

**THE WORSHIPFUL COMPANY OF WATER CONSERVATORS
BRIEFING ON THE RESPONSE TO THE MINISTRY OF HOUSING, COMMUNITIES AND
GOVERNMENT (MHCLG) ON PROPOSED CHANGES TO THE PLANNING
FRAMEWORK**

SEPTEMBER 24th 2024

<https://www.gov.uk/government/consultations/proposed-reforms-to-the-national-planning-policy-framework-and-other-changes-to-the-planning-system/proposed-reforms-to-the-national-planning-policy-framework-and-other-changes-to-the-planning-system>

The full response is located in the policy positions submissions page of the WCWC website <https://waterconservators.org/policies-and-practices/>

1 The planning system, with the National Planning Policy Framework (NPPF)as its central feature, was last updated in December 2023, after a previous consultation. The WCWC has continued to advocate a further review as the system still does not address its concerns over planning and the water sector. The current government does not agree with some of the revisions and has some fresh ones. It has thus prepared this set of proposed revisions, driven in part by the urgency of the mandatory housing targets for the next five years. It would appear that further change is envisaged under the Levelling Up and Regeneration Act and in an Infrastructure and Planning Bill proposed in the King's Speech¹.

2 The WCWC has approached the creation of its response from a general perspective, but with a particular focus on the implications for water management. There is a need:

- a) to streamline the planning system in general;
- b) to better determine the role of planning in water management through a national water strategy;
- c) to understand the consequences of the invigorated housing programme and its impact on a water service system already under financial and political pressure; and
- d) to understand that the take up of systemic spare capacity over the last few years has resulted in a situation where much of the existing physical infrastructure cannot accommodate the implied level of growth without major extensions to treatment plants and the networks that support them with very significant financial consequences. In practical terms because of the relative difference of speed of housing development and asset inertia of the water infrastructure, whatever capacity for the future may have been installed, the growth in population of recent years has outstripped it. And it is often overlooked that there are different dynamics of impact between sanitary biochemical loading and hydraulic loading

3 In preparing its response, the WCWC has come to understand that there is as much to comment on (c) & (d) point as the others, whilst acknowledging that this is outside the strict terms of the consultation in which the questions do not allow these broad strategic points to be made.

¹ [The King's Speech 2024 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/speeches/the-king-s-speech-2024)

4 The WCWC understands that the planning system proposed must facilitate the delivery of housing targets and that this transitional change is needed. The WCWC supports this with significant caveats particularly in relation to the impact on water services and the consequent investments and water charges; and in relation to the need for assurance that biodiversity and landscape values be given proper consideration.

5 It also understands the urgency of the task on housing and the need for swift enabling change in planning, but it also recognises that the essential systemic changes it is advocating, particularly in relation to water management, if not handled effectively, risk delaying the housing task in hand but are needed. Housing and water management are two big national issues not clearly linked in the political debates, while they are intimately connected in practice.

6 The government is proposing legislative changes and reviews of water management in parallel with these planning changes. So, the WCWC suggests very strongly that these are carried out in a parallel but well-connected process (which the WCWC has termed 'tandem reviews'). It would appear that timescales of change could be linked better and the WCWC suggests a number of linked strategic changes could be incorporated into the next steps in the planning reform process and suggests that this could be addressed in a swift joint consultation or in any White Paper before the forthcoming Bill.

7 It would be very helpful if the Ministry and Defra could agree what tactical changes could be implemented swiftly alongside this planning review and what strategic changes could be left to the next steps. For example, the WCWC would advocate a resolution of mandatory Sustainable Drainage Systems (SuDS)² as a matter for swift tactical change. The supporting guidance on water is badly in need of an update.

8 The WCWC recognises that speed is of the essence and speculates that it might be faster and easier to build a new town than it is to build the associated water infrastructure. It is paradoxical that when environmental concerns are driving major infrastructure developments like renewable energy creation and distribution, and new water service assets, the consequent assets are unpopular; and at the same time there is a drive for massive extension of house building, which is also unpopular in many places, and that creates demands of growth of the public infrastructure.

9 The consultation suffers from an assumption of knowledge by the reader. It needs some clearer explanatory text. The WCWC has, therefore, included material not strictly necessary for the submission to aid its members and, indeed, a wider audience of readers, understand some of the issues. The extent and complexity of the legislation is such that it can only be fully understood by legal specialists and those within the professional town planning community. The WCWC has adopted the term Town Planning Community. In fact, one of the caveats to supporting these Proposals is the urgent need for an updated Plain English (Planning) Guide and for the Proposals to be tested against the principles of smart regulation as set down by the Department of Business and Trade³.

10 The NPPF, and associated guidance, is supported by a complex of planning regulation, which needs updating in order to make the Framework proposals work, for example in determining the role of environmental designations (see later). The WCWC observes that, it is all very well adjusting the Framework, but there is an 'air of putting the cart before the horse' in these Proposals. The same need, to update supporting regulation, for, under the Water Industry Act 1991 is also true for the delivery of water services. Any development of a

² [Sustainable drainage systems review - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

³ [Smarter regulation to grow the economy - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

national water strategy is likely to require legislative change. The overlap of these two legal webs needs sorting out. A good example is that of the development of transport infrastructure, which is referred to in the consultation, but at the same time there is growing concern about the impact of highway drainage into rivers and the essential incorporation of sustainable drainage systems into highway planning.

11. Throughout the response there are several specific suggestions; for example, on a post-Brexit review of all environmental designations which steps out of European bureaucracy, but which retains the focus on environmental husbandry. These may be addressed better in the longer-term reviews. The WCWC cannot see any 'line of sight' between the outcome of the 2022 Green Paper consultation and these proposals and suggests that the initiative should be brought to a conclusion one way, or another, but supports the concepts of reducing complexity without loss of integrity and which strengthens the protection of biodiversity, and enhances understanding by the wider community as set out in the 2022 consultation.

12 The WCWC is very much aware that Judicial Reviews can contribute to the time scales of project delivery even if they are allocated as Nationally Significant Infrastructure Projects (NSIP)⁴ This is not part of the Consultation, but the WCWC suggests that the process needs addressing urgently and makes suggestions. Again, these may be addressed better in the longer-term reviews:

- a. an analysis of the 'success rate' of different categories of judicial reviews should be undertaken; if it is proven that a large majority were upheld then we need to learn from the mistakes made by the relevant bodies and ensure such failures of due process are not repeated; if on the other hand only a small minority are upheld then we need to learn what conversely are not legitimate grounds for judicial review;
- b. clear guidelines should be issued on what are and are not legitimate grounds for a call for judicial review;
- c. a process needs to be put in place whereby a very speedy decision is given as to whether a judicial review may proceed or not before the costs and delays caused by a full judicial review are incurred;
- d. the balance of risk between appellant and defendant needs also to be considered; at this stage typically it is the promoter of a project who bears the majority of the risk (which is often then passed on back to back to the government or council) and the appellant much less; consideration should be given to requiring bonds on both sides and indeed in extreme the award of damages where there has been vexatious misuse of the system;
- e. the WCWC also suggests that the efficiency of the Appeal processes for planning decisions needs attention.

Further submissions with a specific focus on water

13 The WCWC has set out several points already by way of exemplification of broader concerns, as well as specific concerns on water. The WCWC has suggested and repeats that water management is of such high profile, that it needs a more integrated, evident and

⁴ [Nationally Significant Infrastructure Projects: Advice on the Water Framework Directive - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/nationally-significant-infrastructure-projects-advice-on-the-water-framework-directive)

specific focus in planning. In its responses to the Department of Business and Trade early in 2024 (see the WCWC website⁵) the WCWC made the point that dealing with issues of growth in relation to telecoms, energy and water may be convenient for a central administration, but from the point of water should be dealt with in separate package involving environmental policy and regulation. This is another dimension of policy evolution, although there are signs that this connection is better recognised in recent government statements. So, the White Paper might well need to have some general points and then separate sections dealing with different sectors, such as water.

14 All of the initiatives must recognise that there are a significant number of demands on regulators particularly the Environment Agency and Ofwat. It may be too late to incorporate the new housing targets in PR24, and the subsequent AMP8 for 2025-30, while there needs to be an understanding that there will be an impact of the economic regulatory processes over the coming years. Not only are there needs for planning to take better account of matters such as Storm Overflow Action Plans, but those Plans now have to take account of the planning impacts. It is suggested that water companies are made statutory consultees on planning matters.

15 All parties accept that there is an urgent need for investment in the water infrastructure. The WCWC emphasises the importance of understanding the very real problems of upgrading existing infrastructure to deal with the proposed scale of development, and freeing up planning procedures will exacerbate existing capacity problems. The debate which matters is who pays. Building new and treatment plants and even new reservoirs, for example, is only part of the challenge and providing new sewers and distribution systems will be expensive and cause disruption in many cases. The WCWC has warned repeatedly about the challenges of street closures necessary for reticulation replacement and renovation, and earlier referred to the problems of highway drainage.

16 There is more to the nexus of these issues than the impact of meeting the need for new houses. Such development must be accompanied by supporting infrastructure, for example, by industrial and retail development, all with their own demands as set out in the growth strategy of the DBT. In its response to the consultation on that, the WCWC drew attention to the high water demand by new industries, such gigafactories and data processing centres⁶, with implications for water resources outside the control of water companies, but inside the control of the Environment Agency through the regulation of abstractions and discharges. These matters can be given a greater profile in the planning framework through the guidance.

17 The WCWC response draws on the very substantial set of submissions and thinkpieces, it has developed since early 2022 and from an overview produced in August this year, all of which can be found on its website. A planning review has been part of a suite of suggestions, while these proposals, and the Housing Targets, have some profound implications, for example by way of further emphasis, including the issue of connections from developed properties to sewers as referred to earlier, and the overview already stands in need of update, which will be produced by the end-of-year when there may be other proposals published by the new government. One of the suggestions by WCWC has been for a multi-agency delivery task force on the water programme, which would involve the Ministry, in a manner somewhat similar to the New Towns Task Force⁷. This could embrace the concept of

⁵ [Consultation Responses – The Worshipful Company of Water Conservators](#)

⁶ [US tech groups' water consumption soars in 'data centre alley' \(ft.com\)](#)

⁷ [The New Towns Taskforce - GOV.UK \(www.gov.uk\)](#)

tandem working between the Ministry and Defra mooted earlier and of the closer working of the DBT and Defra, as advocated by the WCWC and by the new government.

18 A particular concern is the lack of progress of implementation of mandatory Sustainable Drainage Systems. Whilst the retrofitting is a challenge, all new properties and infrastructure assets must have them fitted. And behind the consultation and the work of the New Towns Task Force must lie, the concepts of 'sponge cities' and 'smart water communities', which fit in with nature-based solutions espoused by the WCWC and in its thinkpiece on catchment management (see the archive on the WCWC website). This also extends to highway drainage.^{8 9}

19 As far as water conservation is concerned, the evolution of the Framework must eventually take account of changes envisaged by the government on water services. The WCWC has consistently advocated:

- an overarching National Water Strategy for England is needed by July 2026;
- this would include a much-improved system of catchment management;
- a Water Commission of all relevant parties should be established by the end of 2024 to provide advice to government on this Strategy by July 2026, specifically to advice on environmental water management, particularly sewage disposal by December 2026. Consideration should be given to this being a Royal Commission.

This resonates to some extent with the government statement on September 5th on the future of water.¹⁰

- In addition, as described earlier, a delivery task force of all the relevant government departments, now strengthened by the tandem working between Defra and the Ministry and the DBT in bringing together the issues of planning, growth and economic and efficient management of water by the water companies and water regulators.

There is a whole package of changes in water regulation which are needed to affect the goals of water management, as advocated earlier, could be taken to account in the next steps of 'tandem reviews.' The inclusion of a review of building regulations with respect to water is one obvious practical bridge.

20 The issues for water are much more systemic than making schemes eligible for definition under the rules for NSIP, for example (which the WCWC supports as a proposal in its own right); delivery of the national programme for water will require numerous small schemes all of which will need planning consent.

21 The WCWC wishes to re-emphasise an earlier point that as a consequence of all the issues outlined, there will be changes for AMP8, which will run from 2025–2030. This period

⁸ <https://theriverstrust.org/about-us/news/sponge-cities-a-sustainable-solution-to-preventing-flooding>

⁹ <https://waterinnovation.challenges.org/winners/water-smart-communities/>

¹⁰ <https://www.gov.uk/government/speeches/steve-reed-speech-on-the-water-special-measures-bill>

focuses on climate change adaptation, including reducing leakage, promoting water recycling, and adjusting capacities for variable rainfall. But not the new housing targets, the consequences of which are not likely to be funded out of growth. It is too late to be included in the PR24 determination later this year. So, this will add to the debates about funding and charges which will have to be addressed.

22 The WCWC is concerned about the assumptions made on water recycling and queries what kind of plants would be made NSIP The WCWC suggests very strongly that this whole topic of recycling needs better research before any changes are made to the Framework and Guidance. Indeed, to change the Framework now in the way proposed might 'set unhelpful hares running'. This will not help AMP8.

23 The WCWC submits that its concerns are about the overarching nexus of planning reform, delivery and impact of the housing targets and evolution of water management. It has, therefore, restricted the number of specific answers to the Questions.