type="checkbox"/>
	Government Agency/Other Public Sector	<input checked="" type="checkbox"/>
	Professional Bodies/Interest Groups	<input type="checkbox"/>
	Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations)	<input type="checkbox"/>
	Other (other groups not listed above) or individual	<input type="checkbox"/>

Q1	Do you think an updated circular on conditions is required?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Comments:</b> <b>My response to this question is in relation to land contamination matters only. Wrexham welcomes appropriately worded model conditions to address land contamination issues.</b>				

Q2	Do you agree that the information retained from Circular 35/95 should be carried forward into the new circular?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Comments:</b> <b>My response to this question is in relation to land contamination matters only. Model conditions 56-59 in Circular 35/95 are brief and do not sufficiently reflect the significant changes in this discipline that have taken place over the last</b>				

Consultation reference: WG19178

<b>decade or so.</b>
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<b>Q3</b>	Do you consider:			
	(i) that all six tests are still relevant today and should be retained?	Yes	Yes (subject to further comment)	No
	(ii) that there are additional tests that could be used (demonstrate with case law if possible)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>No comment</b>				

<b>Q4</b>	Do you consider that any significant pieces of recent case law have been overlooked, which would provide better examples than those used, to support the text?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>No comment</b>				

<b>Q5</b>	Are there any topic areas in Chapter 5.0 which should be expanded on, or, are there any new topic areas you consider should be included?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>No comment</b>				

<b>Q6</b>	Do you agree that decision notices should be structured in the manner proposed? If you do not, please suggest an alternative.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>No comment</b>				

Consultation reference: WG19178

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<b>Q7</b>	Do you agree that the approved plans and drawings relevant to a decision should be identified in a condition?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>No comment</b>				

<b>Q8</b>	Do you agree with the approach taken towards the term 'unless otherwise agreed by the Local Planning Authority' discussed in paragraph 3.36 of the draft circular? If not, please suggest your preferred approach.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: <b>The nature of land contamination assessments are highly variable and to have flexibility in what works are undertaken to ensure that they are specific to the situation at the site in question and the development proposed is an appropriate approach. However, the wording of the conditions themselves require agreement to be obtained so it is possible that this flexibility can be ensured anyway.</b>				

<b>Q9</b>	Do you agree that Local Planning Authorities should provide applicants with advance notice of conditions before an application is due to be determined?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments: <b>Officers dealing with land contamination issues through the planning regime welcome discussion on the issue at an early stage.</b>  <b>Where an officer considers that there is the potential that contamination constraints may be present at a site which may mean it can not be safely developed to the proposed use, or that addressing contamination issues may be such a significant cost which should be considered in terms of the overall economic viability of the scheme, then an officer would recommend a decision is postponed and/or refused until such a time that contamination investigations</b>				

Consultation reference: WG19178

**have been undertaken and submitted to the Council to demonstrate the development is feasible.**

**It is felt that advance notice of the conditions to the applicant (from only a land contamination point of view) is not necessary.**

<b>Q10</b>	Should guidance be provided in the circular with regards to any other conditions related matter?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>No comment</b>				

<b>Q11</b>	Does Appendix A of the draft circular contain sufficient examples of model conditions?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: <b>Mostly yes, however we feel that Condition 28 should be removed and replaced with 3 conditions as prepared by the Welsh Land Contamination Working Group since these would be more effective in ensuring any remedial measures identified as necessary by Condition 27 can be enforced and any unidentified contamination is addressed. Further details on the 3 conditions that we feel should replace Condition 28 are detailed below.</b>				

<b>Q12</b>	Do you consider that any of the conditions used should be reworded? If so, which conditions and why? Please suggest alternatives if you are able.	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: <b>Yes, as referred to in Qu. 11 above, we feel that condition 28 should be re-worded and effectively be split into 3 separate conditions as follows:</b>				

**Condition A:**

No development shall take place until a detailed remediation scheme and verification plan to bring the site to a condition suitable for the intended use by removing any unacceptable risks to human health, controlled waters, buildings, other property and the natural and historical environment has been submitted to and approved in writing by the local planning authority. The scheme shall include all works to be undertaken, proposed remediation objectives and remediation criteria, a timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

All work and submissions carried out for the purposes of this condition must be conducted in accordance with DEFRA and the Environment Agency's 'Model procedures for the Management of Land Contamination, CLR 11' (September 2004) and the WLGA guidance document - 'Development of Land Affected by Contamination: A Guide for Developers' (2012), unless the local planning authority gives written consent to any variation.

**Condition B:**

The remediation scheme approved by Condition A (above) must be fully undertaken in accordance with its terms prior to the commencement of the development hereby approved, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.

Within (x) months (timescale to be specified by the LPA) of the completion of the measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out shall be submitted to and approved in writing by the local planning authority.

**Condition C:**

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing and received by the local planning authority within 1 day, all associated works must stop, and no further development shall take place unless otherwise agreed in writing until a scheme to deal with the contamination found has been approved. An investigation and risk assessment must be undertaken in accordance with the requirements of Condition 27, and where remediation is necessary a remediation scheme and verification plan shall be prepared in accordance with the requirements of Condition A (above) and submitted to and approved in writing by the local planning authority.

Following completion of measures identified in the approved remediation scheme, a verification report shall be submitted to and approved in writing by the local planning authority in accordance with Condition B (above).

All work and submissions carried out for the purposes of this condition must be conducted in accordance with DEFRA and the Environment Agency's 'Model

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procedures for the Management of Land Contamination, CLR 11' (September 2004) and the WLGA guidance document 'Development of Land Affected by Contamination: A Guide for Developers' (July 2012), unless the local planning authority gives written consent to any variation.

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2) There is an asterisk on Condition No. 27 but no detail of what it means. The liaison with Welsh Government in the past involved a suggestion by them that a description of a suitably qualified person could be as follows:

\* A 'suitably qualified competent person' would normally be expected to be a chartered member of an appropriate professional body (such as the Institution of Civil Engineers, Geological Society of London, Royal Institution of Chartered Surveyors, Institution of Environmental Management) and also have relevant experience of investigating contaminated sites.

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4) The Groups guidance is referred to in Condition No.'s 30 & 31 but the title isn't quite correct - "Requirements for the Chemical Testing of Imported Materials for Various End Uses and Validation of Cover Systems".

5) The last section of Condition No. 32 refers to gas guidance and maybe BS8576:2013 'Guidance on investigations for ground gas - permanent gases and VOCs' should also be included now?

<b>Q13</b>	Do you believe any of the conditions fail any of the six tests identified in the circular?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments: <b>No comment</b>				

<b>Q14</b>	Should any conditions be totally removed from Appendix A of the draft circular?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Consultation reference: WG19178

		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments: <b>Yes, Condition 28 - provided it is replaced by the 3 conditions (A-C) detailed in the response to Question 12 above.</b></p>				

## **General**

<b>Q15</b>	We have asked a number of specific questions throughout this consultation. If you have any related queries or comments which we have not specifically addressed, please use this space to report them:
<p><b>Where I have provided comments they are only in relation to land contamination issues i.e. other parts of the Circular haven't been reviewed and commented on since they do not relate to land contamination issues. This is why No Comment has been provided in relation to Questions 3-7, 10 &amp; 13.</b></p>	

I do not want my name/or address published with my response (please tick) <input type="checkbox"/>
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