

**TITLE OF REPORT:** Response to Consultation - Environmental Outcomes Reports: A New Approach to Environmental Assessment

**REPORT OF:** Sheena Ramsey, Chief Executive

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### **Purpose of the Report**

1. To endorse the responses to the Department for Levelling Up, Housing & Communities in respect of the [Environmental Outcomes Reports: a new approach to environmental assessment consultation](#) proposals issued on 17<sup>th</sup> March 2023 with a deadline for responses of 9<sup>th</sup> June 2023.

### **Background**

2. The background to the consultation and reforms proposed are set out in Appendix 1, and the Council's proposed responses are set out in Appendix 2.

### **Proposal**

3. To endorse the responses set out in Appendix 2.

### **Recommendation**

4. It is recommended that Cabinet endorses the consultation responses set out in Appendix 2.

For the following reason:

To enable the Council to contribute a response to the consultation.

### Policy context

1. DLUHC published consultation proposals on 17<sup>th</sup> March on the approach to implementing a new system of environmental assessment known as Environmental Outcomes Reports (EOR) in order to allow the government to replace the EU-derived Strategic Environmental Assessment and Environmental Impact Assessment.
2. The consultation contains 26 questions and representations can be made on the proposals until 9<sup>th</sup> June.
3. The Environment Act 2021 sets out a commitment to cleaning up the country's air restoring natural habitats and halting the decline in species by 2030. The government seeks to create an improved framework of environmental assessment to properly reflect the country's needs and unique characteristics of the environment.
4. Through the Levelling Up and Regeneration Bill, DLUHC is seeking to secure the necessary powers to bring forward the new domestic framework for all the environmental assessment regimes originating from the EU Environmental Impact Directive (EIA) and Environmental Assessment of Plans and Programmes (Strategic Environmental Assessment or SEA) Directive.
5. The government seeks to retain the value of environmental assessment whilst pushing for better environmental outcomes. The aim of the consultation is to start a conversation about how best to use these powers.
6. The assessment process is to be simplified and streamlined with the aim of being a more effective tool to support the delivery of environmental commitments.
7. The changes seek to allow communities to fully understand the environmental effects of development and be confident that problems that arise will be addressed. The government aims to enable developers to embed environmental considerations from the outset.

### Background

8. The consultation includes a number of questions and the Council's draft responses are provided in Appendix 2.
9. DLUHC's deadline for consultation responses is 9<sup>th</sup> June 2023. Subject to Cabinet's approval the Council's proposed responses will be submitted by the deadline.

## **Key Proposals/Summary**

### **Issues with the existing regime**

10. The reform is focused addressing on a number of central issues identified with the existing regime including:
  - Inefficiency
  - Duplication
  - Risk Aversion
  - Loss of focus
  - Issues with Data

### **Outcomes-based approach**

11. This chapter introduces how an outcomes-based approach to environmental assessment could work in practice and proposes a set of outcomes.
12. The draft Levelling Up and Regeneration Bill gives powers for the Secretary of State to set environmental outcomes that a plan or project will have to report against, with regard to the government's Environmental Improvement Plan.
13. The outcomes will be high level and have regard to the government's Environmental Improvement Plan. Draft outcomes will be subject to public consultation and parliamentary scrutiny. They must follow a set off principles detailed in the consultation.
14. Potential matters that could be included as an outcome include:
  - biodiversity
  - air quality
  - landscape and seascape
  - geodiversity, soil and sediment
  - noise and vibration
  - water
  - waste
  - cultural heritage and archaeology
15. It is expected that matters not on this list will be picked through regime specific outcomes.
16. The outcomes seek to avoid duplication where change is effectively achieved elsewhere such as through policy, rather than in the EOR regime, for example, matters with a cumulative impact.
17. To demonstrate the extent to which outcomes are met, a national indicator set is proposed. This will be based on existing indicators where possible and will be nationally set and agreed. They will be predominately data sets based on underlying technical work and proportionate to the geography of an area. The

indicators will measure expected change against baseline conditions and trend data.

18. Indicators must comply with a set of principles, detailed in the consultation. Guidance will be regularly reviewed.
19. It is proposed that the approach to reporting against outcomes is proportionate, meaning that minimal assessment is needed in circumstances where full assessment of an outcome is not required. It will be rare that an outcome is not relevant at all, and they will need to be scoped out using desktop analysis.
20. The consultation sets out the need to ensure that assessments effectively consider climate change and that matters such as this are complex, with a network of considerations that are not always directly or effectively measurable.
21. The Bill enables the support of a range of outcomes including 'natural systems, cycles and processes'. Many of the outcomes suggested will relate to climate change and addressing the effects of climate change is inherent in consideration of many of the listed outcomes.
22. The ways that Environmental Outcome Reports can be used to effectively support the efforts to reduce carbon impact of development as well as climate change are being reviewed.

### **What an Environmental Outcomes Report will Cover**

23. The government wants EORs to be accessible to communities and other stakeholders and to give decision makers clear information on the extent to which development supports the delivery of outcomes. There is a commitment to reducing the size and complexity of the assessment reports and ensuring the document is navigable and accessible to all communities.
24. Powers in the Bill will ensure assessments not only report on the outcomes but take a more proactive approach to the assessment of alternatives and the consideration of the mitigation hierarchy.
25. EORs will succinctly summarise and signpost relevant underlying technical work conducted for the plan or project.
26. Technical analysis and reports should identify the effects of the plan, programme or project to support and inform the assessment against outcomes, measured using indicators at the relevant scale. Technical Reports will remain separate documents.
27. The government seeks to provide more clarity around the need to consider alternatives in the early stages and throughout the assessment process.

28. Plan makers and developers will need to provide a summary record of decision making on alternatives.
29. Guidance will be clear that realistic alternatives, fully consistent with the primary objectives of the project, should be considered, with no need to assess and report against any options that would not be credible.

### **When an Environmental Outcomes Report is required**

30. The Bill provides powers to clearly set out what plans and projects require an EOR and avoid borderline cases.
31. As now, all projects in, or partly within, sensitive areas such as protected sites, will require screening, and the greater the potential impact on the environment, the greater the probability that the plan or project will require an environmental assessment.
32. The Bill has been designed to allow the government to set out in regulations what plans and types of development fall into one of two categories requiring assessment:
  - Category 1: consents will require an assessment in all circumstances.
  - Category 2: consents will require an assessment if the criteria set out in the regulations are met.
33. Screening decisions for category 2 consents will be at the discretion of the consenting authority, but regulations will narrow the scope for discussion.
34. Detail on what plans/projects require assessment will be consulted on when developing regulations.
35. The government is exploring whether the criteria for screening for category 2 should be considering and whether and how, we could better use proximity, or a defined impact pathway, to a sensitive receptor to effectively screen.

### **Strengthening Mitigation**

36. This section sets out how the government could use these powers to ensure a robust approach to mitigation and to use monitoring to ensure assessment delivers for the environment.
37. In the new system, the aim is to maximise the value of assessment through effective monitoring and mitigation, backed up with powers to address issues if they arise.
38. Ensuring all steps are taken to avoid damage and mitigate impacts is at the centre of the reforms.

39. The Bill enshrines the mitigation hierarchy in legislation as a fundamental component of environmental assessment. The core elements of the hierarchy are:
- Avoidance
  - Mitigation
  - Compensation
40. Avoidance is prioritised in the hierarchy.
41. It is proposed that applicants will be required to report on the steps undertaken at the design and development stage to avoid an adverse impact on the environment.
42. Agreed mitigation is not always effective and may need to be reviewed on occasion. Adaptive management (also known as Dynamic Mitigation or Adaptive Planning) allows mitigation to be adjusted in response to greater certainty on effects following implementation.
43. The government is exploring how this could help manage uncertainty in assessment of the effects of development on the environment.
44. The Bill gives the government stronger powers to require adaptive management or dynamic mitigation and remedial actions to be taken when monitoring shows that progress towards mitigation is not as expected.

### **Mainstreaming Mitigation**

45. In the new system, the government wants to maximise the value of assessment through effective monitoring and mitigation, backed up with powers to address issues if they arise.
46. Effective monitoring processes are essential in ensuring plans and projects are as proposed, and their effects are as predicted in the assessment. They are also essential in checking whether mitigation to address issues arising has been implemented as proposed, and is working as expected, within the timeframes agreed as part of the planning process.
47. The government intends to clarify monitoring requirements and directly link monitoring with data collection to inform our understanding of the environment.
48. The Bill will give the government the powers to require that assessments, and any mitigation measures proposed, are properly monitored to ensure they are delivering the level of environmental protection envisaged in the EOR.
49. If the anticipated levels are not met and remediation proves necessary, it will be pursued and enforced.

50. The government will explore the range of options for securing the resources required to take remedial action. This could include the use of bonds, escrow accounts and any potential role that third parties could play.

### **Unlocking Data**

51. The government seeks to ensure that the large quantity of data produced through assessment is captured and available to support our understanding of the environment and improve the quality of future assessments.
52. The Bill seeks to digitise planning services. Simplifying access and better use and reuse of essential data can help to deliver a faster, fairer and greener assessment process.
53. Reforms aim to ensure that data collected as part of technical assessments can be re-used to provide a baseline to inform future projects.
54. Users will be able to use certain data (subject to the copyright of that data) so they can readily access it to inform the policy, plans or projects as well as carry out the assessment in an efficient way.
55. The powers in the Bill will allow the government to ensure that environmental data is standardised and made available for future use. It will ensure that the data submitted will be in an accessible form for future use by to support future assessments.
56. The evidence needs of assessment can be large, so there may be a need to prioritise certain data sets. Higher standards of consistency and transparency will apply equally across environmental data held by government.

### **Reporting against performance**

57. The Bill provides the government with powers to require authorities to report on performance against specified environmental outcomes, so that the government to build a picture of the extent to which environmental outcomes are being.
58. The chapter considers how the government can ensure information is captured at a national level to consider the overall impact and effectiveness of environmental assessment.
59. The government seeks to get accountability in the right place and ensure the ability to use information to help build a national picture on the management of the effects of development on the environment over time.
60. The intention is to require authorities to provide annual, consolidated information on how plans are delivering on environmental outcomes. This must be linked to other strategic level monitoring, including local plan monitoring and the duty to provide a Biodiversity Report every 5 years.

61. Better data collection processes will allow this to be done digitally in the future.

### **Consultation**

62. The Leader and Deputy Leader and Cabinet Members for Environment and Transport have been consulted on the proposed response.

### **Alternative options**

63. None.

### **Implications of Recommendation**

64. **Resources:**

- a) **Financial Implications** – The Strategic Director, Resources and Digital confirms there are no financial implications arising from this report.
- b) **Human Resources Implications** – There are no human resource implications arising from this report.
- c) **Property Implications** - There are no direct property implications arising from this report.

65. **Risk Management Implication** – No risks associated with the consultation.

66. **Equality and Diversity Implications** – There is a potential for negative implications on equality due to a perceived ineffective method of environmental assessment.

67. **Crime and Disorder Implications – None.**

68. **Health Implications** – It is recognised that the environment has a significant impact on public health. There is a potential for implications on health.

69. **Climate Emergency and Sustainability Implications** – There is a potential for negative implications on climate and sustainability due to a perceived ineffective method of environmental assessment.

70. **Human Rights Implications** - None.

71. **Ward Implications** – None.

## APPENDIX 2

### GATESHEAD COUNCIL CONSULTATION RESPONSE

1 Do you support the principles that will guide the development of outcomes?

No.

The bullets in para 4.7 are acceptable, however the list of topic areas in 4.10 omit climate change adaptation and climate change mitigation or carbon emissions. The Environmental Improvement Plan includes Net Zero 2050 and the EOR should be one of the delivery mechanisms for this in addition to the Environment Act, this assessment should align with the Climate Change Act.

In addition, this EOR is replacing the SEA requirement, however, there has been no replacement for Sustainability Appraisal proposed. This effectively results in there being no requirement to make a consolidated assessment of the social and economic impacts of plans and projects. If this is to be out with the EOR, there needs to be a clear mechanism for these to be assessed in an alternative process, in particular those relating to Health, such as a Health Impact Assessment and Equality through Equality Impact Assessment. By not having these considerations integrated into one assessment, this reduces the opportunities for co-benefits being achieved through mitigation.

Gateshead Council would welcome a standardised, robust Health Impact Assessment requirement that integrates with environmental assessments that ensure that both positive health and environmental outcomes are maximised, including mental health, in plans and projects and any potential negative impacts are avoided or mitigated whilst maximising co-benefits of any mitigation.

2 Do you support the principles that indicators will have to meet?

No answer.

3 Are there any other criteria we should consider?

No answer.

4 Would you welcome proportionate reporting against all outcomes as the default position?

No answer

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

Please specify

Proportionate reporting may reduce documentation during policy and decision phases, but post decision/build would increase significantly.

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?

Please specify

Assessing climate impacts is complicated and often impacts are under reported where cumulative impact is not effectively assessed. Being complicated is not an acceptable reason for omitting climate change from the EOR. Climate needs to be sufficiently addressed through an alternative assessment if it is not part of the EOR and this needs to be established alongside the EOR to ensure there are no gaps arising and ensure the fully environmental impacts/outcomes can be assessed and avoided or mitigated against as appropriate.

EOR could make an assessment against a climate mitigation/carbon reduction pathway or adaptation pathway adopted by the local authority. Or the EOR could make an assessment against local carbon reduction targets or carbon budgets, and where none are set locally, this could be against nationally set targets.

A clear assessment framework that is standardised, to ensure consistency would be preferable. This should ensure that consideration into all elements of climate change for the lifetime of the plan or project is taken into account. This should consider carbon emissions from all sources, carbon reduction proposals, and adaptation required throughout the lifetime of the plan or project. The assessment could include: energy, heat, transport, food, nature and woodland, sequestration, adaptation, consumption, waste, economy and any other theme considered appropriate and relevant.

Integrating climate considerations will ensure that co-benefits arising from mitigation can be cross referenced with other environmental outcomes such as air quality and biodiversity. Further integrating this with a Health Impact Assessment could increase these co-benefit synergies such as improved health through active travel, reduced respiratory disease through reduced air pollution or reduced early deaths from heat events or improved social outcomes such as energy security from renewable energy production. It would also support an integrated, whole system approach to water and flood risk management reflecting priorities in the Environmental Improvement Plan and the Plan for Water. This should maximise the use of a range of nature-based solutions and green infrastructure across different scales such as natural flood management techniques, SuDS, land management, river restoration and catchment management; reducing the causes and impacts of flooding whilst providing multiple environmental and wellbeing benefits e.g., carbon sequestration, clean water, drought resilience, access to cooler green-blue spaces, restoring habitats and improving river water quality.

- 7 Do you consider there is value in clarifying requirements regarding the consideration of reasonable alternatives? Please set out the reasons for your answer.

Yes.

Any clarity on requirements will reduce scope for challenge or provision of “just in case” information

- 8 How can the Government ensure that the consideration of alternatives is built into the early design stages of the development and design process?

No answer.

- 9 Do you support the principle of strengthening the screening process to minimise ambiguity?

Please set out the reasons for your answer

Yes

Any standardisation or clarity of what must/should not be in scope will provide consistency and brevity.

- 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?

No answer.

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

Please set out the reasons for your answer

No answer

- 12 How can we address issues of ineffective mitigation?

Please set out the reasons for your answer

A clear implementation plan for mitigation which includes timescales, costs (with funds identified), and delivery body identified should be required. Amendments to this delivery plan should only occur in agreement with the Local Authority and may trigger the requirement for an additional appraisal. Changes to the plan should not be the result of inadequate funds and should not detract from other co-benefits established such as improved health and wellbeing.

- 13 Is an adaptive approach a good way of dealing with uncertainty?

No answer

- 14 Could it work in practice? What would be the challenges in implementation?

Please set out the reasons for your answer

A clear implementation plan for mitigation which includes timescales, costs (with funds identified), and delivery body identified should be required. Amendments to this delivery plan should only occur in agreement with the Local Authority and may trigger the requirement for an additional appraisal. Changes to the plan should not be the result of inadequate funds and should not detract from other co-benefits established such as improved health and wellbeing.

An adaptive approach could be built into the mitigation implementation plan, and include clear agreed decision points, thresholds and monitoring framework for adapting mitigation, similar to the Climate Adaptation Pathways approach.

Implementation should be assessed against an agreed monitoring framework using robust and accessible data.

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

Yes

Subject to sufficient resources being provided to Local Authorities, and powers to enforce if required over what may be quite lengthy timescales – long after the development is completed and possibly sold on.

16 How can the Government use monitoring to incentivise better assessment practice?

Please set out the reasons for your answer

Requiring open-source data that can be pooled and used by all will reduce time and cost of data collection.

17 How can the Government best ensure the ongoing costs of monitoring are met?

Please set out the reasons for your answer

Set out an expected regime for how often monitoring should take place, consistent reporting framework and nationally set fees per monitoring process.

18 How should the Government address issues such as post-decision costs and liabilities?

Please set out the reasons for your answer

Bonds or guarantor / performance agreement could be included in the legal agreement, giving the Local Authority confidence of performance. A Levy could also be on all agreements to create a performance fund and legislation could create a market for insurance.

Annual monitoring framework with appropriate fees set nationally

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

Please set out the reasons for your answer

Yes, subject to standardisation and verification.

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

Please set out the reasons for your answer

Data skills, resources, legal agreements, intellectual property, alignment of data formats/filing sharing/digital platforms.

21 What data would you prioritise for the creation of standards to support environmental assessment

Please set out the reasons for your answer

No answer.

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

No answer.

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

Please set out the reasons for your answer

Challenges – agreed outcomes might not be consistent with Council priorities. Co-benefit opportunities might be missed where they are not part of the agreed outcomes, in particular if they are not directly environment related. How to deal with changes in circumstances over lifetime of plan/project. May need to build in flexibility or procedure to change.

Opportunities – Positive implications of the plan or project may be more likely to be maximised.

24 Once regulations are laid, what length of transition do you consider is appropriate for your regime? Please State Regime.

i) 6 months

ii) 1 year

iii) 2 years

No Answer.

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

Please provide an answer

Adequate flood Risk Management Authority (RMA) expertise & capacity i.e., within lead local flood authorities, water companies and the Environment Agency.

Clear roles and responsibilities across various bodies.

Improved data skills and resources. Clear and accessible data.

More guidance on how climate, social and health-based considerations can be integrated into the process or dealt with elsewhere.

Public Sector Equality Duty

While this consultation is seeking initial views on the overarching framework of powers, the Government is also seeking to gather information to understand any equalities implications that will help inform the development of this policy.

- 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.

Please provide your comments

The EOR will be replacing SEA and EIA, however, there has been no provision to replace Sustainability Appraisal. As a result, there is a gap in legislative requirements to assess social and economic implications of plans in a holistic way. Best practice SA's have a Health Impact Assessment and Equalities Impact Assessment embedded in the appraisal, however without a replacement to SA or incorporating HIA and EqIA within the EOR carrying out these assessments will be less likely, and even where they are carried out, these will not be aligned to the environmental assessment and benefit from potential co-benefits. This omission could result in a detrimental impact to equality.