

RESPONSE TO DEPARTMENT FOR COMMUNITIES AND LOCAL GOVERNMENT CONSULTATION

DRAFT NATIONAL PLANNING POLICY FRAMEWORK

Summary

We welcome the opportunity to respond to the Department for Communities and Local Government (DCLG)'s consultation on a draft National Planning Policy Framework (NPPF). We welcome many aspects of the draft NPPF, including flood risk and coastal change, climate change mitigation and the natural environment being identified as amongst the strategic priorities for Local Plans.

- We believe the NPPF should state clearly that delivering environmental outcomes is an objective of the planning system with equal status to economic development.
- We believe the NPPF should state how the planning system should help to encourage the prudent use of natural resources, particularly water resources, and protect and enhance water quality.
- We are concerned that an unintended consequence of applying the presumption in favour of sustainable development could be that, until Local Plans are updated and in place, some developments could be approved that have a negative impact on the natural environment.
- To avoid uncertainty and delay in the planning system, we would strongly support a commitment to producing advice on policy aspects of the NPPF and the implementation of the Localism Bill. We would also recommend that transitional arrangements are put in place until such advice is developed.

1.0 INTRODUCTION

1.1 The Environment Agency is a specific consultation body for the preparation of development plan documents and a statutory consultee for about 35,000 planning applications a year. We are also a statutory consultee for Sustainability Appraisals and Environmental Impact Assessments. We will have a 'duty to co-operate' under the Localism Act, when enacted.

1.2 We have a strategic overview role for flood risk and coastal erosion management. We regulate waste, water and agricultural installations, discharges to land, air and water, water abstraction and flood defence consents and radioactive substances. We are the administrator of greenhouse gas trading schemes and have recently commenced an enhanced role in climate change adaptation. We are also a competent authority for the implementation of the Waste and Water Framework Directives, which aim to protect and improve the environment.

2.0 SUMMARY OF ENVIRONMENT AGENCY RESPONSE

- 2.1 We welcome the NPPF as a rationalisation of planning policy. We welcome the reference to compatibility with EU obligations and many of the ‘Policies for Places’ – particularly on flood risk and coastal change and climate change mitigation and adaptation. We welcome the recognition of the importance of cross boundary co-operation on environmental infrastructure and climate change adaptation.
- 2.2 We believe the NPPF should state clearly that delivering environmental outcomes is an objective of the planning system with equal status to economic development. We believe the NPPF should give greater support for prudent use of natural resources including sustainable water management. We believe the NPPF should clearly state the need for the planning system to protect and enhance water quality, especially helping to meet the objectives of the Water Framework Directive. We believe that more weight should be given to Local Planning Authorities (LPAs) having regard to River Basin Management Plans, so that development is not approved without sufficient safeguards to protect the natural environment. We would be happy to suggest minor changes to text which would strengthen the NPPF, without unnecessarily adding to its length.
- 2.3 We believe it is essential that advice is produced to explain NPPF policy and prevent uncertainty and delay. In particular, advice is needed on climate change resilience (including flood risk mitigation and adaptation), sustainable water management and aspects of the Localism Bill. Transitional arrangements may be needed once the NPPF is published. We are keen to work in partnership to produce advice on issues within our remit.

3.0 ANSWERS TO CONSULTATION QUESTIONS

- 3.1 We generally support the definition of **sustainable development** (Q1). While the NPPF generally contains policies that ‘flesh out’ the principles, the ‘core planning principles’ should also refer to the prudent use of natural resources, in particular sustainable water management (para 19). We welcome reference to EU obligations (para 8) as achieving the objectives of the Water Framework Directive should be regarded as an essential part of sustainable development. We believe that the core planning principles should also refer to the statutory duty for development plans to help mitigate and adapt to climate change.
- 3.2 We note the emphasis in the presumption in favour of sustainable development on allowing development unless the ‘adverse impacts’ would ‘significantly and demonstrably outweigh the benefits.’ LPAs are required to ‘grant permission where the plan is absent, silent, indeterminate or where the relevant policies are out of date.’ This will particularly apply before Local Plans are updated in accordance with the NPPF’s policies. In May, 30% of LPAs had adopted Core Strategies, with another 23% having published theirs. This could make it more difficult to protect and enhance the environment (other than assets protected by designations) as quantifying environmental damage

is usually more difficult than quantifying economic and housing growth, to which the NPPF generally affords greater weight. We believe that the NPPF should ensure that the long term cumulative impacts of development are taken into account and that the value of a good quality and well-functioning natural environment is recognised. We would welcome the deletion of 'and approve all individual proposals wherever possible' (para 14) as it could be interpreted as conflicting with the text following it, which sets out more detailed decision-making principles.

- 3.3 We support the policy on **plan-making** (Q2a), particularly the emphasis on ensuring there are strategic policies in Local Plans on climate change (which we believe should explicitly include flood risk management), protection and enhancement of the natural environment and coastal management (para 23). We believe that local plans should also promote the prudent use of natural resources, which can help to reduce the need for, and the cost of, infrastructure and help to deliver EU and national environmental objectives. We believe 'waste water' infrastructure more accurately describes 'water quality' infrastructure. We believe that the NPPF should require Local Plans to include a clear strategy for climate change mitigation and adaptation, which would ensure compliance with the statutory duty on LPAs (para 24). Planning positively for infrastructure should also include green and water infrastructure.
- 3.4 We welcome the confirmation that local plans will continue to be the basis of decision-making on planning applications and that LPAs can seek a 'certificate of conformity' if their Local Plan is up to date (para 25). We would welcome an early indication of how this can be done. The NPPF could refer to Local Plans in London being in general conformity with the London Plan. We would welcome clarification that supplementary planning documents could include local guidance on managing flood risk (para 21).
- 3.5 We welcome the requirement that development and infrastructure needs should be assessed as part of the evidence base for Local Plans (paras 31, 34). This should include 'green' and coastal risk management infrastructure and be informed by studies and plans such as water cycle studies, River Basin Management Plans, Preliminary Flood Risk Assessments and Surface Water Management Plans. We believe the NPPF should confirm that sustainability appraisal of local plans should satisfy the requirements of the Strategic Environmental Assessment (SEA) Directive. This would ensure that the environmental capacity of an area to accommodate development is assessed and reduces the likelihood of legal challenge and delay. We welcome the encouragement of joint-LPA strategies and would encourage the use of water cycle studies to identify infrastructure needs in areas of high housing growth. We believe LPAs should consider the need for SEA when preparing joint strategies (paras 46, 47).
- 3.6 We welcome the policy on **planning strategically across local boundaries** (Q2b) as many environmental issues, such as flood and coastal risk management, water quality and water resources, cut across administrative boundaries. We believe that LPAs should be urged to have regard to statutory and non-statutory plans and to consult with bodies responsible for

infrastructure delivery – even where they are not subject to the Localism Bill's proposed 'duty to co-operate'. This especially applies to water companies which are responsible for water resources planning and are crucial partners in helping to deliver housing growth. We believe LPAs bordering Wales should co-operate with Welsh LPAs and infrastructure providers on these issues. We would welcome advice from Government on how the duty to co-operate should work in practice. We would welcome the opportunity to help develop aspects of the advice that are relevant to our remit.

- 3.7 We welcome most of the NPPF's policy on **development management** (Q4), especially its emphasis on 'front loading'. We believe that delivering the environmental objectives of sustainable development, including climate change objectives, should also be given significant weight in development management (para 54). We welcome the encouragement of pre-application engagement with statutory consultees, including consenting bodies. We believe that the last sentence of para 58 should be replaced to encourage 'parallel tracking' of applications for planning permission and other consents when the requirements of the different consenting regimes have implications for each other. For example, planning considerations may limit stack height which is needed for adequate dispersal of air pollution, or an environmental permit may require a building to be erected around a new composting operation. A failure to consider the needs of other consents could lead to delay and extra cost. This section could include or cross-refer to paras 171 and 172 which also include relevant policy.
- 3.8 We welcome the references to formal assessments, such as Environmental Impact Assessment, needed for planning applications (para 59) as these will be essential to provide evidence to help LPAs implement the presumption in favour of sustainable development. The NPPF could also urge applicants to use experienced specialists as our experience of assessing flood risk assessments shows that poor quality assessments often slow down the development management process. Assessments for the Water Framework Directive and contaminated land are likely to be required for some applications. Restricting permitted development rights through Article 4 Directions may be desirable for environmental reasons, such as when there may be an increased flood risk (para 64). A reference to restrictions on the use of neighbourhood development orders (para 65) would be helpful.
- 3.9 We recognise the Government's efforts to streamline existing planning guidance but we believe that it is crucial to have some **advice** to support NPPF policies (Q4). It is our recent experience, for example with regard to flood risk management, that the additional clarity which current guidance provides, is welcomed by both local planning authorities and developers. The absence of such advice when Planning Policy Statements and Circulars are cancelled will lead to uncertainty throughout the planning system and could lead to delays and additional costs being incurred by developers, LPAs and consultees. Designated and emerging National Policy Statements also refer to current planning policy and guidance. We believe that the advice should be "fit for practitioners' purposes" and endorsed by a range of practitioners' bodies. The Government should consider retaining existing relevant guidance as a

transitional arrangement. We consider that advice is needed on climate change resilience (including managing flood and coastal erosion risks and the urban heat island effect) and sustainable water management, including the Water Framework Directive. We are happy to work in partnership with Government or practitioners to produce advice.

- 3.10 We welcome the reference to the need for infrastructure provision and environmental enhancement in the **planning for business** (Q5) policy (para 73). We suggest this should also refer to climate resilience..
- 3.11 We welcome the presumption against further peat extraction (paras 101, 103) in the **minerals** section (Q9). We would welcome inclusion of flood risk and wider water management within the environmental criteria (para 102).
- 3.12 We welcome discussion about how the requirement for LPAs to identify a rolling supply of **housing** sites (Q10, para 109) can also ensure that environmental infrastructure needs are planned for.
- 3.13 Developments planned today will exist for many decades during which the climate will change. We believe that high quality **design** (Q12, paras 114, 116) should also deliver resilient, adaptable built environments and sustainable communities that use natural resources prudently and enhance the natural environment.
- 3.14 We welcome the NPPF's emphasis on the role of planning in delivering the Government's **climate change** objectives (Q14, para 148). We believe that the NPPF should clarify the need for planners to secure resilience to impacts other than flood risk and coastal change: particularly water resources, higher temperatures, landscape and biodiversity and the need for integrating mitigation and adaptation strategies (paras 148, 154).
- 3.15 We welcome the strong policies to encourage **renewable and low carbon energy** (Q14c, para 152) and would welcome a clearer indication that this includes Combined Heat and Power and sustainable biomass. We would welcome a clearer requirement for LPAs to identify opportunity areas where this would help deliver renewable and low carbon energy and heat. This would increase developer's confidence. We would welcome reference to the need for environmental permits and flood defence consents for some technologies.
- 3.16 We welcome the retention of the fundamentals of existing **flood risk and coastal change** policy (Q14g, para 154-162). Successful and consistent risk management through planning will depend on technical advice being available, for example on defining vulnerability, using climate change allowances, flood risk assessments and different sources of flooding, including from reservoirs. The NPPF could make it clearer that these are existing risks that will be worsened by climate change and rising sea levels. We also believe the NPPF should refer to other climate risks that planners should help to address and the potential for new development to contribute to making existing communities more resilient (para 154). We believe the NPPF should refer to the Sequential Test being based on flood zones not accounting for

defences (footnote 9) and the importance of other flood risk management bodies (para 155) in the planning system. We believe that the NPPF should refer to avoiding flood hazards and emergency planning as ways of reducing flood risk at the planning application stage (para 157).

- 3.17 We believe the draft NPPF's policy on the **natural environment** (Q15) should reflect the Natural Environment White Paper by aiming to halt overall biodiversity loss, supporting healthy well-functioning ecosystems and establishing coherent ecological networks (para 164). We believe that there is a risk that the replacement of the 'brownfield-first' policy with 'land of lesser environmental or amenity value' could reduce the amount of contaminated land that is restored (para 165). 'Environmental value' could be defined using the ecosystems services approach so that non-designated land is still valued. We believe that policy on biodiversity should also seek to protect designated species (para 168) as well as habitats.
- 3.18 We generally welcome policies on **preventing unacceptable risks from pollution** but believe it should be clarified by specifically referring to LPAs important role in helping to protect groundwater and deliver the Water Framework Directive. Some issues are potentially relevant to both planning and permitting. As an environmental regulator, we must determine permit applications taking into account all material considerations, even if the planning authority has chosen to consider these issues already. We believe that the last sentence of para 172 should be deleted or amended and be consistent with para 58.
- 3.19 We welcome the glossary and can offer suggestions for changing or adding entries on aspects within our remit. We welcome the opportunity to discuss proposed changes to text which address some of the above issues (see Annex).

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Annex
Suggested changes to NPPF text

Para	Suggested change
14	Delete ' <i>,and approve all individual proposals wherever possible.</i> '
17	Insert footnote to 3 rd bullet to explain limitations of Neighbourhood Development Orders as set out in Localism Bill
19	Insert footnote definition of 'land of lesser environmental quality or environmental value' or define in Glossary
19	Amend 5 th bullet: 'planning policies and decisions should seek to deliver a better quality environment by protecting and enhancing the natural and built environmental and heritage assets in a manner appropriate to their significance, and reducing pollution.
19	Amend 7 th bullet: 'planning policies and decisions should <i>encourage and enable the prudent use of natural resources including water, the reuse of existing resources...</i> '
19	Insert new bullet: ' <i>planning policies and decisions should help to ensure that places are resilient to the effects of climate change and support a transition to a low carbon economy.</i> '
23	Amend 3 rd bullet: the provision of infrastructure for transport, minerals, waste, energy, telecoms, water supply and waste water <i>quality, flood risk and coastal change management.</i>
24	Amend 7 th bullet: add ' <i>and contribute to the mitigation of, and adaptation to, climate change.</i> '
31	Amend 1 st bullet: ... <i>flood and coastal erosion risk management defence</i>
34	Insert footnote to 2 nd sentence: <i>Sustainability Appraisals should satisfy the requirements of the Environmental Assessment of Plans and Programmes Regulations 2004 (as amended).</i> '
21	Amend 3 rd sentence: Supplementary planning documents should only be necessary where their production can help to bring forward sustainable development at an accelerated rate and should must not be used to add to the financial burdens on development <i>unless justified by a Local Plan policy.</i>
45	Amend footnote 3 by adding: ' <i>English local planning authorities bordering Wales should co-operate with their Welsh counterparts. Local plans in London should be in general conformity with the London Plan.</i> '
47	Amend 1 st sentence: ...for instance because of a lack of physical or <i>environmental capacity...</i>
54	Amend 2 nd bullet: attach significant weight to the benefits of <i>achieving development that integrate social, economic and environmental outcomes</i> economic and housing growth. Delete 4 th bullet.
58	Replace last sentence with. <i>Developers should consider submitting parallel applications where the requirements of other consents have planning implications.</i> Move paras 171 and 172 to para 58 Add to last sentence in 172 ' <i>, unless legally required.</i> '
64	Amend 2 nd sentence: ... to protect local amenity, or the wellbeing of the area, <i>or to manage environmental risk.</i> '
73	Insert new bullet after 5 th bullet: <i>help secure business resilience to climate change</i>

Para	Suggested change
102	Amend 6 th bullet: 'set out environmental criteria,... against which planning applications will be assessed so as to ensure that permitted operations do not have unacceptable adverse impacts on the natural and historic environment or human health, including from tip- and quarry-slope stability, differential settlement of quarry backfill, <i>increased flood risk, impacts on the flow and quantity of surface and groundwater</i> and migration of contamination from the site
116	Insert additional bullet: <i>ensure developments are resilient to climate change over their lifetime, contribute to reducing carbon emissions and use natural resources prudently</i>
154	Amend 1 st sentence: New development should be planned to avoid increased vulnerability to <i>the range of</i> impacts arising from climate change. Add footnote: ' <i>Including flood risk, coastal change, the urban heat island, pressure on water resources and quality, changes to biodiversity and landscape.</i> '
155	Add at end: ' <i>and other relevant flood risk management bodies</i> '
156	Amend footnote 9: The aim of the Sequential Test is to steer new development to areas at the lowest probability of flooding (<i>Zones 2 and 3 are shown on the Environment Agency Flood Map with Flood Zone 1 being all the land falling outside Zones 2 and 3. The Flood Zones refer to the probability of river and sea flooding, ignoring the presence of defences</i>). Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. The SFRA will provide <i>additional information</i> the basis for applying this test within Flood Zones...
157	Amend 2 nd bullet: ' <i>..resistant, by avoiding flood risk to people and property including safe access and escape routes where required, and that any residual risk can be safely managed, including by emergency planning; and add footnote at end: 'Under the Floods and Water Management Act 2010, sustainable drainage systems will need to be agreed by approval bodies'</i> .'
164	Replace 2 nd bullet by: ' <i>halting overall biodiversity loss, supporting healthy well-functioning ecosystems and establishing coherent ecological networks, with more and better places for nature for the benefit of wildlife and people.</i> ' (text from 2.8 of NEWP)
166	Add at end: ' <i>Decisions should be compatible with and further the objectives of EU obligations such as the Water Framework Directive.</i> '
168	Amend 3 rd bullet: 'promote the preservation, restoration and re-creation of priority habitats, ecological networks and the <i>protection and</i> recovery of priority species populations...'
174	Add at end: ' <i>Planning policies and decisions should help the sustainable management of water by encouraging its efficient use and protecting and enhancing water quality. Decision-makers should take account of statutory River Basin Management Plans.</i> '
Glossary: We recommend amendments to definitions of 'Climate change mitigation and adaptation', 'Pollution' and 'Renewable and low carbon energy' and new definitions of 'Land of lesser environmental quality or value' and the 'Natural Environment'.	

We welcome the opportunity to discuss these suggestions with CLG officials.