



## **Briefing for the Environment and Sustainability Committee meeting on 6 May 2015. Natural Resources Wales' second year in operation.**

### **1. Introduction**

The purpose of Natural Resources Wales (NRW) is to ensure that the natural resources of Wales are sustainably maintained, enhanced and used, now and in the future. We welcome the opportunity to present to the Committee during its second annual scrutiny of NRW.

### **2. Voluntary Exit Scheme**

- An update on the voluntary severance scheme including numbers of staff that have taken up the scheme and the total cost to date.

We've had a Voluntary Exit Scheme policy that has been in place since July 2013 which specifically deals with organisational wide restructuring and change programmes when there has been a requirement to make efficiency savings through staff reductions.

We have run two schemes following successful applications made through Welsh Government's 'Invest to Save' Fund.

The recent scheme, which has now closed, approved the exit of 58 members of staff at a cost of £3.05m, with an average payback period of 14 months. As part of its design the scheme considered all applications against organisational priorities and business objectives, and change programme objectives. Applications were reviewed against the impact of losing the role and the skills, knowledge and experience of the individual from the organisation.

In the first scheme, run in 2013-14, we approved the exit of 126 members of staff at a cost of £5.1m with an average payback period of 13 months.

We are not planning for any further organisational wide open exit schemes. However, we are currently considering the development of a policy and process to allow for individual elective voluntary exits.

### 3. Business Plan

- A summary of the body's performance against the 2014-15 Business Plan including the latest corporate dashboard performance report;
- A copy of the 2015-16 Business Plan, if available.

#### Performance

At present, we've reported two of the three periods to the NRW Board i.e. up 30 November 2014.

The paper on the Performance Dashboard presented to the NRW Board meeting on 10 February 2015 is available [here](#).

We will be reporting for the full 2014/15 year at the Board on 7 May 2015, and the papers will be available on our website prior to this.

#### Business Plan 2015/16

Our Business Plan for 2015/16 can be found on our website [here](#).

### 4. Permits and Self-policing

- An update on the number of permits the body has issued to itself over the last 12 months.
- A summary of any enforcement or self-policing action the body has taken against itself in the last 12 months.

#### Self-Policing

'Self-policing' refers to our role as regulator of our own activities and sits within the context of a wider set of roles that NRW is responsible for. The management of our multiple roles is set out in internal procedures and brought together in an overarching summary in 'Delivering our Multiple Roles'. We have recently finalised Version 2 of this summary which has been updated to include how decisions regarding enforcement action against NRW are taken (see Annex 1).

'Self-policing' covers 3 broad areas:

1. The issuing of permits, licences and consents for our own work.
2. The investigation of compliance against these permits, licences or consents, as well as compliance against some of our wider responsibilities for environmental protection.
3. Enforcement action in respect of our own activities.

#### Self-permitting, licensing and consenting

We publish a record of all our self-permitting decisions on the website each month [here](#).

In terms of self-permitting decisions, there have been 23 for EPR Water Quality since 1 April 2013. Additionally there have been four marine licences issued and three water abstraction licences. There have also been a number of protected species licences issued.

Water Abstraction licences are issued by the Water Resource Permitting Team and their permitting process and legislation requires the submission of our decision documents to Welsh Government for scrutiny and the option to 'call it in'. Welsh Government officials have been consistently satisfied with our determination of the applications and once we receive their response they are sent to the Executive Director for National Services for approval i.e. the Team Leader does not sign them off which is the process and level of delegation for non-NRW applications.

### Investigation of compliance

- As part of our ISO14001 certified Environmental Management System (EMS) we have a procedure relating to the reporting and review of environmental incidents that NRW (or its contractors) are responsible for (see Annex 2).
- Over the last 12 months (April 14 – March 15) thirty-eight environmental incidents relating to NRW (or our contractors) have been reported and eleven near misses
- Of the thirty-eight environmental incidents, thirty-one were related to forestry operations.
- Of the thirty-eight incident reports one incident was found to be serious according to the incident classification scheme that NRW uses for environmental incidents. The investigation of this incident was undertaken by a separate team (see section below).
- Our EMS incident procedure focuses on review and learning from environmental incidents (i.e. we review the root cause of these and take action to prevent similar incidents in future).

### Enforcement

One incident (pollution of a watercourse) led to the issuing of an enforcement warning letter from the Director of Governance to the accountable Executive Director. This is in line with the action that would have been taken with regard to a third party incident of similar severity. The procedures were overseen by the Chair of NRW's Audit and Risk Assurance Committee, and reported to the NRW Board. Although not yet invoked, NRW has agreed with the Crown Prosecution Service (CPS) that if an incident was so serious that had it been caused by a third party and NRW would have prosecuted, then in these instances the file will be handed over by NRW and the CPS will decide whether to prosecute or not.

## **5. Grants/Funding Programmes**

- An update on grants and partnership funding programmes and the changes made to this since the body became operational.

### Background

We value partnership working in delivering joint environmental outcomes. In cases where there is also a funding relationship, we use the term 'Partnership Funding' to capture this important dimension. For NRW, Partnership Funding is any funding paid to a third party organisation where they are also bringing match funding alongside this to support or enable delivery of outputs, or realisation of outcomes, that relate directly to our corporate objectives as set out in our Corporate and Business Plan. Because Partnership Funding involves other parties making their financial contribution to the work, it is different from a market relationship initiated by procurement.

### Development and Principles of Partnership Funding in NRW

At its meeting in April 2014, the NRW Board approved a strategic approach to Partnership Funding that comprised the following main principles:

- NRW will be a funding organisation with a dedicated budget for Partnership Funding for the next three years.
- NRW will distribute this budget in two ways – via joint working approaches and via targeted competitive rounds.
- Joint working approaches are restricted to situations in which NRW selects another organisation as best placed to deliver a project which directly relates to a corporate priority that NRW wants to see addressed. The other organisation shares this priority and contributes some of its own resources to its realisation.
- Competitive funding is where other organisations submit bids, in competition with other organisations, with their own ideas for projects that relate to NRW corporate priorities.
- NRW will normally only provide project funding i.e. work with a clear start and end date and with clear outputs. NRW is not responsible for funding to ensure the existence or core activities of other bodies. Welsh Government may take on the role of core funding for relevant organisations.
- NRW's grant in aid for Partnership Funding will be at a similar proportion to current levels but will reflect any future decline in NRW's budgets.
- NRW funding should have a legacy value, with tangible and sustainable physical, environmental or behavioural outcomes in place.
- NRW Partnership Funding will be managed as a three year programme. This is important in order to provide certainty to those organisations undertaking work that requires more than 12 months to be completed.
- NRW funding arrangement will be embarked upon without a clear exit strategy.
- Where NRW is paying 100% of the costs then this is not joint working but a situation which requires formal procurement.

In July 2014, an update paper was provided to the Board setting out the detail of how the Competitive Fund and Joint Working Partnership approach might be run.

Also in July, NRW ran two briefing events for external organisations on its approach to Partnership Funding, followed by the launch of the 2014 round of the Competitive Fund at the Royal Welsh Agricultural Show.

### Results of First Round of Partnership Funding

The Competitive Fund received a total of 95 applications seeking funding of £5.5 million for operations, amounting to a total value over the three years of £16.7 million. The demand from NRW for year 1 was over £2 million.

NRW also received 111 proposals for Joint Working Partnerships. This represented a demand for £12.5 million from NRW, with total value of £37.7 million. The demand from NRW for year 1 amounted to over £3.9 million.

In total, NRW faced a demand for £18 million when we only had £4.2 million per annum available.

### NRW Response to the Problem of High Level of Demand for Funding

1. **NRW is to fund many great environmental projects** in the next financial year, but we've stressed that we do not have the funds available to support all the applications received.
2. **NRW has done its best to spread the funding as fairly as possible**, e.g. through capping the level of overheads and making partial offers of funding in appropriate cases. This has meant that out of the 206 applications received in round 1, it is planned to make offers of funding to over 120 of these. This is a very high proportion of offers in relation to applications.
3. **NRW has emphasised that as public sector budgets are reducing – and NRW is no exception – we must focus our resources on providing taxpayers with the very best value for money**
  - We need to find new, innovative ways to work and deliver the best outcomes for the environment.
  - With less money available year-on-year, we cannot continue to do the same things in the same way.
  - We have to make sure the environment benefits from every penny we spend. That means sometimes we have to make some difficult decisions.
4. **NRW has highlighted the point that it cannot address the funding challenges alone. All of us working in the environmental sector need to find new solutions to old problems.**
  - We need a broader debate in the environmental sector about how we can come up with alternative funding solutions.
  - We have established, and are keen to encourage new partnerships which are based on shared outcomes as opposed to being rooted in financial arrangements and we will work at reinforcing this.
  - If we all work together we believe that we can achieve great things for the Welsh environment, even in a time of austerity.

### Next Steps

Based on the learning points from the first round of Partnership Funding, a paper will go to the May 2015 meeting of the NRW Board. This will make recommendations for the next steps to be pursued over the next two years of this first three-year programme of Partnership Funding. (The funding available for Years 2 and 3 will be significantly less as some projects in Year 1 were funded for 3 years).

## 6. Cost Benefits

- The latest cost benefits profile for the body including an explanation of any further changes made since May 2014.

The following is summary of delivery against the remit letter and the business case:

### Delivering Business Case Value for Money Benefits

- We are developing our independent capability and seeing the benefits of bringing the three organisations into one. In two years we will have established our own capability for 29 of the 40 services provided to us on a transitional basis, with the remaining required services being migrated by 2017/18.

- We estimate that by the end of 2014/15 we will have taken actions to deliver savings worth £10.9million per year. These savings will accumulate to £97million by Year 10.
- We predict that the further actions that are in train will increase the annual cash and non-cash realisable savings to £19million per year by 2018/19 and will accumulate to £145million by the end of Year 10. This gives us confidence that we will achieve our Business Case benefits of £158M (non-cash and cash releasing) by Year 10.
- The Wales Audit Office will be undertaking a Value for Money Audit against the Business Case for setting up NRW and also a 2 year probationary Audit of the Governance arrangements within NRW. This audit will start in April and report in October 2015.

## 7. Financial Position

- The latest financial position of the body.

### 1. Latest Financial Year (2014/15)

We started the 2014/15 Financial Year with a balanced budget.

At the half year we reviewed our budget position in detail and produced a Revised Budget. This took into account additional income from Welsh Government for specific programmes of work, and increased timber income that has been partly reinvested into business priorities. The overall result of the Revised Budget was a £1.1m surplus of income over expenditure. We planned to take this surplus forward to 2015/16 to help with budget pressures.

The financial results for 2014/15 are subject to final review and WAO audit.

### 2. Current Financial Year (2015/16)

At our February Board meeting we presented the Business Plan and Balanced Budget for 2015/16.

We had previously presented a draft budget that was in a deficit position of £8m, mainly due to cost pressures (e.g. pension increases) and a reduction in revenue Grant in Aid (£3.2m). The balanced position that we presented in February was achieved through a combination of additional commercial income, costs reductions, carry forward from 2014/15 and through our efficiency programme.

We have launched an efficiency programme in 2015/16 entitled 'Success with Less' that aims to deliver £3m of recurring savings.

We have received additional Grant in Aid from Welsh Government of £6m to fund specific work, such as tackling P ramorum tree disease and restocking.

On 1 April 2015 the 3 Internal Drainage Boards in Wales were brought into NRW and they have been fully incorporated into our financial reporting and processes.

We have completed our first significant review of Charge Schemes for 2015/16, which has involved a public consultation exercise. This Charge Scheme has been approved by the Minister. The changes have helped correct some historic imbalances (ensuring strict cost recovery), while keeping costs at the lowest possible level for our customers.

## 8. Invest to Save

- Details of the Invest to Save funding the body has received to date.

NRW has received three amounts of Invest to Save funding:

1. NRW set up costs (pre-vesting)  
Amount received: £2.549m (2012/13) and £0.476m (2013/14)
2. Voluntary Exit Scheme 1  
Amount received: £3.75m (2013/14)
3. Voluntary Exit Scheme 2  
Amount received: £2.283m (2014/15)

## 9. People Survey 2015

Our first People Survey was carried out in February 2015 in order to gauge honest opinions from staff on how they feel about working for NRW.

We had a response rate of 58% which, for our first survey, was very encouraging. Conducting this survey and analysing the results has given us a better understanding of engagement, satisfaction and staff morale within the organisation. The results give us our first full evidence base enabling us to focus on areas for attention and improvement and share what works well.

The results of our People Survey 2015 are available [here](#).

**Natural Resources Wales**  
**22 April 2015**



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Naturiol**  
Cymru  
**Natural  
Resources**  
Wales

Delivering our Multiple Roles as a  
Land Manager, Statutory Adviser and  
Regulator (Version 2) –

*Decision making supported by  
transparency and accountability*



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## 1. Introduction and Purpose

It was a deliberate and strategic decision by the Welsh Government to establish Natural Resources Wales (NRW) with multiple land management, advisory and regulatory roles. This decision reflected an aspiration to create a new and innovative approach to deliver integrated natural resource management, whereby a single organisation has at its disposal a range of tools and roles to better achieve positive outcomes for people, the environment and the economy.

This document establishes the context for our multiple roles, as well as acknowledging the challenges that these roles give us in two main areas. First, with regard to transparency of our own responsibilities as an organisation that directly delivers services, especially as a land manager - an 'operator' - in our own right. And second, in respect of our statutory responsibilities, where equity of regulation of our own activities with our regulation of other parties is an important principle; as well as relevant legislation and case law that means we are required to organise our delivery with particular requirements in mind.

The purpose of the document is to establish clarity and transparency for both our staff and external stakeholders and customers. We describe our organisational design and operational responses established to achieve these objectives. They are all designed to support the decision to establish a new approach towards the delivery and facilitation of integrated natural resource management, through the creation of Natural Resources Wales.

This document is supported by a Policy & Procedure for the 'Management of our Multiple Roles'

## 2. Our Purpose and Roles as an organisation

The Establishment Order states the purpose of Natural Resources Wales is to ensure that the environment and natural resources of Wales are:

- (a) sustainably maintained;
  - (b) sustainably enhanced; and
  - (c) sustainably used.
- (2) In this article –
- (a) “sustainably” (“yn gynaliadwy”) means –
    - (i) with a view to benefitting, and
    - (ii) in a manner designed to benefit, the people, environment and economy of Wales in the present and in the future;
  - (b) “environment” (“amgylchedd”) includes, without limitation, living organisms and ecosystems.

Our purpose requires a balance to be struck and does not ascribe weight to any aspect (e.g. the environment or the economy) in preference to another. However, we have a duty to implement existing legislation and whilst we must also have due regard to our purpose we must also use discretion and judgement in the application of specific legal requirements.

The 'Functions Order' transferred many duties and functions from the existing legislation and our roles can be summarised as follows:

**Regulator:** protecting people and the environment including marine, forest and waste industries, and prosecuting those who breach the regulations that we are responsible for.

**Statutory Adviser:** to some 9,000 planning applications a year and also in respect of Strategic Environmental Assessment, Habitats Regulation Assessments and Environmental Impact Assessment.

**Land Manager (Operator):** managing seven per cent of Wales' land area including woodlands, National Nature Reserves, water and flood defences, and operating our visitor centres, recreation facilities, hatcheries and a laboratory.

**Technical/Policy Adviser:** principal adviser to Welsh Government, and adviser to industry and the wider public and voluntary sector, and communicator about issues relating to the environment and its natural resources.

**Designator:** for Sites of Special Scientific Interest – areas of particular value for their wildlife or geology, Areas of Outstanding Natural Beauty (AONBs), and National Parks, as well as declaring National Nature Reserves.

**Responder:** to some 9,000 reported environmental incidents a year as a Category 1 emergency responder.

**Partner, Educator and Enabler:** key collaborator with the public, private and voluntary sectors, providing grant aid, and helping a wide range of people use the environment as a learning resource; acting as a catalyst for others' work.

**Evidence gatherer:** monitoring our environment, commissioning and undertaking research, developing our knowledge, and being a public records body.

**Employer:** of almost 1,900 staff, as well as supporting other employment through contract work.

For many of the activities we are involved in we may exercise more than one role, either simultaneously or sequentially. For instance, we may provide a local authority with advice as a statutory adviser in respect of a proposed development and then be required to consider an application for a permit under a regulatory regime for the same development.

For a range of our own land management activities and those undertaken by our contractors, we are also the regulator – the body responsible for granting permits, assessing compliance, investigating potential offences and taking enforcement action. We also act as the consultation body for our own programmes, plans and projects in respect of environmental assessments such as Strategic Environmental Assessment (SEA), Habitat Regulations Assessment (HRA) and Environmental Impact Assessment (EIA). In this operator mode we also consider / facilitate third party activity on which we may then provide statutory advice to other authorities and then be required to consider applications for permits against regulatory regimes where we have responsibility.

Our Board has established high level principles to help us manage and organise these roles to achieve an agreed corporate position and avoid undue criticism. In addition our founding legislation and our legal purpose provides an overarching principle that is vital in managing our multiple roles. Namely, that no one role has primacy or priority over another. It is our responsibility to use evidence and judgement to agree the most optimal course of action recognising all our roles, the specific legislation under which we operate and our overarching purpose.

### 3. The principles we have adopted for managing our multiple roles

In developing its approach to corporate governance and mindful of the organisation's purpose and strategic case for a new approach to integrated natural resource management, our Board agreed to adopt a number of governance principles that aim to guide our operational responses to the management of our multiple roles:

- a. All proposals will facilitate integrated decision making by NRW in support of the ecosystem approach;
- b. Functional separation will only be used when necessary, in recognition that NRW is one organisation and that regulatory and advisory functions support the same outcomes;
- c. Transparency will be a fundamental requirement both internally and externally;
- d. Delegated authorities will be based on risk thresholds.

### 4. Legal Context

As well as the specific case law requirements relevant to our multiple roles, in common with other public bodies, we have to have due regard to administrative and public law principles (Annex 4).

In addition, we have to follow the correct procedure. Correct procedure (or "due process") is vitally important in public law because there are some tried and tested procedural mechanisms which are likely to secure a just outcome that is defensible. Procedure is the requirement for the way in which the decision is made. The so called "Rules of natural justice" are rules of procedure.

The rule against bias on the part of the decision-maker is a manifestation of the other rule of natural justice, that "no person shall be judged in her/his own case". If the decision-maker has a financial or other interest in the outcome of a case, s/he cannot be, or be seen to be, impartial.

The rules help to ensure that the decision-making process is not biased because the decision-maker's mind was always closed to the opposing case. As well as preventing actual bias, we need to do all we can to avoid the perception of bias

Impartiality is the opposite of bias. It is prudent to have procedures available to show that with our multiple roles, we remain impartial and independent.

To achieve this, we have taken steps to have functional separation where this is necessary.

The "independence" of a decision-maker is different from, though closely linked to, its impartiality. It means the independence of the decision-maker from internal or external pressures or influence.

Actual bias is rare: most cases are concerned with the perception of bias. The test is whether, in all the circumstances, the Court considers that there has appeared to be a "real danger of bias". If it does, the decision will be set aside. Not only do our staff need to

be sure that they are free of actual bias before making a decision, they also need to consider not acting as decision-maker if there is a real danger that their impartiality might be open to question. This, in part, explains a number of approaches to managing our multiple roles as described in this document.

## 5. Our Operational Response when Land Manager, Statutory Adviser and/or Regulator

The organisational structure for Natural Resources Wales (Annex 3) is a key component in managing our multiple roles in line with the agreed principles:

Our **Operations Directorates** fulfil the Land Manager role through their management of the Welsh Government woodlands and our own land, as well as when acting as the 'client' for services provided by other Directorates e.g. when constructing flood defence schemes or other developments and activities on the land we manage or own. In addition our **Operations Directorates** also provide all our statutory advice to local authorities and the Welsh Government, as well as project level statutory responses to HRA and EIA, including those of the Directorate as a 'Land Manager'. The teams that fulfil our Land Manager role in Operations are separate to the teams that provide our statutory responses and report through to a different manager at Leadership Team level. Our **Operations Directorates** do not make regulatory consenting and permitting decisions\*, which are made by our National Services Directorate reporting to a different Executive Director. However our **Operations Directorates** do undertake compliance and enforcement work based on agreed permits and the protocol for how this is undertaken for our own operations is set out in 4.1.

*\*Except in some instances in respect of consenting operations on designated sites where we are the land manager.*

Our **National Services Directorate** provides internal and external services. The internal services are primarily provided to our Operations Directorate as Land Manager and 'client'. For example harvesting & marketing of timber from the woodland estate and project management of flood defence schemes. In addition, **National Services Directorate** also provides an 'enterprise development' service. Where this involves the land that we manage, the Operations Directorate acts as 'client'. All these activities report to a single Leadership Team level manager. **National Services Directorate** also provides a Permitting and Consenting Service to third parties and to Natural Resources Wales as a Land Manager through our Operations Directorate. These activities report to a different Leadership Team level manager.

Our **Knowledge, Strategy and Planning Directorate** is responsible for strategy development on behalf of the whole organisation. These strategies consider our multiple roles and are the method by which we will achieve alignment for all our roles to achieve our purpose. **Knowledge, Strategy and Planning Directorate** also provides a plan making assessment service for Natural Resources Wales own programmes and plans that require assessment under the SEA and HRA Directives.

Due to the case law requirements for functional separation when a plan making body is also the relevant Consultation Body for Strategic Environmental Assessment, our **Governance Directorate** fulfils the Consultation Body role, as the Directorate has no plan making, land manager or regulatory responsibilities. Due to the close process links with

Habitat Regulations Assessments, the **Governance Directorate** also acts as the Consultation Body for these requirements at 'Plan' level.

## 5.1 As a Regulator of our own Land Manager role

The following explains how we will regulate our own activities including determining applications using principles of fairness, transparency, independence, and an exemplar level of environmental protection.

In some cases such as water abstraction, the legislation prescribes the process for permitting our own activities. However, most of the applicable legislation does not specifically cover self-permitting or compliance and enforcement. The Natural Resources Body for Wales (Functions) Order 2013 ("the Functions Order") imposes a duty on NRW to have a publication scheme, part of which relates to self-permitting; the scheme imposes some specific requirements.

Where we are responsible for a regulatory regime then we will apply the following standards to our application for a permit, determination of permit applications, participation in internal consultation, compliance assessment and investigation of potential offences in relation to own activities. The standards also apply to permitting, compliance and enforcement activities in relation to works conducted by contractors on behalf of NRW; for example, a licence to translocate dormice resulting from construction works within woodland.

Our standards will ensure that:

- a. We apply equivalent scrutiny and standards to our own activities as those required for external individuals and businesses. In particular, we should comply with our published enforcement policy and follow relevant public interest considerations.
- b. We follow clear and transparent decision making processes that are robust to challenge and clearly documented.
- c. There is an appropriate degree of separation between the business unit being regulated and the team undertaking the regulation. This is to help demonstrate fairness and transparency, and to support the public's and Welsh Government's confidence in our decision making.

### 5.1.1 Permitting

The decision making level for internal permits is as specified in the Non-Financial Scheme of Delegation (NFSOD). This will usually be the same as for external applications unless specified otherwise. Where a decision is likely to be contentious, or subject to internal or external challenge it will usually be appropriate to escalate the sign off to a higher level.

Separate guidance exists on functional separation relating to internal consultation on permit determination involving EU obligations, e.g. Habitats Regulations appropriate assessments and environmental impact assessments. These arrangements should be followed for internal permitting, where appropriate.

The arrangements in sections 4.1.3 to 4.1.5 below also apply to permitting activities in relation to works conducted by contractors on behalf of NRW.

### **5.1.2 Arrangements between National Services and Operations**

Where an internal application is made by the Operations Directorates, and submitted to the permitting teams within the National Services Directorate for determination, then a separation of function already exists.

The team that determines the application may need to consult teams within the Operations Directorate that made the application. This may be entirely appropriate as local information will often be needed. In these cases good governance is ensured by a combination of transparent documenting of the advice/information and in some instances by the validation of the advice by subject experts in another directorate (KSP, NS or the other Ops Directorate).

Examples of internal permissions determined by permitting teams within National Services include:

- Water quality discharge consents for an NRW hatchery
- Marine licences for flood defence schemes
- Water abstraction licences for an NRW hatchery
- Septic tank registrations for NRW offices and depots
- Waste exemptions for NRW offices and depots
- Forest resource plans and felling licences for the Public Forest Estate

### **5.1.3 Arrangements where the application originates and is determined within National Services**

Any internal application is determined by a team separate from the team where the application originated, and provide a separation of function to at least Leadership Team level.

If the application is potentially contentious or likely to be subject to internal or external challenge, then as an additional safeguard the proposed decision can be discussed with the Governance team for advice on an appropriate approach.

### **5.1.4 Arrangements where the application originates and is determined within Operations**

Where applications arise from within Operations Directorates that would normally be determined within Operations for external applicants, then a degree of separation through sign off by different area teams is in place.

Examples include:

- SSSI consents issued for NRW flood and coastal risk management schemes
- Flood defence consent for works carried out by NRW

Where possible, applications are determined according to the inter-area arrangements set out in table 1 below. Where this is not possible or the application is potentially contentious, then as an additional safeguard the proposed decision can be referred to the Governance team for review. As a minimum there is a separation to at least Leadership Team level.

Where applications are submitted by contractors on behalf of Natural Resources Wales the same arrangements described above are applied.

There may be some circumstances where it could be appropriate that some of the work can be carried out by the local team. For example, where extensive site visits are required. However, the permitting decision will be taken in accordance with the general arrangements above and clear evidence (e.g. photographs) will be provided.

**Table 1- Inter-area arrangements**

Area	Will regulate	Will be regulated by
North Wales	South East Wales	South West Wales
Mid Wales	South West Wales	South East Wales
South East Wales	Mid Wales	North Wales
South West Wales	North Wales	Mid Wales

*Note:*

Where the team permitting the activity covers all of South or all of North & Mid Operations Directorates, then the application will be determined by the Directorate other than the one where the application arises.

### 5.1.5 Compliance

Once permissions have been granted, the inter-area arrangements described in Table 1 above will be applied for any compliance assessment work. The arrangements in this section also apply in relation to works conducted by contractors on behalf of NRW.

Where the team undertaking compliance assessment covers all of South or all of North & Mid Operations Directorates then the compliance assessment will be carried out by the Directorate other than the one where the regulated activity takes place.

There may be some circumstances where these arrangements are not practicable. In these cases functional separation to at least Leadership Team level will be applied. If an issue develops that is likely to be contentious e.g. an offence is identified then functional separation to at least Executive Director level will be applied for oversight or review.

If the compliance assessment identifies a significant non-compliance that is potentially an offence, then the actions described in the enforcement section below will be followed.

### 5.1.6 Environmental Incident response

In this section the term Responsible Directorate (RespDir) is used to refer to the Directorate in which the incident occurred i.e. the operator. The Regulatory Directorate (RegDir) is the Directorate appointed to undertake the role of regulator. The arrangements in this section also apply in relation to works conducted by contractors on behalf of NRW.

When an environmental incident occurs which is potentially an offence under legislation we enforce, we need to consider our response both as an operator and a regulator.

The initial response needs to ensure that the incident is managed so as to minimise any environmental impact, whilst ensuring that any follow up regulatory action is not compromised. The initial response should normally be coordinated by the RespDir supported by the local Natural Resource Management (NRM) team. The NRM officers attending should ensure that basic evidence such as photographs and samples are secured where appropriate.



As soon as a potential offence is identified the RespDir, they will inform the appropriate RegDir at Leadership Team level. The RegDir will appoint someone to act as the investigating officer. If the RespDir is National Services or KSP, the RegDir will be the Operations Directorate for that area. If the RespDir is Operations then the arrangements in table 1 will apply.

The RespDir should also ensure the Executive Director for that Directorate and the Head of Legal Services are notified as soon as possible.

The RespDir is responsible for implementing the requirements of the internal Environmental Management System (EMS) for incident reporting, internal investigation (i.e. non-regulatory) and review. These requirements are dealt with separately under the EMS.

The investigating officer will categorise the incident according to the common incident classification system and will (subject to the requirements below) undertake an investigation in the same way as for any third party incident or offence.

#### **5.1.7 Enforcement**

Where following an incident investigation or compliance assessment we identify that a potential offence has been committed by NRW, we will comply with our published enforcement and prosecution policy and take account of relevant public interest factors. Wherever a potential offence is identified the Head of Legal Services should be informed as soon as possible. The arrangements in this section also apply in relation to works conducted by contractors on behalf of NRW.

The work of the investigating officer will be supported by one of the seconded police officers (SPO) appointed by the Operations Enforcement Manager. The SPO will oversee the investigation, enforcement recommendation, and enforcement decision to ensure that the investigation is conducted in an independent and transparent manner. The SPO will not take part in decision making but will review each stage and raise any concerns with the Operations Enforcement Manager and Head of Legal Services.

A report of contravention (ROC) form will be completed in all cases. The enforcement recommendation in the ROC will be considered by the Internal Incidents Enforcement Panel, comprising of the Director of Governance, Head of Legal Services and another Executive Director unconnected with the case. The panel will be advised by the Head of Operations (Mid Wales) with line management responsibility for operational enforcement services.

Where the enforcement decision is a warning, a notice or a formal caution it will be dealt with internally by the Director of Governance. The warning or caution will be issued to the Executive Director of the responsible Directorate. In most cases a notice should not be necessary because we would expect complete co-operation and prompt action in response to any findings. This is equitable with the approach taken with third parties who demonstrate co-operation.

Where the panel decides that prosecution is the appropriate response, the case will be referred to the Crown Prosecution Service.

All cases of internal enforcement action will be reported to Natural Resources Wales' Audit and Risk Assurance Committee who will in turn report to the Board. In these cases the role of the non-Executive Directors on the Committee is to ensure the Executive Directors have acted appropriately.

### **5.1.8 Charging**

Where a permit application would normally attract a fee there is no charging requirement for internal applications or subsistence fees for internal permits.

Where applications are required to be advertised in a newspaper during the determination process, then the applying department needs to cover these advertisement costs.

### **5.1.9 Publishing requirements for all internal permissions**

The Functions Order 2013 requires that we publish information\* about 'all applications for permits made by the Body, in cases where the Body is responsible for determining the application'. We are also required to inform Welsh Government of all internal applications (where it has the power to call in an application) at the time of the application.

The 'self-permitting decisions' spreadsheet on the document management system is used to record the receipt and determination of internal permit applications. It is the responsibility of the team involved in the determination of the permit to ensure this spreadsheet is completed promptly when applications are received and when they are determined.

Once a month the spreadsheet detailing all internal permitting applications and decisions for the previous month is uploaded to the NRW external website and forwarded to the Welsh Government.

## **5.2 Our own plans and programmes – Consultation Body (Statutory Advice) arrangements**

In our roles as relevant nature conservation body (HRA- plans) and consultation body (SEA) for the plans and programmes of other authorities, as well as for our own plans and programmes that require either SEA or HRA (plans) we have a number of statutory and non-statutory roles including;

- Provision of information on European Sites, their features of interest and conservation objectives.
- Provision of scientific and technical advice and guidance on the environment and natural resources of Wales, including natural heritage, landscape and cultural heritage.
- Provision of statutory comment and representation as 'statutory consultee'

As well as these specific roles in respect of SEA and HRA, we have many other roles and duties arising from our role as land managers/project developers/operators and as the Regulators for some 30+ regulatory regimes. For SEA, there is European case law (the 'Seaport' case) that requires the 'functional separation', where Natural Resources Wales or any other authority is both the 'responsible authority (plan maker) and statutory consultant body.

In response to our responsibilities and these principles, a 'functionally separate' Strategic Assessment team (SAT) has been established within the Governance Directorate of NRW. This team's primary role is to fulfil the Consultation Body role for the SEA of NRW's own

plans and programmes (legally required by Seaport ruling). However, based on the strong interdependencies between the SEA and HRA (plans) processes, our Board recommended that this team should also fulfil the relevant nature conservation body role on HRA (plans) for NRW's internal plans.

For those plans, programmes and projects produced by Responsible authorities external to NRW, the consultant body role for SEA (programmes and plans) and HRA (plans and projects) is provided by either the Knowledge, Strategy and Planning Directorate or the relevant Operations Directorate, according to the type of plan, programme or project (national/sectoral or regional respectively). However if NRW is formally contracted to develop the SEA or HRA plan level assessment by a third party 'responsible authority' then the Governance SAT team provides NRW's statutory consultee response as the Consultation Body.

### **5.3 Our own projects – Consultation Body (Statutory Advice) arrangements**

For our own projects our Operations Directorates fulfils the Consultation Body role but through a separate team reporting to different Leadership Team manager to the one responsible for the project. The Land Manager role responsible for the project reports through to the Head of Operational Services and the relevant teams responsible for project level Habitats Regulation Assessment Consultation Body role reports through to the Head of Ecosystems Planning & Partnerships.

Where our own project requires planning permission through the Town & Country Planning system, our role as statutory adviser to local authorities within this regime is separate at Leadership Team level to the senior manager accountable for the project. Our role as a land manager responsible for the project is accountable to the Head of Operational Services. The teams who provide the statutory advice as a Consultation Body to enable the Local Authorities as the responsible body for permitted development to make a decision are accountable to the Head of Ecosystem Planning & Partnerships.

## **6. Our Operational Response when Statutory Adviser and Regulator**

Although NRW is a single corporate entity, we will often exercise the distinct functions of statutory advisor and regulator in the context of a single development, most notably Nationally Significant Infrastructure Plan developments. As well as using our agreed principles for managing our multiple roles to guide us where we are a regulator we have also taken into account an important theme that runs through administrative law: where legislation confers discretion on a body like NRW, the body must not surrender or abdicate that discretion – to a "policy". The body (NRW in our case) must keep an open mind and consider each case on its own merits: otherwise we would be failing to exercise our discretion. We must keep an open mind and consider the facts of the particular case.

In relation to the Development Consent Order application under the Planning Act 2008, we are a statutory consultee advising the decision maker on the land use planning implications of the development. For those developments which impact on Welsh waters, certain aspects of the development will comprise marine licensable activities for which a licence is required under the Marine and Coastal Access Act 2009. NRW (acting on behalf of Welsh Ministers) is the licensing authority. For those developments which involve a

regulated activity requiring an Environmental Permit under the Environmental Permitting Regulations 2010, NRW is the permitting authority.

There is therefore a distinct legislative framework for NRW's respective functions. The implications for cross-over between the respective functions could be opening up any decision or consent to be challenged upon the grounds of pre-determination and/or bias i.e. that one function has been unduly influenced by the others. Therefore, internal separation between the functions has been maintained with the Statutory Consultee responses for developments requiring planning permission being the responsibility of our Operations Directorates, whilst our National Services Directorate is responsible for all permits, consents and licences.

## Annex 1 – When operating as Land Manager and Statutory Adviser and/or Regulator - Roles and Responsibilities

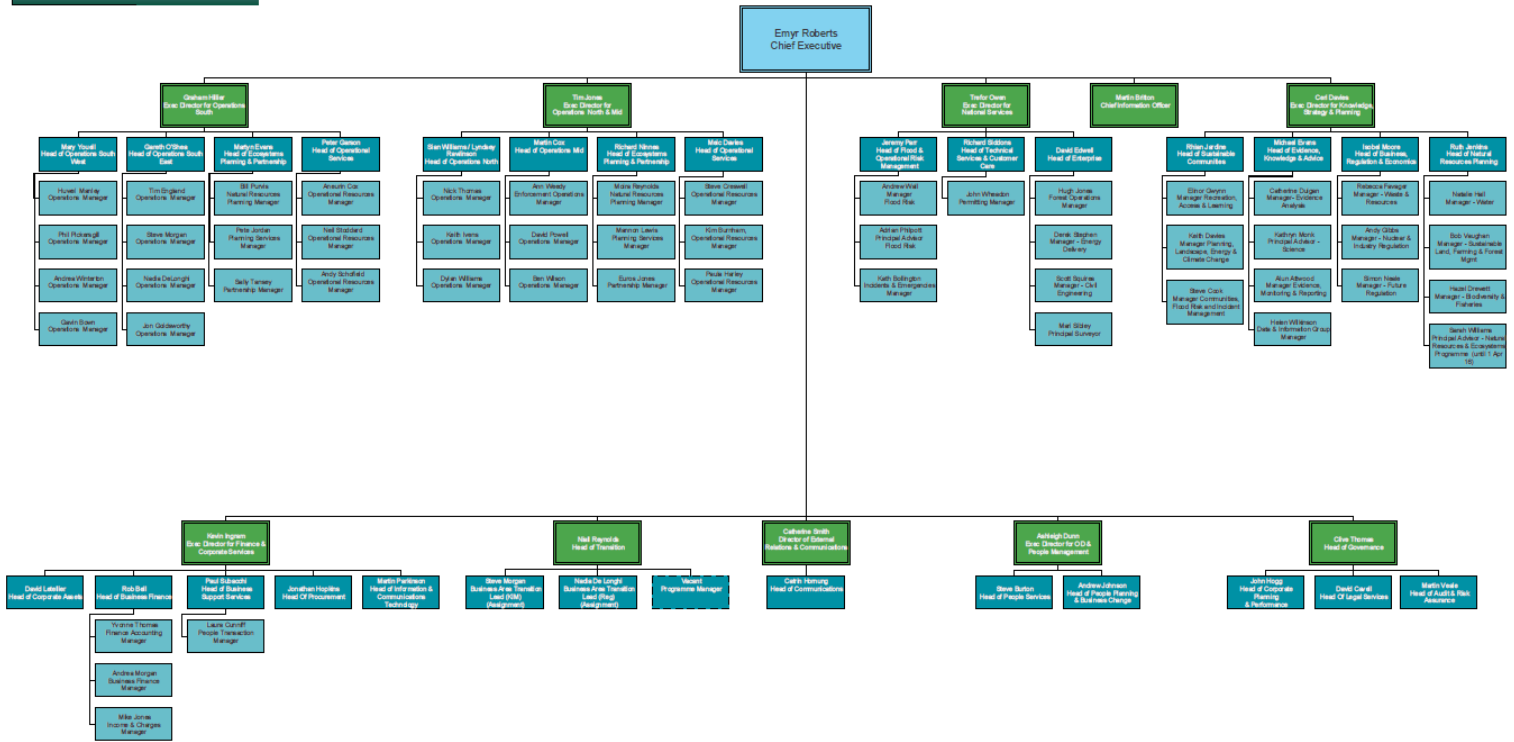
NATURAL RESOURCES WALES AS LAND MANAGER, STATUTORY ADVISOR AND REGULATOR	
ROLE	ROLE & RESPONSIBILITIES
<p><b>Role 1 – Applicant.</b>  <b>Natural Resources Wales is land manager</b></p> <p>The person who makes an application for a permit.            Any registration, exemption, approval, permission, licence, consent, assent or other authorisation.</p>	<p><b>Operations Directorates</b></p> <p>Applicant / land manager is Natural Resources Wales</p> <p>Welsh Ministers are notified of all applications at the time they are made</p>
<p><b>Role 2 - Originator of plan, programme or project is Natural Resources Wales</b></p> <p>The 'Responsible Authority' in statute for preparing Environmental Assessments:</p> <ul style="list-style-type: none"> <li>•Strategic Environmental Assessment &amp;or Habitat Regulations Assessment (plans and programmes),</li> <li>•Environmental Impact Assessment &amp;or Habitat Regulations Assessment (projects)</li> </ul>	<p>Transparency – publication scheme</p> <p><b>Knowledge, strategy, Planning Directorate</b>            for strategic plans, programmes, projects</p> <p><b>Operations Directorates</b>            for regional &amp; local plans, programmes, projects</p>
<p><b>Role 3 – Natural Resources Wales is Regulator</b></p> <p>NRW is the body, as defined by statute, that supervises a particular industry or business activity including its own activities. The provider of a permitting decision / determination.</p>	<p>Transparency – publication scheme</p> <p><b>National Services Directorate</b>            Permitting decision</p> <p><b>Operations Directorates*</b>            Enforcement &amp; Compliance casework            *geographical separation</p>
<p><b>Role 4 - Natural Resources Wales is Statutory Consultee (Planning and Development Control)</b></p> <p>NRW is the body, as defined by statute, that must be consulted on relevant planning applications. The provider of evidence, information, advice to Local Planning Authorities to allow them to make an informed permitting decision.</p>	<p>Transparency – publication scheme</p> <p><b>Operations Directorates</b>            (separate team to applicant / originator)</p> <p>Receive &amp; reply regional &amp; local</p>
<p><b>Role 5 - Nature Conservation, Countryside and /or Forestry Consultation Body (environmental assessments)</b></p> <p>a) NRW is the body, as defined by statute, that gives opinion upon and must be consulted on relevant environmental assessments. The provider of evidence, information or expertise and advice as <b>Competent Authority</b> for plans and programmes (SEA, HRA) and projects (EIA, HRA) as the nature conservation, countryside or forestry body.</p> <p>b) NRW is the body, as defined by statute, that gives opinion upon and must be consulted on relevant environmental assessments.</p>	<p>Transparency – publication scheme</p> <p>a) Evidence &amp; advice role – assessment preparation</p> <p><b>Operations Directorates</b>            Receive &amp; reply Plans, programmes and projects</p> <p>b) Statutory advisory role</p> <p><b>Governance Directorate</b>            Plan / programme due diligence (SEA and HRA)</p>

## Annex 2 – When operating as Statutory Adviser and Regulator - Roles and Responsibilities

NATURAL RESOURCES WALES AS STATUTORY ADVISOR AND REGULATOR					
ROLE	ROLES & RESPONSIBILITIES				
<p><b>Role 1 - Applicant</b></p> <p>The person who makes an application for a permit. Any registration, exemption, approval, permission, licence, consent, assent or other authorisation.</p>	<p>Applicant is external (includes third party on WG Woodland Estate)</p> <p>Customer service centre logged &amp; assigned 'Exceptional' casework identified Corporate risk register entry</p>				
<p><b>Role 2 - Originator of plan, programme or project</b></p> <p>The '<b>Responsible Authority</b>' or <b>plan, programme or project maker</b> in statute for preparing environmental assessments:</p> <ul style="list-style-type: none"> <li>•Strategic Environmental Assessment &amp;or Habitat Regulations Assessment (plans and programmes),</li> <li>•Environmental Impact Assessment &amp;or Habitat Regulations Assessment (projects)</li> </ul>	<p>Originator of plan, programme or project is external. The external applicant may need to prepare a Strategic Environmental Assessment, Habitat Regulations Assessment and / or Environmental Impact Assessment.</p>				
<p><b>Role 3 – Natural Resources Wales is Regulator</b></p> <p>NRW is the body, as defined by statute, that supervises a particular industry or business activity including its own activities. The provider of a permitting decision / determination.</p>	<table border="1"> <tr> <td><b>National Services Directorate</b> Permitting decision</td> <td><b>Operations Directorate</b> Enforcement &amp; Compliance casework</td> </tr> <tr> <td><b>Operations Directorates</b> Permitting decision (eg SSSI consent)</td> <td></td> </tr> </table>	<b>National Services Directorate</b> Permitting decision	<b>Operations Directorate</b> Enforcement & Compliance casework	<b>Operations Directorates</b> Permitting decision (eg SSSI consent)	
<b>National Services Directorate</b> Permitting decision	<b>Operations Directorate</b> Enforcement & Compliance casework				
<b>Operations Directorates</b> Permitting decision (eg SSSI consent)					
<p><b>Role 4 - Natural Resources Wales is Statutory Consultee (planning development control)</b></p> <p>NRW is the body, as defined by statute, that must be consulted on relevant planning applications. The provider of evidence, information, advice to Local Planning Authorities to allow them to make an informed permitting decision.</p>	<p><b>Operations Directorates</b></p> <p>Receive &amp; reply regional &amp; local</p>				
<p><b>Role 5 - Nature Conservation, Countryside and /or Forestry Consultation Body (environmental assessments)</b></p> <p>a) NRW is the body, as defined by statute, that gives opinion upon and must be consulted on relevant environmental assessments. The <b>provider</b> of evidence, information or expertise and advice as <b>Competent Authority</b> for plans and programmes (SEA, HRA) and projects (EIA, HRA) as the nature conservation, countryside or forestry body.</p> <p>b) NRW is the body, as defined by statute, that <b>gives opinion</b> upon and must be consulted on relevant environmental assessments.</p>	<p>a) Evidence &amp; advice role – assessment preparation</p> <table border="1"> <tr> <td><b>Knowledge, Strategy, Planning Directorate</b> Receive &amp; reply Plans &amp; programmes</td> <td><b>Operations Directorates</b> Receive &amp; reply Projects</td> </tr> </table> <p>b) Statutory advisory role</p> <p><b>Governance Directorate</b></p> <p>Plan / programme due diligence (SEA and HRA) only where NRW are a Partner or act as consultant</p>	<b>Knowledge, Strategy, Planning Directorate</b> Receive & reply Plans & programmes	<b>Operations Directorates</b> Receive & reply Projects		
<b>Knowledge, Strategy, Planning Directorate</b> Receive & reply Plans & programmes	<b>Operations Directorates</b> Receive & reply Projects				

# Annex 3 – Organisation Structure

Executive Leadership/Management Tier  
January 2015



## Annex 4 – Administrative Law

NRW and its staff should aim to practice “good administration”: NRW staff should aim to perform their public duties speedily, efficiently and fairly. Administrative law (including judicial review) looks at this aim from the opposite direction: it describes the body of law which has been developed by the courts to supervise public bodies in carrying out their public functions.

As a result of the need to reduce law to a set of more or less standard rules, administrative law is not identical with the principles of good administration. However, a keen appreciation of the requirements of good administration will often give a pretty good idea of what administrative law will say on the point. Administrative law (and its practical procedures, including judicial review) play an important part in securing good administration.

Administrative law has developed a series of tests for measuring the lawfulness of an exercise of public law powers. These are:

**Legality** – acting within the scope of any powers and for a proper purpose;

**Procedural fairness** – so as, for example, to give the individual an opportunity to be heard;

**Reasonableness and rationality** – following a proper reasoning process and so coming to a reasonable conclusion;

**Compatibility** – with, for example, European Union law.

Case law has developed especially in the area of decision making by public bodies such as NRW. This case law can be summarised into three “logical principles” which have to be followed by NRW (and other public bodies) in making a decision. The principles are:

- To take into account all relevant considerations;
- not to take into account any irrelevant considerations;
- not to take a decision which is so unreasonable that no reasonable body properly directing themselves could have taken it.



## Related policies/procedures

- NRW Publication Scheme
- Guidance on functional separation covering all activities.
- Non - Financial Scheme of Delegation
- Internal Environmental Management procedures.



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## **Environmental Management System (EMS)**

### **Environmental Procedure - Environmental incidents and near misses**

<b>Title</b>	<b>Environmental incidents and near misses</b>
<b>Reference</b>	<b>EP-19</b>
<b>Version</b>	<b>3</b>
<b>Sheet</b>	<b>1 of 6</b>
<b>Issue Date</b>	<b>08 April 2015</b>
<b>Issued By</b>	<b>Environmental Systems Manager</b>
<b>Approved By</b>	<b>Head of Corporate Assets</b>

## **1.0**      SCOPE

This procedure sets out how we manage environmental incidents and near misses caused by NRW, or its contractors.

## **2.0**      RESPONSIBILITIES

All members of staff and contractors working on our behalf

## **3.0**      RELATED DOCUMENTS

- [NRW Environmental incident review form](#)
- [NRW Near miss review form](#)
- [EP-09 Emergency Preparedness & Response](#)
- [EP-12 Internal EMS Audit & Evaluation of Compliance](#)

## **What is an environmental incident?**

An environmental incident is a specific event which has an impact on the environment

Examples:

- unplanned and uncontrolled silt mobilisation into or within watercourses;
- un-permitted damage to flora and fauna;
- burst hydraulic oil pipes resulting in leaks to ground or watercourses;
- uncontained spillage of chemicals, fuels or oils (including biodegradable oils)

## **What is an environmental near miss?**

An environmental near miss is a specific event which has no impact on the environment but has the potential for impact.

Examples:

- plant activities in proximity to trees or habitat which have not been protected as required;
- burst hydraulic oil pipes where the leaks are contained;
- collision with drum of chemicals but no leaks resulting.

Note: Lack of an appropriate permit, or failure to comply with a permit condition (where no environmental impact results) is a legal breach. Legal breaches are most likely to be identified via EMS audits, so legal breaches are handled in line with our [EP-12 Internal EMS Audit & Evaluation of Compliance](#) procedure for closing out nonconformities arising from EMS audits.

## 4.0 PROCEDURE

### **Environmental incident: Immediate actions**

1. STOP - Before you report the incident, stop the work
2. CONTAIN - Where safe to do so, carry out any local site pollution prevention or emergency incident measures
3. NOTIFY
  - a. Report the incident to the (24 hour) NRW incident hotline 0300 065 5111, stating that it is an NRW caused incident and giving full details of the incident (including location / contact details). Also request, and note, the incident number

Now report the incident (including the incident number) to:

- the EMS team ([EMS.team@cyfoethnaturiolcymru.gov.uk](mailto:EMS.team@cyfoethnaturiolcymru.gov.uk))
- your line manager;

Where an environmental incident occurs on a Facilities managed site, the Facilities Management emergency contact must also be contacted.

### **Incident review procedure**

Stage	Description
1	<p>The tier 3 manager (or Project Manager or contact where involving a contractor) oversees and owns the review.</p> <p>The <a href="#">environmental incident review form</a> must be used to capture the detail of the review, and should be completed within four weeks of the incident occurring</p>
2	<p>When the review is completed the line manager (or Project Manager or contact where involving a contractor), sends the details to the <a href="#">EMS team</a>, including the name of the action plan owner</p>
3	<p>The EMS team checks the quality of the review and action plan; particularly in respect of making sure the review addresses the root cause and that the action plan is appropriate to prevent re-occurrence.</p> <p>Where the EMS team has comments, they will approach the tier 3 manager (or Project Manager or contact where involving a contractor) to make amends to the review and Action plan.</p>

4	<p>The action plan owner should provide quarterly feedback to the EMS team until all of the incident actions are complete.</p> <p>The Environmental Systems Manager will report progress on the actions to the Head of Corporate Assets.</p>
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## Near miss: Immediate actions

### 1. NOTIFY

- a. Report the near miss to the (24 hour) NRW incident hotline 0300 065 5111 stating that it is an NRW caused near miss and giving full details of the near miss (including location / contact details)

Now report the near miss to:

- the EMS team ([EMS.team@cyfoethnaturiolcymru.gov.uk](mailto:EMS.team@cyfoethnaturiolcymru.gov.uk))
- your line manager;

Where a near miss occurs on a Facilities managed site, the Facilities Management emergency contact must also be contacted.

## Near miss review procedure

Stage	Description
1	The <u>near miss review form</u> must be used to capture the review. [Note: The Incident Communication Centre complete the first two sections of the form on initial notification of a near miss]
2	When the review is completed the details are sent to the EMS team, including the name of the action plan owner (if there are actions to be taken forward)
3	<p>The EMS team checks the quality of the review; particularly in respect of making sure we are addressing the root cause and taking appropriate action to prevent re-occurrence.</p> <p>Where the EMS team has comments, they contact the person that reviewed the near miss to make amendments to the review.</p>
4	<p>If there are actions to be taken forwards, the action plan owner should provide quarterly feedback to the EMS team until all of the actions are complete.</p> <p>The Environmental Systems Manager will report progress on the actions to the Head of Corporate Assets.</p>

Note: Reporting to our external assurance providers

We have external assurance arrangements in place related to both ISO14001 and UKWAS.

During surveillance visits for our ISO14001 certification we standardly report to our assurance providers on the overall picture of any environmental incidents and near misses NRW or its contractors have caused, including:

- the number of environmental incidents and near misses
- the status of action plans arising from reviews into these (in line with this procedure)