

## **Delegated Decision**

**1 June 2023**



## **Government Consultation on Environmental Outcomes Reports**

**Ordinary Decision**

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**Amy Harhoff, Corporate Director of Regeneration, Economy and Growth**

**Councillor Elizabeth Scott, Cabinet Portfolio Holder for Economic Regeneration and Partnerships**

### **Electoral division(s) affected:**

Countywide

### **Purpose of the Report**

- 1 This report seeks approval from the Corporate Director of Regeneration, Economy and Growth for the submission of a response to The Department for Levelling Up, Housing and Communities (DLUHC) consultation on Environmental Outcomes Reports.

### **Executive Summary**

- 2 DLUHC are consulting on proposals to replace Strategic Environmental Assessments (SEA) and Environmental Impact Assessments (EIA) with a new system of Environmental Outcomes Reports (EOR). SEA requires the assessment of significant environmental impacts of plans and programmes and EIA of development projects. Both derive from European Union Directives.
- 3 The government considers the current regime of SEA and EIA duplicates assessment activity carried out elsewhere and needs to be refocused on critical environmental issues. EOR are to report against outcomes derived from the government's Environment Improvement Plan.
- 4 There will be a greater emphasis on monitoring and stronger powers to require adaptive mitigation as effects become more certain.
- 5 Environmental data is to be standardised and made more readily available to support the EOR process. There will be a requirement for

EOR monitoring data to be shared and for local authorities to report on performance against environmental outcomes.

- 6 The Council's response states:
- a) EOR needs to be considered in the context of wider proposed reforms to the planning system. There is an opportunity to embed the objectives of the Environment Improvement Plan into proposed National Development Management Policies. This could negate the need for EOR for developments and help simplify the process.
  - b) Whilst the Environment Improvement Plan is a good starting point there needs to be flexibility to ensure significant local environmental issues are assessed.
  - c) Specific indicators should be included for climate change adaption and a net zero carbon outcome.
  - d) The need for monitoring and adaptive mitigation has significant resource implications. Developers should be required to pay a monitoring fee to the local planning authority and, where relevant, for an independent third party to undertake monitoring.
- 7 If agreed by REG Management Team, the Council's response will be submitted to DLUHC using the delegated powers of Corporate Director of Regeneration, Economy and Growth before the deadline of 9th June 2023. Following the close of consultation on the government will further develop and refine their proposals. Following Royal Assent of the Levelling Up and Regeneration Bill (anticipated end of 2023) proposals will be brought forward through secondary legislation and supporting guidance.

## **Recommendation**

- 8 The Corporate Director of Regeneration, Economy and Growth is recommended to:
- a) agree that Appendix 2 of this report constitute the Council's formal response to the government consultation on Environmental Outcomes Reports.

## Background

- 9 The Department for Levelling Up, Housing and Communities (DLUHC) are consulting on proposals to replace Strategic Environmental Assessments (SEA) and Environmental Impact Assessments (EIA) with a new system of Environmental Outcomes Reports (EOR). SEA assesses plans and programmes (e.g. local plans) that are likely to have significant environmental effects, whilst EIA assesses development projects (e.g. planning applications of a strategic scale). Both have been derived from two European Union Directives. The government considers the current regime duplicates assessment activity carried out elsewhere, is inefficient and needs to be refocused on critical environmental issues.

## An Outcomes-based approach

- 10 EORs will move from a system which considers the potential for significant environmental effects to an outcomes-based approach. The Secretary of State will set high level outcomes which a plan or project will have to report against. The outcomes are to:
- a) drive the achievement of statutory environmental targets and the government's Environment Improvement Plan.
  - b) be measurable using indicators of a scale relative to the geography of an area.
  - c) be designed using the knowledge and experience of sector groups and environmental experts.
  - d) have an organisation responsible for monitoring overall progress of specific outcomes i.e., a responsible 'owner'.
  - e) be reviewed on a regular basis to ensure they remain relevant.
  - f) not duplicate matters more effectively addressed through policy.
- 11 It is proposed indicators address biodiversity, air quality, landscape and seascape, geodiversity, soil and sediment, noise and vibration, water, waste and cultural heritage and archaeology.

The Council's response:

- 12 The Council considers it is unhelpful to combine EIA and SEA into one process, as they serve different functions. In the Council's experience SEA adds value to policy development, EIA duplicates matters already considered through the planning application process and repeats detailed supporting studies. EOR needs to be considered in the

context of wider proposed reforms to the planning system. There is an opportunity to embed the objectives of the Environment Improvement Plan, and requirements for better monitoring and adaptive mitigation into National Development Management Policies and a revised National Planning Policy Framework. This could negate the need for EOR for developments.

- 13 Notwithstanding the above, local authorities should be able to set local environmental outcomes and there should be specific indicators for climate change adaptation and a net zero carbon outcome.

### **When an EOR is Required**

- 14 Criteria as to when EOR is required will be set out in regulations. Whilst the current system is based on the type and scale of development, it is proposed EOR would also consider proximity, or a defined impact pathway, to a sensitive receptor (e.g. A Site of Special Scientific Interest).

The Council's response:

- 15 Using proximity could capture planning applications and neighbourhood plans which, by virtue of their scale or type, would not have significant environmental impacts. This could result in abortive work and there will need to be a degree of sense checking. Whilst a baseline for proximity could be set nationally, local authorities should be able to set their own local impact zones.

### **Mitigation and mainstreaming monitoring**

- 16 The mitigation hierarchy will be made law. This preferentially applies avoidance, mitigation and as a last resort compensation. There will be a standardised format for EOR with the aim of making the process streamlined, accessible to communities and to avoid repetition. The EOR is to set out how reasonable alternatives and the mitigation hierarchy were considered early in the development of the project.
- 17 There will be a requirement for monitoring to ensure the level of environmental protection envisaged in the EOR is being delivered and stronger powers to require adaptive mitigation in response to greater certainty on effects. Consideration is being given to the use of bonds, escrow accounts and third parties to enable this.

The Council's response:

- 18 Government should introduce a requirement for applicants to seek pre-application advice on EOR development, to ensure reasonable alternatives are genuinely considered before an application is

submitted. Adaptive mitigation should not be an excuse for poorly considered mitigation and compensation at the outset.

- 19 Monitoring requirements will have significant resource implications for local planning authorities. Monitoring and mitigation should seek to align with Biodiversity Net Gain and Nutrient Neutrality processes. Developers should be required to pay a monitoring fee to the local planning authority and, where relevant, for an independent third party to undertake monitoring.

### **Unlocking data and Performance Reporting**

- 20 The challenges in accessing data to inform an assessment and enable effective monitoring is recognised. There will be a drive to standardise environmental data and make it available for future use. Data submitted as part of the EOR is to be in a form that enables it to be captured for future use by relevant data holders.
- 21 Local authorities will be required to report back on the overall performance and delivery of environmental outcomes annually. This includes on how their own plans are delivering on environmental outcomes.

The Council's response:

- 22 Reporting on performance of local plans should be integrated into the Authority Monitoring Report as far as possible. EOR should not be introduced until the issue of accessing data is addressed.

### **Next Steps**

- 23 If agreed by REG Management Team, the Council's response will be submitted to DLUHC using the delegated powers of Corporate Director of Regeneration, Economy and Growth before the deadline of 9<sup>th</sup> June 2023. Following the close of consultation on the government will further develop and refine their proposals. Following Royal Assent of the Levelling Up and Regeneration Bill (anticipated end of 2023) proposals will be brought forward through secondary legislation and supporting guidance. There will be a transition period and the consultation seeks views on an appropriate period.

### **Background papers**

- [www.gov.uk/government/consultations/environmental-outcomes-reports-a-new-approach-to-environmental-assessment/environmental-outcomes-report-a-new-approach-to-environmental-assessment](https://www.gov.uk/government/consultations/environmental-outcomes-reports-a-new-approach-to-environmental-assessment/environmental-outcomes-report-a-new-approach-to-environmental-assessment)

### **Author**

Mike Allum

[Mike.Allum@durham.gov.uk](mailto:Mike.Allum@durham.gov.uk)

Claire Bradley

[Claire.Bradley@durham.gov.uk](mailto:Claire.Bradley@durham.gov.uk)

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## **Appendix 1: Implications**

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### **Legal Implications**

The current process for assessing the environmental impacts of development plans and projects likely to have significant effects on the environment has been derived from two EU Directives and their transposing statutory instruments:

- The Environmental Assessment of Plans and Programmes Directive (also known as Strategic Environmental Assessment or 'SEA'): Requires the assessment of plans and programmes that set a framework for development likely to have a significant environmental impact
- The Environmental Impact Assessment Directive (EIA): Requires the assessment of development projects where there is likely to be significant environmental effects (for example, large housing developments, quarries, agriculture etc.)

The February 2022 Levelling Up White Paper reiterated the government's commitment to make changes to the planning system. The Levelling-up and Regeneration Bill (the Bill) which is before Parliament will put the foundations in place for delivering this. The Bill is seeking powers to implement a new domestic framework for environmental assessment which utilises EOR.

### **Finance**

There are no financial implications in responding to this consultation.

### **Consultation**

DLUHC published consultation proposals on 17<sup>th</sup> March 2023 and representations can be made on the proposals until 9<sup>th</sup> June 2023.

### **Equality and Diversity / Public Sector Equality Duty**

The Council acknowledges that, in exercising its functions, it has a legal duty under the Equality Act 2010 to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations. This duty applies to all people defined as having protected characteristics under that legislation. The Act also applies to DLUHC. The consultation seeks comments on any potential impacts that might arise under the Public Sector Equality Duty as a result of the proposals in the consultation.

### **Climate Change**

Climate change, this is a thread running through both national planning policy and County Durham Plan. The Council's response suggests climate change adaptation and net zero carbon outcomes should be indicators assessed through EOR.

### **Human Rights**

Human Rights issues are relevant to the consultation and in particular Article 8 which protects people's right to respect for their private life, family life and home and Protocol 1, Article 1 which protects a person's right to enjoy their property peacefully.

### **Crime and Disorder**

None.

### **Staffing**

None in responding to the consultation. There will be resource implications should EOR come forward as proposed, particularly in regard to monitoring and reporting on outcomes. The consultation indicates support will be available to help build local authority capacity and capability in implementing EOR.

### **Accommodation**

None.

### **Risk**

Not applicable.

### **Procurement**

None.



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## **Appendix 2: Proposed Consultation Response**

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### **Q.1. Do you support the principles that will guide the development of outcomes?**

Yes and No. The overarching ambition of outcomes which are measurable and monitored is supported. Whilst there is a logic in linking outcomes to the government's Environment Improvement Plan, this could restrict opportunities for Environmental Outcomes Reports (EOR) to address environmental issues of significance to the locality. In the case of EOR for local plans using outcomes at a strategic scale may not give decision makers sufficient information on where the impact is occurring and what the appropriate policy response should be. There needs to be flexibility to allow local authorities to identify local outcomes where a local need can be justified. The Environment Improvement Plan should provide an overarching framework in which local environmental issues can also be identified.

### **Q.2. Do you support the principles that indicators will have to meet?**

Yes.

### **Q.3. Are there any other criteria we should consider?**

Yes. It will also be important to clearly define how performance will be monitored against each indicator. For example, what is an appropriate threshold, if an outcome should be neutral or improve on the existing situation.

### **Q.4. Would you welcome proportionate reporting against all outcomes as the default position?**

Yes

### **Q.5. Would proportionate reporting be effective in reducing bureaucratic process, or could this simply result in more documentation?**

Durham County Council does not consider this to be an issue in the current system of SEA. The Council undertakes SEA on plans and programmes which it considers to be proportionate. In this regard whilst there could be benefit in a national set of criteria to determine what is proportionate, there will always be a need for this to be determined at a local level based on the specifics of the locality.

In the Council's experience EIA results in duplication of matters addressed in supporting technical studies and summarised in the accompanying planning statement. In addition, matters are often unnecessarily scoped in for fear of legal challenge. Communities can wrongly be given the impression that because a development is not subject to EIA, relevant environmental matters have not been considered, when in fact they are through the decision making process. EOR needs to be considered in the context of wider proposed reform to the planning

system through the Levelling Up and Regeneration Bill. There is an opportunity to align National Development Management Policies, the revised National Planning Policy Framework and new style Local Plan with the Environment Improvement Plan to ensure environmental outcomes are considered for all planning applications and monitored as appropriate. This would negate the need for EOR on planning applications, remove duplication and give the message consideration of environmental impacts are a fundamental consideration at all scales of development.

The Council considers it is unhelpful to combine the current SEA and EIA process into one EOR process due to their distinct functions.

**Q.6. Given the issues set out above, and our desire to consider issues where they are most effectively addressed, how can government ensure that EORs support our efforts to adapt to the effects of climate change across all regimes?**

There should be specific indicators for climate change adaption and a net zero carbon outcome. Durham County Council, like many local authorities, has declared a climate emergency and set a target for the county to be net zero by 2045. A net zero indicator would align with both national and local ambitions. The government's consultation on reforms to national planning policy (December 2022) indicated carbon impact assessments could be an evidence base requirement for new local plans. The EOR would be a logical place to integrate carbon impact assessments and ensure they inform preferred options (currently Regulation 18 stage) for the development of an area.

**Q.7. Do you consider there is value in clarifying requirements regarding the consideration of reasonable alternatives?**

Yes. Whilst it would be helpful to set out broad criteria for reasonable alternatives at a national level, this will still need to be determined at a local level based on the specifics of the proposal and site. For example, whether reasonable alternatives should include the consideration of alternative sites will need to be linked to the significance of a site, its impacts, and the extent to which it has been subject to EOR through local plan preparation. National guidance could also usefully state the assessment of alternatives is an iterative process.

**Q.8. How can the government ensure that the consideration of alternatives is built into the early design stages of the development and design process?**

For SEA the consideration of alternatives is built into Regulation 18 stage in the assessment of issues and options and selection of a preferred option. The government's consultation on reforms to national planning policy (December 2022) indicated there would no longer be a requirement for development plans to be justified, which suggests moving away from an 'issues and options' stage. Consideration needs to be given as to how EOR could best work alongside the new planning system.

On individual developments alternatives are best considered in advance of an application being submitted. Whilst currently local planning authorities can't require developers to enter into pre-application discussions, for developments requiring an EIA it is the Council's experience pre-application advice is almost always sought. The government should introduce a requirement to seek pre-application advice on EOR development. At this stage the local planning authority could set parameters for and assess reasonable alternatives.

**Q.9. Do you support the principle of strengthening the screening process to minimise ambiguity?**

Yes. Notwithstanding our comments above, should the government progress EOR for developments clearer criteria would be beneficial for all parties and help avoid abortive work.

**Q.10. Do you consider that proximity or impact pathway to a sensitive area or a protected species could be a better starting point for determining whether a plan or project might require an environmental assessment under Category 2 than simple size thresholds?**

Yes providing this is sense checked. An unintended consequence may be that this captures more planning applications of a minor nature, therefore this needs to be alongside a threshold approach. Similarly, this could result in more neighbourhood plans being screened in, so there will also need to be consideration of the nature and potential impact of the policies in the plan to ensure unnecessary burdens aren't placed on neighbourhood forums.

**Q.11. If yes, how could this work in practice? What sort of initial information would be required?**

Natural England already have impact pathway layers which could form a starting point, in conjunction with relevant local designations identified by local authorities e.g. HRA buffer zones. The availability of mapped data and the ability to keep it up to date will be a challenge.

Whilst a baseline could be set nationally local authorities should be able to set their own local impact zones.

**Q.12. How can we address issues of ineffective mitigation?**

In terms of planning applications, mitigation will need to be clearly conditioned and monitored. Even if an applicant is required to appoint a third party to monitor mitigation, local planning authorities will still need to be sufficiently resourced to assess the evidence submitted and agree adaptive mitigation measures if necessary.

**Q.13. Is an adaptive approach a good way of dealing with uncertainty?**

Yes. An adaptive approach is sensible. As stated above it will be dependent on local planning authorities being sufficiently resourced and having the necessary expertise to assess the evidence submitted and agree adaptive mitigation measures if necessary. Adaptive mitigation should not be an excuse for poorly considered mitigation and compensation at the outset.

**Q.14. Could it work in practice? What would be the challenges in implementation?**

EOR mitigation should look to align with, and avoid duplication of, the approach being developed for Biodiversity Net Gain and Nutrient Neutrality mitigation.

The challenges as set out above will be local authority resources and expertise, continuity of personnel and ensuring any third parties are truly independent and suitably qualified. It will need to be ensured adaptive mitigation is not seen as an excuse to leave detailed assessment until further down the line.

**Q.15. Would you support a more formal and robust approach to monitoring?**

Yes. However, this would need to be properly resourced and skilled.

**Q.16. How can the government use monitoring to incentivise better assessment practice?**

By making monitoring as an iterative process a requirement and sharing outcomes. The need for monitoring should be better embedded in a revised National Planning Policy Framework and National Development Management Policies.

**Q.17. How can the government best ensure the ongoing costs of monitoring are met?**

In the case of planning applications the developer should pay for a suitably qualified and independent third party to undertake monitoring on their behalf. This should be secured through legal agreement. There will be synergies with Biodiversity Net Gain and Nutrient Neutrality monitoring which should help to reduce costs.

There will be resource implications for local authorities in assessing evidence submitted by third parties and undertaking site visits. Under the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012, mineral planning authorities can charge for a maximum of 8 site visits for monitoring site operations within any 12 month period where the site is operational, or one visit in other circumstances. It is considered a similar legal mechanism to allow for charging should be created for EOR.

**Q.18. How should the government address issues such as post-decision costs and liabilities?**

See response to question 17.

**Q.19. Do you support the principle of environmental data being made publicly available for future use?**

Yes. Whilst the Council supports the principle of making data publicly available, collecting and collating data is resource intensive and requiring data to be made freely available may discourage this. In addition data may be sensitive. Data should be free to those that need it including local authorities and agents working on behalf of applicants.

**Q.20. What are the current barriers to sharing data more easily?**

- Accessibility rules
- Capacity to digitise and keep data up to date
- Loss of funding for local record centres

**Q.21. What data would you prioritise for the creation of standards to support environmental assessment?**

- Local greenhouse gas emission data
- Local air quality data
- Flood risk data
- Water quality catchment area data/ Nutrient Neutrality
- Agricultural Land Classification data
- Census travel data
- Tree cover data
- Ancient Woodland

**Q.22. Would you support reporting on the performance of a plan or project against the achievement of outcomes?**

Yes. For local plans this should be integrated into the authority monitoring report as far as possible.

**Q.23. What are the opportunities and challenges in reporting on the achievement of outcomes?**

A key opportunity is the early identification of when policies are not working as they should.

Key challenges will be having the resources to make sure outcomes are monitorable; ensuring the availability of data and that this is kept up to date; and separating the impact of plans and policies on outcomes from other factors.

**Q.24: Once regulations are laid, what length of transition do you consider is appropriate for your regime?**

- i) 6 months

ii) 1 year

iii) 2 years

**Please state regime.**

The availability of data will be fundamental to the success of EOR. The new system should not be introduced until this has been addressed. Assuming this can be addressed, given SEA is fundamental to the local plan process it would be sensible to align the introduction of EOR with wider changes to the planning system and the roll out of new style local plans from 2024 onwards.

It is considered a 'test and learn' approach is needed in advance of a national roll out.

**Q. 25: What new skills or additional support would be required to support the implementation of Environmental Outcomes Reports?**

The proposal will have significant resource implications. Durham County Council benefits from a range of specialists, due to its size and nature. However, this is not the case for all local authorities. Durham County Council's response to the government consultation on strengthening planning performance through an increase in planning fees (February 2023) highlighted challenges in recruiting Ecologist. The Council would again emphasise the need for government to support capacity within this profession.

**Q. 26: The government would be grateful for your comments on any impacts of the proposals in this document and how they might impact on eliminating discrimination, advancing equality and fostering good relations.**

Unknown