



The Association of Environmental Clerks of Work

National Planning Framework 4 - Call for Ideas

Introduction

As highlighted in the NPF4 briefing, our economy relies on our significant natural resources, for food & drink, tourism, energy and financial services. Pressure from planning and development on the natural resources in terms of housing, renewable, energy and infrastructure, creates significant environmental risks, particularly during construction. The Association outlines its understanding of the challenges in the current planning system and opportunities in relation to NPF4 and how it can be amended to better protect our natural resources, particularly during the construction phases of developments. To this end, the Association considers the ideas in this paper to cut across all areas which consultees have been asked to consider, however, as we are primarily focused on environmental compliance during construction, the key theme is considered to be 'place' - to better protect the identity of our natural environment.

The construction industry has a responsibility to manage and minimise its impacts, yet evidence suggests that poor environmental performance is common, with unnecessary and avoidable impacts on our natural heritage¹. The Association believes that these environmental impacts will increase over time, as climate change exacerbates the challenges and extreme events become more frequent, more severe and more difficult to manage. Therefore, the existing challenges that the construction industry faces must be more effectively regulated and incentivised to better manage and minimise environmental impacts on natural resources, such watercourses, species, designated sites and habitats. An Environmental Clerk of Works (ECoW) can be an effective resource in order to support, and facilitate, that during construction. The Association defines an ECoW as:

'An environmental or construction professional with direct responsibility for monitoring compliance with environmental legislation, policy or mitigation'.

The Association recognises the need for, and supports, new, responsible developments, but it is aware that often they are not constructed in accordance with the mitigation outlined in the planning process or are not compliant with environmental legislation. The Association has serious concerns that the current situation means that the construction phases of development projects are having a much greater impact on the environment than is presented at the planning stage and that there is minimal enforcement; this compounds the issues and encourages bad practice: it is usually cheaper for a developer, or contractor, to be environmentally non-compliant. We are aware that incidences of legal non-compliance and mitigation identified to limit the impact of development are poorly understood, and implemented, during construction.

¹ <https://scotlandagainstspin.org/wp-content/uploads/2015/03/14.07-A-report-to-SNH-Assessing-the-Success-of-Restoration-and-Reinstatement-July-2014-3.pdf>

An ECoW is sometimes required by planning consents to help support a development, by monitoring and advising on compliance during the construction phase, but the Association believes that the current planning regime limits their effectiveness. NPF4, therefore, provides an opportunity to improve the status quo so as to make the role more effective and to positively influence and incentivise the construction industry to improve environmental performance and to help protect the special character of our natural heritage and environment.

For the purposes of transparency, the Association is currently working with SEPA, SNH, a representative from the Heads of Planning Scotland (HoPS) and the Civil Engineering Contractors Association (CECA) to improve the effectiveness of the ECoW. We have also recently partnered with the Institute of Environmental Management (IEMA) to work on an affiliated project regarding developing quality in the ECoW role and engaging with stakeholders to define the role with them.

Aims

The Association considers the aims of this NPF4 consultation paper to be:

- Strengthening policies that help protect the environment by deterring bad construction practices, incentivising good practice by encouraging innovation in the construction industry, through the effective appointment, and implementation, of ECoWs. This is considered to include providing clearer scope, appropriate resources and reporting mechanisms for ECoWs during the planning stage, so the role is more effectively appointed and implemented during construction.
- Providing a stronger regulatory regime / framework for monitoring environmental performance with more effective feedback mechanisms, to influence and control environmental performance. This should make provision for greater accountability of developers and contractors and strengthen the enforcement powers by planning departments and other regulatory bodies.

Objectives

The Association's objectives of this NPF4 consultation paper are:

- For ECoWs to be commonplace on construction sites; and
- Defining the role of an ECoW in NPF4, including independent commissioning / appointment.

Challenges

The main challenges of existing issues that the Association considers to limit effectiveness of current environmental compliance which stem from the existing National Planning Framework are:

1. Local Planning Authorities (LPAs) have seen increasing workloads and a reduction in specialist staff (the Association of Local Government Ecologists lists only 4 out of 32 LPAs in Scotland as having an ecologist) which means that the LPA planners are relying on the Environmental Impact Assessment Report (EIAR) assumptions that conclude there will not be a significant impact, usually through the provision of mitigation. Sometimes that mitigation will include a commitment that an ECoW will be appointed to help the developer manage and minimise potential environmental effects during construction.
2. Whilst an ECoW may be proposed as mitigation, the scope, role and resources are not stipulated and are left to the developer, or contractor, to propose. In a competitive and commercial industry, this is considered not to be an effective model and, therefore, the role is poorly scoped and resourced. This includes early consideration and planning of relevant qualifications and experience of an ECoW in relation to site environmental sensitivities and risks. This may include establishing an ECoW team and not just an individual ECoW.
3. ECoWs are usually appointed directly by the developer or the contractor. The Association believes that for an ECoW to monitor compliance effectively and provide advice, the role needs to be independently

commissioned from the developer, or contractor, otherwise a conflict of interest is created, whereby they are monitoring, and reporting, on their own compliance. The role must also be given the appropriate autonomy and status so that it can more easily influence decisions made at construction sites.

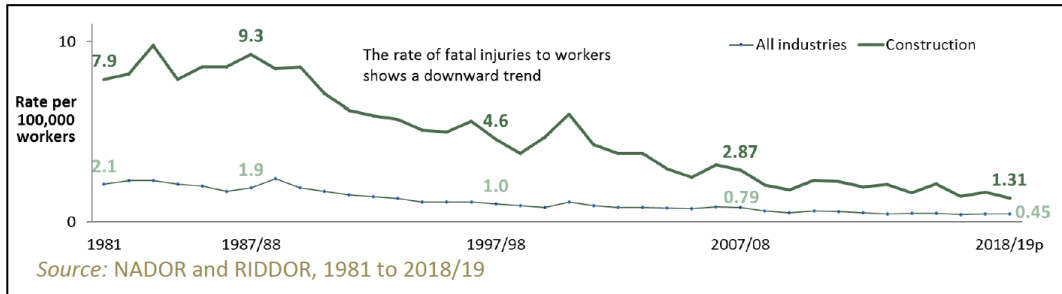
4. A recent study identified that an Environmental or Ecological Clerk of Works was required as part of the planning consent conditions in only 59 of a total 11,000 decision notices. Therefore, the proposed mitigation (of ECoWs) is often not transferred through to the planning consent and it relies on contractual documents (EIARs) to capture the requirement of an ECoW, which reduces the potential effectiveness of the role.
5. There is frequent confusion and disagreement in the planning and construction industry about the role of an ECoW, which limits the effectiveness of it and, therefore, also potential positive effects it could have on protecting the environment.

Opportunities and Recommendations

The Association has identified the following opportunities and recommendations in NPF4:

- Increased planning enforcement during construction by third party auditing, such as an ECoW. This has been evidenced as being the most effective model for increasing environmental compliance²³.
- Greater accountability of developers and contractors for when things go wrong through strengthening regulatory regime, as per the health and safety (H&S) sector and CDM Regulations. Figure 1 shows how mortality rates at construction sites have improved in response to improvements in the following H&S Regulations:
 - Health and Safety at Work Act 1974
 - Construction (Health, Safety and Welfare) Regulations 1996
 - Construction (Design and Management) Regulations 2007
 - Construction (Design and Management) Regulations 2015

Figure 1: Mortality Rates for all industries and Construction Sites



It was when directors were made personally accountable for fatal injuries, when the mortality rates were reduced even further and the Association will lobby for similar amendments in planning and environmental legislation.

- Define, and embed, the role of an ECoW in NPF4 to support its effectiveness.
- Require the ECoW role to be standard practice on construction and engineering projects, particularly where significant risks to the environment exist.

² Chousa, et al, 2017. *Managing Reputational Risk through Environmental Management and Reporting: An Options Theory Approach*. Sustainability. MDPI

³ Ding, et al. 2019. *The Impact of Environmental Administrative Penalties on the Disclosure of Environmental Information*. Sustainability. MDPI.

Summary

The Association considers that the lack of the definition of an ECoW in national planning framework means that the role can be a tick box exercise, which is poorly understood and implemented, to the detriment of our natural resources and environment.

The construction industry has yet to go through a culture shift similar to the H&S industry. It is known that more effective environmental monitoring and accountability in construction (which the H&S sector has been subject to) will increase compliance, and the effective and independent provision of an ECoW role is a major part of that.

If the ECoW role is not embedded and defined in NPF4, the lack of checks and balances that it could otherwise provide during construction will continue to affect the environment adversely and erode the environment, natural resources and fragile habitats. This will contribute to further degradation of our natural heritage, which will in turn contribute to adverse impacts on food, drink, tourism, energy and financial services and the overall quality of life for Scottish citizens as well as our unique biodiversity and natural resources.