Environmental Outcomes Report: a new approach to environmental assessment

Horsham District Council Response 1 June 2023

1. As the consultation was conducted during our pre-election period and concluded only a short time after our local elections, the following is an officer level response.

2. We are pleased to contribute to the consultation. Officers at HDC have extensive experience of undertaking environmental assessments on both major planning applications and on policy documents, and a number of officers have additional qualifications in this respect. We agree with many of the criticisms identified of the current assessment regime. This includes that they are overly burdensome to authorities, impenetrable to the public and repetitious of other activities that Councils already do. They also, crucially, do not necessarily lead to positive environmental outcomes – particularly if assumptions made in the assessment prove incorrect.

3. In summary, we are generally supportive of the principle of changes to the regime of environmental assessment. However, as we have done in response to other recent consultations, we continue to express concern as to the lack of resources for local authorities to carry out new responsibilities and become familiar with new regimes.

4. Whilst we agree that change is necessary to the current regime and that this recognition is positive, we do feel it important to highlight issues related to the consultation and environmental assessment that are not covered by the consultation document and/or there are no relevant questions to which to provide feedback.

5. There is no discussion of the input from the statutory bodies (e.g., Natural England and Environment Agency). Our experience is that they are currently ill-equipped to provide adequate and timely responses to existing environmental assessments, which is leading to delays in plan-making and in determining planning applications. Not addressing their lack of capability/capacity is a major issue.

6. We note that these proposals do not reform the Habitat Regulations Assessment/Appropriate Assessment process. We recognise that this legislation is in place to ensure that internationally threatened habitats and species are given protection, and that this will need to be retained going forwards. Given the position that the Council finds itself in relation to water neutrality and the excessive work required to be undertaken to meet the demands of the Habitat Regulations, we see that there would be major benefits in simplifying this related area of environmental assessment in due course, subject to ensuring that there is no weakening of the protections it provides.

7. As we have suggested in previous consultations in relation to other planning reforms, it would have been beneficial to show mock up EORs for both Local Plans and planning applications. Much of the discussion in the consultation document is of a conceptual nature, but planning is a practical endeavour. Examples would have been helpful to properly clarify the form of the documentation that the government intends us to produce.

8. Whilst we recognise the challenges in developing a new regime, the ideas presented do not seem fully developed. Asking about general principles, when EORs have been referred to in the LURB for a considerable time, suggests that DLUHC has much work to do to finalise a new regime. As a result, our responses to this consultation are consequently relatively limited

and/or caveated on further details that are awaited. In addition, some of the questions ask for a simple yes/no answer. It is not clear what meaningful information can be provided by a one-word response. As such, we have provided full answers to such questions.

9. By not clearly delineating between EORs for plan-making and determining planning applications, in places the consultation is confusing and does not reflect the different levels of assessment (and the information that will be considered) that the two arms of the planning system deal with. We would recommend if a further consultation were forthcoming and/or in any guidance produced relating to EORs that expectations and the processes for the distinct types of EORs are separated.

10. Lastly, the consultation is taking place alongside other consultations (for instance on planning fees, permitted development rights changes and the Infrastructure Levy) and immediately after another detailed consultation on changes to the NPPF. There are a number of further consultations planned (on a new NPPF and the NDMP) which also will be of huge interest to Councils. We very much welcome the opportunity to comment. It would be helpful in due course for DLUHC to produce a consultation report explaining how the feedback has impacted on policy development.

Chapter 4 – An outcomes-based approach

Q.1. Do you support the principles that will guide the development of outcomes? [Yes / No].

11. Yes, broadly, the principles seem sensible and are supported. We particularly agree that they should be drawn up using expert input and that indicators should be measurable and at the correct scale. We also agree on not duplicating matters more effectively addressed through policy, but clarity is needed on this as to which matters it is intended that the new regime will cover.

12. Notwithstanding the above and without detail as to who will be the 'responsible owner' for outcomes, we do have some concerns over this principle – particularly if it is local planning authorities who will be responsible for some of the outcomes. We do not have the expertise and resources for many environmental matters to monitor outcomes and organisations such as the Environment Agency and Natural England already struggle with engaging with existing asks of the planning system in a timely manner.

13. Whilst we support the principle to review outcomes to ensure relevance, it would be useful to be explicit in how regularly they are reviewed and of any transition periods that may be applied. Otherwise, there is a risk that long-term datasets/trends are not recorded, and work may have to be duplicated once changes are made.

Q.2. Do you support the principles that indicators will have to meet? [Yes / No].

14. In general, yes. The principles for indicators are broadly supported. A national indicator set will ensure consistency of approach and help provide certainty of process, which is desirable within the planning system.

15. We will though reserve the right to comment on the actual indicators when they are forthcoming. There is some concern that with high level indicators, the regime will mean that locally sensitive issues are not considered – which is something that the current system (for all its flaws) does cover. Local Issues (such as the presence of a particularly rare species) can overall be of national or even international importance. Further, with limited local resources we are concerned that we would suddenly need to collect data that we currently do not have to inform plan-preparation (and potentially decision-taking), too.

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

16. No additional criteria are suggested. We agree that as climate change is a cross-cutting issue that the other criteria feed into, that it would not be helpful to have it as a standalone indicator. However, the impacts of climate change will need to be clearly considered under each topic area to ensure that it is not inadvertently omitted.

Q.4. Would you welcome proportionate reporting against all outcomes as the default position? [Yes/ No].

17. Yes. We believe that currently for both EIA development and SEAs for Local Plans, a disproportionate amount of information and assessment is produced for no meaningful purpose. However, 'proportionate' will have to be tightly defined if there is to be consistency across local authorities and applicants. If it is not defined, or expectations are not made clear, then the likelihood of unnecessary work being conducted increases in order for local authorities (and potentially planning applicants) to reduce the risk of legal challenge.

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

18. Mentioning every outcome in a report (even in a 'proportionate' manner) will likely mean that there will be repetition and some irrelevant content in any report.

19. For instance, HDC is not a coastal authority, but is common for authorities with coastline to have an environmental objective in an SEA relating to coastal erosion. If a common outcome relating to coastal erosion will be identified nationally then every report in HDC will likely identify no effect against this measure. In doing so, this does not provide any useful information to any party but will ensure that the EOR is complete and should guard against any challenge without being overly burdensome.

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?

20. Climate change, as an issue, does not lend itself to a single outcome or indicator. Instead, it will impact a range of different issues that the EOR system will collectively contribute to. As such, it would not be beneficial for there to be an EOR outcome or specific indicator given that an individual planning application or Local Plan is very unlikely in itself to have a measurable impact on climate change.

21. However, the effect of climate change will be assessed as a consequence of other parts of the EOR. Take for instance flooding, which is thought likely would be covered by a national outcome relating to water. As part of the assessment in an EOR, we should have to take account of the greater likelihood of flooding/higher sea levels that are predicted in the future due to climate change.

Chapter 5 – What an Environmental Outcomes Report will cover

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

22. We fully agree that there is value in clarifying requirements on reasonable alternatives. From the proposals, there is some concern on a dated summary of decisions on reasonable alternatives. This process in plan making is iterative, with new information, data or

assessment outcomes affecting thinking and decision making. Furthermore, formal decision making by local authorities is made by Councillors as per the relevant LPA constitutions, rather than any officer recommendation. Therefore, the requirement for a dated decision and summary of alternatives is likely to simply duplicate other Council reporting, which potentially adds additional bureaucracy and time.

23. In addition, there currently exists potential for duplication between SEAs and EIA in relation to the consideration of reasonable alternatives for major development proposals on allocated sites. This is because the process for considering reasonable alternatives should have been undertaken in Local Plan SEAs but would be required in an EIA. Without clarification, this repetition could happen in the new EOR system. In our view, if development is proposed in accordance with an allocation, consideration of reasonable alternatives for a project-level EOR is unnecessary.

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?

24. As outlined in the introduction, it would have been helpful to clearly differentiate between policy development issues and matters relating to a specific application in this consultation document and, more generally, to the reformed system of environmental assessment.

25. Assuming that this question is more focussed on planning applications, what constitutes a 'reasonable alternative' is currently subjective. Whilst it is easier to present this for potential Local Plan allocations, as the process means that local authorities will habitually consider a wide range of different options – it is more difficult for planning applications where it is unlikely that an applicant owns other land. For sites that are in accordance (in general locational terms) with the LPA's development plan it is potentially not reasonable to ask the applicant to consider other sites which may not be in their control. It is questioned whether alternatives could instead focus on masterplan / layouts. However, such alternatives may already have been considered through other aspects of the DM process. In our experience alternative masterplans are considered through pre-application advice – additional support and resourcing to allow LPAs to better support this process would be supported.

26. For large sites that are not being brought forward as part of a local plan allocation (e.g., a major sports stadium) it is considered it may still be appropriate to ask applicants to set out their consideration of alternative sites, as this may be useful to inform wider decision making and help demonstrate compliance with national or Local Plan policies as well as full ensuring public transparency. Again, supporting LPAs to require this consideration as part of pre-application advice at the point that site promoters are beginning to develop their proposals could assist in this respect.

Chapter 6 – When an Environmental Outcomes Report is required

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

27. We are generally supportive of the principle and of clarity in criteria used to screen but consider that there will always be applications which will be borderline and subject to professional judgment that could lead to legal issues once a determination has been made. It may therefore be useful for Government/ Defra bodies to function as an arbiter in such cases to reduce judicial reviews and to prevent authorities from acting more cautiously than the Government desires.

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].

28. In principle, yes. A small development nearby to a protected area is likely to have a greater impact on protected sites/species than a larger development located far away from such environmental assets.

29. Despite this and whilst recognising that simplicity is desired, a simple proximity criterion is likely to be too basic a tool to make a determination as to whether an environmental assessment is required and therefore consideration of the impact pathway should be undertaken. As an example, in Horsham District we currently are affected by the need to ensure that new development is water neutral. The issue is caused by water being supplied by a singular groundwater abstraction point which Natural England believes is drying out protected habitats and species further downstream in the Arun Valley.

30. As Horsham District is a large, predominantly rural district, it is quite possible for proposals to be a considerable distance away from the sensitive area which may not be captured by the proposed criteria. As such, there will need to be flexibility to allow for local authorities to apply knowledge that it has at its disposal.

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

31. If Government wishes to use proximity as a basis for screening, it should provide GIS data and proximity distances that local authorities are to apply (whilst allowing for some discretion to allow for issues such as that discussed in response to Q10). This should be managed centrally and updated in real time to avoid any disputes between different parties.

32. In addition to nationally supplied proximity information, an applicant would be required to present information as to what the proposal includes, where the proposal is located and information as to what they have assessed as their proposal would cause. Being prescriptive about the information sought would allow authorities to essentially refuse consideration of an EOR on grounds of insufficient information rather than the onus being put onto local authorities to scope in matters for full assessment – which is a problem with the current system.

Chapter 7 – Strengthening mitigation

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

33. The current system of environmental reporting sees an SEA or EIA is at the end point of a process rather than the beginning of a process for environmental management. We thus agree that mitigation is ineffective – because of the system that currently exists.

34. When a planning permission is granted, it will often include measures to mitigate the effect of development on the environment. For example, trees/hedgerows may be planted as part of conditions imposed on the developer. However, Councils do not have sufficient resources to provide very long-term monitoring as to the effectiveness of their provision, unless there are very significant enforcement breaches identified. Even if adequate monitoring of all schemes were possible, this may not help resolve problems if it is not clear who is responsible for resolving such failure – the original developers may no longer be in business or legally in control of the site.

35. Local Plans can create policies to enable more effective mitigation and building upon them, authorities can condition applications to ensure mitigation is delivered. However, ultimately enforcement of environmental mitigation will only be possible if Councils are properly resourced with separate monitoring and enforcement teams that have clear legislative powers and effective penalties in place in the event that breaches arise. However, Government already accepts that the planning sector is not adequately resourced for its current responsibilities. Nevertheless, additional burdens continue to be placed upon LPAs. In a monitoring context, this already includes the need to ensure that Biodiversity Net Gain is provided and is effective long term with no significant financial support. Increased responsibilities for local authorities will further water down the ability to deal with such issues while balancing other matters. Therefore, unless the sector gets the resources that it needs to properly fund enforcement activities or are told to prioritise enforcement over other matters, mitigation could continue to be ineffective

Q.13. Is an adaptive approach a good way of dealing with uncertainty? [Yes/No].

36. Yes. Flexibility – which we understand that an adaptive approach will bring - may be beneficial as it will allow mitigation approaches to be altered to ensure beneficial environmental effects are maximised rather than persisting with mitigation that, through evolving understanding of environmental impact, may have been found to be less effective.

37. Again however, this change puts the onus on local authorities who are not necessarily experts in environmental protection and who are not currently resourced to undertake existing responsibilities to assess the impacts of mitigation and to explore alternatives. As things stand, most local authorities are not set up to do this. We also envisage that this change would require an increase in interaction with the existing statutory environmental bodies (Natural England and Environment Agency), who are currently inadequately resourced to deal with the existing level of planning casework, leading to delays in delivering development (both in terms of responding to Local Plan consultations and Planning Applications).

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

38. Theoretically, it could work. However, and as stated above, the main issue relates to a lack of resource in both local authorities and environmental bodies to implement the proposals. If new burdens are not fully resourced, then the benefits sought will be unlikely to be delivered or will come at the price of harm to other activities currently undertaken. This issue is not recognised in this consultation document and therefore we are concerned the measures proposed will not have the positive impact intended.

Chapter 8 – Mainstreaming monitoring

Q.15. Would you support a more formal and robust approach to monitoring? [Yes/No].

39. We would support new legal measures, both to formalise monitoring and to require the development industry to provide relevant information to allow environmental outcomes to be monitored. However, it is not clear from the consultation document as to who will do the monitoring. Individual local authorities do not have the resources to do this within existing budgets, may not have the expertise to collect environmental data and some of the habitats and species may be located in other local authorities and so would not have the power to enter such land or enforce data collection.

40. We would be supportive of measures for Government and its environmental bodies to increase their resource, so that they are capable of monitoring information collected by local

authorities as part of the new regime and then acting on such information. However, that does not appear to be what this consultation proposes.

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

41. For this to work, it is imagined that the Government or any other body will have to create a significant role for itself in reviewing a selection of EORs for planning applications and plans per local authority and observing whether the assessed outcomes are actually achieved. Not only would this take a huge amount of resource from Government to set up, but it could also only be done after a significant amount of time once development is complete and environmental outcomes are clear. It is therefore questioned whether the proposed monitoring regime will enable the Government to be as responsive as it hopes.

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

42. It is our view that the development sector should ultimately fund the ongoing costs of monitoring through a fee paid as part of a planning application. As we have consistently stated in response to this and other consultations, additional activities that local authorities are required to undertake should be fully resourced and the costs of monitoring should not come from existing local authority budgets or come from a competitive bidding process that pits authorities against each other.

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

43. This is something that the Council is particularly concerned about. Ultimately, once local authorities have approved planning permission, it is not in control of development nor its consequent environmental impacts (barring any specific legal provisions that may be in place). It is suggested that the Government should create a reserve fund to deal with post-development issues that will inevitably occur – for instance, if a developer ceases to exist or should a developer not deliver environmental mitigation as conditioned. The liabilities should not fall on individual local authorities and their communities to undertake remedial action should mitigation measures not be delivered by the development industry as required.

Chapter 9 – Unlocking data

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

44. In general, yes. Authorities should be able to freely access information held by other public bodies and the public should usually have the ability to review the information available to authorities when undertaking environmental assessment.

45. However, there will always need to be protections put in place. For instance, locations of vulnerable or protected species should not be publicly available as this may put them at risk of further harm (rare plant collectors / badger baiting for example). This information should be available to local authorities who can monitor the environmental outcomes predicted by their assessments and use such data for future assessments and decisions around mitigation.

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

46. Data is held by numerous different public bodies, including local authorities. Sharing and using such information, is usually subject to data licensing agreements which can take time to set up and limits the information that can be shared by third parties.

47. As an example, although Southern Water furnish us with information relating to the water neutrality issue (for instance, extent of the water supply networks) we cannot pass these GIS layers onto other interested parties, such as planning agents. As a third party to such information, there could be sensitivities that we are unaware of when sharing information that we do not own and thus we direct requests onto Southern Water. It would therefore be easier and more efficient, if this information were centrally held and Government decide what information should be publicly accessible, ensuring a consistent approach across the country, and reducing the administration caused by dealing with requests for such information.

48. A number of datasets are likely to be provided by local organisations/amateur recorders who collect such information as a hobby. They may not be regularly collected, and such bodies may not wish to share the information that they collect without a cost. Such groups may not also collect information in a standardised way, nor wish to depart from their own existing methodology to match the Government's data requirements or be able to commit to collecting information on a regular basis. Local biodiversity record centres, or similar, often co-ordinate the collation and dissemination of such data in a way that is agreeable to local recorders. Direct support for these organisations may help provide solutions as to how this data can be accessed.

49. Some of the current datasets that are currently held, will likely be in a non-digital format and require conversion into digital formats before they are able to be shared. This can be a resource intensive process and data holding bodies may seek to prioritise more urgent matters rather than update data which they hold for the benefit of other parties.

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

50. We do not have a preference on which data would be preferential, but we implore the government to keep standards as simple as possible and only require what is necessary – they should be based on a defined scope to avoid mission creep. If the standards are too onerous, it will act as a disincentive to collect and provide information.

Chapter 10 – Reporting against performance

Q.22. Would you support reporting on the performance of a plan or project against the achievement of outcomes? [Yes/ No].

51. In principle, yes. Councils already produce AMRs and reporting on the performance of a Local Plan or planning application could be incorporated into that process. However, it needs to be recognised that some of the outcomes are not fully controlled by the planning system and thus the reporting against a particular outcome may not be indicative of the performance of a plan or approved development. For instance, an outcome that seeks to improve water quality in a local authority area is likely to be more impacted by rainfall, agricultural and industrial processes and activities by water companies than it is by anything related to the planning system.

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

52. As stated in response to question 19 and 20, it is thought that a lot of the information will be held by other bodies or volunteers and this information would need to be shared with Councils. If this is not freely available, it may incur costs to the local planning authority which Councils should expect to be reimbursed by Government or else, the reporting is likely to be limited.

53. Similarly, the Council will be reliant on the development industry providing information to the Councils as development sites get built out. There will need to be mechanisms that could enable the Council to require data to be submitted to it and at no cost.

54. As stated in response to Q22, the influence of the Local Plan on environmental outcomes is likely to be limited as it will be reliant on other actions with it also being near impossible to show a direct causal link between, for example, a Local Plan policy on air quality and air quality improvements in a particular location.

Chapter 11 – Next Steps

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.

55. In relation to plan-making, an arbitrary time period would not be the best way to transition to a new regime. Instead, it would be better if it were based on the relevant stage of development of the Local Plan. We would assert that should a Regulation 19 publication period (based on the current regulations – the equivalent stage could be used if/when the new planning system is introduced) have been undertaken on a Local Plan, then it would not be necessary to use the new system. If such a provision is not included, there is risk that additional work would be necessary to Local Plans at an advanced stage of preparation (including those undergoing examination) with no meaningful benefit other than to meet new regulations.

56. In relation to planning applications it is thought that a 1-year period may be appropriate. Major planning applications take a considerable time to be prepared before they are submitted to local authorities and a shorter transition period may delay the submission of such schemes as additional work would be required to be undertaken.

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

57. Firstly, national guidance should be published, with worked up examples of EORs for both Local Plans and planning applications. Without this, authorities, applicants, and consultants will interpret the new measures differently leading to wide variance in the EORs that are produced – when uniformity is desired by Government.

58. Secondly, Government needs to invest in its statutory bodies (Natural England and Environment Agency) in order that they can provide the necessary input that the new regime will require. It is our experience that they currently do not have the capability/capacity to undertake their current roles within a well-established regime and we are concerned that this will continue or worsen in a new regime.

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

59. We do not have any comments to make in relation to this question.