



Llywodraeth Cymru
Welsh Government

CYHOEDDIAD

Cyfarfod y Pwyllgor Llifogydd ac Erydu Arfordirol: 27 Ionawr 2022: nodiadau

Nodiadau o gyfarfod y Pwyllgor Llifogydd ac Erydu Arfordirol ar 27 Ionawr 2022. (Saesneg yn unig)

Cyhoeddwyd gyntaf: 9 Mawrth 2022

Diweddarwyd ddiwethaf: 9 Mawrth 2022

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Cynnwys

Meeting no 8: minutes and action points

Present

Apologies

Declaration of interests

Minutes of the meeting held on 23 September 2021, and matters arising

Chair's announcements

Items from the regional groups

Presentations from North Wales

National asset database – Wyn Davies and Ben Hext, Natural Resources Wales

Welsh Government Update, including Technical Advice Note (TAN) 15 & the Labour / Plaid Cymru co-operation agreement – James Morris, Head of Flood and Coastal Erosion Risk Management

Reports

Law Commission of England and Wales – 14th programme consultation

Any other business previously notified to the Chair.

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Meeting no 8: minutes and action points

Microsoft Teams
27.01.22 at 10am

Present

Present

Martin Buckle (MB), Chair
Darren Thomas (DT), Pembrokeshire County Council
Geraint Edwards (GE), Conwy County Borough Council
Jean-Francois Dulong (JFD), Welsh Local Government Association (WLGA)
Karen Potter (KP), Open University
Paul Blackman (PB), Wallingford Hydro Solutions
David Harris (DH), Independent Consultant
Anne-Marie Moon (AM), JBA Consulting
Jeremy Parr (JP), Natural Resources Wales (NRW)
Mike Wellington (MW), WaterCo.
Natalie Haines (NH), Mott MacDonald
Catherine Wilson (CW), Cardiff University
Lorna Davis (LD), National Farming Union Cymru
Adrian Philpott (AP), Dwr Cymru – Welsh Water
Andrew Stone (AS), Rhondda Cynon Taff County Borough Council

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In Attendance

Rowland Thomas (RT), Anglesey Council
Richard Weston (RW), Natural Resources Wales
Gareth Davies-Jones (GDJ), Gwynedd Council
Wyn Davies (WD), Natural Resources Wales
Ben Hext (BH), Natural Resources Wales
Ruairí Barry (RB), Natural Resources Wales
Nicholas Paines QC (NP), Law Commission
Professor Nicholas Hopkins (NH), Law Commission
Lisa Smith (LS), Law Commission
Poppy Jones (PJ), Law Commission
Daniel Campbell, (DC), Law Commission
Elizabeth Welch (EW), Law Commission
Charlotte Ames, Natural Resources Wales
James Morris, Welsh Government
Erin Walker, Welsh Government
Lowri Norrington- Davies, Welsh Government

Apologies

None.

Declaration of interests

None noted.

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Minutes of the meeting held on 23 September 2021, and matters arising

The minutes of the meeting were agreed as an accurate record.

Chair's announcements

Firstly, I would like to update the Committee on the meetings that I have attended since our last meeting of the Committee. Following the presentation to that meeting by Nicholas Paines QC of the Law Commission for England and Wales, I have had two meetings with Commission colleagues in preparation for the further presentation today. On the subject of the Commission's 14th Programme of Law Reform, I have also met with Welsh Government (WG) colleagues including a representative of the Office of the Legislative Counsel.

In September and December, I attended the quarterly meetings with the Chairs of the English Regional Flood & Coastal Committees. Of particular interest at the first meeting was a discussion about the Shoreline Management Plan refresh programme. At the following meeting, there was a focus on the Flood and Coastal Erosion Risk Management (FCERM) Strategy for England and progress towards its implementation, and an update from the Association of Drainage Authorities. The next quarterly meeting takes place in March.

In November, I met with Julia Cherrett, the new Chair of the Natural Resources Wales Flood Risk Management Committee. We agreed that we would meet periodically to update each other on the work of our respective committees.

Also, in November I attended a meeting of the Flood and Coastal Risk Programme Board. The focus was on the proposals coming forward from our Resources Sub-Committee, but there were also updates on progress with the current year's programme of schemes, and on budgetary expectations for 2021-22. The next meeting takes place in February.

In December, I met with the Minister for Climate Change. I provided an overview

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of our work programme, with a particular focus on the work of our two sub-committees. We also discussed the situation with the Planning Technical Advice Note TAN15, and the Welsh Government / Plaid Cymru Co-operation Agreement, along with its potential implications for the workload of the Committee.

Also in December, I met with David Clubb, the incoming chair of the National Infrastructure Commission for Wales, to discuss the potential for collaboration between our Committee and the Commission.

Finally, I must also take this opportunity to put on the public record my thanks to Adrian Philpott. This will be his last meeting of the Committee, having opted not to extend his term beyond March. Adrian has made a substantial contribution to our work, including chairing the Policy and Legislation Sub-Committee. Steps are being taken to fill the resulting vacancy. The remaining members of the Committee have all agreed to extend their terms by a further year, to March 2023.

Items from the regional groups

GE provided an update from the North Wales Regional Group. At the last meeting, the group discussed the improvements to data and maps and appreciated this resource in informing decision making. They queried the possibility of further mapping to include area investment and consequential reduction in risk to aid in communication with the public and raise understanding of conditions within each area. Skills and capacity were also discussed with significant concerns raised over capacity to deliver.

DT updated the group on behalf of the South West Regional Group who met in October 2021. The meeting covered SuDS Advisory Body (SAB) inconsistencies, funding and resource, capacity, and local strategies.

DT also provided an update from the Swansea Bay Coastal Group who met on the 19th of October and will meet again on the 8th of February. The group discussed the Shoreline Management Plans. DT also updated the group on the

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Pembrokeshire Coastal Forum, who have set up a group 'Pembrokeshire Climate Adaptation Strategy' with community renewal funding. This work is being taken forward by Dr Alan Netherwood. AS provided an update from the South East Regional Group. The group has reported concerns on resources, recruitment and delivery of ad hoc work and events. The new online portal has been met with mixed reviews from local authorities, with authorities who inputted a small number of applications reporting that it worked well, and authorities inputting substantial amounts reporting that it was difficult to use and restrictive.

Newport City Council are leading at a regional level on strategic flood consequence assessments.

There is a concern that there will be gaps in project delivery, so local authorities will need to involve consultants early on in project timelines. From a Rhondda Cynon Taff perspective, the authority is only receiving 60% return on tenders, with 40% having nil returns.

JFD reported from a WLGA perspective that local authorities had identified some inconsistencies between WG policies and priorities and TAN 15, especially around renewables and infrastructure. Work is needed to ensure that these policies and priorities can be delivered through TAN15. This has been a particular hurdle in the South East with Network Rail projects and major renewable energy projects.

Local authorities need to update their local strategies by October 2023. WLGA is developing a consistent and pragmatic approach, with a steering group being set up to develop a national template for local authorities tackling their local strategies. WLGA are also merging the Flood Risk Management Plan with local strategies to reduce workload on officers. A training course has been commissioned to aid local authorities in approaching their local strategy.

Presentations from North Wales

North Wales SuDS Approval Body Guidance - Gareth Davies Jones, Gwynedd Council, and Ruairi Barry, Natural

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Resources Wales

GDJ and RB gave a presentation on the North Wales SuDS Guide, developed by the North Wales Flood Risk Management Group.

Action 01/22: AM to share draft North Wales SuDs Guide with Committee members.

A discussion followed around SuDS and SAB requirements. This covered small/rural developments, SAB applications for Agricultural Buildings, the Welsh Government review of SuDS, retrofitting, and the need for collaboration. Ongoing issues with capacity and staff resources were noted.

Mill Lane Beaumaris Automated Trash Screen - Rowland Thomas, Anglesey Council

RT provided an overview of the Mill Lane Automated Grillage, the installation of which was instigated by the Community Flood Partnership and Flood Incident Warden, and initially funded under a small scheme application. A further application was submitted for the mechanical elements as well as further Natural Flood Management higher up in the catchment.

A discussion followed on the detail of the development with JM noting that WG and Ministers are very keen to see this type of scheme taking a progressive and innovative approach. Feedback on this scheme has been passed to the Minister and has been positively received.

National asset database – Wyn Davies and Ben Hext, Natural Resources Wales

WD and BH provided an update on the National Asset Database (NAD), which has its roots in historic flooding events and originates from the Coastal Flooding Review 2014-17. Following the publication of the National Strategy, there is a

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requirement for all FCERM assets to be identified on a Local Authority (LA) asset register and for these assets to be reflected in the NAD and accessible to the public.

Existing data is from 2017 and requires updating. NRW are currently working with AMX Solutions to develop a less onerous process that will help to understand interoperability between asset systems. The data is being sought by April 2022, with a view to commencing a rolling programme of updates and improvements over time.

A discussion followed around the level of data included. The NAD currently includes NRW and LA data, with third party data only captured if it is included as part of a LA's register. Not every single asset is currently visible, with priority given to those with significance. JM noted that Natural Flood Management (NFM) schemes would be included in the future, to feed into reflecting lower risk both on the Flood Risk Assessment Wales and on the Flood Map for Planning.

It was noted that several Risk Management Authorities are currently not included, such as WG Highway assets with a flood risk function, Welsh Water and Network Rail. Lessons will need to be learnt first from working with LAs before starting to include this additional asset information.

Action 02/22 – BH and WD to be invited back to a future meeting to provide an update on the National Asset Database.

Welsh Government Update, including Technical Advice Note (TAN) 15 & the Labour / Plaid Cymru co-operation agreement – James Morris, Head of Flood and Coastal Erosion Risk Management

With this being JM's last meeting of the Committee, MB thanked JM for his work to support both himself and the wider committee.

JM started by providing an overview of the (flood related) Programme for

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Government Commitments, including ‘funding additional flood protection for at least 45,000 homes’ and ‘delivering nature-based flood management in all major catchments to expand wetland and woodland habitats’. JM noted that these are well established and form the basis of future work, for example the NFM programme.

JM explained that there are also items in the WG/Plaid Cymru co-operative agreement on flooding: 1) Flood Review; and 2) Flood Capital Investment, increasing flood investment and a national resilience picture. The Flood Review is being taken forward independently. This is a large task, considering and incorporating technical information into a public facing summary report. The National Infrastructure Commission for Wales (NICW) has been asked to carry out an assessment on national resilience, looking at future risks. WG would like the NICW to work alongside, and take advice from, the Flood and Coastal Erosion Committee, NRW, the WG flood team, local authorities, and water companies. JM noted that there is plenty that the Committee have been working on that will feed into an assessment of nationwide risk. This work will also borrow heavily from lessons and aspirations on TAN15.

JM provided an update on TAN15. The Minister for Climate Change announced in November a delay of 18 months to TAN15 and the new flood maps for planning becoming operational. There is now an expectation on LAs to undertake strategic flood consequence assessments which will then help to inform any changes that are required, and highlight any inaccuracies.

TAN15 has been well received and critiqued in equal measure. Climate change needs to be a strong consideration in development and should be informed by the best available data. TAN15 makes it clear that assessments need to include information on all sources of flooding. There has been a focus so far on main river and coastal flooding. TAN15 is stronger on surface water, ground water and ordinary water courses in particular. The changes that many LAs may want to see made may put extra requirements or burdens on main river defences and coastal defences or have knock-on effects. Conversations will need to be had over the next 18 months over what is realistic and the prioritisation of flood schemes. There are no plans to change the National Strategy. The focus remains on protecting existing homes and businesses. The unlocking of

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development areas which are currently at substantial risk falls outside of flood programme funding and there are fundamental questions over how these are funded and whether they should proceed. Overall, the appropriateness of locations for development should be carefully considered, along with future maintenance costs, especially with the prevention message which has been embedded into the National Strategy in not making things worse for future generations.

Reports

Resources Sub-Committee – To receive the Draft Final Report and the minutes of its meetings held on 5th October, 9th December 2021, and 6th January 2022.

MB provided an overview of the recent work of the Resources Sub-Committee, which has met three times since October 2021 and has produced its draft final report “Resources for Flood & Coastal Erosion Risk Management in Wales” for consideration by Committee members. The proposals have been divided into 6 sections; Capital Funding and the Schemes Pipeline; Partnerships; Revenue Funding; Skills and Capacity; Governance and Collaboration; and Community Engagement.

MB highlighted that the report recognises the significant commitment of resources which may be required by the various agencies in the implementation of each of the proposals, and that these will need to be phased over several years. In recognition of this, the report contains a proposal to create the capacity to lead a programme of resource improvement across Wales. The section on skills and capacity within the proposals is therefore seen as meriting particular urgency.

MB noted that a number of proposals from the Sub-Committee have already been taken on board. Most notably amendments to the grant memorandum that sets out how WG grant aid is made available to RMAs, recommendations around TAN15 and the increase in resources budgets.

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A focused consultation on the proposals will now be undertaken with those organisations who responded to the initial call for input, along with a selected number of additional organisations who may have a role in the implementation of the proposals. The outcomes of the consultation will be reported back to the next meeting of the Committee in May.

A discussion followed around the report, with PB noting the number of proposals and actions and suggesting there would be merit in prioritising actions. MB noted that the Sub-Committee intend to look at the phasing of proposals, recognising that not all will be able to be taken forward at the same time, with the skills and capacity issues particularly urgent. NH noted that the issue of skills and capacity is relevant to both the private and public sectors.

MB noted that the Sub-Committee are now proposing to take the report out to consultation, and this includes with members of the committee itself. JFD noted that there will be a consultation with the WLGA Environment Directors on the 16th of February, which would provide an opportunity to seek their views on prioritisation.

The minutes of the Resources Sub-Committee meetings on 5th October and 9th December 2021, and on 6th January 2022 were noted.

Action 03/22 – The Sub-Committee to progress consultation on its Draft Final Report as proposed.

Policy and Legislation Sub-Committee - To receive an update and the minutes of its meetings held on 14th October 2021 and 11th January 2022.

MB informed the group that AS will be taking over as chair of the Policy and Legislation Sub-Committee, with AP completing his term with us at the end of March 2022. He congratulated AS on his appointment.

AS provided an update on behalf of the Sub-Committee, which has continued to work on three work streams: control of flood risk management assets; roles and responsibilities; and adaptation and resilience. AS reiterated how the work of the

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Law Commission and that of the Sub-Committee are closely aligned. The Sub-Committee is also engaged with an ongoing Construction Industry Research and Information Association (CIRIA) project on the integration of non-flood defence structures into the flood defence system.

At the January meeting the Sub-Committee began to discuss potential recommendations and this will be the continued focus in the coming months, to prepare a draft for the next full committee meeting in May, with a final report provided in September.

A discussion followed on the detail of the CIRIA work. AS confirmed that this project does not currently cover orphaned assets and the issue is not currently part of the workstreams for the Sub-Committee.

The minutes of the Policy and Legislation Sub-Committee meetings on 14th October 2021, and on 11th January 2022 were noted.

Action 05/22 – AS to agenda the issue of orphaned assets at the next Sub-Committee meeting.

Permitted Development - Amendments to the Town and Country Planning (General Permitted Development) Order 1995 – Welsh Government Consultation – to agree a consultation response

MB introduced the Welsh Government consultation on permitted development rights and their proposals for amendments to the Town and Country Planning General Permitted Development Order 1995, a draft response to which has been circulated with the Committee papers.

The main purpose of the consultation is around extending some temporary relaxations of permitted development rights. However, it has become evident that a number of them do raise flood risk management issues. MB provided an overview of the questions most relevant to the Committee.

Action 06/22 – The consultation response to be forwarded to the Welsh

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Government as proposed.

Committee Work Programme - To receive the report of the Chair, and to consider the recommendation that the updated Work Programme be approved.

The quarterly update to the Committee's work programme was circulated with the meeting papers. Regarding the work of the two Sub-Committees, this has been done to reflect their updated work programmes.

The rephrasing of the work of the Sub-Committees will have knock on implications for other themes in the work programme. MB noted there will be a need to review the work programme again as the implications of the programme for Welsh Government / Plaid Cymru Co-operation Agreement becomes clearer.

JM noted that the intention is for the Measures in the National Strategy not to have any change in their timeline. These are seen as complementary to the Cooperation Agreement and the Programme for Government. MB confirmed that the proposed adjustments to the work programme would not prejudice target dates in the National Strategy.

The updated Work Programme was approved.

Law Commission of England and Wales – 14th programme consultation

MB welcomed Law Commission colleagues to the meeting to update on the formation of their 14th Programme of work. NP and NH informed the Committee that since the last meeting the Commissioners have finalised a list of proposed projects to be taken through, with a view to proposing them to the Lord Chancellor, and projects on flooding and coastal erosion law (both the public law and the private law) are among the ones proposed to be taken forward. NP noted that any work the Law Commission proposes to undertake on an England

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and Wales basis requires the consent of both the UK and the Welsh Governments, whilst work undertaken in Wales alone requires the consent of the Welsh ministers. The Law Commission will therefore continue to liaise with both governments with a view to taking this project forward.

Several distinct sources of proposals for work in this area were received as part of the consultation, with the work suggested much the same across all the stakeholders, with most responses raising a combination of public and private law issues. Public law issues identified included the issues identified in the Jenkins Report on surface water flooding. Uncertainties as to the responsibilities of asset owners in the public law side of the regime and the lack of a duty to maintain assets that are in private ownership were highlighted.

The public law aspects would examine the role of public bodies in managing risks posed by flooding and coastal erosion and considering questions such as whether the legal duties and obligations owed to and by public authorities are sufficiently coherent and comprehensive. From a private law perspective this work would focus on the legal relationships between private individuals, and on the legal duties and obligations owed by one landowner or occupier to their neighbours to manage hazards such as flooding and coastal erosion, which emanate from their land and endanger neighbouring land.

Improving private law will be an important part of meeting the challenges raised by flooding and coastal erosion. A significant amount of infrastructure which is critical to protecting the country from the dangers of flooding and coastal erosion is in private ownership, and those assets range from small culverts, drains and ditches to whole stretches of cliff and coastal land. Therefore whatever improvements are made to public law, the role of private landowners is likely to remain important, and stakeholders have emphasised that private law in this area is unclear and outdated. Work conducted so far suggests there seemed to be at least three different strands of private law that govern the responsibilities of landowners to mitigate the risks of flooding and coastal erosion, and how these different strands of law would interrelate does not seem entirely clear.

From the private or property law context, a Law Commission project could consider whether the legal duties owed between private landowners and occupiers could be clarified, rationalized or codified. The current law also fails to

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facilitate Natural Flood Management (NFM) because there is no easy legal mechanism by which multiple landowners across catchment areas can coordinate their actions. A project may also consider whether new legal tools could be created that would better facilitate NFM, potentially through conservation covenants, which could provide a starting point to devise a new legal tool that would enable such agreements to be legally binding. Stakeholders have also raised concerns over the increasing burden on landowners to maintain sea defences considering the impact of climate change, with coastal land inevitably lost. It has been suggested that the law may need to be reformed to allow modification of this type of historic arrangement without imposing disproportionate penalties to landowners.

Finally, NH noted that the Law Commission are also considering another project for the 14th programme, on agricultural tenancies and how these can facilitate environmental progress, and invited comments from the Committee on the role that agricultural land can play in flood prevention.

MB requested clarity over the formal adoption of the 14th programme and related timescales. NP confirmed that neither the Welsh nor the UK Government will consent to a project unless the department within it that has responsibility for that area of law and policy agrees that the project is worthwhile. Working with current timescales, the plan is to approach Governments after Easter with a view to having the programme signed off before the summer.

A discussion followed around the proposed programme of work, with the Committee offering its support and assistance as the project moves forward. NP noted that the Law Commission would be very keen for further engagement with the Committee on these issues. JP noted the synergies between the issues being raised and the what the Committee's Policy and Legislation Sub-Committee are taking forward, and highlighted the need to pave the way for what needs to happen in the future regarding adaptation. The legal team within NRW may also be able to feed into any review of legislation. LD highlighted the work undertaken with CW at Cardiff University on an enabling change project that explores some of the barriers that farmers feel with regards to farming going forward. This work also explores issues around policy and changing farming practices and NFM, and LD noted that farming unions would be keen for further discussion on these topics. CW noted some techniques used in NFM are also

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used in river restoration or water quality improvement projects. The lack of legal clarity has hindered the roll out of NFM projects, and CW offered to share her experience of this work if helpful.

Action 04/22 - MB confirmed that discussions with Law Commission and Welsh Government colleagues to move this programme forward would continue.

Any other business previously notified to the Chair.

MB reminded members that we are now coming up to the period of the year where individual committee members' annual reviews will take place, and these will need to be completed by the end of April.

Date and venue of next meeting

26.05.2022, Welsh Government Buildings, Picton Terrace, Carmarthen, Carmarthenshire, SA31 3BT

Actions

Action no.	Description	Progress
01/22	AM to share draft North Wales SuDs Guide with Committee members.	
02/22	BH and WD to be invited back to a future meeting to provide an update on the National Asset Database.	
03/22	The Sub-Committee to progress consultation on its Draft Final Report as proposed.	

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Action no.	Description	Progress
04/22	MB confirmed that discussions with Law Commission and Welsh Government colleagues to move this programme forward would continue.	
05/22	AS to agenda the issue of orphaned assets at the next Sub-Committee meeting.	
06/22	The consultation response to be forwarded to the Welsh Government as proposed.	

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Ynghylch y ddogfen hon

Mae'r ddogfen hon yn gopi o'r dudalen we [Cyfarfod y Pwyllgor Llifogydd ac Erydu Arfordirol: 27 Ionawr 2022: nodiadau](#) a lawrlwythwyd.

Ewch i <https://llyw.cymru/cyfarfod-y-pwyllgor-llifogydd-ac-erydu-arfordirol-27-ionawr-2022-nodiadau-html> i weld y fersiwn ddiweddaraf.

Efallai na fydd y ddogfen hon yn hollol hygyrch; darllenwch ein [datganiad hygyrchedd](#) i gael rhagor o wybodaeth.

Gwybdaeth am [hawlfraint](#).

Cafodd y ddogfen hon ei lawrlwytho o LLYW.CYMRU, efallai nad dyma'r fersiwn mwyaf diweddar.

Ewch i <https://llyw.cymru/cyfarfod-y-pwyllgor-llifogydd-ac-erydu-arfordirol-27-ionawr-2022-nodiadau-html> i weld y fersiwn ddiweddaraf.

Gwybdaeth am [hawlfraint](#).