

To:  
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## Environmental Outcomes Reports consultation

This response is submitted on behalf of the Association of Directors of Environment, Economy, Planning & Transport (ADEPT) by David Dale, Policy Officer. It is not confidential.

ADEPT is a professional membership association representing Place Directors from county, unitary and combined authorities across England, along with Local Enterprise Partnerships, sub-national transport boards and corporate partners drawn from key service sectors throughout England.

### Introductory comments

We welcome the opportunity to comment on the Environmental Outcomes Reports consultation and recognise the need to replace EU-derived assessments (SEAs and EIAs) with an updated system that aligns with the government's environmental ambitions. We support the objectives set out in the consultation document to strengthen not reduce the standard of environmental protection; to retain the value and rigour of environmental assessments; to simplify and streamline the process; to introduce a more robust approach to monitoring and mitigation; and to increase transparency and community engagement.

However, the consultation document does not explain how the new system will work in practice, so it is not possible to understand whether these objectives will be met. The Levelling Up and Regeneration Bill seeks to give broad powers to the Secretary of State but the environmental outcomes and indicators are not set out, these are to be specified via secondary legislation and statutory guidance. It is not clear how these outcomes and indicators will align with the targets set in the Environmental Improvement Plan 2023.

It is also not clear to what extent the proposals are based on a thorough analysis of the strengths and weaknesses of the current system. The document refers to engagement with users of the environmental assessment regimes (3.1) but there is no detailed analysis just a number of unattributed quotes. We would expect to see a more robust analysis of the issues raised and some exploration of why the issues have arisen and why there is variation between consenting authorities. The views of local planning authorities should be taken into account equally with those of developers, and where there are issues related to the resources and capacity of LPAs these should be recognised.

We are reassured to some extent by the commitment to further detailed consultations on these matters in due course. However, we are not so reassured by recent experience of government responses to consultations, and of secondary legislation and guidance issued under the

Environment Act, where lengthy delays and late publication have created uncertainty and operational and financial difficulties for local authorities.

It is also difficult to judge the extent of the practical impact that the EOR outcomes-based approach will have. We understand from DLUHC that currently less than 2% of planning applications require an EIA, and that there is no intention to change thresholds or increase the number of applications once EORs are introduced. We need to see how the EOR approach will align with those other planning reforms that affect environmental improvement, including the relationship between Local Nature Recovery Strategies and Local Plans, the delivery of Biodiversity Net Gain requirements, and the anticipated Land Use Framework. We also need to understand how EORs at application stage relate to the Local Plan policies that they are being tested against: it is important that EORs support effective evidence-based decision making and so remain sufficiently detailed, up to date and site-specific to enable this.

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

Yes, it is fundamental that the outcomes should align with and drive the achievement of the statutory targets and the EIP. We need to see further details of what the proposed outcomes will be, how they are to be measured and monitored, and how outcomes can be enforced where they are not being achieved. If local authorities are to be responsible for owning and monitoring some outcomes then any new burdens will need to be clarified and funded.

We have a specific concern about ensuring that EORs continue to give adequate weight to the historic environment in plan making and development management. While it is encouraging to see cultural heritage and archaeology included in the list of matters in 4.10, the EIP itself is light in its treatment of the historic environment – it has a narrow focus on heritage within protected landscapes. The new EOR process should not lose any of the value that EIAs currently afford the historic environment, EORs should specifically include cultural heritage and the historic environment everywhere and not just in the narrow sense of the EIP.

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

Yes, the usual principle is that indicators should be SMART – specific, measurable, achievable, realistic and time-bound. The list in 4.18 seems to cover all these elements.

**Question 3: Are there any other criteria we should consider?**

No, this list seems comprehensive. We agree that it should be kept under review to facilitate innovation and best practice. As noted above, further details are needed about ownership and monitoring of outcomes and indicators, and responding when targets are not being met.

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

Yes, although it is not clear that this would necessarily reduce the scope for disagreement about or even legal challenge about when a particular outcome has a major or a minor relevance to a given project. At plan (rather than individual project/application) level presumably all outcomes are relevant.

**Question 5: Would it be effective in reducing bureaucratic process, or could this simply result in more documentation?**

Probably not – see comment at Q4 above. Proportionate reporting would need to be supported by clear guidance to ensure that EORs meet requirements and avoid becoming too onerous.

**Question 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?**

We strongly support the general principle of strengthening the planning system to give greater emphasis to climate change mitigation and adaptation and believe that this should be a central principle of the NPPF. However, it is not clear that EORs would be the appropriate mechanism to do this locally. The risk again is that by loading requirements onto EORs increases their complexity and the scope for challenge.

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

Yes, there is little point in considering reasonable alternatives late in the design and application process, particularly if it is a box-ticking exercise with content cut and pasted from other assessments (5.11). Developers should be expected to explain what practical site and developments alternatives were properly considered and why they were not pursued.

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

Clear secondary legislation and statutory guidance.

**Question 9: Do you support the principle of strengthening the screening process to minimise ambiguity?**

Yes, this would be helpful, We welcome the commitment to further consultation on what plans and projects require assessment.

**Question 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, in theory, but there must be clarity about what information needs to be taken into account as a starting point.

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

Sufficient information about the area and species to enable an informed judgement about whether the assessment criteria have been met. Standard formats and templates could be provided.

**Question 12: How can we address issues of ineffective mitigation?**

It will be helpful to have the mitigation hierarchy set in legislation to ensure that the likely environmental effects of development are addressed early in the design process. Mitigation measures can then be integrated into the plans. LPAs need adequate enforcement powers and capacity to ensure that mitigation is delivered during and after development.

**Question 13: Is an adaptive approach a good way of dealing with uncertainty?**

Yes, in principle. A dynamic and flexible approach is needed to ensure that mitigation can be reviewed as the impact of development becomes clearer. In practice this has implications for LPA capacity and resourcing, and developer costs/viability.

**Question 14: Could it work in practice? What would be the challenges in implementation?**

See Q13 above.

**Question 15: Would you support a more formal and robust approach to monitoring?**

Yes, in principle. There is little point in carrying out an assessment and identifying mitigation actions if there is no monitoring to verify the predicted impacts and the effectiveness of mitigations. Better monitoring and enforcement will result in better outcomes. The issue is how to create the capacity in LPAs to carry out the more robust monitoring and enforcement, and how this will be paid for. The nature and extent of future monitoring should as far as possible be identified at the time the assessment is carried out so that this is clear to all parties including the wider community affected by the development. Where impacts and mitigations are not delivered as agreed, the additional cost of enforcement, remedial action and further monitoring should be met by the developer.

**Question 16: How can the government use monitoring to incentivise better assessment practice?**

The requirement for more formal and robust monitoring should in itself help to ensure that assessments are realistic and comprehensive.

**Question 17: How can the government best ensure the ongoing costs of monitoring are met?**

It is anticipated that the vast majority of applications will not require an EOR. Where an assessment is required, it seems reasonable to estimate the ongoing cost of monitoring and pass this on to the applicant as part of the capital cost of the development – an EOR fee or environmental protection levy.

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

See comments at Q17 above. The system for identifying and meeting the costs of monitoring should include a strong incentive for applicant and LPA to be as accurate as possible. The risk of any unforeseen costs including enforcement and remedial action should not sit with the LPA, residents or the wider community.

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

Yes. Data should be available on grounds both of transparency, so that all parties can see the basis on which an assessment is made, and of efficiency, so that where appropriate data can be reused rather than produced again. There will be important practical questions about where the data sits and who is responsible for ensuring that it is accurate and up to date.

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

We have no direct experience of this. Just as indicators should be SMART (Q2 above) so data should be accurate, up to date, accessible, and in a standard format.

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

We are not clear about the likely level of data here, it would be helpful to see a list of the data sets that might be considered for prioritisation.

**Question 22: Would you support reporting on the performance of a plan or projects against the achievement of outcomes?**

Yes, in principle. Just as monitoring is necessary to understand whether outcomes and mitigations have been achieved for individual developments, so reporting at a higher level is needed to understand the success or otherwise of EORs locally and nationally.

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

Reporting should be light touch and in a standard format that enables results to be compared and aggregated. It is difficult to be more specific until we have more details of how EORs will operate.

**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**

**Please state regime.**

We can only comment on this question at a general level. Reflecting on the ongoing experience of new requirements under the Environment Act 2021, such as Local Nature Recovery Strategies and Biodiversity Net Gain, it would seem reasonable to plan for EORs to be implemented 18 months to two years after the Bill receives Royal Assent. This assumes that further consultations (and responses to them) happen in a timely manner so that regulations and guidance can be issued in plenty of time for LPAs to gear up for the new system.

There will need to be wide and detailed engagement with local government during the transition period. The current work of the Planning Advisory Service to engage and support local authorities preparing for the roll-out of LNRs and BNG is very effective and could provide a model for a similar process with EORs and other planning reforms.

Any new burdens on LPAs must be fully funded by Government. The funding should be allocated early to enable the transition to be planned smoothly. There should be no unhelpful terms and conditions imposed.

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

See comments under Q24 above in relation to support and funding. Workforce skills and capacity are also key issues: we need a national strategy to train, recruit and retain staff across all place-based services – including planning, ecology and environmental health. There is already a workforce crisis, this is not being helped by the way in which government places new responsibilities on local authorities in a piecemeal and uncoordinated manner with late, insufficient and short-term funding.

**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.**

There are no obvious equality, diversity and inclusion impacts of the EOR proposals here. A workforce strategy (Q25 above) would offer the opportunity to make the workforce more diverse in future.

David Dale

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