

**Response to Consultation on Environmental Outcomes Reports:**  
**A new approach to environmental assessment**

Wildlife and Countryside Link, Land Use Planning Group, June 2023

**About Wildlife and Countryside Link:**

Wildlife and Countryside Link is a coalition of 70 environmental organisations in England, using their strong joint voice for the protection and enhancement of nature.

This Link response is supported by: Amphibian and Reptile Conservation, Association of Local Environmental Record Centres, Bat Conservation Trust, Buglife, Bumblebee Conservation Trust, Butterfly Conservation, Chartered Institute for Ecology and Environmental Management (CIEEM), CPRE – The countryside charity, Froglife, Open Spaces Society, National Forum for Biological Recording, RSPB, The Wildlife Trusts, Wildfowl and Wetlands Trust, and the Woodland Trust.

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**Covering letter:**

In principle, Link supports a move to a more outcomes-focused approach to environmental assessment.

However, while their implementation [could be improved](#), the current environmental assessment regulations (EIA and SEA) are fit-for-purpose. The existing regulations are also well-understood by those involved in the system.

Currently, the main causes of delays in the planning process are not SEA and EIA, they are poor implementation of planning processes and a lack of resources and expertise in the planning system. Small and Medium Enterprise (SME) housebuilders identified the [main cause of delays](#) in the planning process to be understaffing of Local Planning Authorities (LPAs). Recent research commissioned by Defra also identified a lack of ecological resource and skills within LPAs: [only 5% of LPAs said](#) that they were able to scrutinise all applications that might affect biodiversity. Overall, the planning system has had funding [reduced by 38% since 2010](#).

Undertaking reforms to a fit-for-purpose and well-understood regime of environmental assessment and associated case law will create uncertainty and potentially cause delays for those involved in environmental assessment. New skills and learning across the sector, from LPAs to solicitors to statutory consultees to consultants, will be needed. There will necessarily be a long transition period. It could result in the loss of precious time to deliver nature's recovery in the face of a nature and climate emergency.

The issues with SEA and EIA identified by the consultation document, such as duplication, risk aversion and data issues, could be addressed through improved implementation.

We are concerned about the reform of environmental assessment through the provisions in the Levelling Up and Regeneration Bill for Environmental Outcomes Reports (EORs) because:

- The Government is giving itself broad enabling powers to reform environmental assessment, with not enough detail in primary legislation and insufficient Parliamentary scrutiny.
- This recently published consultation on EORs still does not provide sufficient detail to reassure that reform of environmental assessment will not lessen environmental protections.
- The safeguards in primary legislation, also cited in this consultation, are not sufficient (non-regression, international obligations, public engagement) to ensure that specific environmental protections will not be undermined by this reform.
- We also wish to highlight a particular concern about the way the legislation is currently drafted, which in our view, could allow for the modification or disapplication of the Habitats Regulations. This is also the [view of the Office for Environmental Protection](#). We appreciate this is not the Government's intention, but the legislation as drafted still allows for this possibility. As the intention is to allow coordination, as the current EIA regulations do, we urge the Government to amend the Levelling Up and Regeneration Bill to use the existing EIA Regulation wording ('ensure that the Habitats Regulation Assessment and the EIA are coordinated'), rather than add a specific provision in the LURB for HRA to be disapplied or modified.
- Link is also concerned about the implications of the EOR provisions in the Levelling Up and Regeneration Bill on devolved administrations and legislation. Clause 143 requires UK Government Ministers to consult with Ministers of devolved administrations, should EOR regulations fall within a devolved administration's competence. This is a weak requirement, which could see EOR regulations imposed on devolved nations without the consent of their administrations. The situation is even worse in Northern Ireland, as Clause 143 only requires the Secretary of State to consult a NI department – no elected representative in NI would be even consulted. This provides a further risk of environmental regression, should EOR regulations impose weaker requirements than requirements put in place by the devolved Government. In June 2022, the former Deputy First Minister of Scotland, John Swinney, raised these concerns about environmental protection and the threat to the competence of devolved administrations in a [letter to the Parliamentary Under Secretary of State](#) for Levelling Up, the Union and the Constitution. In August 2022 the Environmental Links UK (ELUK) network, representing the UK's largest environmental coalitions, [wrote to the UK Government](#) to express their concern at the regression risk posed by Part 6 of the Bill, and its threat to the competence of devolved administrations. The [Scottish Government has expressed its opposition](#) to the Bill on these grounds.

We welcome this consultation from DLUHC, starting to set out the framework and process for EORs, and we hope our responses to the specific consultation questions are useful in setting out what is necessary for EORs to protect and restore the natural environment.

In particular, we welcome the ambition to secure better environmental outcomes and to reinforce the mitigation hierarchy and strengthen the consideration of alternatives.

However, the implementation issues that hamper the effectiveness of the current system will also hinder the success of the new system, if not addressed. They include the issues around poor quality and availability of some environmental data, the lack of advocacy for accessing and using existing

high quality environmental data services, and lack of resources and expertise to implement environmental assessment.

We would welcome co-creation of policy with environment NGOs, including through open conversations with officials, deep dives on certain topics, stakeholder engagement workshops, and more.

We urge the Government to provide more clarity on how EORs will apply in the context of other EIA regimes, as this consultation document is very focused on planning and development.

Responses to selected [consultation questions](#):

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

Yes / No

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

Yes / No

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

While we support the principles set out in this consultation document that will guide the development of outcomes, there are additional principles that should also be considered.

An outcomes approach must first address and reinforce the importance of environmental protection and avoidance of environmental harm by assessing potential impacts, measuring and giving weight to something *not* happening. Outcomes must not disguise the flow between losses and gains, if measuring 'net' outcomes.

We suggest the addition of several principles that should guide the development of outcomes with a new EOR regime.

Firstly, the precautionary principle, which acknowledges that not all environmental impacts will be easy to measure, should be added as a principle for outcomes. Where there is uncertainty about the risk of environmental harm, the precautionary principle allows protective measures to be taken without having to wait until the harm materialises.

Secondly, there should be an additional specific principle on the non-regression of existing environmental protections (and not just the overall level). While we appreciate the Government has set out in legislation a non-regression statement for the overall EOR system, it is important that a non-regression principle also guide the development of outcomes to ensure no existing environmental protections are undermined.

An outcomes-focused approach must still retain an aspect of identifying and assessing potential environmental impacts, as well as driving towards a particular set of environmental outcomes. There should be an additional principle to prevent plans and projects from exceeding environmental limits. In the face of the long-declining state of nature in England, for example, [the declining condition of](#)

[the most important protected sites for nature in England](#), the Government's environmental targets and objectives cannot be achieved without first ensuring nature is protected from harm.

We welcome that the outcomes will be linked to the achievement of statutory environmental targets, to the ambitions in the Environment Improvement Plan, and to other Government environmental ambitions contained elsewhere, for example, the Clean Air Strategy. However, the legally-binding targets, interim targets in the EIP, and other environmental ambitions, are not necessarily sufficient to achieve nature's recovery. While the Defra Secretary of State marked their own EIP as sufficient to pass the Significant Improvement Test, the OEP and other environmental experts have repeatedly highlighted the lack of ambition of the existing Environment Act targets. For this reason, another guiding principle should be that outcomes are based on the best available evidence of what will effectively deliver on overall environmental objectives and targets. Also, an additional principle that the outcomes should reflect locally-set targets, where those are more ambitious than targets set nationally, should be added to the suite of principles to guide the development of outcomes.

We agree with the principle that outcomes should be measurable using indicators at the correct scale. However, some outcomes may not be conducive to a quantitative metric or the most appropriate indicator for a particular outcome may not be a quantitative indicator, for example, cultural heritage issues, and some outcomes may not have an adequate evidence base to inform or report on the outcome indicator. In these cases, a robust qualitative assessment should be considered, rather than just simply not including an outcome.

The first principle should be expanded to drive the achievement of the conservation objectives and recovery of designated sites such as SPAs, SACs and MCZs, the achievement of a coherent network of Marine Protected Areas (MPAs), and the achievement of the Marine Strategy, the Climate Change Act 2008 targets, and the UK's wider international targets set out in the Global Biodiversity Framework.

The fifth principle on 'regular' review should specify a time period - we suggest a review at least every 5 years in line with the review of the EIP Outcomes Indicator Framework.

We appreciate the intention behind avoiding duplication of EORs with matters addressed in policy. However, it is important not to lose the processes of environmental assessment in which on-the-ground data is gathered to inform decision-making and the design of specific mitigation and compensation measures for that plan or project.

We disagree with the consultation document's assertion that some matters, such as those with an insignificant local impact but which are important cumulatively, could be more appropriate and effectively addressed through policy and policy compliance than through the EOR regime. The application of policy is not always sufficient to ensure cumulative impacts are properly considered. Good consideration of cumulative effects in SEA and/or in EIA, alongside a robust policy framework, can identify and safeguard against cumulative environmental impacts, as well as create greater opportunities for holistic mitigation strategies for the cumulative effects of development.

As well, the significance of local impacts, that can be picked up in environmental assessments, are not always given sufficient weight in national policy. For example, Local Wildlife Sites will play an important role in meeting the Government's species and habitats targets, but National Policy Statements state that these sites are not sufficient to refuse development consent.

There are also gaps in policy, and while the policy framework should be strengthened, these important issues can be usefully picked up in environmental assessment. For example, there are insufficient regulations for ammonia emissions in the planning system, which can form harmful particulate matter and impact human health. As well, while the EIP sets a target for all people to have access to nature within 15 minutes of home, there are no planning policies or plans in place to achieve this objective, nor ensure that all new development contributes, and does not detract from, this target. Access to [high quality green and blue natural spaces for nature and for people's health and wellbeing](#) should be considered for an outcome within the EOR framework. A robust environmental assessment is still needed within the wider policy framework.

We urge the Government to not remove human health as a matter for consideration in environmental assessment, but to clarify how it should be addressed. IEMA has [recently published guidance](#) for practitioners on considering human health in environmental assessment, which specifies access to nature as an important determinant of health to be considered in the planning process.

There are also additional principles that indicators will have to meet, alongside the principles for indicators set out in the consultation document.

We agree that indicators must be evidence-based. There must be sufficient, expert evidence that the indicators at the strategic and project level are appropriate and accurate measurements of the particular outcome. Indicators should be based on whether they accurately measure an outcome, and this may require a comprehensive set of indicators to measure one particular outcome. Indicators should not be left out simply if they are hard to measure. Where there is not sufficient data to inform an indicator, this should drive investment in gathering appropriate and up to date environmental data.

There must also be evidence that the actions identified to avoid, mitigate, or compensate will genuinely achieve the expected change in indicators and therefore the desired outcome. For example, avoiding the destruction of a certain habitat or enhancing it does not necessarily entail an increase in the population of species that relies on that habitat.

As the consultation document acknowledges, wider environmental trends and context, such as climate change, must be integrated into the indicator model. We look forward to engaging in more detail in the development of the indicator model and guidance.

We agree with the consultation document's recognition that not all outcomes may be conducive to a quantitative metric and that a robust qualitative assessment may be appropriate in some cases. In particular, some sites may have unique features that are not comparable to other sites and so not measurable with standardised indicators. It is important these unique features can be recorded and afforded weight in EORs and their protection prioritised.

We also agree that the indicators must be measurable at the correct scale, whether strategic or project level. We welcome the consultation document's reinforcement of the importance of collecting site-based environmental information and assessing impacts at a site or project level, as well as building up and using the strategic-scale environmental evidence base. The geographical scope of the strategic level indicator may be different between indicators, depending on the indicator and outcome. For example, a water quality indicator should be assessed at the strategic level at a catchment level, while a species population indicator should be assessed at the strategic level at a population or meta-population level.

There will inevitably be uncertainties or a lack of data or evidence in some cases about particular indicators, as some datasets are unavailable or incomplete, such as the Priority Habitat Inventory. The absence of evidence must not be taken to indicate evidence of the absence of a habitat or species or effect. The Government should take steps to improve the availability, completeness and quality of existing environmental datasets. Where environmental data to assess an indicator model and outcome are not available, this should drive investment in gathering appropriate and up-to-date data, including [greater support and advocacy for England's environmental data infrastructure](#).

In the absence of current or sufficient data for an indicator or evidence to inform the indicator model, and thus where there is uncertainty about the risk of environmental harm and the achievement of outcomes, a precautionary approach must be taken.

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

Yes / No

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

We are not in favour of removing the scoping stage, to be replaced by proportionate reporting against all outcomes as the default position.

We support making reports more accessible and reducing replication, but we do not think this proposal will have the desired effect.

We are also concerned that the removal of the scoping stage will result in the loss of engagement with statutory consultees and the scientific community, who play an important role in identifying key environmental issues at this stage of environmental assessment. Therefore, the unintended consequence may be to lengthen the process as EORs may fail to report sufficiently against relevant outcomes which would have been identified during scoping.

We do not believe that removing the scoping stage in favour of proportionate reporting against all outcomes would reduce bureaucratic process nor reduce fear of legal challenge. As the consultation document acknowledges, it is rare that outcomes will not be relevant at all and most will require a degree of desktop analysis to be scoped out, which is similar to current practice during the preparation of a scoping report. The information collected during the scoping stage is important to an effective environmental assessment.

A good scoping report potentially saves time at later stages and should not be limited to a desk-based exercise. Scoping ensures that planners and developers are aware of the matters that need to be considered in designing plans and projects, and the likely costs and timeframes associated with the assessment (e.g., additional surveys that may span a number of years and importantly the justification for requiring these surveys). It also provides an early opportunity to liaise with other stakeholders and allow for early input into the scheme design. Scoping is also important in considering the mitigation hierarchy and the sequential approach before considering outcomes. It is vital therefore that this is factored into and not eliminated from any new approach.

**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?**

We welcome the Government's ambition to ensure a new environmental assessment regime better addresses and mitigates the cumulative impacts of climate change. Protecting and avoiding harm to existing habitats is an effective climate mitigation and adaptation measure. We agree that all regimes must be considered, for example, Agriculture EIA and Forestry EIA because land use change can have significant implications for climate mitigation and adaptation. For example, preventing the loss of nature-rich and carbon-rich habitats, such as semi-natural grasslands, woodland, and peatland, that can store carbon, mitigate flooding, and provide other ecosystem services that support climate adaptation. We also support the ambition to mainstream adaptation in environmental assessment.

For environmental assessment of planning and development, we welcome the ambition to introduce carbon impact assessments (as consulted on in the recent NPPF consultation). However, the detail of these carbon impact assessments has not yet been published and will be crucial.

Existing environmental assessments can play an important role in mitigating and adapting to climate change. SEA can influence the nature of a development by helping determine flood risk management policy in catchments and shoreline management plans. Through consideration of alternatives and mitigation at a project level, EIA can influence the design of a development to reduce the impact of the development on climate change. Across a number of projects, the cumulative effect of multiple EIAs can be a useful means to reduce the impact of the development on climate change. Any new system of environmental assessment must further strengthen the assessment of the impact of a plan or project on climate change and strengthen the influence of the assessment on the consideration of alternatives and design of the plan or project.

EORs should also consider the contribution of nature to climate adaptation. Outcomes should include how far nature-based solutions from existing and created nature boost resilience to flooding, heatwaves, and other impacts of climate change. Development should aim to use nature-based solutions as far as possible to protect people from these impacts.

With respect to the indicator models, climate change must be an important factor to integrate into other considerations, such as biodiversity, as for example, rising temperatures increase the risk of extinction of different species.

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

Yes, we agree there is value in clarifying requirements regarding the consideration of reasonable alternatives.

Assessing alternatives, such as alternative locations or design, is crucial in choosing the most environmentally-friendly options for development. There must be better clarity on what reasonable alternatives are at different stages in the planning process through guidance, but care must be taken not to unduly restrict the scope of alternatives.

Assessment of alternatives is best done at the strategic level and this must be made clear. At both a strategic and project level, consideration of alternative sites, as well as design, for development is

important in applying the mitigation hierarchy. It should be made clear that once land has been acquired it should not be used as an argument to undermine the consideration of alternatives and the mitigation hierarchy. Unique features of a selected site may make impacts unacceptable, with alternative sites the only viable option. Ruling this out of consideration effectively assumes that dire environmental impacts are, in some cases, inevitable, even when reasonable alternative sites are available. Applicants must be required to clearly state if avoidance has not been considered prior to land acquisition and is no longer possible for this reason.

Guidance on alternatives should require plan-makers and developers to outline how stakeholder recommendations on alternatives have been considered - a clear paper trail could reduce consenting delays.

**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 welcome the Government's consideration of how to build in the consideration of alternatives earlier into the design stages of the development and design process.

Better alignment between the strategic and the project scale could filter out the need for unnecessary project level assessments by steering development away from the wrong locations at the strategic level, reducing the extent to which project level assessments might otherwise be required. Good strategic level assessment can also streamline the scoping process for project-level assessment, for example, if important environmental areas and potential environmental impacts are already identified and so automatically scoped into the assessment process.

Consideration of alternatives should be integral to strategic level assessments, for example, sites identified by a strategic level assessment as inappropriate for development should be ruled out as potential sites for development, and strategic-level assessment should guide the location of the potential scheme or project, by being consulted when developing the scheme. This should be made clear in the guidance around consideration of alternatives.

Many infrastructure projects do not fall under a plan or programme which has been subject to SEA, which can make early and thorough consideration of alternatives more challenging. Strategic-level assessment should be applied to all appropriate plans and programmes. Currently, we are aware there are plans and programmes that could have significant adverse effects that are not subject to SEA. For example, despite introducing potentially huge cumulative environmental impacts, plans for major infrastructure investment in the Oxford Cambridge Arc, a strategic transport plan for HS2, changes to design codes, and the expansion of permitted development rights have not been subject to SEA or have not been properly assessed. SEA should be applied consistently to all strategic plans and programmes. Furthermore, while offshore wind farms are subject to SEA, they are not currently strategically planned so there is no spatial element within the SEA.

Strategic-level assessments should also have greater weight, which would also help the alignment of strategic assessment and project assessment and reduce the need to which project level assessment is necessary. Early implementation of strategic assessment could genuinely inform strategic and Local Plans. No planning application or permitted development should be approved in areas which a strategic level assessment has identified as unsuitable for development. In the marine environment, a strategic level assessment should consider the cumulative impact of offshore wind development



along with wider sea space interests on marine wildlife to identify which areas of the seabed are potentially appropriate for development.

Also, rigorous assessment of cumulative impacts at a plan level, including how projects proposed outside of the plan contribute to cumulative environmental effects and how these can be adequately mitigated to not exceed environmental limits, is important.

However, it is important to note that the site-specific and granular data-gathering and assessment is essential to retain in a new EOR regime, as well as the strategic element of SEA and the ability to identify cumulative impacts. We do not agree with the proposal to narrow the extent of project level assessment due to strategic level assessment. While a better strategic assessment can result in a more straightforward and simpler project assessment, a sufficiently detailed project assessment is still necessary to identify and evaluate a particular site and potential impacts on the site, and then design specific and effective mitigation and compensation measures.

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

Yes, we support the principle of strengthening the screening process to minimise ambiguity, however, it is difficult to comment on the principle of strengthening the screening process without understanding what might be contained within category 1 and category 2 consents. We welcome further consultation in this area.

Due to poor screening decisions, EIA is not applied to many individual projects that have a significant effect on the environment. It is unclear what criteria are used to determine what is a 'significant effect,' and whether these criteria are transparent or sufficiently robust. The consideration of cumulative impacts must also be a consideration when developing the categories. There are developments that are not automatically covered by the thresholds for requiring an EIA that can have significant environmental impacts, including those under the thresholds of Schedule 2 of the regulations. [Research from IEMA](#) found considerable anecdotal evidence from EIA practitioners that screening of development proposals, above the Schedule 2 thresholds, may not be regularly undertaken by all planning authorities in every case and that the majority of practitioners (55%) believed EIA had not been required for projects with what they considered to be likely significant environmental effects.

The screening process should be strengthened to improve the consistency and quality of screening so that all projects that are likely to have significant environmental effects are screened and are subject to project-scale environmental assessment.

The screening process should be strengthened by:

- Frontloading evidence-gathering to improve strategic level assessment and provide baseline data for project level assessments
- Improving spatial planning at a landscape level to identify alternatives
- Identifying outline opportunities for mitigation, compensation, net gain, and monitoring at a strategic level
- Expanding screening thresholds to include any development within 100 metres of a designated/protected site of international, national or local importance, or irreplaceable habitats
- Amending Planning Policy Guidance (PPG) notes to lower the thresholds for Schedule 2 screening

- Clarifying unclear wording in EIA regulations
- Ensuring that all consenting authorities have access to environmental professionals with sufficient EIA competence to be able to meet their regulatory obligations to screen all Schedule 2 developments

[IEMA's research](#) also found that while the screening process could be improved, only a small proportion of the 500+ EIA undertaken annually in England end up in the courts and that there are fewer EIAs undertaken in England, per head, than within the equivalent planning systems in the UK's devolved administrations.

**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 / No

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

Yes, proximity or impact pathway to a sensitive area or a protected species should be important criteria in determining whether a plan or project might require an environmental assessment under Category 2. Although size thresholds are still an important consideration in screening and determining whether a project might have a significant environmental impact, size is not always the best indicator of impact. For example, in the marine environment, infrastructure that is similar in size and scale may not even be covered by the same planning or EIA regime, such as a submarine cable which is exempt from requiring a marine license for several reasons. Based on the scale of offshore cables expected to connect energy from offshore wind farms to the UK grid, this exemption poses serious risk to the achievement of environmental outcomes.

However, much important nature is outside protected sites and so this cannot and should not be the only or the predominant criteria in screening.

Minimum data requirements to check for the screening process should be set so that the existing evidence base for sensitive areas and protected species records is examined.

The screening thresholds for environmental assessment should be expanded to include any development within 100 metres of a designated/protected site of international, national or local importance, or irreplaceable habitats and the size of development that should be screened should be lowered for Schedule 2 screening to ensure all projects with significant environmental impacts are subject to environmental assessment. Within the current EIA Agricultural regime, the 2ha threshold for protection of uncultivated land is too high. A significant proportion of remaining semi-natural grasslands and lowland heath occur in patches smaller than 2ha and can occur within close proximity to protected sites. These small sites are very important for biodiversity conservation, heritage, and health and landscape quality. As well as proximity and impact pathway criteria, we would welcome greater protection of these important habitats through the removal of the 2ha threshold.

The capacity and capability of local planning authorities must be increased in order to carry out comprehensive and robust screening for environmental assessment.

A Preliminary Environmental Impact Report (PEIR) or high-level ecological assessment could be used to indicate whether further assessment is required and at what level. Minimum data requirements to check for the screening process should be set so that the existing evidence base for sensitive areas and protected species records is examined.

Other information could include or be informed by: the Local Nature Recovery Strategy, the understanding of cumulative impacts, understanding the potential offsite impacts on protected sites, Impact Risk Zones for conservation areas such as SSSIs, irreplaceable habitats and Local Wildlife Sites, and desk-based assessment using local and national species records and initial site surveys should be undertaken to identify likelihood of impacts on protected species and inform the need for further assessment. This could also consider the location of development, types of activities that could take place during construction, operation and decommissioning, and habitats and species within the location of development.

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

To address ineffective mitigation, environmental assessment processes need:

- High quality appropriate environmental information available and consulted at an early stage - the availability and use of FAIR data should be improved
- Earlier and robust consideration of the mitigation hierarchy, the assessment of alternatives and designing of mitigation options
- The design of mitigation options should be evidence-based, informed by environmental information and the local environmental context, and designed and implemented by experimental experts
- Design of mitigation options should be onsite wherever possible, if not, as close to the site as possible
- Detailed mitigation measures are submitted as part of the development application and are subject to consultation and scrutiny
- Mitigation is undertaken ahead of impacts occurring
- Ensuring mitigation measures are actually implemented as designed and maintained, supported by sufficient resources
- Proper monitoring and enforcement
- Review and produce new guidance on the appropriate use of the Rochdale Envelope. The use of the envelope does not incentivise the use of the mitigation hierarchy, creates uncertain and unrealistic cumulative impacts, introduces precaution and results in vague mitigation, compensation and monitoring measures at the time of consent, particularly for offshore wind farm developments. There is a place for the Rochdale Envelope, particularly to ensure innovation, but it is currently being used very broadly at the detriment of the environment.

Mitigation measures should be conditioned through the planning application so that these measures must be incorporated in the design of the project or in the planning conditions before permission is granted.

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

Yes / No

No Link response.

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

Adaptive mitigation has a place in cases when planned mitigation is ineffective or failing, in order to help secure better outcomes.

However, it should be clear that an adaptive approach to mitigation should be a last resort. First, feasible and effective mitigation measures should be used. Only when there is uncertainty of what mitigation to choose or whether the mitigation is effective or will be effective should an adaptive approach be employed.

As always when dealing with uncertainty, the best route is avoidance of effects. The precautionary principle should also be applied to the design of mitigation measures, especially considering that there is already guaranteed to be loss and impact from development as mitigation measures are being applied to reduce or minimise the impact. Adaptive management should never be applied in the face of unacceptable environmental impacts. Taking this approach as a starting point risks poorly evidenced assessments and applications and unacceptable development/activities and uncertainty for stakeholders and decision-makers about the adequacy of measures to protect the environment and any necessary compensation measures.

An adaptive approach to mitigation will require robust monitoring and enforcement, if it is to be effective.

This will be a very large change from the existing system, where there is often little post-project implementation monitoring and data, which would then have to be evaluated by experts against the mitigation plan, and then the mitigation plan potentially updated. Lessons can be learned from the experience of minerals and waste planning which often has more robust monitoring systems.

Adaptive management and mitigation will come with additional costs for monitoring, model development, and re-adjustment, and enforcement, and the funding, support and expert staff must be retained over the long-term to deliver and enforce it.

Learnings from implementation of an adaptive approach of mitigation in other countries has identified other important aspects of implementation, including identifying the definition of success of measures, specifying decision points, timeframes and criteria, and estimating cost of mitigation and monitoring.

If this approach is implemented, there must be a requirement for transparent reporting and for developers to engage with interested stakeholders post-consent, where mitigation, compensation and monitoring plans are adapted.

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

Yes / No

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

Yes, we support a more formal and robust approach to monitoring, including for all the reasons identified in the consultation document and overall to improve the consistency and quality of environmental assessment.

Mitigation and compensation measures and accompanying monitoring requirements should be conditioned through the planning application so that these measures must be incorporated in the design of the project or in the planning conditions before permission is granted.

If monitoring demonstrates that the mitigation measures and compensation measures are not being delivered and are not delivering the level of environmental protection and outcome, remediation should be pursued and enforced.

Monitoring should help inform better practice and future approaches, so that lessons learned will deliver greater certainty on developer requirements.

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

The Government should ensure that the cost of monitoring for a certain number of years and enforcement is built into the costs by the developer or landowner undertaking the activity through the application costs. Agreed funding should be set aside in a protected account to ensure adequate monitoring is able to take place throughout the life of the development.

Also, the Government must ensure that the current skills and resource gaps in local planning authorities, in particular with respect to ecology, are filled.

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

We would support a mechanism which secured a proportionate developer contribution to a contingency fund to cover potential future costs of remedial action. LPAs would be best placed to administer this for TCPA development. Funds could be repaid to the developer if monitoring results demonstrate mitigation and compensation have been effectively delivered and is achieving the desired outcomes.

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

Yes, we support the principle of environmental data being made more accessible in accordance with the [FAIR principles](#) (findable, accessible, interoperable, reusable) to optimise the reuse of data.

There are significant gaps in existing environmental information. The quality, availability and comparability of environmental data necessary to underpin good decision-making and limit costs and delays in the planning system should be improved. This is necessary to better inform environmental assessments and to improve the quality and speed of all land use planning decisions.

Data collected through environmental assessment evidence-gathering and monitoring should be shared and made available and usable for other purposes in accordance with the FAIR data

principles to improve the existing environmental evidence base, which can then be mobilised for future environment assessments and inform best practice.

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

Despite industry guidance, the vast bulk of data in connection with development is not made available for re-use. Data sharing could be made mandatory or its requirements strengthened through legislation or conditions on planning permissions to improve baseline environmental data and create a level playing field for developers. Environmental information collected for plans and projects undergoing environmental assessment should add to the data bank by being subject to this data sharing requirement, including those that do not receive planning consent.

Even when data is available, it may not be high quality, appropriate, or in a standard or format that is usable. The Government should set national standards for environmental data and create a shared data platform accessible to all stakeholders (there is already a species data platform funded and run by the National Biodiversity Network Trust (NBN Atlas)). This could take the form of the RSPB's proposal for an Environmental Observatory. It is also essential to improve understanding and use of existing and any new environmental data infrastructure, to ensure that stakeholders are able to access and use data responsibly and accurately.

The Government must also provide the necessary resources to further support the national environmental data infrastructure to curate, assure and manage environmental data. There are necessary costs of data collection, curation and quality assurance. It is important that resources are available to support national and local volunteer recording groups which necessarily impacts on data provision and quality assurance. Local Environmental Record Centres (LERCs) and Historic Environment Records (HERs) should play a role in supporting this sharing of data. Data must be consistently updated and must be sufficient to assess the full consideration of impacts at the time of appraisal. Access to and management of these datasets need to be improved within local authorities by ensuring there are the resources and staff necessary to maintain them.

Even where data is accessible, the lack of obligation to use it or the lack of expertise to use it in assessments and decision-making means that the existing environmental evidence base is not always employed. The Government must require that developers consult the existing environmental evidence and ensure that local planning authorities have sufficient ecological expertise and capacity to review and use the existing environmental evidence database when conducting or reviewing environmental assessments.

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

We strongly recommend a costed audit of the national environmental information and information infrastructure against the needs, targets and reporting requirements for the Environmental Improvement Plan. This audit should identify and prioritise gaps in existing environmental information and map out the measures and funding required to fill these gaps.

There are a large number of gaps within existing environmental datasets, for example, the ancient woodland inventory is incomplete, as well as areas where data are not being collected or are not sufficient, for example, species information, particularly for some taxa.

Project level assessment should be informed by site-specific surveys.

Assessments should also be informed by the Local Nature Recovery Strategy. The Levelling Up and Regeneration Bill and the NPPF should be clear on the weight that should be given to Local Nature Recovery Strategies as part of the evidence base in preparing Strategic and Local Plans and informing planning decisions.

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

Yes / No

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

Yes, we support reporting on the performance of a plan or project against the achievement of outcomes, but this must be in addition to reporting on the plan or project's impacts, in order not to disguise the flow between losses and gains, if and when measuring 'net' outcomes.

While documentation for EIA and SEA can be lengthy, it is essential that the right information and analysis is in the report. The presentation of the information could be improved - and here we think there is a role for reporting on outcomes, as a helpful summary to the technical analyses.

We welcome the proposal for annual reporting by authorities and developers on how their plans and projects are delivering environmental outcomes. However, this must be accompanied by a process of adjustment and revision, if the plan is not delivering against environmental outcomes. For plans, this reporting should feed back into the regular review, for example, of Local Plans and National Policy Statements. For projects, the feedback from the reporting should also factor into the approval processes for other development projects, Government guidance, and where needed, enforcement action.

We also welcome national level reporting on performance and delivery of outcomes.

There is a useful opportunity to provide evidence of progress or lack of progress against national environmental objectives and targets.

However, there will be a number of challenges, including sufficient resource and expertise for some bodies, such as LPAs, to conduct reporting on performance. As well, reporting against the achievement of outcomes must not disguise the flow between losses and gains, if and when measuring 'net' outcomes. Finally, it may take time to make progress towards environmental outcomes, and in the lack of progress, the precautionary approach should be taken to uncertain outcomes.

**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.**

No Link response.

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

There is a significant risk in the time it will take to transition and implement a new environmental assessment regime, including due to re-skilling and the loss of case law associated with existing SEA and EIA regulations.

In general, there is a [dearth of ecological expertise and capacity within local planning authorities](#) and this is a source of many problems with implementation of the existing environmental assessment system. LPAs are others are already facing a significant challenge and need for ecological skills as result of the new requirements for mandatory Biodiversity Net Gain. The Government must ensure LPAs have sufficient ecological expertise and capacity to conduct and review environmental assessments. Planners must also receive guidance and training on environmental outcomes and how those relate to Government's targets and ambitions for nature recovery. Without tackling these deeper funding and skills issues, the problems faced with implementation of the existing system will not be solved.

Statutory consultees, such as Natural England, have also suffered from [budget cuts over the last decade](#), and currently lack sufficient resources to always engage in a timely manner with the planning system and environmental assessments.

Ecological consultants and other environmental assessment practitioners will require training and support during the transition to the new environmental assessment regime.

Undertaking reforms to a fit-for-purpose and well-understood regime of environmental assessment and associated case law will create uncertainty and potentially cause delays for those involved in environmental assessment. New skills and learning across the sector, from local planning authorities (LPAs) to solicitors to statutory consultees to consultants, will be needed. There will necessarily be a long transition period. It could result in the loss of precious time to deliver nature's recovery in the face of a nature and climate emergency.

**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 Link response.