

IEPAW

Interim Environmental Protection Assessor for Wales

Annual Report
2023 - 2024

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Foreword

I am pleased to present my third annual report as the Interim Environmental Protection Assessor for Wales (IEPAW) covering the period 1 March 2023 to 29 February 2024.

This year has seen nine submissions from the public highlighting a variety of concerns about environmental law in Wales. This was an increase on the previous year and I am grateful to those who have taken the time to make these submissions in order to highlight areas where the effectiveness of legislation related to environmental protection in Wales would benefit from review.

There have been changes to the Secretariat team, with Clare Stock and Tim Morris joining in August 2023 and a new Head of the Secretariat, Emma Davies being appointed in December 2023. I must express my gratitude to David Beckett and Elizabeth Clark for their contribution and dedication to the IEPAW Secretariat over the last two years. We are a small team but we have continued to progress work on several key areas and although there is always more to be done, the

addition of Deputies, Anna Heslop and Lynda Warren and support from PhD Students to our work in 2024 will be beneficial in assisting to achieve our aims for the coming year.

The Climate Change, Environment and Infrastructure Committee (CCEIC) has once again provided invaluable feedback to aid the IEPAW in assessing and monitoring its impact and this is something we have been actively considering.

I would also like to extend my thanks to the public and stakeholders who have reached out to me over the past year and attended events organized by the IEPAW. The concerns, evidence and observations provided have been invaluable. This ongoing support is greatly appreciated and I look forward to working closely with you all in 2024.

Finally, I would like to express my gratitude to Julie James, Minister for Climate Change for her support, regular meetings and engagement with the IEPAW during this term.

Introduction

Since March 2021, Dr Nerys Llewelyn Jones has undertaken the role of the Interim Environmental Protection Assessor for Wales (IEPAW). The IEPAW considers concerns raised by the public about the functioning of environmental law in Wales. This is an interim process that will be in place until a permanent body is established in Wales to oversee compliance with environmental law. Dr Llewelyn Jones was initially contracted for a period of up to two years, although this was extended to 29 February 2024. A further year extension has since been provided until 29th February 2025 and the recruitment of two Deputies was commenced in 2023, with appointments being made in May 2024 for a period of 3 years.

The IEPAW is independent from the Welsh Government, although Welsh Government officials provide secretariat support to the IEPAW. Our focus is on the functioning of environmental law, not on breaches of that law. Our aims are to:

- provide oversight of the functioning of environmental law in Wales; and

- to consider systemic issues relating to the working or functioning of environmental law in Wales.

The role does not involve consideration of:

- breaches of environmental law;
- areas of non-compliance with environmental law; or
- issues raised that are covered by another complaints mechanism or process.

Our aim is to identify where action can be taken to improve the functioning of environmental law in order to improve environmental outcomes. Details on how to raise a concern about the functioning of environmental law in Wales, as well as our terms of reference, are available at [Interim Environmental Protection Assessor for Wales | GOV.WALES](https://gov.wales/interim-environmental-protection-assessor-for-wales)

The IEPAW is committed to publishing an annual report on the submissions received, its work in considering the functioning of environmental law in Wales and any action taken regarding concerns raised. This is the third annual report and covers the period 1 March 2023 to 29 February 2024

Climate Change, Environment and Infrastructure Committee Report

On 21 June 2023, the IEPAW attended an oral evidence session hosted by the [Climate Change, Environment and Infrastructure \(CCEI\) Committee](#) (“CCEI Committee”). This session provided the CCEI Committee with an opportunity to scrutinise the operation of the interim environmental governance arrangements and to learn more from Dr Llewelyn Jones about her previous year as the IEPAW in addition to her planned activity moving forward. Following this evidence session, the CCEI Committee published a [report on the operation of the interim environmental governance measures](#).

We are once again grateful to the CCEI Committee for the work they have undertaken in this area and the recommendations they made for improving the interim environmental governance arrangements. The CCEI Committee’s recommendations constitute an important package of improvements to ensure the IEPAW can deliver its functions effectively until a permanent environmental oversight body is in place.

Although the recommendations in the report were primarily aimed at the Welsh Government, there was one recommendation that was specifically directed towards the IEPAW. This related to the establishment of processes to monitor the impact of the IEPAW’s role and work on environmental outcomes. The IEPAW

is grateful to the CCEI Committee for highlighting this and has considered ways to address the issue. These include:

- Delivery of the annual briefing to the CCEI Committee and the opportunity for Committee members to directly question the Interim Assessor on its work and to highlight areas that require consideration.
- Delivery of online Stakeholder briefings on a quarterly basis for the public to directly question the Interim Assessor on her work¹
- Publication of regular newsletters detailing IEPAW activities.²
- Quarterly reviews of all submissions received by the IEPAW since its establishment, identifying substantive changes affecting initial scoping of the submissions and reconsideration in line with the published prioritisation principles.³
- Ongoing reviews of Senedd activity relevant to the IEPAW’s activities such as Plenary discussions and CCEI Committee meetings.

The IEPAW is considering what additional monitoring processes are required to analyse the impact of reports published by the IEPAW going forward. An additional section has been added to this Annual Report that

¹ Four quarterly stakeholder meetings have been conducted to date. Details of the discussions and issues raised are covered in the IEPAW newsletter. Teams invitations to attend can be obtained by emailing IEPAW@gov.wales.

² Four newsletters have been published to date starting in October 2022. They can be found at [Interim Environmental Protection Assessor for Wales | GOV.WALES](#)

³ Details of the outcome of reviews are included in the Process section of this report.

reviews and considers the impact of report recommendations and other IEPAW activities. We have also reviewed our submissions processes, and analysis activities. As a result, measures to improve impact monitoring and reporting have been identified and implemented within our quarterly reviews of submissions.

Another key recommendation of the Committee's report was that the Welsh Government should provide an indicative timetable for the remaining stages of the appointment process for a Deputy IEPAW.⁴ The IEPAW is pleased to announce that following the

recruitment process in December, two Deputies have been appointed instead of one and that both Deputies, Anna Heslop and Lynda Warren are now in post as of 1st May 2024. The IEPAW is fortunate to have attracted two PhD students to join the team for a period of 3 and 6 months respectively to contribute in particular to our work on protected sites and water, with one placement commencing in the period of this Annual Report and both continuing into the 2024-5 year. These additions to the IEPAW team have been invaluable and will enable us to deliver more output in 2024-5 period.

⁴ Recommendation 1: The Minister should report back to the Committee on [...] steps that have been taken to date to appoint a Deputy IEPAW. This

should include an indicative timetable for the remaining stages of the appointment process.

Stakeholder Engagement

Since 2022, the IEPAW has continued to host a series of virtual quarterly stakeholder meetings. These meetings continue to provide an opportunity to update interested parties on the work of the IEPAW in addition to listening and learning from stakeholders about matters of concern that may give rise to submissions. These sessions continue to be well-attended and have seen a wider range of stakeholders engage with us over the last 12 months. They have also proved to be a valuable source of information for us and continue to allow us to provide a high level of transparency around our work. Alongside these events, we have also continued to meet with individual stakeholders both virtually and in person. This has included the NRW, RSPB, Green Alliance and Afonydd Cymru, WLGA and AECOW. Insights from these meetings have assisted the IEPAW in considering a range of environmental issues that have required prioritisation.

The IEPAW attended several events throughout the year. These include:

- The UKELA Conference in late June 2023 which was held in Reading University. The Interim Assessor delivered an update at the UKELA Working Group Wales virtual session and also attended the in person event held in Reading University where she participated in a session together with representatives from the OEP, and ESS on Environmental Governance in the UK.
- The 2023 Royal Welsh Show once again provided an opportunity to meet with stakeholders. The IEPAW was particularly interested in the views of stakeholders on the Agricultural (Wales) Act 2023 and the development of the Sustainable Farming Scheme. Input from stakeholders was particularly welcomed as it provided a helpful perspective on how the scheme might affect the functioning of environmental law.
- Coed Cadw's event in Cardiff on tree protection focused specifically on Welsh matters with engaging presentations from youth representatives and the Minister for Climate Change, Julie James which was attended by the IEPAW Secretariat.
- Attendance at several Westminster Forum events including the Policy Forum for Wales Keynote Seminar: Next steps for climate change policy in Wales on 9th June 2023 and The future for environmental standards, policy and regulation in the UK on 27th February 2024.
- Virtual Attendance at the Association of Environmental Clerks of Works conference on 14th November 2023 which was specifically considering approaches to EIA.
- As in previous years, we continue to meet regularly with Natural Resources Wales (NRW) for updates on emerging issues and discussion on areas we are working on. We have also engaged in a collaborative workshop with NRW in on 12th February 2024 on potential legislative and regulatory priorities.

This workshop was a useful opportunity to develop a greater understanding of the areas of environmental law that have limitations or where improvements could be made from a Regulator perspective.

We also continue to meet with relevant officials within Welsh Government policy teams as in previous years. This provides the opportunity to ensure that we remain appropriately informed on policy developments relating to environmental law in Wales.

Cross-border Engagement

Given the cross-border nature of many environmental issues, it is important that we maintain constructive working relationships with our counterparts in the other nations of the United Kingdom. For this reason, we regularly meet with representatives from the Office for Environmental Protection (OEP) (representing both England and Northern Ireland) and Environmental Standards Scotland (ESS). Although each body has slightly different remits and powers to us in Wales, these meetings are an invaluable forum for cooperation and exchange of information, enabling the three bodies to discuss our shared priorities, flag emerging issues, and share information on best practice. To strengthen this relationship further, the three bodies have agreed a tripartite memorandum of understanding⁵ setting out how the three bodies will seek to cooperate and share information.

Work has continued this year sharing information on water quality issues in addition to collaboration on work relating to protected sites. With

several water bodies traversing the border between England and Wales, collaboration has provided valuable opportunities to develop our understanding of where opportunities and challenges exist in environmental management along their courses. This collaboration has also helped to understand the challenges different regulatory regimes present.

The IEPAW also received an invite to join the other UK environmental scrutiny bodies in Edinburgh, Scotland on 24th and 25th May 2023. We are grateful to the ESS for hosting that meeting and the opportunity to meet with counterparts and discuss the processes for establishment of the OEP and ESS bodies has been invaluable to us in the IEPAW in terms of our development but also in feeding in to the Environmental Governance team in Welsh Government considerations for the permanent body in Wales. We are pleased to confirm that this meeting will become an annual event and we are excited to welcome representatives of the OEP and ESS to Cardiff in August 2024.

⁵ Available at [Memorandum of Understanding between the Office for Environmental Protection 0.pdf \(theoep.org.uk\)](https://theoep.org.uk/Memorandum_of_Understanding_between_the_Office_for_Environmental_Protection_0.pdf)

Process

We aim to provide an initial response to submission forms received within 20 working days of their receipt.

When a submission is received, it is subject to a scoping exercise to determine whether it relates to the functioning of environmental law in Wales and so can be considered by the IEPAW. If the submission is within scope, then it will also undergo a prioritisation exercise to decide whether it should be the subject of an investigation and report to Welsh Ministers. It is not possible to produce a report in response to every submission received. Instead, we aim to target our resources on the issues that we consider to be of the highest priority in line with our published prioritisation principles⁶.

Following the CCEI committee report on the IEPAW published in June⁷, we have reviewed our processes regarding submissions as a result of their recommendation on impact

monitoring. It was identified that improving how we manage and use data as well as the details we record would be necessary for this purpose. Amendments included refined categories for submissions and improved recording of actions undertaken in response. All submissions received by the IEPAW have been recategorized using the new categories to ensure consistency moving forward in addition to analysis of previous activity. We have also implemented changes to the way we record information about the regulations and statutes referred to in submissions. This is allowing us to improve our analysis of the functioning of environmental legislation and provide appropriate detail to Welsh Ministers. Additionally, we are improving our analysis of the environmental issues that are being brought to our attention. Figures 1 – 3 below show the submissions received against the new categories since the inception of the IEPAW by year.

⁶ Available at [Interim Environmental Protection Assessor for Wales \(IEPAW\) prioritisation principles](https://gov.wales/government/interim-environmental-protection-assessor-for-wales-2023-2024/prioritisation-principles) | GOV.WALES

⁷ See CCEIC Report Section for further details, [cr-ld16043-e.pdf \(senedd.wales\)](https://gov.wales/government/interim-environmental-protection-assessor-for-wales-2023-2024/cceic-report)

Figure 1: IEPAW Submissions Received by Category 2021-2022

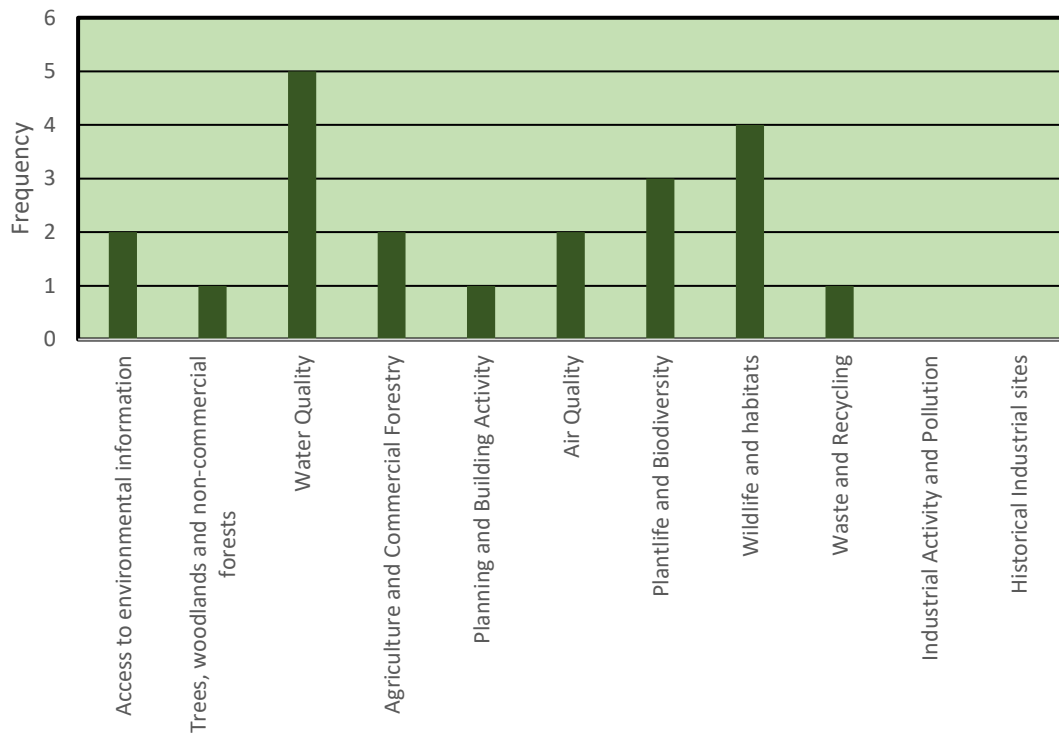


Figure 2: IEPAW Submissions Received by Category 2022-2023

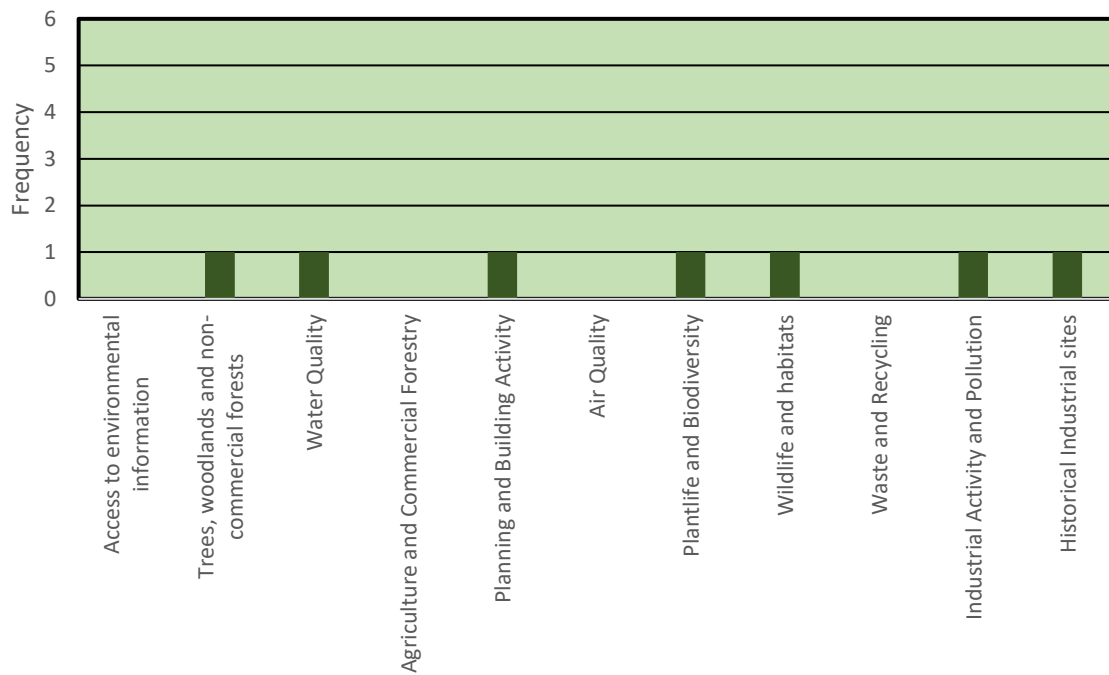
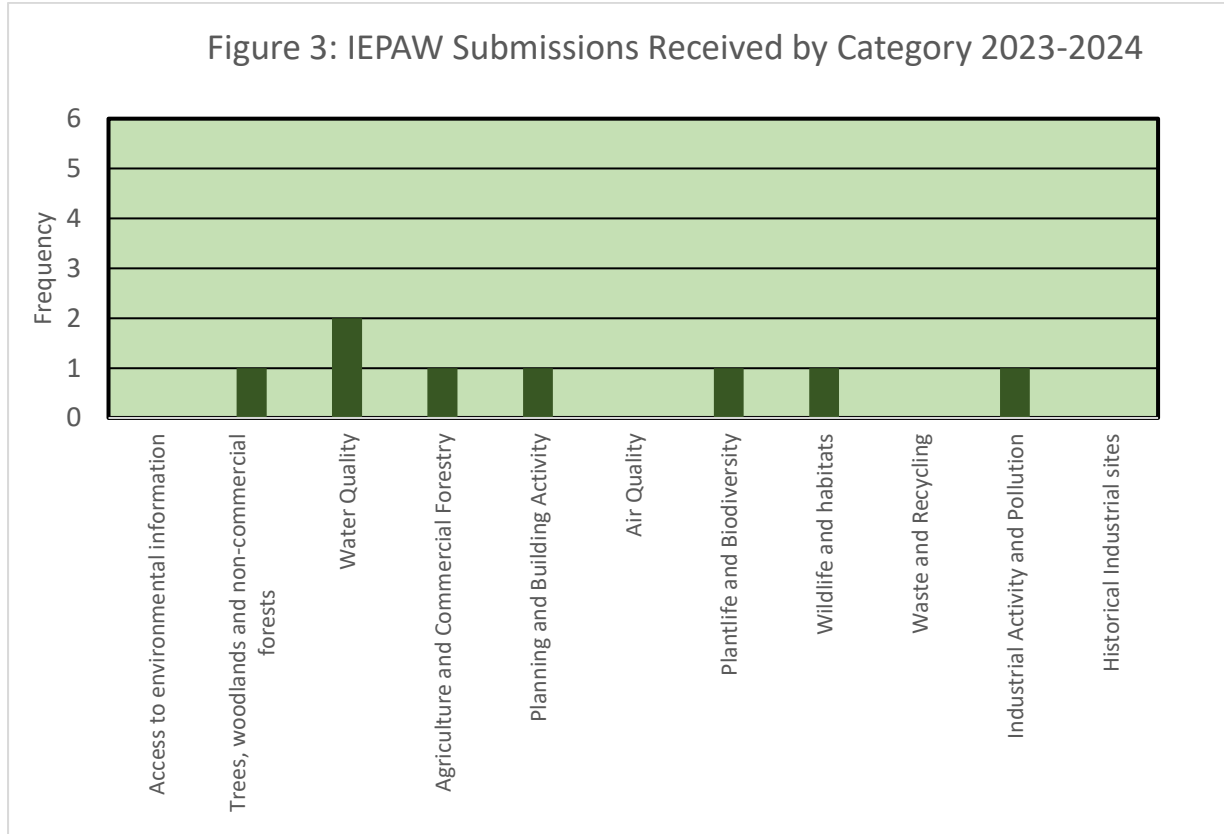
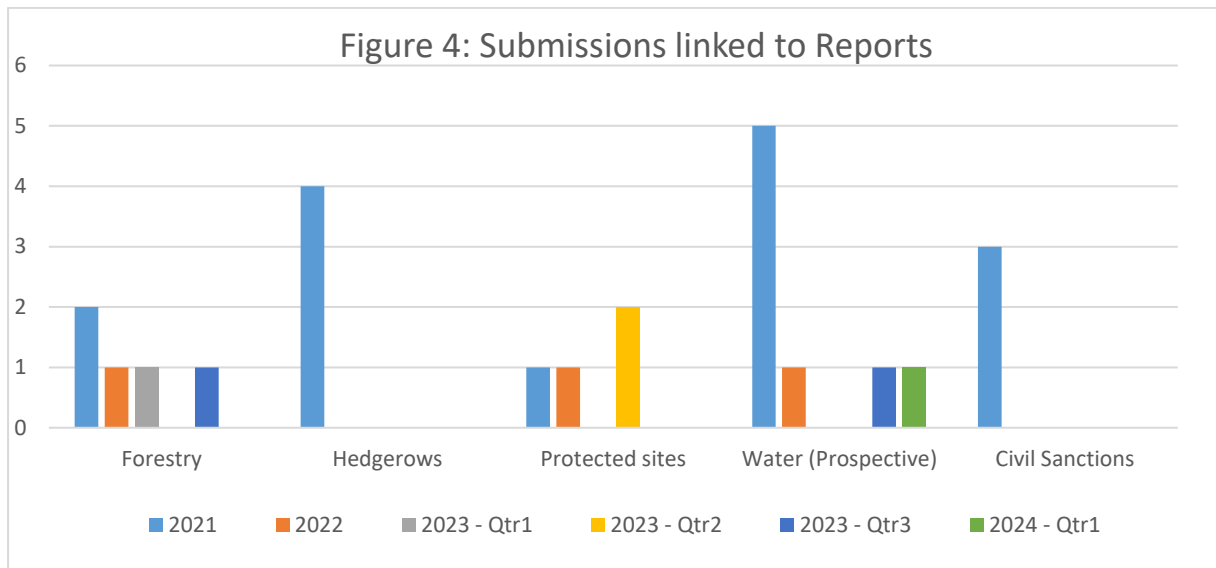


Figure 3: IEPAW Submissions Received by Category 2023-2024



Most submissions received by the IEPAW have resulted in them being considered and included in the scoping of a report. Of the 36 submissions received since 2021, 7 were deemed to be outside the scope of the IEPAW. The majority of these were received in 2021 (5) with only 2 further submissions to date having fallen into

this category. This we believe has been assisted by our implementation of a formal submission form and clearer guidance on what content should be included in submissions and what is within or outside scope. We have received submissions on water quality, and biodiversity in every year to date.



This work has also highlighted some of the limitations resourcing has placed on the activity of the IEPAW. Other factors have influenced decisions about which topics to pursue reports on for Welsh Ministers. Water quality has been the most frequent issue raised with the IEPAW since its inception. Although it has been earmarked for development, work has not yet commenced on a report into this topic. This is due to the complexity of the matter as illustrated in the submissions received. Although they have all been classified as referring to water quality, multiple sources of pollution have been identified in submissions. Furthermore, we are keen to add value and we took a conscious decision in 2023 not to embark on compiling a water report at that time until other pieces of work by the CCEI Committee, Welsh

Government and NRW had been completed.

We have however recruited a dedicated PhD student who will concentrate on water quality and commences at the IEPAW in March. Their contribution should allow us to rapidly progress development of the report on water quality with a Call for Evidence to be issued in Summer 2024.

We are also engaging in quarterly reviews of all submissions to date to ensure that we effectively track progress on various environmental issues that have been raised and keep submitters up to date with our work in response to their submission. This includes a consideration of the original scoping decision and activity linked to the submission.

Submissions Received

During 2023 – 24, we received nine submissions about the functioning of environmental law in Wales. This was a 50% increase on the previous year.

- One submission related to tree preservation orders and appropriate enforcement activity by local planning authorities.
- Two submissions related to the protection and management of protected sites.
- Two submissions related to water quality and the impact of activity on protected sites.
- Two relate to ammonia emissions from agricultural sources.

- One submission relates to local development planning and the full range of obligations planning authorities are subject to under environmental legislation.

(See Figure 3 above)

Of the submissions received this year, one was considered to be outside the scope of the IEPAW process so was not taken any further. This submission related to open cast mining. The majority of the other submissions are on matters we are already drafting reports on and we have considered these additional submissions in their development.

Further Details on Concerns Received

Trees

In this submission, the submitter stated that tree preservation orders were not being correctly utilised. They cited a case in which several trees were felled following a planning application. It was suggested that guidance or regulations could be selected to justify decisions to allow trees to be felled. They also contended that monitoring and enforcement processes are insufficient for ensuring legal protections for woodland areas and specific trees are enacted.

Protected Sites.

We have received two submissions relating to protected sites this year. In the first, concerns were raised about activity related to Special Protected Areas (SPAs) and Wales' obligations relating to the creation of a national network across the UK. The second raised concerns about the protection of endangered species on protected sites and the extent to which obligations were being considered in the planning process.

We are in the process of producing a report on legislation and regulations relating to protected sites in Wales. These submissions have been included for consideration in this report.

Water Quality

We have received two submissions relating to water quality this year. In the first, concerns were raised about the impact of permitted discharges on Sites of Special Scientific Interest (SSSIs). It was argued that the current permitting regime was not providing

sufficient protection for these sites. The second raised concerns about the impact of diffuse agricultural pollution on Special Areas of Conservation (SACs). It argued that there was scope for legislation and regulations to be incorrectly applied, citing evidence of pollution in a specific body of water.

We are currently considering our approach to water quality and the production of a report. This has required engagement with a broad range of stakeholders to determine what issues are involved. These submissions are being considered in the context of this report.

Ammonia Emissions

We have received two submissions related to ammonia emissions this year. Both relate to the effective control of ammonia emissions in agriculture. It has been suggested that guidelines were based on incorrect information and were resulting in flawed authorisation of planning permission for agricultural development. It was also argued that emissions were not being effectively controlled as a result.

We are currently considering our response to the issues raised within these submissions.

Planning and Building Activity

This submission argued that local planning authorities were failing to consider their obligations to ensure access to open spaces. It was contended legislation that established Natural Resources Wales (NRW) had

failed to transfer responsibilities held by previous bodies in this area.

In the process of scoping, it was identified that the submitter had not considered a subsequent piece of legislation relating to these responsibilities. It was therefore determined that the submission did not require further investigation.

Industrial Activity and Pollution

This submission argued that scope existed for the continuation of open cast mining in Wales as result of the incorrect application of planning and industrial policies. The case of an open cast mining site was cited in support of the submission. As the submission related to regulatory breaches, it was determined that it fell outside the scope of the IEPAW.

Reports Under Development

We are currently continuing to develop several reports. These have taken longer than originally anticipated as emerging issues have been taken into consideration. Given that we have received 9 more submission during this period it has been challenging to also progress our report work. Additional submissions received have also had to be considered in the context of the reports already in progress.

There are 4 reports currently being progressed. These include:

1. Tree Preservation Orders and Felling Licences
2. Hedgerows
3. Protected Sites
4. Civil Sanctions

We are currently drafting a report on hedgerow protection and management. This is intended to consider whether the Hedgerow Regulations 1997 meet their stated aim of protecting hedgerows effectively. This will also closely align with several issues identified in the development of the report on trees.

A further report on protected sites and their management is also being drafted. This follows several submissions received in 2022.

Several further submissions have been received this year, as noted above. The aim of this report is to consider the legislation relating to the protection and management of the various types of sites designated within Wales.

Another report that we feel has relevance to many of the issues we have been considering is the application of civil sanctions in Wales. The intended aim of this report is to consider how civil sanctions have been utilised to date within environmental law and also to assess whether use of civil sanctions in other areas of environmental law would be valuable in encourage compliance and as an additional mechanism for enforcement.

We noted last year that we have kept a watchful eye on issues relating to water quality in Wales, particularly concerns around the use of combined sewage overflows and agricultural pollution. Having received further submissions on this topic this year that identify these and other sources of pollution as potential issues, we have recruited a PhD student on a 6-month part time placement who will focus specifically on the functioning of environmental law in this area and the regulatory framework currently available. A call for evidence on water quality will be issued in the 2024-25 period.

Impact Monitoring

The CCEI committee's report on the functioning of the IEPAW published in September made the following specific recommendation for us:

“The IEPAW should establish a formal process to monitor the impact of its recommendations on Welsh Government decisions and environmental outcomes. This will allow the IEPAW to assess its impact.⁸”

To address this recommendation, we have prioritised our processes for monitoring the impact of our actions with respect to submissions as this is the starting point of much of our activity. This has involved the development of a formal review process that evaluates previous decisions and activity since the receipt of submissions.

Submissions to date have fallen broadly into two categories; those within and outside of the scope of the IEPAW. Where they have fallen within scope, they have been allocated to reports in development or to those we are currently planning our activity.

Those submissions that have been determined to fall outside the scope of the IEPAW have been reviewed to determine whether that decision still holds, or whether there have been changes such as introduction of new legislation that might prompt a re-evaluation of the original decision.

Of those submissions that fall outside of scope, two are of note. The issues raised in those submissions related to the conduct of the NRW. Even though the IEPAW does not have formal powers to deal with such issues, it was felt that this did not preclude the IEPAW from raising these issues with NRW. It was considered reasonable to ask for an explanation of their decision and what plans they had with respect of the issues raised.

In the first submission, it was argued that NRW was failing to maintain a public register to allow members of the public to obtain information on pollution matters in Wales. Since raising the matter NRW has addressed this issue and made a public register available on its website⁹.

In the second submission, it was argued that NRW had failed to establish and maintain a Regional Advisory Committee (RAC) as it was required to under the Forestry Act 1967. Since our discussions, NRW have created one as a sub-body of their Land Management Committee (LMC). The group currently meet to review emerging issues and consider strategic priorities for forestry as required, reporting back to the full LMC.

With respect to impact monitoring around responses to IEPAW reports, we are still in the process of formalising our approaches. The issue of capacity has had some impact on work in this area as resources have been dedicated to report development

⁸Recommendation 2 [cr-ld16043-e.pdf \(senedd.wales\)](#)

⁹ [Natural Resources Wales / Public register: environmental permitting, water resources and marine licensing information](#)

as they have become available. To date, only informal monitoring of the impact of the Reformed European Union Legislation Report has been undertaken.

We have previously met with Welsh Government to discuss the recommendations of the REUL report published in 2022-23 as part of our ongoing monitoring and continue to do so, following the next stage of implementation of the REUL Act from 1st October 2024.

The increased resources that have been made available to the IEPAW are allowing us to rapidly progress work on other reports. Alongside this activity

we are developing formal processes for monitoring and documenting the impact of these as they become available. These will be piloted with the publication of forthcoming reports with the aim of ensuring these are sufficiently developed to allow effective reporting in subsequent Annual Reports.

To date we have undertaken informal impact monitoring with stakeholders during stakeholder meetings. As with our procedures around IEPAW reports, we will be formalising these over the coming months. The ambition is to achieve the same outcomes as for other areas of impact monitoring.

Conclusion

The IEPAW is an interim position and we look forward to the outcome of work by Welsh Government to bring forward legislation for the establishment of a permanent environmental governance body. The IEPAW has engaged with the Welsh Government Environmental Governance team in relation to their ongoing work and fed in suggestions based on the experience of the IEPAW to date. We also welcome commitments made by the Welsh Ministers to ensuring a seamless transition from the IEPAW to this new body. We welcome comments and feedback in relation to the role and its work. If

you wish to raise a concern about the functioning of environmental law in Wales, you can fill in a Submission Form which can be found on the IEPAW website at [Interim Environmental Protection Assessor for Wales: Submission Form | GOV.WALES](#). Further information about our activities, details of calls for evidence or stakeholder events can also be found on the IEPAW website at [Interim Environmental Protection Assessor for Wales | GOV.WALES](#). If you have any comments about this or the role or wish to be added to the mailing list, please contact IEPAW@gov.wales.