Nuclear Industry Association Response to Environmental Outcomes Report: a new approach to environmental assessment

The Nuclear Industry Association (NIA) welcomes the chance to respond to the Department for Levelling Up, Housing and Communities' Environmental Outcomes Report consultation.

The NIA is the trade association and representative body for the civil nuclear industry in the UK. We represent around 270 companies operating across all aspects of the nuclear fuel cycle, including the current and prospective operators of nuclear power stations, international designers, and vendors of nuclear power stations, and those engaged in decommissioning, waste management and nuclear liabilities management. Members also include nuclear equipment suppliers, engineering and construction firms, nuclear research organisations, and legal, financial and consultancy companies.

Due to the diversity of our membership, our views in this submission will cover high-level, industry-wide matters. Our members may choose to make their own detailed submissions.

Executive Summary

The NIA welcomes the positive intent outlined in the Environmental Outcomes Report consultation and supports the ambition to streamline environmental regulations. The principle to "not duplicate matters more effectively addressed through policy" will be important to meet the overall objective of the Environmental Outcome Reports (EORs), which is to streamline the approach to environmental assessments.

Removing the amount of duplication across environmental regulation, consents and assessment is essential to accelerate the delivery of low carbon, nuclear projects. Nuclear is essential to the UK's net zero future as our only source of clean, sovereign baseload power. It currently supplies around 15% of electricity demand from just over half a square mile of land, and according to United Nations' analysis, has the lowest lifecycle carbon, lowest land use, and lowest impact on ecosystems of any electricity source.[1]

We acknowledge that further consultation on the development of EORs is planned and as part of that future consultation, we would welcome further clarity on:

- How monitoring and outcomes would be managed.
- How the mitigation hierarchy would be applied.
- How climate change mitigation and adaptation will be incorporated into outcomes.

We would add that the functioning in practice of the planning regime for Nationally Significant Infrastructure Projects (NSIPs) has been highly unsatisfactory to date. In particular, it has not been proportional at all in assessing the environmental impacts of proposed projects against the urgency of deploying new low carbon energy sources to combat the climate crisis. To highlight two examples:

- Hinkley Point C, a UK First-of-a-Kind technology and the first nuclear power plant to start construction since the 1980s, took 17 months to receive a Development Consent Order (Oct 2011-March 2013), whereas Sizewell C, a replica of HPC technology, took 26 months (May 2020-July 2022). EDF submitted 1,001 documents as part of its Development Consent Order (DCO) application for Hinkley Point C but 4,378 documents for Sizewell C. The environmental statement for the former was 31,401 pages and for the latter 44,260 pages.

[1] United Nations Economic Commission for Europe (2022), *Carbon Neutrality in the UNECE Region: Integrated Life-cycle Assessment of Electricity Sources*. Available at: https://unece.org/sites/default/files/202208/LCA_0708_correction.pdf. Accessed 6 June 2023.

- The Planning Inspectorate (PINS) recommended the rejection of the Wylfa Newydd DCO application for a project that would have provided clean power for 65 years to 5.5 million homes because of concerns over the possible, not certain, impacts on a local tern colony and local fungi.[2] This is a key example of highly disproportionate assessment and outcomes within the planning system.

We therefore strongly support efforts to improve the functioning of elements of the planning system. For this to succeed, we emphasise two important steps:

- A Net Zero Duty on *all* relevant regulators, to ensure regulation proportionate to the urgent need for more low carbon energy to mitigate climate change

- Adequate resourcing and skilling of all relevant public bodies to ensure that decisions are taken with the necessary certainty and the necessary speed. This is crucial to carry through well-intended reforms into practice at a project level.

1. Do you support the principles that will guide the development of outcomes? [Yes / No].
The principles are high level, and we agree with the intent.

While we recognise that there will be further consultation on the draft outcomes and consultation on how Environmental Outcome Reports will be applied, we are concerned that matters not listed in 4.10 currently covered by all EIA regimes, could vary across EIA regimes and undermine the objective to retain a common approach wherever possible. This is a concern for major projects and decommissioning projects where consents and EIAs can span across several different regimes.

In the case of the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999 as amended, which require assessment of the environmental effects of decommissioning, with planning applications required in part for development associated with decommissioning, but no planning permission for the whole of decommissioning (in England and Wales), the proposed core outcomes would currently mean that there would be gaps, including socio economic and transport effects, that would not be addressed by planning policy and legislation.

The DLUHC must ensure there is no variation, and a common approach is produced in the transition to EORs.

2. Do you support the principles that indicators will have to meet? [Yes / No].
In principle we agree, however, this will be dependent on consultation and testing of the details of the indicators.

3. Are there any other criteria we should consider?
Low carbon energy projects are an essential solution to the climate crisis, and this should be considered within environmental assessment. We suggest proportionality to be included as an indicator to take account of the wider benefits that developments can offer and ensure assessment is proportionate to the benefits of a project.

To give a practical example, the Planning Inspectorate, as noted above, recommended the rejection of the Wylfa Newydd Nuclear Power Station application for a Development Consent Order, despite the fact that it acknowledged the project would meet the objectives of NPS EN-1, by providing “a source of

[2] The Planning Inspectorate, *Wylfa Newydd Nuclear Power Station: Examining Authority’s Report of Findings and Conclusions and Recommendation to the Secretary of State for Business, Energy and Industrial Strategy* (published February 2021, drafted July 2019). Available at: https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010007/EN010007-003948-Recommendation%20Report%20-%20English.pdf. Accessed 6 June 2023.

low carbon energy for an estimated 65-year operational life that could serve 5.5 million households". It concluded that "the benefits of the development at this site would not outweigh the broader impacts on the national network of SSSIs", largely on these grounds:

- "due to insufficient scientific evidence, it cannot be demonstrated beyond reasonable scientific doubt, that the tern colony would not abandon Cemlyn Bay and with reference to 5.3.17 of EN-1, substantial weight should be given these potential adverse effects"
- "there is probability that the nationally important CHEG grasslands may be lost and not able to be re-created, so not being compliant with 5.3.17 of EN-1 or TAN 5."[3]

Especially given the previously cited United Nations' analysis that nuclear generation has the least impact on ecosystems of any electricity source, the benefits of such a large but compact source of low carbon generation would certainly outweigh possible, not certain, effects on local species, but the planning system failed to account for this. The inclusion of proportionality as an indicator and the consider of low carbon projects contribution to the net zero drive would make it more likely that an adequate analysis of the balance of benefits and impacts would be reached.

4. Would you welcome proportionate reporting against all outcomes as the default position?
The NIA is supportive of this proposition. We agree that the current approach of preparing a scoping report which covers all environmental topics that are scoped into assessment can create an unnecessary step and include topics in assessment that are driven by fear of legal challenge. Therefore, a default position for proportionate reporting against all outcomes would save time and resource in developing and submitting a scoping report. More guidance and direction should be provided to ensure that assessment is truly proportionate.

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

6. Given the issues set out above, and our desire to consider issues where they are most effectively addressed, how can government ensure that EORs support our efforts to adapt to the effects of climate change across all regimes?
We welcome more clarity in the next consultation regarding the outcomes as to how climate change mitigation and adaptation will be incorporated. The transition to net zero is crucial for climate change mitigation as the UK replaces carbon emitting fossil fuel electricity generation with low carbon sources. Therefore, we strongly recommend that an outcome is included which covers a project's contribution to net zero. Paragraph 4.28 recognises how the current practice of carbon assessment of projects within the EIA struggles to reflect the importance of the issue.

The Government's legislated target to achieve net zero by 2050 should carry great weight when determining projects. There can be no doubt that nuclear projects individually making enormous contributions toward reaching net zero, but we recognise that the methods by which precise contributions can be measured can vary. Therefore, we believe DLUHC should:

- Include the principle of a carbon assessment at an appropriate level recognising the complexities of measurement at both project and local plan levels.
- Make close links between carbon emission reductions and the National Adaptation Programme.

[3] The Planning Inspectorate, *Wylfa Newydd Nuclear Power Station: Examining Authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for Business, Energy and Industrial Strategy* (published February 2021, drafted July 2019). Available at: https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010007/EN010007-003948-Recommendation%20Report%20-%20English.pdf. Accessed 6 June 2023.

- Provide more specific information about how EORs can assess and ensure projects do adapt to the effects of climate change and the type of indicators that could be measured at a project level.

- Additionally, removing the standardised requirement to print hard copies of environmental assessments would significantly decrease associated paper usage across the environmental assessment regimes. For example, the environmental statement for Hinkley Point C Development Consent Order application was 31,401 pages and for Sizewell C 44,260 pages.

7. Do you consider there is value in clarifying requirements regarding the consideration of reasonable alternatives?
Yes, we would welcome the clarification of what would meet the level of reasonable alternatives required, to improve understanding for both applicants and decision makers.

8. How can the government ensure that the consideration of alternatives is built into the early design stages of the development and design process?
We note the intention that the consideration of alternatives would be reviewed and updated prior to the EOR submission. Further guidance on this is required to ensure that the consideration of alternatives does not unreasonably delay the submission of applications for consent. The use of statements of common ground could be a tool used to demonstrate where alternatives have been considered and an agreement has been reached with stakeholders, and where there is any outstanding disagreement on alternatives to inform the decision maker.

9. Do you support the principle of strengthening the screening process to minimise ambiguity?
The NIA supports the principle of strengthening the screening process to minimise ambiguity.

There is currently an inconsistency between the interpretation of 'nuclear power station' under the TCPA EIA Regulations for England and Wales, and Scotland, such that it is unclear whether dismantling or decommissioning a nuclear power station would be treated as development. We would request that to avoid duplication of regimes that this apparent error corrected in the TCPA EIA Regulations for England and Wales is also corrected in the TCPA EIA Regulations for Scotland.

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].
No. Whilst proximity or impact pathways to sensitive or protected habitats/species should remain a part of the decision-making process when determining whether an EOR is required, it should not be used as the starting point.

11. If yes, how could this work in practice? What sort of initial information would be required?
Desk-based information should primarily be used to inform the screening request.

12: How can we address issues of ineffective mitigation?
We support proposals to embed the mitigation hierarchy, consider alternatives early in the development of a plan, and recognise that mitigation is not always effective, consequently leading to some circumstances where mitigation may need to be reviewed during implementation.
To support this approach, we suggest that:

- All competent authorities are adequately resourced to review and monitor mitigations secured under planning obligations.
- There is a defined process with clear timelines and guidance for assessing and managing effective mitigation. The process for monitoring and maintaining effective mitigation for the

decommissioning of the UK's nuclear power stations could be considered as good practice that could inform the guidance.

- Enhanced monitoring and data collection should be used to inform good practice guidance on effective mitigation measures.

Further clarity on how the mitigation hierarchy would be applied is required.

13: Is an adaptive approach a good way of dealing with uncertainty? [Yes/No].
No. An adaptive approach would not provide certainty at the start of the design phase of a project. Adding an unknown and variable cost to a project beyond final investment decision could be significantly damaging in terms of the long-term feasibility of the project if it is unable to cover the additional costs and this should be recognised. Therefore, in the circumstances that an adaptive approach is used, the approach should remain under review by both the developer and competent authorities.

14: Could it work in practice? What would be the challenges in implementation?
Adaptive management practices can be challenging to achieve in practice without effective engagement of local authorities, statutory consultees and landowners. Management arrangements can be technically difficult to draft and are often accompanied by complex legal agreements.

15: Would you support a more formal and robust approach to monitoring? [Yes/No].
We agree that a more formal and robust approach to monitoring would verify the environmental effects are as predicted, ensure mitigation is effective and add to the knowledge base where there are environmental uncertainties. However, in order to provide a more formal and robust approach to monitoring on a consistent basis, the approach must be supported by adequate resourcing for local authorities, regulators and statutory consultees to review the monitoring.

Formal and robust monitoring could also highlight the wide-ranging benefits that low carbon energy generation projects can provide to the environment and sustainability objectives.

16: How can the government use monitoring to incentivise better assessment practice?
The Government should facilitate the creation of a data sharing platform as this could be utilised to inform future project assessments.

17: How can the government best ensure the ongoing costs of monitoring are met?
One of the most important aspects of the cost of monitoring is to make sure that the scope is correct. If the new regime results in extensive additional costs, then it will not be effective. Monitoring needs to be tailored to what is most important. Therefore, monitoring should be proportionate to the largest uncertainties or the largest contributions to outcomes identified in the EOR. This is necessary to maximise the cost effectiveness of monitoring.

There could be several options to ensure that ongoing costs of monitoring are met, for example, a requirement for a bond at application, which is only released on completion of monitoring. However, this is likely to rely on a 'responsible body' or another organisation auditing the monitoring, which will require additional resource on the part of that organisation.

18: How should the government address issues such as post-decision costs and liabilities?
As a trade association, we will leave suggestions on approaches to affected organisations.

19. Do you support the principle of environmental data being made publicly available for future use?
The NIA welcomes the principle of environmental data being made publicly available for future use, as it could help facilitate future project planning and provide valuable evidence for analysis of the actual environmental impact of projects and the effects of different regulatory decisions and regimes.

20. What are the current barriers to sharing data more easily?
A lack of resources to carry out the administrative burden of checking the data, converting it into an accessible format and uploading it to a data sharing platform, is a major barrier to data sharing. Government should rectify this issue by providing adequate funding dedicated to this exercise.

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

- Monitoring of novel infrastructure technology.
- Monitoring where environmental impacts are uncertain or unpredictable.

22. Would you support reporting on the performance of a plan or project against the achievement of outcomes? [Yes/ No].
We would welcome further clarity on what is intended by this question because it is unclear if this reporting lies with decision makers or the developer.

23. What are the opportunities and challenges in reporting on the achievement of outcomes?
More information is required to provide a detailed answer to this question.

To support reporting on the achievement of outcomes, it is recommended that the following is provided:

- Guidance for how to measure an individual project's contribution to national outcomes and targets;
- A definition of what will determine the contribution to the outcomes and targets as sufficient or inadequate; and
- The inclusion of proportionality within the reporting phase.

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

As a trade association, it is not appropriate for us to comment on this. However, the transition to net zero will produce significant benefits to the environment and climate. Therefore, disruption to net zero projects should be minimised as far as possible along the transition to EORs to prevent delays and knock-on effects for the development that is required to meet net zero.

25: What new skills or additional support would be required to support the implementation of Environmental Outcomes Reports?
Adequate resourcing for local authorities, regulators and statutory consultees will be crucial for the implementation of EORs.

Further Information
The NIA is happy to provide more context or any clarifications desired on the content of our response and to ask our members where appropriate for additional information that may be useful.

Please contact Lauren Rowe, Policy Analyst for the NIA, at Lauren.Rowe@niauk.org to do this.