

**Y Pwyllgor Llifogydd ac Erydu Arfordirol Cymru**

**Wales Flood and Coastal Erosion Committee**

**Annual Report 2022**

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## **Foreword**

1. This is the Committee's third annual report. The Environment (Wales) Act in 2016<sup>1</sup> established the Committee to advise Welsh Ministers on all aspects of flood and coastal erosion risk management. The Committee continues to evolve with the advice that is offered, but it will be evident from this report that one very busy year for the Committee has been followed by another, and a further energetic year is anticipated ahead.

2. Lessons from the serious flooding events in Wales in 2020-21 continue to shape our work programme. The Glasgow Cop26 climate summit in November 2021 maintained a global focus on the urgency of the climate emergency, recognising that mitigation and adaptation need to be progressed in parallel. Weather extremes continue to be stretched. The need for urgency is becoming increasingly evident. The Intergovernmental Panel on Climate Change (IPCC)<sup>2</sup> is giving growing attention to adaptation and to the importance of climate resilient development.

3. Governments continue to respond to these challenges, but the scale of fundamental change needed requires widespread consultation. This inevitably takes time in order to reflect all interests and to secure comprehensive commitment. Key changes within Wales on which the Committee has offered advice include those affecting the funding of agriculture and the management of agricultural land, as well as the way in which statutory planning decisions impact on flood risk management and on development land. We were pleased to see that the technical advice note (TAN15) published in September 2021 on planning and flood risk management reflected much of the Committee's advice.

4. The Committee's determination to play a full role in implementing the National Strategy remains strong. Key reports which will deliver on two of the Strategy's Measures, on maximising resources and on legislative change, have advanced over the past year, with publication anticipated early in 2022-23. On the resources front, while good progress needs to be maintained in securing effective multi-year funding programmes, key proposals in our report will in particular seek to address capacity constraints in our risk management authorities. Our ability to successfully manage and mitigate flood risks, in ensuring a successful future for Wales, will be dependent on tackling these constraints.

5. While maintaining flood defences will continue to be important, the focus is growing on how land is managed, particularly at the catchment scale, and on how communities and businesses can improve their adaptability and resilience. With climate change impacting on us all, effective collaborative working will become increasingly critical.

6. The need for collaboration applies no less to the Committee itself than to other organisations. While collaboration with organisations represented on the Committee, and with colleagues in England, has been ongoing since the inception of the Committee, key progress in the past year has focused on the Law Commission for England and Wales and its programme of law reform, and on the National Infrastructure Commission for Wales.

Martin Buckle  
Chair, Wales Flood and Coastal Erosion Committee

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<sup>1</sup> <http://www.legislation.gov.uk/anaw/2016/3/contents/enacted>

<sup>2</sup> [IPCC\\_AR6\\_WGII\\_SummaryForPolicymakers.pdf](#)

# Y Pwyllgor Llifogydd ac Erydu Arfordirol Cymru Wales Flood and Coastal Erosion Committee

## 1. **How We Work**

### **Committee Members**

- 1.1 Members of the Committee over the year 2021/22 (see table below) were initially appointed for a three-year term. All members listed have completed three years of service on the Committee.

|                       |                 |                    |
|-----------------------|-----------------|--------------------|
| Paul Blackman         | Natalie Haines  | Karen Potter       |
| Martin Buckle (Chair) | David Harris    | Andrew Stone       |
| Lorna Davis           | Anne-Marie Moon | Darren Thomas      |
| Jean-Francois Dulong  | Jeremy Parr     | Michael Wellington |
| Geraint Edwards       | Adrian Philpott | Catherine Wilson   |

Members were invited to extend their terms by a year to March 2023, All agreed to do so with the exception of Adrian Philpott. As the representative of the water industry, Adrian made a substantial contribution to the Committee's work, including chairing the Policy and Legislation Sub-Committee. The resulting vacancy has been filled by Dominic Scott.

### **Committee Meetings**

- 1.2 The full Committee normally meets three times each year. All agendas and minutes are published on the Committee's website <https://gov.wales/flood-coastal-erosion-committee>. All papers, other than those of a confidential nature, are available from the Committee's Secretariat:

floodcoastalrisk@gov.wales

- 1.3 The Committee meetings held in 2021-22 are set out below.

| Committee | Date                            | Location |
|-----------|---------------------------------|----------|
| FCEC6     | 20 <sup>th</sup> May 2021       | Remote   |
| FCEC7     | 23 <sup>rd</sup> September 2021 | Remote   |
| FCEC8     | 27 <sup>th</sup> January 2022   | Remote   |

- 1.4 Due to the pandemic, the Committee has been unable to meet in person since January 2020. While there are advantages in holding some meetings remotely, the Committee has agreed that it should meet physically again as soon as that becomes possible. From its inception, the Committee has adopted a practice of focusing its agendas on each of the three regions of North Wales, South-East Wales and South West Wales in turn once a year, with a meeting taking place in each region each year. Once the Committee has been able to revisit each region, the aim will be that alternate meetings of the Committee will be held remotely.

### **Terms of Reference**

- 1.5 The Committee's terms of reference can be found in Annex 1. They are derived from the Flood and Coastal Erosion Committee for Wales Regulations 2017.<sup>3</sup>

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<sup>3</sup> <http://www.legislation.gov.uk/wsi/2017/827/contents/made>

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### **Remuneration and Allowances**

- 1.5 Details of remuneration and allowances can be found in Annex 2.

### **Work Programme**

- 1.6 At the September 2021 meeting, the Committee updated its three-year Work Programme, and rolled it forward to 2023-24. The Work Programme is organised around twelve work themes, and is closely integrated with the National Strategy.
- 1.7 The Work Programme was signed off by the Minister prior to the Committee's eighth meeting<sup>4</sup> in January 2022. It has subsequently been updated to reflect the situation at the end of the financial year. The programming of activity around each of the themes is summarised in the remaining sections of this report.

### **Sub-Committees**

- 1.8 In progressing two of the themes in the Work Programme, the Committee has established two sub-committees. Theme 4: "*Explore opportunities to maximise resources for FCERM in Wales, including partnership funding contributions*" is being taken forward by the Resources Sub-Committee. Having met for the first time in August 2020, the Sub-Committee had six further meetings in 2021-22.
- 1.9 In addition, the Policy and Legislation Sub-Committee is progressing Theme 5 in the Work Programme: "*Review of the policy and legislation around FCERM in Wales*". The Sub-Committee had its first meeting in December 2020, and met three times during 2021-22.
- 1.10 An overview of forthcoming reports from the Sub-Committees is set out in Section 3 of this report. Membership of the Sub-Committees is set out below.

#### **Resources Sub-Committee**

|                       |                 |               |
|-----------------------|-----------------|---------------|
| Martin Buckle (Chair) | Anne-Marie Moon | Karen Potter  |
| Jean-Francois Dulong  | Jeremy Parr     | Darren Thomas |

#### **Policy & Legislation Sub-Committee 2021 - 22**

|                |                         |                    |
|----------------|-------------------------|--------------------|
| Paul Blackman  | Jeremy Parr             | Andrew Stone       |
| Lorna Davis    | Adrian Philpott (Chair) | Michael Wellington |
| Natalie Haines |                         |                    |

#### **Policy & Legislation Sub-Committee 2022 - 23**

|                |              |                      |
|----------------|--------------|----------------------|
| Paul Blackman  | David Harris | Andrew Stone (Chair) |
| Lorna Davis    | Jeremy Parr  | Michael Wellington   |
| Natalie Haines |              |                      |

- 1.11 The Policy and Legislation Sub-Committee has also benefited from participation by and contributions from Jean-Francois Dulong.

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<sup>4</sup> [Flood and Coastal Erosion Committee meeting: 27 January 2022 | GOV.WALES](#)

## **2. Flood & Coastal Erosion Risk Management in Wales**

### **The National Strategy – Committee Work Theme 1**

- 2.1 The publication by the Welsh Government of the final version of the National Strategy in October 2020, represented a major step forward in tackling the challenges Wales faces in managing flood and coastal erosion risks.
- 2.2 Helping to update the Strategy is the first Theme within the Committee’s Work Programme, along with assisting in its implementation, monitoring and review. All of the Committee’s remaining work themes (see sections 3 and 4) are linked to delivering the National Strategy. The Strategy sets out 24 measures, including three measures which directly involve the Committee: firstly, to consider the need for changes to legislation; secondly, to explore opportunities to maximise investment; and thirdly to establish guidance for local authority flood investigation reports.

### **Programme for Government Commitments**

- 2.3 With the formation of a new Welsh Government, following elections to the Senedd in May 2021, a new Programme for Government for the five year Senedd term was published in June 2021. This was updated in December 2021<sup>5</sup> following the conclusion of the co-operation agreement between the Welsh Government and Plaid Cymru. Within a suite of commitments to address the challenges of climate change, the Programme includes the following specific commitments to help address flood and erosion risks, which will have implications for the Committee’s work programme:
- Fund additional flood protection for more than 45,000 homes;
  - Deliver nature-based flood management in all major river catchments to expand wetland and woodland habitats;
  - Commission an independent review of the local government section 19<sup>6</sup> and Natural Resources Wales reports into extreme flooding in winter 2020-21;
  - Ask the National Infrastructure Commission to assess how the nationwide likelihood of flooding of homes, businesses and infrastructure can be minimised by 2050;
  - Legislate to strengthen the requirements for the use of sustainable drainage systems that provide wildlife habitat;
  - Establish a targeted scheme to support restoration of seagrass and saltmarsh habitats along our coastline.

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<sup>5</sup> [Welsh Government - Programme for Government - Update](#)

<sup>6</sup> [Flood and Water Management Act 2010 \(legislation.gov.uk\)](#)

### **3. Committee Progress in 2021 -22**

#### **Flooding Events in 2020-21 – Storms Ciara, Dennis and Jorge**

- 3.1 The early months of 2020 saw exceptional flooding events in many parts of Wales. Storms Ciara, Dennis and Jorge in February and March 2020 emphasised the implications of the climate emergency for communities and businesses. Across Wales, flood defences helped to protect 73,000 properties from flooding, but nonetheless over 3,000 properties were flooded, about half of which were in Rhondda Cynon Taf. Meetings of the Committee during that year included a focus on these storms, and further details can be found in our Annual Report for 2020-21.<sup>7</sup> The implications of these storms have significantly influenced our subsequent work programme, as will be seen below.
- 3.2 At the Committee meeting in January 2021, we considered the Flood Incident Management Review of the February 2020 floods prepared by NRW.<sup>8</sup> The Review acknowledged many positive elements of the operational response, but also identified a number of key areas for improvement, and these were consolidated into an action plan. Looking at the wider picture, the Review went on to conclude:
- "Managing such huge quantities of water is extremely challenging, especially given the climate change predictions for more extreme weather in the future. We need to complement defences with other measures, such as holding back water higher up in the catchment, making space for water in valleys, and in some cases accepting that, especially during events of this scale, there will be flooding. We also need to invest in warning systems, community support and advice, so that communities can take their own actions to lessen the impacts of flooding."*
- 3.3 In the report to the Committee, NRW sought views on the potential role of the Committee in considering a number of the wider issues, including a list of eight actions that extended beyond NRW's own responsibilities. Of the eight actions, it was noted that three related to flood warnings and mobilisation, and that these could be grouped together from an operational perspective, with NRW leading the discussions.
- 3.4 Four of the actions raised questions about levels of service, public expectations and the resources needed to respond effectively. These questions are related to the objectives of the National Strategy, to associated funding programmes, and to the resources needed to deliver them. The Committee noted that Section 18 reporting requirements enable the performance of the National Strategy to be monitored (see Theme 2 below).
- 3.5 The remaining action, which raised questions about roles & responsibilities, and collaboration, is an area of concern that the Committee's Sub-Committees have included within the scope of their subsequent reviews. Amongst the conclusions arising from these extreme flooding events is one that, in mitigating flood risk, local authorities are constrained by limitations on their powers. This concern is being addressed by the Policy and Legislation Sub-Committee (see paras 3.19–3.21). In addition, proposals to improve collaboration are included within the recommendations being brought forward by the Resources Sub-Committee.

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<sup>7</sup> <https://gov.wales/wales-flood-and-coastal-erosion-committee-annual-report-2021>

<sup>8</sup> [Natural Resources Wales / Our response to Storm Ciara and Storm Dennis](#)

**Storm Christoph**

- 3.6 In January 2021, further serious flooding events occurred as a result of Storm Christoph. Approx 100 homes were evacuated in the Goshen Park area of Skewen, near Neath, because of a mine water blowout. Homes were also evacuated in the Dee Valley, and there was significant damage to infrastructure in the Vale of Clwyd. The effects of Storm Christoph were discussed by the Committee at its meeting in May 2021, which received a presentation by Neath Port Talbot Council. We heard that in Skewen, approx 60 properties experienced internal flooding. The response and recovery stages of this event required widespread collaboration on a multi-agency basis, including the UK Coal Authority.

**Work Theme 2 – Natural Resources Wales (NRW) Section 18 Reports**

- 3.7 NRW has a duty, under Section 18 of the Flood and Water Management Act 2010<sup>9</sup>, to report on how flood risk and coastal erosion are being managed, and on how the National Strategy is being implemented. In response to a Wales Audit Office recommendation<sup>10</sup>, the Committee provides an independent review of these Section 18 Reports. The Report for the period 2016-19, was reviewed by the Committee prior to its submission to the Minister in January 2020.
- 3.8 In response to this review, the Committee received a report to its January 2021 meeting with proposals for a revised approach and format for the next Section 18 Report. This forthcoming report would include two components. The first component would be an annual report from NRW, reflecting the two year cycle of the Section 18 process. This would detail key achievements from NRW, acting as an update against delivery programmes, and would include information on flood events. Preparation of this component would commence early in 2021/22 financial year. It was duly reviewed by the Committee at its meeting in September 2021. The second component, to be prepared early in 2022/23, will be a progress update against the objectives and measures listed in the National Strategy. This will be reviewed by the Committee in September 2022.
- 3.9 In reviewing NRW's annual report in September 2021, the Committee was advised of NRW's key achievements and deliverables including:
- Launch of the new flood maps
    - Flood Risk Assessment Wales mapping
    - Flood Map for Planning
  - Launch of the flood risk post code finder
  - Launch of the online river levels which received approximately 730,000 hits in the first 10 months
  - Maintenance and upkeep of asset management, and the database
  - Ongoing flood incident management, including flood forecasting and warning, with 153 days of heightened flood risk experienced in 2020/21.
- 3.10 The Committee was also advised of projects that are underway, including:
- Replacement flood warning system
  - Hydrometric review of NRW's resources and infrastructures

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<sup>9</sup> <https://www.legislation.gov.uk/ukpga/2010/29/contents>

<sup>10</sup> <http://senedd.assembly.wales/documents/s53470/PAC5-03-16%20P4%20-%20WG%20Response%20to%20AGW%20report%20on%20coastal%20flooding.pdf>



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- Risk based revenue allocation model, to look at investing in NRW defences and maintenance on a risk basis, utilising the funding
- Increasing interest in the catchment scale approach
- Reservoir safety work emerging from the Toddbrook review<sup>11</sup>.

### **Work Theme 3 - Highlighting good practice in FCERM**

- 3.11 While we have yet to fully engage with this Theme in the Work Programme, the past year has seen considerable sharing of good practice through the meetings of the Committee. In May 2021, following the major floods in 2020-21, with issues of properties being uninsured coming again to the fore. As a result, the Committee received presentations on good practice in flood insurance from the Association of British Insurers, and from Flood Re, the joint initiative between governments and insurers to make flood insurance more affordable. Two new initiatives were of particular interest:
- Build Back Better - Allowing claims to include an additional amount so that flood resilience measures are included in repairs, above and beyond the original damage;
  - Discounted Premiums - Rewarding households who proactively install property flood resilience measures to benefit from lower premiums.
- 3.12 In addition to the presentation on the Skewen Flood Event (para3.6), we also received presentations to the Committee from a number of Risk Management Authorities highlighting examples of good practice. These included:
- Lamby Way Coastal Risk Management Scheme, Cardiff Council;
  - Coldbrook Flood Alleviation Scheme, Barry, Vale of Glamorgan Council;
  - Community Engagement in North-East England, Environment Agency;
  - North Wales SuDS Approval Body Guidance, Gwynedd Council and NRW;
  - Mill Lane Automated Trash Screen, Beaumaris, Anglesey Council;
  - National Asset Database, NRW.

### **Work Theme 4 - Exploring opportunities to maximise resources for FCERM in Wales, including partnership funding contributions**

- 3.13 This Theme in the Work Programme reflects the obligation placed on the Committee by Measure 24 of the National Strategy. In order to progress this Theme, the Committee in 2020 established a Resources Sub-Committee, which met for the first time in August 2020. Following three meetings in 2020-21, the Sub-Committee had six further meetings during 2021-22. The Sub-Committee delivered its Interim Report to the Committee in May 2021, followed by a Draft Final Report in January 2022. A focused consultation exercise was then undertaken, including meetings with regional flood groups and with local authority environment directors. A Final Report which takes account of this feedback is being presented to the Committee for approval in May 2022, before submission to the Minister.
- 3.14 The proposals in the Draft Final Report have been organised under 6 headings;
- Capital Funding and the Schemes Pipeline;
  - Partnerships;
  - Revenue Funding;
  - Skills and Capacity;
  - Governance and Collaboration;

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<sup>11</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/872769/toddbrook-reservoir-independent-review-reporta.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/872769/toddbrook-reservoir-independent-review-reporta.pdf)

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- Community Engagement.

- 3.15 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.
- 3.16 It was noted that a number of proposals from the Sub-Committee had 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, the increase in budgets, and the progress towards multi-year budget horizons.

### **Inequalities in Flood and Coastal Erosion Risk Management**

- 3.17 A number of the inputs received during the preparation of the Resources Sub-Committee Report drew attention to concerns about the distribution of flood and coastal erosion risks as they impact upon particular segments of society. This led to an extended literature review being undertaken to develop a fuller understanding of inequality in the distribution of flood risk in Wales, and this has influenced the proposals from the Sub-Committee.

### **The National Infrastructure Commission for Wales**

- 3.18 Having consulted the Commission at an early stage in the work of the Sub-Committee, the Chair together with Committee Member Jeremy Parr gave presentations to the Commission in March 2022 to outline the Sub-Committee's conclusions and seek their endorsement. The Commission's willingness to play a role in moving the report's proposals forward is welcomed. The meeting also provided an opportunity to discuss how the Committee and the Commission might collaborate in responding to the Programme for Government update (see para 2.3).

### **Work Theme 5 - Review of the policy and legislation around FCERM in Wales**

- 3.19 This Theme in the Work Programme reflects Measure 1 of the National Strategy. In progressing this theme, the Committee in 2020 established a Policy and Legislation Sub-Committee. Following two meetings in 2020-21, a further three meetings were held in 2021-22. The Sub-Committee will be presenting its Draft Final Report to the Committee in May 2022, following an Interim Report in September 2021.
- 3.20 Having reviewed a wider list of issues, the Sub-Committee has been focusing its attention on the following topics:
- The control of FCERM assets, including the designation of features under Schedule 1 of the Flood & Water Management Act 2010;
  - Roles and responsibilities;
  - Flood risk adaptation, both on the coast and inland, and flood resilience.
- 3.21 The work of the Sub-Committee has been aided significantly by the work of the Law Commission for England and Wales, who have been undertaking a consultation on proposals for a further programme of law reform. This has developed into a dialogue between the Committee and the Commission, with Commissioners attending the meetings of the Committee in September 2021 and January 2022 (see also paras 3.38–3.45).

**Work Theme 6 – Establishing links with other stakeholders**

- 3.22 The Committee at an early stage recognised the importance of links with other stakeholders. The Wales Coastal Groups Forum (WCGF) and the regional flood risk management groups were identified as particularly important. Proposals to formalise these links were confirmed by the Committee in January 2020. The measures agreed include:
- The Committee appointing an additional member to the WCGF, with the Forum reporting annually on progress to the Committee;
  - Regional groups to be strengthened, and to be given the opportunity to raise issues and make presentations at meetings of the Committee;
  - Strengthening communications at Local Authority Director level.

**The Wales Coastal Groups Forum**

- 3.23 The second report to the Committee from the WCGF was received at the September 2021 meeting. The Forum brings together the Chairs of the four Coastal Groups in Wales with Welsh Government, NRW, National Trust, Network Rail, the Wales Coastal Monitoring Centre (WCMC) and the Welsh Local Government Association. The Committee is represented on the WCGF by Jean-Francois Dulong and by David Harris, with the former chairing the Forum.
- 3.24 The focus of the Forum’s work had been on supporting the delivery of the Shoreline Management Plan Refresh Programme, which has included technical health checks and a review of actions plans. The Wales Coastal Monitoring Centre (WCMC), had been making steady progress, and this had led to the conclusion of a five year funding agreement in principle with the Welsh Government. They have also secured contracts under the National Coastal Erosion Risk Management programme.

**Regional Flood Risk Management Groups**

- 3.25 The Committee’s practice of inviting presentations to its meetings on issues of regional significance is one that has continued through 2021-22. As well as the presentation by Neath Port Talbot Council (see para 3.6), a number of presentations have been made sharing examples of good practice (see paras 3.11–3.12). In addition, Committee agendas provide opportunities for the regional groups to provide input and feedback, and they have also been active in providing input to the Committee’s two Sub-Committees.

**Wider Stakeholders**

- 3.26 The Committee also recognises the importance of wider links, and the Chair continues to meet with a range of other key stakeholders. Links with the Flood and Coastal Risk Programme Board continue to be important, with the Board offering feedback on the work of the Resources Sub-Committee. Regular contact also continues to be maintained with the Regional Flood and Coastal Committees in England, including collaboration on the developing dialogue with the Law Commission (see para 3.21).

**Work Theme 7 – Advising on the integration of FCERM policies and priorities with other relevant policies and legislation**

- 3.27 The Committee has yet to engage comprehensively with this Theme. However, a number of consultation responses progressed under Theme 10 below are of direct relevance, including responses to consultations on agricultural funding, on planning matters (TAN 15 and permitted development rights), and on coal tip safety.

**Work Theme 9 – Influence research needs and programmes, and disseminate research once complete**

- 3.28 While the Committee has also yet to fully engage with this Theme, progress is being made with disseminating research, and both the Resources and the Policy and Legislation Sub-Committees continue to draw on academic papers and research in progressing their work programmes. In addition, Committee Members Karen Potter, Jean-Francois Dulong and Jeremy Parr continue to play a role in advising on the Joint (England and Wales) FCERM Research and Development Programme.

**Work Theme 10 – Responding to consultations relevant to FCERM in Wales – Update on 2020-21 Responses**

- 3.29 As in previous years, key consultations continue to arise regularly, and this Theme continues as the focus for much of the Committee's work.

**Agriculture Wales White Paper**

- 3.30 The Committee had initially responded to a consultation paper in 2019, and thereafter to the White Paper in 2020. Arising from these consultation responses, the meetings of the Committee in May and September 2021 were joined by the Deputy Director of the Welsh Government's Land Management and Reform Division, to share an overview of consultation responses, to outline progress and to discuss next steps.
- 3.31 We were advised that the proposed timetable is as follows:
- 2022 will see the introduction of the Bill and an outline of the scheme;
  - 2023, subject to Royal Assent, will see a firming up of the scheme and of the transition phase in 2024, alongside significant outreach and starting to ask farmers to sign up to sustainable farming scheme contracts;
  - 2025 onwards will see contracts commence, whilst the basic payment scheme will continue to be phased out over a multi-year period, and replaced with a scheme based on the premise of public money for public goods. This will represent a transformational change.
- 3.32 As the scheme is developed, there will be more information on specific actions to be undertaken on farms to deliver a range of flood mitigation measures. Flood mitigation remains one of the eleven strategic outcomes of the new proposed scheme. There will need to be a focus at both farm and catchment scale, with water management techniques as just one of a suite of actions.
- 3.33 The outline final scheme will be published in 2023 for consultation, when there will be an opportunity for the Committee to comment further.
- Technical Advice Note 15 (TAN 15) on Development, Flooding and Coastal Erosion; Welsh Government**
- 3.34 Having responded extensively to the consultation draft in 2020, the Committee was invited in June 2021 to provide further comments as the work on TAN15 approached its conclusion, and these were submitted in July. We had previously expressed concerns about inconsistencies with the draft National Development Framework, which proposed key growth areas in coastal towns and cities which would fall into flood zones where development would be constrained. It was pleasing to see that these concerns had been addressed, and that the new TAN and Flood Map would represent a major step forward in updating planning guidance to respond to the climate emergency. We had also raised the

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importance of reviewing TAN12 on design, which needs to be updated to reflect the climate emergency, and to support the objectives of the new TAN15.

- 3.35 At our meetings in September 2021 and January 2022, we received updates on further progress on TAN15. The new TAN was launched on 28<sup>th</sup> September, along with the new Flood Map for Planning which includes climate change projections, with the intention that the TAN would come into effect on 1<sup>st</sup> December. The TAN would reflect a determination to restrict development taking place in the highest flood risk areas, demonstrating a commitment to prevent problems for future generations.
- 3.36 While the new TAN had been well-received and criticised in equal measure, it was announced in November that it would not come into effect until June 2023. This would provide local authorities with sufficient time to undertake or update their strategic flood consequence assessments, which will then help to inform whether the TAN and Flood Map require any adjustment. The new TAN seeks to avoid development which places extra requirements on main river and coastal defences. The appropriateness of locations for development will need to be more carefully considered, along with future maintenance costs,

### **Work Theme 10 Responding to consultations relevant to FCERM in Wales in 2021–22**

- 3.37 During the year, the Committee has responded to the consultations set out below. Key extracts from the responses are included.

#### **Law Commission of England and Wales – 14<sup>th</sup> Programme of Law Reform Consultation, July 2021**

- 3.38 In July 2021, the Chair wrote to Lord Justice Green, the Chairman of the Law Commission, in response to the Commission's consultation, expressing the Committee's interest in the programme, but indicating that, with our Policy and Legislation Sub-Committee not due to report until May 2022, it would be premature to respond fully to the consultation at that stage. The hope was expressed, however, that this might be the beginning of a dialogue between the Committee and the Commission.
- 3.39 Lord Justice Green responded, indicating that the Commission was already taking an interest in the law relating to flooding and coastal erosion, and that an ongoing dialogue with the Committee would be welcomed.
- 3.40 Accordingly, Commissioners attended the meetings of the Committee in September 2021, at which the Policy and Legislation Sub-Committee's Interim Report was agreed (see para 3.19), and in January 2022. We were informed by the Commissioners on the formation of their 14<sup>th</sup> Programme that they have finalised a list of projects, 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 amongst them.
- 3.41 Several distinct sources of proposals for work in this area were received as part of the consultation, with many common themes. Public law issues identified included issues on surface water flooding. Uncertainties as to the responsibilities of asset owners in public law, and the lack of a duty to maintain assets that are in private ownership, were also highlighted.

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- 3.42 The public law aspects would examine the roles of public bodies in managing risks posed by flooding and coastal erosion. From a private law perspective, this work would focus on the legal relationships between private individuals, and on the duties and obligations owed by one landowner to their neighbours to manage hazards such as flooding and coastal erosion, which emanate from their land and endanger neighbouring land.
- 3.43 Improving private law will be an important part of meeting the challenges raised by flooding and coastal erosion. A significant amount of FCERM infrastructure 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 will remain important,
- 3.44 The current law also fails to facilitate Natural Flood Management (NFM), because there is no easy legal mechanism by which multiple landowners across catchment areas can co-ordinate their actions. 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.
- 3.45 Working with current timescales, we were advised that the plan was to approach Governments after Easter, with a view to having the programme signed off before the summer.

### **Law Commission of England and Wales – Regulating Coal Tip Safety in Wales, September 2021**

- 3.46 In early September, the Committee responded to this consultation paper, indicating our support for the proposals, including their benefits for flood risk management.

### **Permitted Development - Amendments to the Town and Country Planning (General Permitted Development) Order 1995 – Welsh Government Consultation**

- 3.47 From an FCERM perspective, a key proposal in this consultation was to remove permitted development rights within domestic gardens for the creation of impermeable surfaces. We expressed strong support this change. There is growing evidence about the scale of surface water flood risks across Wales, and the extent to which these will increase through the climate emergency. Impermeable paving over domestic gardens continues to be a significant factor in exacerbating these risks.
- 3.48 In responding to this consultation, we also added the following comments:

*"In responding to other Welsh Government consultations on flood and coastal erosion risk management (FCERM) and on planning, we have emphasised the importance of reviewing this Order. As things stand, this Order permits development which would contribute to the consolidation of vulnerable development within flood risk areas. In doing so, it is in direct conflict with the National Strategy for FCERM, and its objective of preventing more people becoming exposed to flood risks. The amendments currently proposed in this consultation do not address this concern, but a number of them, in extending permitted development rights, would expose the users and occupiers of vulnerable development to greater exposure to risk."*

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*"Under the umbrella of Future Wales, The National Plan 2040, the Welsh Government is making huge strides through amendments to planning policy and guidance, in enabling the planning system in Wales to respond effectively to the climate emergency and associated increases in flood risk. It is important that these measures are carried through to ensure that the whole of the planning system is able to make its full contribution to these challenges. There is a pressing need for the GPDO to be reviewed more widely than proposed in this consultation, indeed, to be reviewed comprehensively."*

*"Similar considerations apply to the Town and Country Planning (Use Classes) Order 1987, which permits changes of use of land and buildings within flood risk areas to vulnerable development without the need for planning consent. It is long overdue for review."*

### **Committee Members Feedback**

- 3.49 Included within the Committee's Work Programme is the undertaking of annual appraisals of Committee Members. In addition to providing feedback to individual Members on their performance, these appraisals also provide valuable feedback on the Committee's processes and outputs, as summarised below.
- 3.50 As has been the case since the formation of the Committee, attendance levels at meetings continue to be good. Despite working through a pandemic, and with many individuals being under heavy pressure in work, attendance has averaged 96% for the three meetings of the main Committee, and 88% for the nine meetings of the Sub-Committees. Levels of stakeholder support in releasing Members to attend meetings are notable, and contributions to the work of the Sub-Committees have grown substantially. Participation in the Committee continues to be highly valued by individual Committee Members and their employers.
- 3.51 All meetings of the Committee and Sub-Committees were held remotely, but there was general satisfaction with the arrangements made. Momentum in delivering on the Work Programme has been maintained. There is nevertheless enthusiasm for restarting physical meetings, and a perception that some of the qualitative value of meetings has been lost. Levels of engagement with Welsh Government officers continue to be highly valued. Only one Committee Member felt unable to accept the offer of a 12 month extension to their term of office.
- 3.52 The workload of the two Sub-Committees in delivering on two of the Measures within the National Strategy is recognised as being of key importance. Nevertheless the ability to influence the development of policy and programmes within Welsh Government and other organisations through consultations is still recognised as a critical priority, and the progress made in moving beyond consultation to dialogue is highly valued. As the Committee's workload has grown, however, there are continuing concerns about the Committee's capacity to initiate further workload.

#### **4. Looking Ahead**

- 4.1 In a repeat of the situation from 12 months ago, while the impact of the pandemic is diminishing, meeting of the Committee in May 2022 will again be held remotely. It is to be hoped that the Committee meeting scheduled for Newport in September, will go ahead as planned. We then hope to schedule meetings in North and South West Wales again, before moving to a schedule where meetings alternate between physical and remote meetings. In accordance with our normal practice to maintain a three-year work programme, the September meeting will look to extend the programme into 2024-25.

##### **The Work Programme in 2022-23 and 2023-24**

- 4.2 It is intended to maintain progress on Work Themes 1, 2, 4, 5, 6, 7 and 10, as outlined in sections 2 and 3. Key events during the year will be the reports to the Committee from the two Sub-Committees, with the Resources Sub-Committee presenting its Final Report in May 2022, and the Policy and Legislation Sub-Committee presenting its Draft Final Report in May 2022, and after a period of consultation, its Final Report in September 2022. The remaining themes are planned to be moved forward over the coming two years in the following order:

##### First Priority

- Theme 8 - Contribute to the preparation of the Coastal Adaptation Guidance (with an initial report to Committee in May 2022).

##### Second Priority

- Theme 12 – Establish high level requirements and supporting guidance for the Section 19 flood investigation reports prepared by local authorities. (This will be phased to link with the independent review of Section 19 and Natural Resources Wales reports into extreme flooding in 2020-21.)

##### Third Priority

- Theme 3 - Highlighting good practice in FCERM (see also paras 3.11–3.12);
- Theme 9 – Influence research needs and programmes, and disseminate research once complete (see also para 3.28);
- Theme 11 – Wider resilience and emergency policy from an FCERM perspective.

- 4.3 On the administrative front, Committee Members' current terms of appointment will expire over the coming year. Steps will need to be taken to ensure that the momentum of the Committee's work programme is able to be maintained into 2023-24 and beyond.



**Annex 1: Committee Terms of Reference**

(References to “Regulations” refer to the Flood and Coastal Erosion Committee for Wales Regulations 2017).<sup>12</sup>

**Purpose**

1. The Committee has been established by the Environment (Wales) Act 2016, Section 81. Its purpose is to advise the Welsh Ministers on matters relating to flood and coastal erosion risk management.

**Scope (regulation 8)**

2. The scope of the Committee is to advise on any matters relating to flood and coastal erosion risk management.

**Membership (regulations 3-5)**

3. The Committee shall be made up of a Chair and up to 14 Committee members who are either an expert on matters deemed relevant by Welsh Ministers, or a nominated representative of an organisation associated with flood and coastal erosion risk management.

**Duties (regulation 9)**

4. The Committee must advise the Welsh Ministers on:

- i. The management of risk from all sources of flooding and coastal erosion;
- ii. Wider resilience and emergency issues from a flood risk management perspective;
- iii. The National Strategy for Flood and Coastal Erosion Risk Management; and
- iv. Work being carried out by flood and coastal erosion risk management organisations.

**Powers**

5. The Committee may:

- i. Establish its own programme of advisory work on flood and coastal erosion risk management in Wales (regulation 10);
- ii. Advise Welsh risk management authorities on the management of risk from all sources of flooding and coastal erosion (regulation 10);
- iii. Advise Welsh risk management authorities on wider resilience and emergency issues from a flood risk management perspective (regulation 10);
- iv. Advise Welsh risk management authorities on the National Strategy for Flood and Coastal Erosion Risk Management (regulation 10);
- v. Enter into agreements with other bodies, subject to the approval of the Welsh Ministers (regulation 10);
- vi. Appoint members of the Committee as its representatives on other fora or committees.

**Meetings (regulation 11)**

6. Meetings shall be held at intervals of no more than 6 months.

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<sup>12</sup> <http://www.legislation.gov.uk/wsi/2017/827/contents/made>

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7. The Committee is a public body within the meaning of the Public Bodies (Admission to Meetings) Act 1960. Accordingly meetings of the Committee will be open to the public [Environment (Wales) Act 2016, Section 81 (3) and Schedule 2 Part 4].

### **Reports (regulation 12)**

8. The Committee must submit a report to the Welsh Ministers on the exercise and performance of its functions for each period of 12 months, following the appointment of members to the Committee.

### **Procedure (regulation 13)**

9. The Committee may regulate its own procedure, including making provision in relation to the quorum for its meetings (subject to the approval of the Welsh Ministers), and its voting procedure.

### **Sub-Committees (regulation 14)**

10. The Committee may establish sub-committees by majority vote, to meet on the direction of the Committee. The Committee may regulate the procedure of any sub-committee, including its quorum and voting procedure. The terms of reference of a sub-committee are subject to the approval of the Welsh Ministers.

### **Communications & Working with others**

11. Requests for interviews should be sent to the Minister for Environment in the first instance via the Secretariat. If the Minister is unavailable, the Chair may be asked to speak on behalf of the Flood and Coastal Erosion Committee.

### **Programme of work**

12. The annual programme of work will be agreed with Welsh Ministers to ensure it includes current priorities.

## **Annex 2: Remuneration & Allowances**

The Chair is entitled to remuneration on a per-day basis. Other Members of the Committee are not entitled to remuneration, but, as with the Chair, they are entitled to claim for travel and subsistence expenses. Expenditure under these headings is set out below.

| £       | Remuneration | Expenses | Total  |
|---------|--------------|----------|--------|
| 2018-19 | 6,036        | 150      | 6,186  |
| 2019-20 | 14,295       | 2,279    | 16,574 |
| 2020-21 | 14,520       | 80       | 14,600 |
| 2021-22 | 16,020       | 175      | 16,195 |
| 2022-23 | 17,203       | 129      | 17,332 |