

## ANNEX 9

### Review of Science - – timeline of events

**This time line and explanation of what took place is both misleading and incorrect. Annotation in blue will seek to clarify what actually took place.**

In **2009** the (then) Welsh Assembly Government requested a 'Review of Science' to consider the queries being raised concerning the CCW's advice on the conservation status of the Annex I and Annex II habitats and species in the Abermenai to Aberffraw SAC, and the most appropriate management of the forest and habitats adjacent to it. The reviewing panel was unable to reach a consensus on some issues.

The respondent seeks to suggest the Science Review was a Welsh Government initiative that was part of an ongoing consultation process. The reality is the former deeply flawed consultation process was effectively ended when the CCW/FCW jointly announced the FMP based on that process was to be 'withdrawn' ['Cast' Technium FCW/CCW joint meeting, 30/04/09]. NRW had abandoned any pretence at engaging in meaningful consultation and the process was then effectively null & void [see Dr Craig Shuttleworth's complaint to the EU].

The Science Review was in fact the outcome from a meeting arranged between members of the Liaison Partnership and the conservation agency's CEO [16/07/09] as a consequence of outrage generated by the April joint FCW/CCW meeting. That meeting only took place because of the intervention of the Newborough area councillor, Peter Rogers [see attached letter to CCW's CEO dated 09/07/09]. The outcome of that meeting was documented by the communicant on behalf of the Liaison Partnership [respondent's C-115 Annex 11]. Following the meeting the CCW CEO met senior Welsh Government officials no doubt explaining the details of his meeting with the public. Then and only then did the Welsh Government request that the Science Review was set up and that was to review CCW's conservation claims not to consult on the develop of a management plan for the forest. It was supposed to be a precursor to a FMP and meant to inform the prescriptive elements in that plan.

As foreseen before the Science Review, consensus was not achieved on a number of very significant issues that all parties had agreed prior to the start of the Review would be resolved by impartial and independent arbitration.

The communicant met with the Chief Executive of CCW on 16 checklist 2009 to consider various issues in relation to this (see **Annex 11**).

The meeting referred to was between CCW's CEO and fifteen or more very angry members of the public. Annex 11 documents the outcome in a post meeting letter from the communicant to the CEO on behalf of those who attended the meeting. Annex 11 provides no information about the Science Review that didn't exist at that point - it details what was a precursor meeting that ultimately led to the setting up of the Review.

Implementation of several actions in the Newborough Forest Management Plan (FMP) 2010-2015 (published in 2010) was subject to the conclusions of the Review of Science, which remained partly unresolved.

There were very significant 'unresolved' issues and the Science Review was supposed to inform the detailed prescriptions of a Forest Management Plan but in fact that plan was drafted in bipartisan dialogue between CCW and FCW while the Review was underway. The public and independent scientists participating in the Science Review were unaware of this process.

Fifth Meeting of Newborough Science Review at 10.00, **17 August 2010**: It was agreed that the Newborough Science Review should move to independent arbitration.

Arbitration that all parties to the Review had agreed would follow the initial phases of the Review and resolve all disputed issues. This is the process that would have provided what the courts call alternative dispute resolution (ADR).

There was agreement in **November 2010** on the general composition of the arbitration panel, though the note of the meeting indicates a panel of 2-3, lists 5 roles and suggests 8 possible members. However, there was no agreement on the specific membership or on the terms of reference.

There was never any intention at that point in agreeing on potential members of an arbitration panel. CCW's Review chairman was supposed to arrange a canvassing exercise between the participants in the Review to seek agreement on potential members of an impartial and independent arbitration panel. The agreement was that the panel would consist of three respected members of the scientific/conservation community who had appropriate knowledge & expertise and that panel chaired by a fourth person of appropriate stature in the scientific community and also with an appropriate background and expertise. That process despite initial suggestions for panel membership never took place. The Welsh Government and CCW/NRW reneged on their commitment to ensure arbitration resolved the disputed conservation issues.

December 2010 Felling licence approved for Newborough (Annex 4)

The FCW author of the FMP sought approval for the licence on 05/10/10 prior to the finalized plan being presented as a *fait accompli* to the public on the 21/10/10. This highlights that under no circumstance would the plan be modified.

**August 2011** – Minister's letter to Albert Owen MP

*'I understand that the terms of reference for the Review made provision for arbitration by a single independent scientist if a consensus was not forthcoming. I have seen CCW's subsequent proposal to convene an expert panel of scientists (agreed by both parties) but I am not convinced that it represents the best way forward.*

*Given the already protracted nature of the Newborough case, I believe a more cost-effective and streamlined approach is necessary. I have asked the Welsh Government's Chief Scientific Adviser, Professor John Harries to examine the scientific aspects of the case and determine what if any arbitration is necessary.*

*The Forestry Commission's Forest Management Plan for 2010-2015 has been running for over six months, and requires clarity on some of the scientific issues in order to progress. My officials have been in contact with representatives of Newborough Forest Partnership and CCW and it appears that there is considerable potential for agreement on a way forward. Both parties have been asked to outline their scientific concerns and submit them for the consideration of Professor Harries. I look forward to receiving his advice and expect that it will lead to the development of appropriate management measures for the site.'*

The independent participants in the Science Review were led to believe the Chief Scientist's review of evidence from the disputing parties was a screening precursor to arbitration. He could have advised that NRW/CCW had not substantiated their arguments and that forest removal should not be part of the FMP. However, he diplomatically advised that NRW's claims were not substantiated and that further research was required before any conclusions could be drawn. Arbitration should have gone ahead to resolve the disputed issues based on CCW/NRW's claims and any evidence they could produce to support their arguments.

Welsh Government (WG) met its Chief Scientific advisor Dr John Harries **on 6 December 2011**, to conduct an initial overview of the evidence then available in the Newborough Forest Review of Science.

In **late 2011** those parties which had contributed to the Review of Science were asked to document their positions for consideration by the Welsh Government's Chief Scientific Advisor (CSA). ANNEX 1 contains the summary of the documents submitted by the Newborough Forest Partnership to the CSA.

From this information the CSA concluded there was insufficient evidence to support decision-making and advised that further scientific work, including on-site trials and research, should be undertaken to help guide future management.

In other words NRW/CCW had not substantiated the claims used to support their forest removal agenda.

The results of subsequent scientific work were published (Pye & Blott 2012) in a CCW science report on Welsh dune geomorphology and best methods for dune rejuvenation at ten protected sites across Wales (including Aberffraw to Abermenai).

The respondent seeks to suggest that Ken Pye Associates commissioned survey of Welsh dune systems was a response to the Chief Scientist's advice that more research was needed to resolve the disputed issues. That was not the purpose of their work. The consultants were asked to survey the sites and provide advice on how more mobile bare sand could be created in these dune systems; euphemistically referred to as 'dune rejuvenation'. They were not asked whether such actions were needed just how to achieve that objective. In other words how to achieve NRW's dune zonation and more bare sand agenda. It should also be noted that Ken Pye Associates have expertise in geomorphology (coastal processes) but are not competent to advise on whether artificially creating additional areas of dunes (zonation) and more mobile bare sand are dune conservation requirements. They were asked to advise on how to achieve NRW's objectives and they duly did so. They were not providing research to address whether such actions were required nor are they competent to do so.

For Newborough the report concluded that direct vegetation clearance, accompanied by local topographical re-profiling to enhance wind flow, will be required in order to stand any chance of creating significant areas of bare sand and mobile dunes.

They provided advice on how to achieve NRW's objectives not whether those objectives were justified. They were not a substantiation of NRW's forest removal claims merely advice on how to achieve the agency's objective.

In addition to the '10 sites report', a paper (by Dr Lawrence Jones of the Centre for Ecology and Hydrology (CEH)) submitted with the package of documents for review, included recommendations for work in the area around the boundary between Newborough Warren and Newborough Forest (Zone 1 east) arguing that clearing within this area would be most likely to benefit the Warren through benefits from both changes to hydrology and wind-speeds.

Dr Laurence Jones' recommendations were a response to an agreed outcome of the Science Review; he was an independent participant in the Review. CCW/NRW had never substantiated their claim that the forest had significantly impacted the open dune hydrology by lowering the water table. All the independent participants in the Review had agreed a small scale limited trial along the forest/dune boundary on the south eastern side of the forest was a sensible means of gaining knowledge of the actual hydrological changes across the forest/dune boundary. Dr Jones' advice was not a justification for NRW's general clearfelling agenda but a specific outcome of the Science Review. It should also be noted that the suggested hydrological experiment required collection of baseline water table data for a number of years before any felling experiment. Without such data climatic variation could not be distinguished from felling effects. NRW proceeded with clearfelling before any baseline data could be collected. This makes the claim that Dr Jones' advice supported NRW's agenda hardly tenable.

Taken together the areas highlighted in the 10 sites report and suggestions in Lawrence Jones' additional paper (southern end of Zone 1 west and Zone 1 east) broadly corresponded with areas proposed for clear felling to restore dune mobility in the FMP.

Ken Pye Associates commissioned survey & report, and Dr Jones' advice regarding a limited hydrological experiment do not fulfil the role of new research as envisaged by the Chief Scientist's advice nor do they substantiate NRW's claims in support of their clearfelling agenda. They provided no new research that would clarify whether NRW's claims were justified.

In **2013** Welsh Government commissioned Professor Ken Pye to provide a detailed specification for the proposals for pilot works in the relevant areas of Zone 1 east and Zone 1 west.

This second commissioned report provided detailed advice to further NRW's agenda; no research that might have substantiated NRW claims and justified forest removal.

An internal examination of the Newborough Review of Science documents was undertaken by a qualified Welsh Government official. The internal report "Consideration of Proposals for Shifting Dune Rejuvenation and Hydrological Monitoring Work for Winters 2013-14 & 2014-15" (**Aug 2013**) concluded that, within the material presented for review, no specific objections were identified to the works proposed in Zone 1 east and Zone 1 west for winter 2013-14.

This was a clearly biased document that failed in its stated aim of being objective and impartial; it was clearly neither impartial nor independent. It was a 'justification' document and the conclusion that 'no specific objections were identified' illustrates the extent of that bias. The Committee should also note that the officer failed to approach any of the independent participants in the Science Review to clarify any of the reasons for disputing NRW's claims.

The Welsh Government was therefore of the view that the proposals outlined were measured and balanced, i.e. proportionate, and focused on specific outcomes in respect of restoring FCS, and advancing scientific knowledge of mobilisation techniques. The WG therefore raised no objections to the proposal to proceed with operations as outlined in the Forest Management Plan 2010-15 (FMP) and to further consider the matters relevant to the FMP that were to be referred for review.

The proposed trials in Zone 1 east and Zone 1 west (southern end) began in **January 2014**.

Having failed to substantiate the claims used to support forest removal NRW and the Welsh Government then reneged on the agreement to ensure impartial expert opinion (arbitration) resolved the disputed conservation claims and proceeded with clearfelling sections of the coastal forest.

As part of its work to consider the other matters that were to be referred for review, the WG has asked the JNCC to support it and Natural Resources Wales (NRW) in taking forward the Review of Science for Newborough. As the authors of the Common Standards Monitoring Guidance WG has sought further clarification from JNCC regarding **what constitutes the inland boundaries of dune systems and the application of principles to define shoreline integrity** (the '95%' principle you refer to).

This garbled question does nothing to clarify whether zonation should exist along at least 95% of a dune SAC's shoreline irrespective of the features that were present when a SAC was designated. A 2002 two day Habitats Directive clarification workshop organised by JNCC and including all UK conservation agencies, DG-Environment (EU), devolved UK governments, Defra and the EU presidency concluded the Directive requirement was that with respect to protected habitats the '**contemporary**' area and range (i.e. zonation) should be maintained or increasing (naturally). In other words the requirement is to maintain the area & range of protected habitats present when the SAC was designated. There is no requirement or remit within the Directive to landscape our environment to create additional areas of dune habitat.

The respondent seeks to demonstrate that JNCC's response to specific queries from NRW constituted arbitration of key disputed issues. JNCC have stated that that is not the case and their responses were to queries that avoided ever putting the disputed issues in terms that might have informed the key dispute concerning the '95% zonation' issue. JNCC's email in reply to the communicant [JNCC Fol response email 101214 previously submitted to the Secretariat] stated:

*'JNCC **has never been asked to adjudicate in regard to Abermenai to Aberffraw Dunes**. We were, however, asked by the Welsh Government for advice on the interpretation of Common Standards Monitoring Guidance for dune sites, with reference to the site. We supplied advice within our remit, and also answered a follow-up query from the Welsh Government.'*

JNCC's view reflected the consensus of the four UK Statutory Nature Conservation Organisations that decisions regarding common standards across the UK and EU may be informed by expert knowledge and professional judgement regarding a specific site and the experience of managing that site.

This statement seeks to imply that there are UK dune management standards [Common Standards for Monitoring (CSM)] that NRW has describes in its reports as 'mandatory' but that they can be interpreted any way the conservation agency wishes. JNCC's 'view' is not suggesting conservation agencies have *carte blanche* but sensibly advises that, where appropriate, minor modifications of CSM targets may be justified; for example, targets for complex plant communities that characterize dune habitats. Fundamental targets, those that define our very coastline, are not to be misinterpreted whether intentionally or otherwise. In JNCC's CSM guidance they actually state that some targets must be 'site specific'; informed by the particular features of the site especially at the time of SAC designation.

**April 2014** – JNCC response to WG clarification regarding what constitutes the inland boundaries of dune systems and the application of principles to define shoreline integrity; on issues concerning small-scale clearance and restoration; and on the management of high conservation- value, "non SAC" features

The public (and the communicant) have never been shown this response so there is no way of knowing what JNCC actually said in April 2014.

**September 2014** – WG letter to NRW stated that WG consider that the Review of Science that has been undertaken is now concluded in relation to the FMP

The WG may have written to NRW in September 2014, well after the initial phase of clearfelling had been carried out in Jan. - March, but they never contacted the independent participants in the Science Review. Those who took part in the Review had to rely on a NRW 'Winter 2014/15' Newsletter to learn that the WG had finally reneged on their arbitration commitment.

The Annex 9 narrative seeks to demonstrate that the Welsh Government 'properly' decided to renege on the commitment to go to arbitration; suggesting that a biased WG officer's internal report and dialogue with JNCC resolved disputed issues and arbitration was not necessary. As a participant in the Science Review with a clear understanding of the issues I can assure the Committee that the disputed issues remain unresolved despite suggestions to the contrary.

**Far from showing that a decision was 'properly' made this narrative demonstrates the lengths to which the WG & NRW went to avoid arbitration; to avoid having to substantiate their claims before a panel of impartial, appropriately qualified experts. That decision denied the public environmental justice and meant disputed issues were never resolved.**