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8 June 2023

Dear Consultation Team

### **Environmental Outcomes Reports: a new approach to environmental assessment**

On behalf of South Oxfordshire District Council I am providing answers to the questions raised in the above consultation.

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

*Yes but we have the following comments.*

- drive the achievement of statutory environmental targets and the Environment Improvement Plan – *this should be secured through primary legislation rather than Environmental Outcomes.*
- be measurable using indicators at the correct scale (see paragraphs 4.15 to 4.20 for further detail on indicators) – *yes they should be measurable using indicators at the correct scale.*
- be designed using the knowledge and experience of sector groups and environmental experts – *they should be designed by relevant and experienced experts and not necessarily sector groups such as developers.*

- have an organisation responsible for monitoring overall progress of specific outcomes i.e., a responsible ‘owner’ – We think this responsibility will fall on the local planning authorities as independent bodies. If that is to be the case, Government needs to ensure LPAs are fully resourced to undertake the monitoring and draw down on appropriate expertise assistance
- be reviewed on a regular basis to ensure they remain relevant - Yes
- do not duplicate matters more effectively addressed through policy. The topics covered by paragraph 4.10 are the subject of policy and guidance within the NPPF, PPG and development plans. We therefore question the need for an Environmental Outcome process.

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

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

At paragraph 4.10 we suggest traffic, transport climate change and light pollution needed to be added.

**Q.4. Would you welcome proportionate reporting against all outcomes as the default position?** Yes, but we have the following comments. At paragraph 3.1 a quote is used stating “*But the planners’ scope everything in*”. At the start of paragraph 4.23 it is advised that “*Users told us that the scoping process is driven by fear of legal challenge,*” Paragraph 4.23 then goes on to suggest all topics are addressed but proportionately with a desktop type analysis for scoping out. Effectively, a scoping process remains and could equally be subject to legal challenge. Proportionate reporting does not address the scoping issues reported. To address scoping issues reported, all topics need to be scoped in. Reporting will be proportionate by default if there are limited/no impacts as per the example in paragraph 4.23 of underwater construction activity (once operational) having little if no impact on air quality

**Q.5. Would proportionate reporting be effective in reducing bureaucratic process, or could this simply result in more documentation?** We consider it has the potential to reduce the scale of the current process.

It could reduce the bureaucratic process in removing the scoping stage but would result in more documentation as part of reporting outcomes on topics that could be of limited use to considerations. There is also the issue of screening opinions and the question of whether they should they remain part of the process. Currently Schedule 2 development is a matter of judgement with degrees of subjectivity and equally open to challenge as scoping. The screening stage would be removed, prevent any conjecture and remove a bureaucratic process if like Schedule 1 it is made clear exactly which developments and their characteristics/size will require Environmental Outcome e.g., a residential development exceeding x number of dwellings, commercial development exceeding x sq. m, solar arrays on a site exceeding x ha etc.

**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?**

In our opinion EORs are unlikely to be the answer. Net Zero targets and means of achieving them need to be set out and implemented through primary legislation and not through a subjective regulating regime. We note that potential changes to the NPPF in relation to carbon impact assessment will be subject to public consultation

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

Yes, this has the potential to save time for all parties but there is too much ambiguity what comprise reasonable alternatives. For example are reasonable alternatives alternative uses such as solar rather than wind turbines? Or is it site location related? And if so, what is the scope of site location and area to be considered? We think there needs to be clarity around whether its size or effects related?

**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?**

We believe it's a question of how genuinely alternatives have been explored. However, it is difficult to establish and prove non-genuine attempts at identifying alternatives so we don't see the consideration of alternatives as having significant merit.

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

Yes - as suggested above the screening process should be removed with categories of development requiring EOR being made clear like they are for current Schedule 1 developments e.g., residential development exceeding x number of dwellings,

commercial development exceeding x sq. m, solar arrays on a site exceeding x ha etc. This should rule out any ambiguity and reduce legal challenges and bureaucracy.

**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?**

No - for a sensitive area such as a National Park, AONB, Scheduled Monument a distance and development size and type could be established that then generates the need or not for EOR. Any necessary assessment may only require a landscape and visual impact assessment rather than other topics being relevant for the sensitive area. e.g., air quality may not be a significant consideration but there would be an obligation to address it if sensitivity is a criterion for triggering EOR. For authorities like ours which contain significant areas of AONB we could spend a greater amount of time screening developments because they are potential EOR through location in or proximity to a sensitive asset.

Protected species could be using any site either as an individual or in numbers but that could only be established in many cases through on site assessment as past records are not a guarantee that a protected species is still using a site. Protected species assessments would normally be part of the assessments submitted to accompany a major planning application (perhaps more so with 10% biodiversity net gains coming into force through the Environment Act).

Given the above there is no reason why sensitivity should be used as a criterion for requiring the need for EOR. Effects for sensitive areas and protected species can be assessed either through the EOR if the proposal is EOR development or through assessment as part of a non EOR development as it currently the case.

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

We think this is difficult to say because of our concerns set out above.

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

Applicants could be required to provide a report on steps at the design and development stages, but reporting may need to be over a number of years as not all mitigation will be immediate and will take some time to mature e.g., landscaping and biodiversity improvements measures.

**Q.13. Is an adaptive approach a good way of dealing with uncertainty?** It may be appropriate in connection with some developments, particularly where monitoring reveals an unexpected outcome.

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

Possibly. On occasions, mitigation measures may not address the full range of environmental impacts and may not be effective due to human interference (e.g., biodiversity mitigation on the site of a housing development may not be successful due to human access to that part of the site or human error e.g. mowing a wildflower meadow at an inappropriate time). It may be the case that off-site mitigation could be more successful with a site having less human accessibility and management by a nature conservation organisation.

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

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

Introduce financial penalties where mitigation falls short and providing LPAs with the resource and robust support to enforce this. There should be no appeal rights as the mitigation will have been detailed in the EOR and developers will have signed up to the EOR as part of their planning application submission.

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

By allowing index linked payments to be secured as part of S106 obligation before planning permission is issued.

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

This would be very difficult where the developer is no longer present/ the land has changed hands - bonds are an option but they are complicated in practice.

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

Yes – this would have positive impact on driving up the standard of data.

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

Copyrights. Sometimes the data is not comparable, or actively captured by the data owner and is of variable quality.

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

We are not sure what this question is about and are therefore not expressing a view.

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

Yes - in principle.

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

It could be quite onerous. It would need to be linked to local plan monitoring and the Environment Act 2021 duty for public authorities to produce a diversity report every 5 years to avoid duplication.

**Question 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

We believe two years will be necessary.

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

It will require some specialist advice/training to embed the new procedures and assessments.

**Question 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.**

No comments.

Thank you for the opportunity to comment on this consultation.

Yours sincerely

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