

# WORSHIPFUL COMPANY OF WATER CONSERVATORS

## RESPONSE TO THE MINISTRY OF PLANNING, COMMUNITIES AND LOCAL GOVERNMENT, AND DEFRA

### WORKING PAPER ON DEVELOPMENT AND NATURE RECOVERY JANUARY 2025

[Planning Reform Working Paper: Development and Nature Recovery - GOV.UK](#)

#### PROLOGUE

1 The Worshipful Company of Water Conservators ('WCWC') is a City of London Livery Company focussed on the long-term health of our water resources and the broader environment. Our members include senior professionals from water, environmental and related industries and regulators, along with others who share our concern for water and the environment. Our experience and knowledge ranges from the complexities of environmental sciences, through the application of engineering to deliver the goals identified by those sciences, and the subsequent management of the assets created. The WCWC's purpose is *promoting a diverse and sustainable environment*.

2 As part of that purpose, the WCWC has been responding to relevant consultations particularly on matters relating to water conservation. These are archived on its website.

<https://waterconservators.org/policies-and-practices/>

3 This includes a response to the consultation by the Ministry of Housing, Communities and Local Government (MHCLG) on the proposed changes to the National Planning Policy Framework in September 2024. It is relevant to reprise the summary of the response which is still very much relevant to this Working Paper; and is included as Appendix 1.

4 The revised framework was published in December 2024

<https://www.gov.uk/government/publications/national-planning-policy-framework--2>

The WCWC has no comment on the general impacts of the changes and reserves most of its comments for the impact on water conservation and the resolution of the nexus of issues surrounding housing and economic growth with water conservation. A good summary of the general impacts is given in:

<https://cornerstonebarristers.com/the-new-nppf-a-christmas-cracker/>

There have been some criticisms on the lack of fundamental reform.

<https://www.bdonline.co.uk/opinion/the-new-nppf-will-help-at-the-margins-but-does-little-to-reform-our-planning-system/5133488.article>

The WCWC notes that none of the key issues on water conservation have been addressed and the supporting guidance is still well out of date.

5 The Ministry and Defra have now issued this working paper, as hyperlinked at the head of this submission

<https://www.gov.uk/government/publications/planning-reform-working-paper-development-and-nature-recovery/planning-reform-working-paper-development-and-nature-recovery>

It forms part of a series of working papers on different aspects of planning reform, designed to inform further policy development in collaboration with the wider sector.

6 The Summary states that *This paper invites views on proposals for a new approach to how housing and infrastructure development can meet its environmental obligations and contribute to nature recovery. The government wants to accelerate development while going beyond simply offsetting harm to unlock the positive impact this development can have in driving nature recovery. This new approach would use funding from development to deliver environmental improvements at a scale which will have the greatest impact – moving us from an unacceptable status quo that can hold up development without improving nature, to a win-win for both. These working proposals reflect valuable feedback already received from representatives of the development industry, nature conservation organisations, nature service providers, and local government. If taken forward, the government would use the Planning and Infrastructure Bill to make the necessary legislative changes to establish a more efficient and effective way for Habitats Regulations and other environmental obligations to be discharged, pooling individual contributions to deliver the strategic interventions necessary to drive nature recovery. A series of questions are posed at the end of the paper, to inform further discussions before determining whether these proposals are taken forward.*

7 The WCWC recognises the driving force behind the Working Paper in a Government Press Release.

<https://www.gov.uk/government/news/planning-proposals-get-britain-building-and-turn-the-tide-on-natures-decline>

## **SUMMARY**

8 Most of the response by the WCWC concerns the impact of the proposals, in the Working Paper, on water conservation.

9 It points out that many of the issues causing angst in the interface between economic and housing development with water conservation as manifested in the NPPF remain unresolved. It is disappointing that these were not addressed in the revised NPPF issued in December 2024. These need addressing before any new system is introduced especially regarding ensuring adequate provision and payment for infrastructure impacts especially for water supply and waste water treatment.

10 The WCWC supports the notion of integrated, holistic management of water and draws attention to a more formal system of Catchment Management , as envisaged in the 2023 Defra Water Plan and articulated by the WCWC thinkpiece produced for Defra (see <https://waterconservators.org/thinkpieces/>).

11 It considers that the case for the proposals for new processes is not well made. There are many generalisations which need to be addressed, such as a more formal definition of environmental obligations. Many of the suggestions for the content of Delivery Plans would be better located in more formalised Catchment Plans. The formal system of approval of Delivery Plans will not necessarily speed things up or make technical burdens less. The proposals are coy about the concept of Delivery Bodies, particularly in relation to the established concept of Competent Authorities. The financial case is not strong nor demonstrated and the funding arrangements appear superficial and incomplete. The Working Paper needs to be clarified.

12 The WCWC has long opined that there are ‘too many pieces of a jigsaw of delivery’ of water conservation and these proposals add more without resolving the issues with the existing pieces. They need testing against the Environmental Principles Duty of the Environment Act 2021 and the Better Regulation Framework. ‘Planning, to get Britain building and turn the tide on nature’s decline’ definitely . Whilst holistic management, catchments and outcomes over processes do, indeed matter, the new processes as set out do not address these in an appropriate manner.

#### **Footnote;**

F! Just as this document was signed off for submission , the WCWC became aware in a UK Water Report article, by Karma Loveday, of another parallel development of the likelihood that the Environment Agency will cease Catchment Nutrient Balancing.

[EA set to withdraw “ineffective and unworkable” catchment nutrient balancing](#)

#### ***EA set to withdraw “ineffective and unworkable” catchment nutrient balancing***

*The Environment Agency (EA) has found catchment nutrient balancing (CNB) to be “ineffective and unworkable as a regulatory mechanism”. Ahead of Christmas, it told water companies it was minded to withdraw CNB permitting as a regulatory mechanism for wastewater treatment works discharges – from the start of AMP8.*

*CNB allows water companies to offset the nutrient (mainly phosphorus) reduction requirements specified in their sewage works permits, by funding farmers to implement catchment measures to cut nutrients instead. It has been trialled in AMP7, with a view to cutting pollution and meeting phosphorus standards at lower financial, carbon and chemical costs, while also providing other benefits, such as for biodiversity.*

*The EA has reviewed AMP7 evidence to assess the approach’s effectiveness as a regulatory mechanism and its ability to achieve the nutrient standards required by*

legislation. According to the Agency, CNB fell short on both fronts. Its minded-to decision is based on:

- Lack of strong evidence demonstrating a link between CNB measures and water quality improvements to achieve environmental objectives.
- Insufficient availability of catchment measures to reduce nutrients sufficiently to meet polluter pays fair share requirements and achieve nutrient standards.
- Enforceability concerns regarding third parties.
- CNB will not achieve key statutory environmental targets required to protect the environment. “To achieve clean and plentiful water both the water and farming industries need to adopt all the measures they can and clear up their own pollution,” the Agency argued.

Companies have until 17 January to provide comments and responses before a final decision is confirmed ahead of the start of AMP8.

The EA pointed out that ending CNB will not impact other innovative permitting solutions such as catchment permitting, or the use of nature-based solutions.

F2 The CNB consultation is a discussion about catchment nutrient balancing (CNB) negotiations and agreed targets. The consultation is part of the Water Industry Strategic Review (WISER).

Explanation

- The EA CNB consultation is a discussion about the Water Industry Strategic Review (WISER).
- The consultation is about CNB negotiations and agreed targets.
- The consultation is concerned with how the industry can maximize opportunities in CNB.
- The consultation is concerned with streamlining and reducing the complexity of CNB negotiations and agreed targets.

F3 WISER is written by the Environment Agency and Natural England. It provides the strategic steer to water companies on:

- improving the environment
- resilience for the environment and customers
- flood risk
- relevant legal requirements

<https://www.gov.uk/government/publications/developing-the-environmental-resilience-and-flood-risk-actions-for-the-price-review-2024/water-industry-strategic-environmental-requirements-wiser>

F4 The WCWC includes this at length because there seems to be no cross reference or connection between the ideas set out in the Working Paper and the ideas set out by the EA. It strengthens the submission by the WCWC on the current

fragmented approaches. And provides some hope that catchment permitting will play a leading role in future.

## RESPONSE

13 The WCWC provides a wider background than is strictly necessary in the response, for the benefit of readers not in Government departments. It is concentrating on aspects relevant to water conservation but nevertheless will provide some insights on the implications for other aspects of environmental conservation. It does so because of the high-profile debates about the impact of nutrient neutrality in the housing programme and the use of this as the first case study in the Working Paper.

14 The WCWC is very much aware of the issues around the challenges in meeting the aspirations for improved water quality whilst also meeting housing and economic regeneration targets. There are concerns about planning processes and outcomes; the current processes are perceived to be cumbersome and the perceived outcomes of meeting environmental targets too much of a cost burden on housing, arising from the costs of the processes and the provision of environmental solutions.

15 The initial reaction to the Working Paper is that it is too long and could be made simpler to understand.

16 The WCWC is pleased to note that there is now recognition of a need for a more integrated, holistic, less piecemeal approach, although it also is concerned that the proposals create further complexity and new bureaucracy which may well 'muddy the waters' to use an appropriate simile.

17 The WCWC reiterates that matters of primary concern are the issues around the supporting guidance for the NPPF itself. For example, the implementation of mandatory Sustainable Drainage Systems lies in limbo and needs sorting out urgently. This working paper only make oblique reference to this. The answer to many of the problems surrounding water management lie in catchment management, as set in the Defra Water Plan. The WCWC provided a thinkpiece to Defra. So, for example nutrient neutrality should become part of a bigger plan for water quality management. In fact, many of the proposals for Delivery Plans would be better located in more formalised Catchment Plans.

18 Defra and the MHCLG want to take three steps of change for which the Planning and Infrastructure Bill will provide the necessary legislative underpinning.

*a) Moving responsibility for identifying actions to address environmental impacts away from multiple project-specific assessments in an area to a single strategic assessment and delivery plan. This will allow action to address environmental impacts from development to be taken strategically, at an appropriate geographic scale, rather than at the level of an individual project – while recognising the importance of protecting local communities' access to nature and green space.*

*b) Moving more responsibility for planning and implementing these strategic actions onto the state, delivered through organisations with the right expertise and with the necessary flexibility to take actions that most effectively deliver positive outcomes for nature.*

*c) In turn, allowing impacts to be dealt with strategically in exchange for a financial payment that helps fund strategic actions, so development can proceed more quickly. Project-level environmental assessments are then limited only to those harms not dealt with strategically.*

19 Step 2 contains the following

*If we are to shift to a more strategic approach to certain environmental obligations, we also need to move responsibility for determining and delivering these measures away from individual development projects to a more strategic level. We therefore want to establish a framework that allows for a suitable public delivery body to consider which actions are needed to address an environmental impact (or impacts) strategically, for a relevant range of development types, across an appropriate area and for an appropriate period of time. The delivery body will then secure these actions using funding provided by developers, meaning that there will be no need to consider this environmental impact on a case-by-case basis.*

### **Shortcomings of Proposals**

20 There are several proposals, which are generalisations and lack clarity and structure, and whilst the WCWC recognises that these are proposals are in an initial Working Paper, these issues to be addressed. The WCWC provides some elaboration subsequently.

- There is reference to existing Regulations like those for nutrient neutrality, but the opening summary talks of “The government would use the Planning and Infrastructure Bill to make necessary legislative changes to establish a more efficient and effective way for Habitats Regulations and other environmental obligations to be discharged. What does this mean in practice, and would this add to the ‘piecemeal approach’? It would certainly require a lot of effort which may not produce the desired outcomes in practice. Paras 5 & 6 take the idea forward “develop a new statutory plan to protect and restore our natural environment”.
- The WCWC has concerns over the addition of Delivery Plans for water management, with an approval process for the Secretary of State in addition to the role of more formalised Catchment Plans. Many of the Proposals for Delivery Plans would be better located in those Catchment Plans.
- The WCWC has concerns over the definition, appointment, and role of Delivery Bodies.
- There needs to be a more rigorous definition of ‘environmental obligations’.
- Para 3 refers to the submission of “Good quality applications” which deliver for the community and the environment, which rather implies that existing legislation does not require that.

- Para 4 “discharging of environmental obligations can unlock economic benefits;” unless there is widespread failure to meet existing environmental standards this must imply an increase in standards.

21 It is not clear how a Delivery Body would be Identified and appointed. There needs to be much more insightful explanation of what Delivery Bodies would be and do. The proposal refers to Natural England, as an example of such a Body for nutrient pollution in Scenario A. The WCWC points out that the Environment Agency is the Competent Authority for managing nutrient pollution as part of catchment management in River Basin Management under the Water Framework Directive, which should be the delivery process for tackling this and other water pollutants and problems. Subject to the usual constraints on resources is equipped to deal with this matter. Surely, what is needed, as has been suggested before, is cooperation in setting integrated Catchment Plans and then deciding on delivery. In the more formalised system of Catchment Management Plans advocated by the WCWC, the Natural England has a role in determining Catchment Objectives and could include the Nutrient Mitigation Credits Scheme, which is not mentioned in the case study Scenario A.

#### [Natural England's nutrient mitigation scheme for developers - GOV.UK](#)

22 The WCWC is concerned about the duplication of what is, or should be, implemented now. The proposals state that *It is vital that Delivery Plans do not involve any unnecessary or duplicative work. Where all or some of the necessary evidence base is already available to a delivery body – for example, due to an extant Diffuse Water Pollution Plan (DWPP), Protected Site Strategy (PSS), Species Conservation Strategy (SCS), or Local Nature Recovery Strategy (LNRS) – this may be depended upon for these purposes. Likewise, any relevant evidence and actions identified in preparing a Delivery Plan should be made available to any other body subsequently involved in preparing a wider environmental plan or strategy covering the same area. Legislation will include a coordination duty to ensure this cooperation between relevant public bodies.* But what is proposed for water, or at least nutrient neutrality, is a duplication. The WCWC re-iterates that what is in place now needs sorting out, rather than being adding to.

23 A Delivery Plan would appear to require the intervention of the Secretary of State for DEFRA. *Under the new approach, where development in a specific area is expected to impact a protected site (as is the case for nutrient neutrality), the Secretary of State may determine that a Delivery Plan for nutrient mitigation, operating at catchment scale, would be more effective.*

24 The Delivery Plan *will be based on a strategic assessment of impacts and the interventions required to accommodate an agreed level of development, with those interventions linked to incremental phases of delivery (e.g. 150 houses). The Delivery Plan will also include costings for the interventions, and a draft tariff to fund their delivery. The Delivery Plan would be considered and signed off by the Secretary of State. Interventions identified in the Delivery Plan may commence in advance of development coming forward.*

25 The funding arrangements seem to lack practicality. The WCWC poses questions

- Is the Treasury really going to allow Defra or others to set up hypothecated pots of money without a clear mechanism for ensuring that the delivery bodies' measures are really worthwhile and the most efficient means of restoring nature?
- Even worse it talks of "up-front payments" before developers pay in. Where does that money come from?
- Does the "donation" by the developer cover the cost of the new organisations that are going to oversee these projects and manage their implementation, or just the capital cost of building whatever is deemed to be necessary?
- Who is going to pay for ongoing maintenance?
- What happens if the project suffers from cost overruns, where does the extra cost fall? Developers aren't likely to sign up for blank cheques, and certainly not ongoing maintenance charges.
- What about the project failing to deliver the desired outcomes?
- Where are the concepts of risk to fit in?
- Where is the Impact Assessment of this proposal – and its liabilities? What would be its probable scale and likely funds and their effective impacts on nature restoration?
- The suggestion of a Public Schedule of Costs for different types of development seems misplaced. This marks a shift away from developers meeting real costs to some form of fixed fee for developments presumably linked to number and size of houses. But once that money is applied to other than the initial purpose on which the schedule is based, it will become effectively a tax that bears no relation to actual outputs. What if there are multiple charges? What about regional variations in pricing?. Construction in the North of England is less costly than in the South. This proposal is short on detail and needs much more explanation, demonstrate fairness and not simply "the developer must pay whatever is demanded." Some form of appeals mechanism possibly to the Courts would seem to be necessary, but this may slow processes unacceptably.
- There is implication in the idea that by developing larger projects, the economies of scale will allow more work without increasing the financial burden on developers. There is no evidence offered to support this generalisation and frankly looking at the thrust towards far more nature restoration, Is this correct?
- And any financial transactions within a catchment must be kept in a catchment and there must not be any catchment cross subsidisation.



Have the Proposals been tested under the Better Regulation Framework ?

<https://www.gov.uk/government/publications/better-regulation-framework>

### **Piecemeal approach that fails to set out a comprehensive Framework**

26 The paper mentions “other environmental obligations” and “addressing pollution and environmental harm at source (with which the WCWC agrees). The proposal in the paper then just expresses concerns about specific constraints on developments of designations under the Habitats Directive Regulations, or and the Wildlife and Countryside Act.

27 This piecemeal approach is misguided. It would seem appropriate to provide an overall framework which addresses coherently and at source all environmental impacts of developments and ensures that developments pay fully for them. In respect of concerns about impacts on water and nutrient neutrality in particular, the project team should first examine current established processes for water management (e.g. WINEP, Water Industry Environment Programmes, for water industry periodic reviews and Environment Agency’s River Basin Management planning for Water Framework Directive Regulations 2017 implementation). Then do an urgent review of what is happening now in these processes regarding the particular subject of nutrient management so as to see what could be applied in practice. For example, the application of nutrient mitigation credits regarding nutrient neutrality, such as that implemented in Norfolk.

<https://www.norfolkenvironmentalcredits.co.uk/>

28 We can determine how well Catchment Partnerships are performing and take on board the WCWC response to the NPPF consultation. A good example is the WINEP project in Anglian Water.

<https://www.anglianwater.co.uk/SysSiteAssets/household/about-us/pr24/ANH27-Enhancement-strategy-Ecological-improvements.pdf>

29 The WCWC poses the question; do the Proposals meet the requirements of the Environmental Principles Duty under the Environment Act 2021, in which ministers and policy makers must consider the environmental impact of new policies.

<https://www.gov.uk/government/news/environmental-principles-duty-comes-into-force>

30 The Proposals refer to Environmental Obligations. Whilst this is understood in the vernacular.

<https://www.lawdonut.co.uk/business/health-and-safety/environmental-regulations/essential-guide-to-fulfilling-your-business-environmental-obligations>

There is no definition per se in law. The NPPF refers to environmental designations and the WCWC referred to a need to sort these out in its response to the consultation last year. The time has come to create clarity and harmony in law as to

what is targeted ..With that greater clarity better assessment can be made of the notion that all of the identified environmental obligations identified in the paper can be accommodated without increasing the burden on developers.

31 The example given for nutrient pollution and proposal for nutrient neutrality does not reflect the practice 'on the ground' (see the comments above). The Working Paper appears to be trying to introduce a new system when what is needed is to improve and refine current practice. The WCWC is doubtful if the intervention of the Secretary of State will achieve the objectives of making the process faster and the outcomes less of a burden. In fact, this could make matters even more complicated. The WCWC has opined several times that an overarching, integrated, holistic and approach is sorely needed. This Working Paper seeks to take steps in that direction but appears to provide more complexity by establishing yet more Plans. It is very coy about the nature of Delivery Bodies and, as set out earlier, should have been articulated more fully.

32 The WCWC suggests that the concepts behind the Working Paper need to be based on better research, understanding their place in everything which is occurring (particularly in water) and tested in more scenarios as to whether the proposals do meet the aspirations (as would be expected by the tests of Better Regulation). Whilst the WCWC supports a more holistic and at source approach, it is not convinced that the proposals will bring the clarity which is needed. That a first step should be to 'clean up' the current system and then determine how to refine it to address current challenges.

33 The overarching answer to the questions set out in section 64 of the Paper is that as set out, the case is not well made for the addition of this process in addition to all the other initiatives for water conservation 'Planning to get Britain building and turn the tide on nature's decline' is right, and this must focus on holistic management, catchments, and outcomes over process. The new processes, as set out, do not. Whilst holistic management, catchments and outcomes over processes do, indeed matter, the new processes as set out do not address these in an appropriate manner.

34 The specific answers by the WCWC are in bold below:

a) Do you consider this approach would be likely to provide tangible improvements to the developer experience while supporting nature recovery? **Perhaps, while only regarding the specific aspect of nature restoration, not regarding nutrient neutrality. Need to overcome its fundamental shortcomings – as highlighted in above. Deal with nutrient neutrality concerns through proper implementation of Environment Agency's nutrient management and river basin management planning processes at catchment level.**

b) Which environmental obligations do you feel are most suited to this proposed model, and at what geographic scale? **These need more formal definition. It appears to be just a means of enabling developers to get round the Habitats Directive and prevent it from constraining economic growth and energy infrastructure projects. It has major shortcomings and is misguided. The current proposal is not appropriate for dealing with nutrient neutrality.**

c) How if at all could the process of developing a Delivery Plan be improved to ensure confidence that they will deliver the necessary outcomes for nature?

**Address shortcomings and be part of a comprehensive framework to ensure developers addressing all their environmental impacts at source and pay fully for them and their mitigation. Duplication with existing initiatives will reduce confidence.**

d) Are there any additional specific safeguards you would want to see to ensure environmental protections and / or a streamlined developer experience? **We need a comprehensive policy with measures to ensure developers addressing all environmental harms at source and pay fully for them. What are Environmental Protections? Are they another new term? Or are these Obligations and are Harms a failure to meet these Obligations?**

e) Do you support a continued role for third parties such as habitat banks and land managers in supplying nature services as part of Delivery Plans? **Yes provided the payments by developers to the third parties cover the full costs of supplying the nature services, including ongoing maintenance liabilities and avoiding or offsetting unintended impacts.**

f) How could we use new tools like Environmental Outcomes Reports to support this model? **Need clarification of the Environmental Outcomes Reports. Need such reports to cover all environmental impacts affected by developments – including impacts on the adequacy of water supply and wastewater treatment infrastructure and implications of resulting shortfall if developments do not pay fully for addressing such shortfalls.**

g) Are there any other matters that you think we should be aware of if these proposals were to be taken forward, in particular to ensure they provide benefits for development and the environment as early as possible? **Overcome fundamental flaws by having a comprehensive policy with measures to ensure developers addressing all environmental harms at source and pay fully for them**

## APPENDIX

### WCWC Response to the Consultation on proposed changes to the NPPF

September 2024

1 The planning system, with the 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 Speech<sup>1</sup>.

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.

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

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<sup>1</sup> [The King's Speech 2024 - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

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 '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)<sup>2</sup> as a matter for swift tactical change. The supporting guidance on water is in 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 Trade<sup>3</sup>.

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,

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

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

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 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 out-come 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)<sup>4</sup> 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 the 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

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<sup>4</sup> [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)

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 specific focus in planning. In its responses to the Department of Business and Trade early in 2024 (see the WCWC website<sup>5</sup>) 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 as gigafactories and data processing centres<sup>6</sup>, with implications for

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<sup>5</sup> Consultation Responses – The Worshipful Company of Water Conservators

<sup>6</sup> US tech groups' water consumption soars in 'data centre alley' (ft.com)

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 Force<sup>7</sup>. This could embrace the concept of 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.<sup>8 9</sup>

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:

- a. an overarching National Water Strategy for England is needed by July 2026;
- b. this would include a much-improved system of catchment management;
- c. 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.

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<sup>7</sup> [The New Towns Taskforce - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

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

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



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

- d. 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 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 questions.

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