

**Draft Final Report      R&D Project 293**

**Efficiency and Effectiveness  
of Planning Activities**

**Michael Parker Associates  
November 1991**

**R&D 293/1/S**

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**Additional Copies**

Further copies of this document may be obtained from Regional R&D Co-ordinators or the R&D Section of NRA Head Office.

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## 1. INTRODUCTION

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### Background

- 1.1 In March 1991, the NRA commissioned Michael Parker Associates to undertake a Research and Development Project (No. 293) to examine the efficiency and effectiveness of its planning liaison activities. As a Catchment Appraisal and Control Topic (No. C3), the study's overall objective is to analysis the efficiency and effectiveness of current planning liaison procedure in relation to NRA objectives and to recommend courses of action to ensure that its flood defence interests are protected.
- 1.2 It is accepted that the NRA's planning liaison function does not only seek to protect and promote the concerns of flood defence, but is instead, a multi functional activity which seeks to ensure that all the NRA's various interests are considered in consultations with planning authorities and others involved in the development process. Thus, while the prime objective of this project is to consider how flood defence matters can be protected and promoted, this cannot be achieved without a more general examination of the purpose and role of the NRA's planning liaison function.
- 1.3 To this end, while this report seeks to concentrate on flood defence issues, much of its contents, conclusions and recommendations apply to planning liaison procedures in general and will be relevant to the other functional interests.

### Methodology

- 1.4 This study has been undertaken by Michael Parker Associates, a firm of consultants based in Lewes, East Sussex, who specialise in town and country planning matters including planning applications, appeals and development plan representations as well as planning based research projects.
- 1.5 The Project Manager (Mr. M. D. Pickup) and author of this report, is a Chartered Town Planner who prior to becoming an Associate with Michael Parker Associates, worked for a number of years as a Planning Liaison Officer with the Southern Water Authority. Having also worked with a local planning authority, the Project Manager benefits from a detailed knowledge of planning legislation and the development process as well as a working knowledge of the NRA's planning liaison function together with relevant NRA regulations and controls.
- 1.6 The survey information contained in this report was compiled following a series of meetings with planning liaison and flood defence personnel at the NRA's 10 regional offices between April and July 1991. These have been referred to as '*regional project meetings*' throughout the report. The type of information sought and matters discussed at the meetings were structured by a survey questionnaire (reproduced in Appendix 1) which in most cases, was circulated prior to the meetings together with a copy of the 'Project Investment Appraisal'. The information obtained from these meetings was subsequently supplemented by additional information forwarded by planning liaison officers.
- 1.7 As well as the regional project meetings, interviews also took place with planning liaison staff involved in the processing of planning consultations to examine and discuss methods and procedures used in each region.

- 1.8 Other information contained in this report followed a desk study of government legislation and advice. Where relevant and appropriate, the report seeks to complement two other planning liaison based studies commissioned by Severn Trent and Thames regions.

#### The Status of the Report

- 1.9 This document is a draft consultation report intended for internal circulation, discussion and feedback from the 10 NRA regional offices and NRA Head Quarters. Copies of this report have been forwarded to relevant regional personnel and the Director of External Affairs. All personnel who attended the various regional project meetings have been informed of the names of regional personnel who have been forwarded a copy of this report. The final report will take account of any comments received prior to its publication and circulation in January 1992. Any comments should therefore be returned to the Project Leader as soon as possible and at the latest by 6th December 1991.

- 1.10 Comments should be returned to:

Mr. R. A. Hopkins, Senior Planning Liaison Engineer, NRA Southern Region,  
Guildbourne House, Chatsworth Road, Worthing, West Sussex, BN11 1BR.  
Tel: 0903-820692. Fax: 0903-821832.

- 1.11 It is intended that the final project report shall be circulated to Regional Managers and National HQ for consideration of the implementation of the report's recommendations.

#### The Report Layout and Structure

- 1.12 The first part of this project report examines the objectives and need for the NRA's planning liaison function with particular emphasis upon flood defence activities and conservation duties under Section 8 of the Water Act 1989. This part of the report sets out the planning liaison function within the context of existing statutes, government circulars, byelaws and other regulatory controls which govern its effectiveness within the framework of Town and Country Planning.
- 1.13 The second part of the report sets out nature of planning control and the constraints imposed upon the NRA in pursuing its interest through the planning system and the opportunities provided by development plan consultations.
- 1.14 The third part of the report examines various regional planning liaison structures and procedures for processing planning consultations in terms of the mechanism of consultation, speed of response, quality of response and monitoring of decisions.
- 1.15 The final part of the report contains conclusions and recommendations as to the best practice to ensure the NRA makes effective and efficient consultation both in protecting and promoting its various interests as well as meeting obligations and deadlines imposed by existing statutes. In particular, the report contains recommendations which seek to ensure the NRA's flood defence interests are safeguarded and promoted in the development process.

#### Acknowledgements

- 1.16 Thanks are extended to all those NRA staff who provided invaluable assistance in compiling the information contained in this project report. For reference purposes, and to aid inter regional contact a list of NRA planning liaison contacts is contained in Appendix 2.

## 2. THE PURPOSE AND NEED FOR PLANNING LIAISON BY THE NRA

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### Objectives of Planning Liaison

- 2.1 Upon its establishment in September 1989, the NRA had vested in it extensive statutory powers and responsibilities making it one of the strongest environmental protection agencies in England and Wales. Its responsibilities and functions are aimed at safeguarding and enhancing the natural water environment. These include flood defence, water quality regulation and pollution control, water resources, fisheries, recreation and conservation. In some regions the NRA also has navigational responsibilities.
- 2.2 The potential impact of new development is of prime concern to the NRA in the exercise of its duties and responsibilities and is central to its planning liaison function. The main objective of planning liaison is to provide an effective and efficient procedure whereby all matters relating to the planning and developing of land which affect the NRA's interests, are taken fully into account by planning authorities and the Department of the Environment (DOE) in decisions made about proposed development.
- 2.3 Planning liaison objectives stated by the NRA's Anglian, South West and Thames regions are to:-
- o Protect the water environment from any detriment due to development.
  - o Protect surface and ground water resources from pollution and derogation arising from development.
  - o Protect new development from the risk of flooding and existing properties from any worsening of flood risk due to new development.
  - o Conserve and enhance the water environment in conjunction with development and prevent harm.
  - o To identify increased demands for NRA services such as flood alleviation and the provision of water resources.
  - o To protect existing water based recreation and promote new schemes.
  - o To protect existing NRA installations and structures from any detriment due to development.
  - o To protect the NRA's own land and estate interests.
- 2.4 Throughout the NRA's ten regions these objectives are achieved by seeking to influence:-
- i) Planning policies formulated by County, District and Borough Councils in the production of development plans for their areas (i.e. Structure Plans, Unitary Development Plans, Local Plans and informal planning guidance such as Development Briefs).
  - ii) planning authority and DOE decisions on individual sites when planning applications are submitted for their development or redevelopment.
  - iii) Developers at the pre-application stage of the planning process.

### The Need for Planning Liaison

- 2.5 The NRA's statutory regulations and controls are far reaching. Consent is required for foul sewage, trade effluent and surface water discharges (under the Water Act 1989), licences are required to impound or abstract water (under the Water Resources Act 1963) and various fishing and fisheries consents are required (under the Salmon and Fresh Water Fisheries Act 1975).
- 2.6 The NRA's flood defence and land drainage controls are embodied in the Land Drainage Act 1976 and regional byelaws made under the provisions of Section 34 of the Act. Essentially, the Land Drainage Act and regional byelaws provide the NRA with powers to control:-
- i) The erection of structures in, over or under main rivers (or the repair of any such structures) if likely to affect the flow of water in the watercourse (Section 29).
  - ii) The construction of any culverts or control structures affecting the bank, bed or flow of non-main rivers (Section 28).
  - iii) The diversion, piping or filling of any watercourse (Section 28).
  - iv) Operational works and tree/shrub planting near the flood banks of a main river (the width of control stated in regional byelaws varies between 5 and 10 metres).
  - v) Operational works to or near sea defences (again, regional byelaws vary but range from 5 to 15 metres of the landward side of such defences).
  - vi) The disturbance or excavating of any material (excluding normal cultivation) near sea defences (up to 250 metres of the landward side).
- 2.7 In addition, Section 1 of the Land Drainage Act places a duty upon the NRA to exercise general supervision over all land drainage and flood defence matters within England and Wales.
- 2.8 On the face of it therefore, it might seem that the NRA has a wide range of controls to enable it to regulate new development irrespective of the powers of local authorities under the Planning Acts. This is far from the case in practice however, as despite the plethora of regulations available, the NRA remains largely dependent upon the town and country planning system to control some important aspects and consequences of new development.
- 2.9 Where a proposed new development is likely to infringe upon or compromise NRA interests, and the NRA has insufficient powers of its own to mitigate against such adverse effects, it is reliant upon making representations to planning authorities (or the DOE in some instances) if it wishes such proposals to be either amended, approved subject to conditions or refused.
- 2.10 The protection and promotion of many of the NRA's functional activities are dependent upon (or complemented by) powers of planning authorities and the DOE under town and country planning legislation. At the regional project meetings, NRA planning and flood defence staff were asked to consider areas of concern where the NRA's flood defence interests are largely dependent upon planning authorities/DOE taking NRA representations into account in making their planning decisions. Those identified and discussed comprised;

- o The Control of Surface Water Run-off
- o The NRA's Powers to Carry Out Flood Prevention and Alleviation Works
- o Development in Flood Risk Areas (Tidal and Fluvial)
- o Conservation Duties
- o River/Flood Defence Catchment Planning and River Corridor Policy
- o Global Warming

A) The Control of Surface Water Run-Off

- 2.11 NRA consent is needed to discharge water to a watercourse in order to control and limit any potentially polluting substance (i.e. the 'quality' and not 'quantity' of discharge). Land drainage consent is also required for any works or the erection of structures (e.g. a headwall) which may impede the flow of a receiving watercourse.
- 2.12 The NRA does not however, have any direct powers of its own to regulate and control increased volume and rates of surface water discharge to watercourses (with the exception of some regional byelaws e.g. Southern, which require land drainage consent to "alter or permit to be altered the level of water in the main river"). This can obviously have important consequences if a site's development involves the construction of buildings, roads, paths, car parks, yards and other new hard areas which will increase both the amount and rate of surface run-off. This is particularly the case in the development of '*green field*' sites.
- 2.13 Increased volume and rate of surface water discharge from a developed site can have a direct effect upon any receiving watercourse and an indirect effect upon others within the river catchment. Thus, such development may cause localised flooding or exacerbate existing flooding problems elsewhere within the drainage catchment.
- 2.14 Difficulties may also arise where a developer intends to discharge surface water to soakaways but subsequently, after being granted planning consent, finds that soakaway tests fail to meet local authority building regulation requirements. This may then result in additional surface water run-off being discharged to a ditch or watercourse.
- 2.15 In such cases, the NRA normally recommends to the planning authorities that development should not be permitted unless the local authority/DOE is satisfied that the proposed development will not cause or exacerbate flooding problems. It is common regional practice for the NRA to recommend to planning authorities that either:-
- i) Planning conditions are imposed to ensure that the developer provides adequate balancing facilities to regulate surface water flows from the site.
  - ii) The developer undertakes improvement works to a receiving watercourse or agrees to make a financial contribution to meet the costs of upsizing any flood alleviation scheme in the NRA's Capital Works Programme.
  - iii) The applicant undertakes a drainage study to identify the potential impact of the development upon a receiving watercourse or river catchment together with means of overcoming any such adverse effect (prior to the application being determined).
  - iv) Or where soakaways are proposed, that tests are undertaken prior to planning consent being granted to enable the planning authority to satisfy itself that this means of surface water drainage would be effective.



Where soakaways would be ineffective and balancing facilities or river improvement works would not overcome flooding problems (for example where flooding results from 'tide locking' of watercourses) the NRA may object to a development and recommend to the planning authority that the development should be refused. Such an objection may be withdrawn if alleviating works can be carried out (for example the upsizing or provision of a surface water pumping station) and developer agrees to meet the cost of any such works and pay a contribution towards future maintenance.

- 2.17 Therefore, unless the NRA makes appropriate representations to the planning authorities and these are subsequently incorporated into planning decisions, there are no controls available to the NRA to prevent additional surface water being discharged to a watercourse following a site's development. Furthermore, the NRA's general supervisory duty is largely exercised through its planning consultation and liaison arrangements with local planning authorities.

B) NRA's Powers To Carry Out Flood Prevention and Alleviation Works

- 2.18 The NRA has permissive powers to carry out flood alleviation works on watercourses, classified by MAFF as 'main rivers'. MAFF grant support can be obtained to enable the NRA to carry out capital works on an en-mained watercourse where there is a high priority and urgent need to alleviate existing flooding. Grant support can also be obtained to build and repair sea defences to protect low lying coastal areas.
- 2.19 The NRA does not have any permissive powers to carry out works on unclassified (non-main) rivers (as under the provision of Section 97 of the Land Drainage Act, these are vested with local authorities) nor does it have authority to undertake works to mitigate potential flooding which might result from new development. In both cases, the NRA is dependent upon local authorities and the town and country planning system to ensure that drainage/flood alleviation works are undertaken and to a satisfactory standard, and that if works are required to facilitate new development these are funded by the applicant or a development agency.

C) Development in Flood Risk Areas (Tidal and Fluvial)

- 2.20 One of the NRA's main responsibilities is to seek to protect lives and property from the dangers and damage arising from flooding, so as well as seeking to ensure that proposed development does not exacerbate existing flooding problems or create new ones, the NRA also seeks to ensure that proposed development is not itself at risk from flooding (both tidal and fluvial).
- 2.21 The NRA's powers to control development in flood risk areas are again limited to those contained in the Land Drainage Act 1976 and regional byelaws concerning main rivers and sea defences, but the views of NRA staff who attended the regional project meetings varied as to the degree of control available over development in flood plains and other flood risk areas.
- 2.22 A narrow interpretation of the NRA's powers under Section 29 of the Act is that consent for structures and works is confined to the main river itself (i.e. between its banks) and that such powers do not apply to development in the flood plain (unless covered by regional byelaws). A wider interpretation is that Section 29 (sub Section 2) requires consent for the erection or alteration of any structure which has an effect of containing or diverting flood water of any part of a main river.

- 2.23 Thus, while the term "main river" is defined in Section 8 (3) of the Act in a way limited to its channel and banks, a Section 29 (2) indicates that consent is required for structures which "divert the flood water of" and not just "in" main river. In its wider interpretation, some NRA regional staff consider that land drainage consent is required for all works on the flood plain which have an effect upon diverting flood flows.
- 2.24 Subject to any definitive legal conclusions as to which is the correct interpretation of the Act, the NRA's control is limited to advising planning authorities on flooding implications of development proposed in flood risk areas. The final decision to grant or refuse planning consent rests with the planning authority and therefore, in order to control development in flood risk areas, it is essential to ensure that good working relationships are developed and maintained between the NRA and the planning authorities
- 2.25 Furthermore, most regional byelaws do not require land drainage consent for the filling of part of a flood plain if it is granted planning consent (this also includes development which is deemed to be approved under the GDO i.e. so called "permitted development").
- 2.26 Generally, the NRA seeks to oppose any development within areas which are known to be at risk from flooding either from rivers or the sea. This is particularly the case if the proposed development site has a low standard of flood protection or is subject to regular flooding, and/or is in a flood plain (or wash land area) where its development would obstruct the flow of flood water and/or reduce the amount of flood storage available.
- 2.27 The NRA may object to small scale development and filling within flood plains in view of the possible cumulative effect which might arise if other similar proposals are permitted. Thus, while a development proposal may in itself have only a very limited effect upon the flood plain when considered in isolation, the precedent created, and the cumulative effect of other small scale proposals may have a significant long term impact in reducing flood storage capacities and diverting flood flows. Precedent and the cumulative effect of development can be valid reasons for refusing planning permission but the planning authority would need to be satisfied that other similar development would be likely and the cumulative effect would cause environmental harm.
- 2.28 The NRA is less likely to object if a developer is able to improve the standard of flood protection (without exposing other property to increased risk of flooding), and/or provide evidence to show that the flood flow area will not be reduced and/or the developer is able to provide compensatory flood storage.
- 2.29 Where a flood risk is more limited or where it would be difficult to resist the development (for example the redevelopment of land along an already developed river frontage) in some regions the NRA will recommend to the planning authority that if they are minded to grant permission, the finished floor levels of the development should be no lower than a specified height. In other regions however (e.g. Northumbrian), the NRA will not recommend specified flood levels in order to avoid any possible legal claims against the authority if the development subsequently floods. In such cases, while indicating to the planning authority that the site may be the subject of flooding, the planning authority is left to determine appropriate finished floor levels.

- 2.30 Other difficulties occur where no detailed information is available regarding past flood levels although the proximity of a site to a watercourse or tidal sea defence might suggest that the site may be at risk from flooding. In such cases, the NRA usually considers that it is its duty to inform the planning authority of a probable flood risk although the NRA is not in a position to provide detailed information to support the planning authority's decision to impose relevant planning conditions or refuse the development. In some instances (albeit rare) the NRA has persuaded planning authorities to require the applicant to undertake local investigations prior to determining applications to satisfy the local authority that the site will not be subjected to flooding or that the consequences of any such flooding can be overcome.
- 2.31 In coastal areas where low lying land or marsh land may be subject to periodic flooding or risk of flooding from the sea, development is generally resisted where the depth of flooding could be to the height of a flood tide. Permanent and even holiday homes and caravans are usually opposed by the NRA in such areas (for example in Anglian region). Where such flooding would be dispersed over a wider area and to a lower level, the NRA (eg Southern region) may permit development subject to there being no single storey development or alternatively, a means of escape to and from the roof. In all such areas, the NRA will seek to ensure that development does not have any adverse effect upon the integrity of sea defences.
- 2.32 In some circumstances the NRA may object to new development in low lying flood risk areas because of increased NRA resources that would be needed to provide an adequate flood warning service and the lack of available emergency service cover. The NRA may for example object to holiday caravans, or other residential development being located outside areas covered by existing flood warning services.

D) Conservation Duties

- 2.33 The Water Act 1989 has significantly consolidated, strengthened and extended the NRA's conservation role as Section 8 of the Act provides it with a duty "*to further the conservation and enhancement of natural beauty and the conservation of flora and fauna*" when formulating or considering any proposals relating to its functions. While the NRA is not dependent upon the planning system in order to implement its conservation duties in the same way as those matters identified in the preceding paragraphs, this duty nevertheless impinges upon planning consultations with local authorities and was consequently the subject of some discussion at the regional project meetings.
- 2.34 In formulating its own proposals and schemes, or in determining those made by others which require NRA consent (or licensing), there is a clear and specific duty for the NRA to consider the conservation implications of such works or operations. In considering land drainage consents for example, the NRA has a duty not only to consider the land drainage/flood defence implications but also has a duty to consider whether proposals will conserve and enhance the environment of rivers.
- 2.35 Having taken legal advice, the NRA has interpreted that Section 8 imposes a similar duty when considering proposals (i.e. planning applications) submitted to local authorities for which (under planning legislation) there is a statutory requirement for the NRA to be consulted (under the provisions of Article 18 of the Town and Country Planning Act General Development Order 1988). It is less clear whether there is also a duty placed upon the NRA to consider the conservation aspects of other '*non-statutory*' planning application consultations or proposals included within local authority development plans which are referred to the NRA for advice and comment.

- 2.36 Despite the 1989 Code of Practice on Conservation, Access and Recreation produced jointly between the DOE, MAFF and the Welsh Office (Statutory Instrument No 1152) and draft conservation guidelines produced by the NRA HQ, there remains some confusion and differences between various regions concerning the implementation of the NRA's conservation duties in response to local authority planning consultations.
- 2.37 This in part stems from the degree to which each region considered its conservation duties when determining land drainage consent applications. Clearly, whether or not the NRA is prepared to grant land drainage consent for proposed work to or close to a watercourse or sea defence can have a material impact upon the layout or development of a site which is the subject of a planning application. When consulting on planning applications, it is general practice for all NRA regions to inform a planning authority firstly, where it appears the applicant may also require land drainage consent and secondly whether, in the absence of any modifications to the planning application, such land drainage consent is likely to be granted.
- 2.38 Some regions tend to pursue a firm line in administering conservation duties in relation to land drainage consent. For example in Thames region, there is a very strong presumption against the granting of land drainage consent for any culverting works due to the harm caused to the ecology of watercourses. In the Northumbrian region however, land drainage consent may be granted to culvert polluted or 'problem' watercourses such as those in urban areas between rear gardens which tend to be used as dumping grounds for garden waste, etc.
- 2.39 Thus, while all NRA regions are well aware of their general conservation duties under Section 8 of the Water Act 1989, their response to planning consultations tends to vary between regions. While this, together with those matters raised in paragraph 2.35 above, might benefit from further investigation, this is considered to be beyond the terms of reference and scope of this particular project.

not a  
\* Commit  
view  
being  
taken.

E) River/Flood Defence Catchment Planning and River Corridor Policy

- 2.40 With increased conservation and recreation duties imposed under Section 8 of the Water Act 1989, the NRA is developing a 'proactive' rather than 'reactive' response to development proposals. In particular the NRA is developing 'Catchment Management Plans' and 'river corridor policies' (although some NRA regions are far more advanced with this than others).
- 2.41 Whereas in the past, planning authorities (and developers) have viewed watercourses as a constraint to development proposals, the NRA's recent promotion of river corridor policies has helped establish the view that a watercourses is an asset which can enhance individual sites and built-up areas as a whole. Many of the NRA staff interviewed recognised that within the context of the planning system, considerable potential exists to promote such policies especially in response to planning consultations regarding development plans produced by local authorities. As planning authorities are responsible for formulating and implementing development plans, they are ideally placed to promote the protection and enhancement of river corridors as environmental buffers between developed areas of land or as 'green lungs' providing opportunities for recreational facilities and increased public access perhaps in the form of pedestrian and cycle links, picnic areas, open space, amenity landscaping and wildlife reserves.

- 2.42 In considering run-off from development, the NRA seeks to provide advice to planning authorities and developers as to how this can best be achieved without causing or exacerbating flooding or harming the environment of rivers. Various NRA regions are developing strategies for surface water disposal in conjunction with planning authorities in their allocation of land in development plans. This is being achieved by the development of computer modelling of river catchments and the production of '*River Catchment Plans*' which identify existing constraints within river catchments and can model the effect of proposed development.
- 2.43 The formulation and incorporation of policies in planning authority development plans to take account of rivers and flood plains is central to the NRA's promotion of river catchment planning and river corridor policies and consequently, this requires and depends upon a close working relationship and co-operation between the NRA and planning authorities.

F) Global Warming

- 2.44 While the consequences of global warming was not canvassed at the regional meetings in relation to this project, the matter was raised during the meeting with Northumbrian region.
- 2.45 There is increasing evidence to suggest that the so called "*greenhouse effect*" is and will continue to lead to higher rises in sea levels. This in turn will increase the frequency of flooding from the sea unless sea defences are raised or the level of land behind them is raised.
- 2.46 The consequence of global warming could therefore, have a significant effect upon developed coastal areas and along tidal lengths of rivers. The feeling in the Northumbrian region is that the NRA should make local authorities aware of the possible consequences of rises in the sea level when consulted on planning applications and development plans.
- 2.47 In view of the extensive flooding and damage along the South Coast caused by violent storms in October 1987 and February 1990, the greenhouse effect is clearly an important matter but one which again falls outside the remit of this particular project. This may need to be the subject of further investigations by the NRA with a view to formulating regional or national policy and advancement of this policy through local authority planning consultations in areas at risk from tidal flooding.
- 2.48 There is also the view put forward that, since future climatic change due to global warming may result in wetter winters and drier summers in the UK, the NRA should be investigating how to apply the appropriate precautionary principle in its response to development, particularly in terms of strategic planning. Again, this important consideration falls outside the remit of this project.

### 3. THE PURPOSE AND FUNCTION OF THE BRITISH PLANNING SYSTEM

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#### Background

- 3.1 Section 2 of this report has identified some of the areas where the NRA's flood defence function is dependent upon the planning system to protect its interests with regard to new development. The NRA in responding to local authority planning consultations must similarly be aware of the purpose of the planning system, its control and the constraints placed upon planning authorities in determining planning applications and formulating planning policies.
- 3.2 From discussions at the regional project meetings, it is evident that most NRA planning and flood defence staff involved in dealing with planning consultations had a good working knowledge of the purposes of the planning system and the constraints placed upon the NRA in pursuing its interests through town planning legislation. It was also evident from these meetings, however, that few regions employ qualified town planners to help and advise the NRA in response to planning consultations and only one region (Severn Trent) provides specific training on planning matters for its planning liaison staff and planning liaison consultees (for further details see Appendix 3). The NRA's South West, Thames and Yorkshire regions have also recognised this need and have organised, or are in the process of organising similar training courses.
- 3.3 Therefore, in considering the efficiency and effectiveness of the NRA's planning consultations, it is important to establish and consider briefly the procedures and parameters within which the NRA can influence planning decisions.

#### The Role and Purpose of the British Planning System

- 3.4 The British planning system has evolved from the need to regulate and control the development and use of land in the public interest. Essentially, in administering planning controls, local authorities and the DOE seek to strike a balance between the need for development and the need to protect and enhance the built and rural environment.
- 3.5 A fundamental requirement of the planning system is that 'development' may not be undertaken without the grant of planning permission. 'Development' is defined in the planning legislation as "the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of buildings or other land"\*. Thus, the term 'development' as used in this report is as that defined in the planning acts.
- 3.6 If planning consent is deemed to be required for a proposed development, the planning authority in determining the application must have regard to the provisions of any development plan (where relevant) and to "any other material considerations". These can be wide ranging and any matter which relates to the use and development of land is capable of being a material planning consideration.

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\*Footnote: The Planning and Compensation Act 1991, will also require planning consent for other "building operations" including the demolition or structural alteration of some residential buildings, which are not already subject to demolition control.

3.7 During the regional project meetings, a number of NRA staff identified difficulties with some planning authorities who consider that comments made by the NRA in planning consultations are not material planning considerations which can reasonably be taken into account by them in determining planning applications. Generally however, as '*guardians of the water environment*' acting in the public interest, by far the majority of the NRA's concerns about development as set out in planning consultations, are material and directly relevant to the purpose of planning legislation.

3.8 As will be examined elsewhere in this report, the aims of ensuring proper drainage of land and minimising flood risks are material planning considerations which should be taken into account by planning authorities (and the DOE) in determining development proposals. Indeed, although planning application forms are not standardised throughout the country, most require the applicant to submit relevant information to show that a proposed development can be satisfactorily drained of both foul sewage and surface water. Furthermore, as will be considered in this Section, planning authorities have a statutory duty to consult the NRA on development directly affecting watercourses and they are advised to consult the NRA on development proposals in flood risk areas. Government advice also indicates that planning conditions can be imposed which seek to regulate and control draining matters.

#### The Legislative Planning Framework

3.9 Planning legislation is now contained in the Town & Country Planning Act 1990. This Act together with the Planning (Listed Buildings and Conservation Areas) Act 1990, The Planning (Hazardous Substances) Act 1990, and The Planning (Consequential Provisions) Act 1990, comprise the third consolidation of planning legislation since the introduction of the present system of planning control in 1947. The two previous consolidations were the Town and Country Planning Acts of 1962 and 1971.

3.10 The 1990 legislation repeals all previous acts (apart from transitional provisions contained in Planning (Consequential Provisions) Act 1990) and the Town & Country Planning Act 1990 (the Principal Act) came into force on 24th August 1990. Some of the provisions of the 1990 Act have now been replaced however, by those contained in the Planning and Compensation Act 1991 which received Royal Assent on 25/7/91 (see paragraph 3.44).

#### Legislative Instruments

3.11 Much of the detailed administration of the planning acts is set out in subordinate legislation in the form of Statutory Instruments, Regulations and Orders. One of the most significant as far as NRA planning consultations are concerned is the Town & Country Planning General Development Order 1988 (hereafter referred to as the '*GDO*').

3.12 To ensure that all "*material considerations*" are known to planning authorities prior to determining applications, the GDO places a duty upon them to consult various public bodies on planning applications which may affect their interests. Article 18 of the GDO (reproduced in Appendix 4) specifies six types of development upon which there is a statutory duty for planning authorities to consult the NRA. These comprise:-

- o Development involving or including mining operations - Article 18 (1)(j)
- o Development involving the carrying out of works or operations in the bed of or on the banks of a river or stream - Article 18 (1)(o)
- o Development involving the use of land for the deposit of refuse or waste - Article 18(1)(q)

- o Development for the purpose of refining or storing mineral oils and their derivatives - Article 18(1)(p).
  - o Development relating to the retention, treatment or disposal of sewage, trade waste, slurry or sludge (with some exceptions including septic tanks and cesspools serving single dwellings or buildings in which not more than ten people will normally reside, work, or congregate) - Article 18 (1)(r).
  - o Development relating to the use of land as a cemetery - Article 18 (1) (s).
- 3.13 As the types of development set out in Article 18 are described in a general form there may be occasions where it is difficult to distinguish those applications which should be referred to the NRA for consultation and those which should not. The GDO is clear however that it is for the planning authority and not the consultee to decide which applications are and are not relevant. Thus, it is a matter for the planning authority to determine whether the NRA should be consulted and while this could be challenged by judicial review (if the LPA can be clearly shown to be totally unreasonable or misdirected) and perhaps result in the planning permission being quashed, the use of this procedure is most unlikely in practice given that it is retrospective, lengthy and expensive.
- 3.14 The GDO requires that planning authorities shall not determine applications until the NRA has had 14 days in which to respond to statutory planning consultations. The 14 day period commences from the 'date of notice' given to the consultee but the GDO does not provide any precise definition as to when the 14 day period actually commences, i.e. whether the 14 days starts from the date the consultation is received by the NRA, the date dispatched or the date contained on a local authority's covering letter. The GDO in Article 18 (4) (b) merely states that the local authority "*shall not determine the application until at least 14 days after the date on which notice is given*" of the application to consultee.\*
- 3.15 This is of some importance to the NRA as, depending upon the method of consultation, a number of days may be lost due to postal delays. The lack of clarification of the commencement date also leads to confusion in the NRA's monitoring of its performance as some regions monitor the time taken to respond from the date of the local authority's letter, while others monitor from the date of receipt of the consultation (or date entered into a processing system). This matter is considered further in Section 7 (paragraph 7.55).

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\* Footnote: It is interesting to note that in a recent case (ADC Estates Ltd v. Camden London Borough, 1990) the Court of Appeal held that a planning application was made when it was received by the LPA and not when it was posted. The Court ruled that the purpose of an application (and service of various notices with the application) was to communicate information, and that information could not be conveyed until the recipient had received it. <sup>1</sup> It is possible that a legal case could be made to apply this ruling to the 14 day GDO consultation period. By the same token however, it would imply that while a statutory consultation cannot be determined by the planning authority for at least 14 days after the consultation has been received by the NRA, it would also imply the NRA's response should be received by the LPA by day 15.

<sup>1</sup> Source: NRA: Thames Project Report by Roger Tym & Partners



Local authorities are under continuing government pressure to improve the speed of determining planning applications. Government advice contained in Planning Policy Guidance (PPG 1) states that *"the Secretary of State has indicated that local planning authorities should aim to decide 80% of all applications within eight weeks"*. Aware of these performance targets, some local authorities rigidly adhere to the 14 day rule, making it virtually impossible for many NRA regions to respond in time.

- 3.17 A further pressure is that the GDO (Art 23) states that planning applications shall be deemed to be refused if not determined within 8 weeks of being registered by the planning authority. Unless the applicant agrees to an extension of the time period, failure to determine an application within this period can result in an appeal to the Secretary of State against the planning authority's *'non-determination of the application'*.
- 3.18 While some planning authorities rigidly adhere to the 14 day rule, others have agreed, on a non-statutory basis, to allow consultees (such as the NRA) a 28 day response period. Such a recommendation is contained in a document entitled 'Guidelines for the Handling of Planning Applications' produced by the National Development Control Forum (NDCF) which represents the Association of County Councils, the Association of District Councils and the Association of Metropolitan Borough Councils. The 1988 edition of the guidelines (Extract reproduced in Appendix 5) recommends that while the GDO gives a minimum of 14 days for statutory consultations to take place, the NDCF's 1980 Code of Practice lays down 28 days for statutory and non-statutory consultation (from the date of dispatch).
- 3.19 The NDCF's guidelines note that a number of authorities apply a 21 day rule and suggest that whichever period is chosen it should be as short as *"reasonably possible"* with a *"target"* date being made known to the consultee. Furthermore the guidelines advise that even after such a period *"there remain, however, consultees who simply cannot be ignored, for example water authorities where major development in a flood plain is proposed. Essential consultees should be invited to advise the LPA if they expect that they will be late in responding"*.
- 3.20 As will be considered later in this report, many NRA regions notify planning authorities if they are unlikely to be able to respond within the time period given. Indeed, some regions automatically respond if a target response date is exceeded.
- 3.21 The GDO does not give planning authorities any specific basis for disregarding consultations received after 14 days, as it only requires the authority not to determine an application until after 14 days have passed. Circular 22/88 (General Development Order Consolidation) states that *"once the period of notice has expired there is no obligation to delay the application and await comments from consultees, unless an agreement to allow a longer period has been made"* (Appendix C, para 1). Nevertheless, the GDO still requires that *"the local planning authority shall, in determining the application take into account any representations received from a consultee"*.
- 3.22 If a planning authority fails to take account of a consultation received prior to an application being determined and the representation comprises a material planning consideration, the authority's decision could be challenged in the courts (usually by the process of judicial review) but for reasons mentioned previously this is not normally a realistic means of redress.

- 3.23 Therefore in summary, the GDO requires that:-
- i) The planning authority must consult the NRA on six specific types of development and has discretion as to whether an application fits the description of development set out in the GDO.
  - ii) The planning authority must not determine an application until after at least the 14 days have passed since notifying the NRA of such a consultation.
  - iii) The planning authority must take NRA representations into account if they are received prior to the application being determined, regardless of whether a reply is received within 14 days or not.
- 3.24 Another important aspect of the GDO which affects NRA interests is that, in addition to supplementing some of the procedural provisions of the Planning Act, the Order also grants permission for a wide range of development. The principal categories of this so called "*permitted development*" include: householder and other minor works (including extensions to dwellings), temporary land uses, agricultural and forestry development, extension to industrial development and certain development by local authorities and statutory undertakers (including drainage bodies, sewerage authorities and the NRA).
- 3.25 At the regional project meetings, a number of flood defence engineers raised concerns about permitted development rights in flood risk areas. Clearly some permitted development even if relatively small scale can reduce flood storage areas and the cumulative effect of such development can significantly add to difficulties in areas where there are already acute flood risk problems.
- 3.26 The GDO provides power for the Secretary of State or a planning authority to withdraw permitted development rights by making a '*direction*' under Article 4 provided that the Secretary of State is satisfied that it is expedient that development within an area covered by the direction shall not be carried out. A direction under Article 4 may withdraw permission for all or specified classes of permitted development in any particular location or it may be a pre-emptive prohibition in respect of a particular type of development. Such a direction, if made by a planning authority can remain in force no longer than six months unless approved by the Secretary of State and once approved will remain in force indefinitely until cancelled by the authority which made it.
- 3.27 The consequence of such a direction, is that formally permitted development must be the subject of a planning application which will be treated (and determined) in the same way as other applications made for planning consent (although no planning application fee is required).
- 3.28 Limitations are that such a direction has no effect against permitted development carried out prior to the direction coming into effect and importantly, compensation is payable for restrictions imposed upon future development if planning permission is either refused or granted subject to conditions.
- 3.29 Thus, while the NRA could approach a planning authority (or the Secretary of State) to request the issuing of a direction to remove particular permitted development rights in flood risk areas, there would need to be exceptional circumstances and it would rarely be justified unless there is a real and specific threat of danger to life and property.

- 3.30 Similar concerns were expressed about reduced development controls in '*Enterprise and Simplified Planning Zones*' established to stimulate development or redevelopment in economically depressed areas. Many of these areas front main rivers and tidal estuaries and there is a concern that demolition, site clearance and redevelopment may damage the integrity of flood defences, or require works to the structures themselves.
- 3.31 While such designation helps to stimulate new development by minimising normal development control regulations this does not remove the need to consult with the NRA.

Government Circulars and Planning Policy Guidance Notes

- 3.32 There is a range of ways by which government policy and advice is communicated to planning authorities. While such government advice in the form of circulars and Planning Policy Guidance Notes (PPGs) have no direct legal status, their provisions are capable of enforcement through government involvement in decision making in planning appeals, structure plan modifications and local plan recommendations.
- 3.33 Various circulars and PPGs are (where relevant) referred to elsewhere in this project report but DOE Circular 17/82 merits particular consideration as its contents are directly relevant to NRA planning consultations in flood risk areas.
- 3.34 This Circular entitled '*Development in Flood Risk Areas - Liaison Between Planning Authorities and Water Authorities*' was jointly issued by the DOE (Circular 17/82), the Welsh Office (Circular 15/82) and the Ministry of Agriculture, Fisheries and Food (Circular 1/82). A subsequent joint Circular (No 20/89) issued in conjunction with the Water Act 1989 makes it clear (in paragraph 34) that where Circular 17/82 refers to '*Water Authorities*' this should now be read as '*the NRA*'.
- 3.35 Circular 17/82 indicates that while the NRA has some powers to directly control works affecting rivers, these are "*complemented by the wider powers of planning authorities over development which may affect flood control*" (paragraph 3). While the GDO does not include development in flood risk areas within its list of statutory consultations by planning authorities, the Circular emphasises the importance of ensuring that, where land drainage and flood defence matters arise (tidal and fluvial), they are material considerations which local authorities should take into account in determining planning applications\*. "*Development permitted without regard to land drainage [and flood defence] problems can lead to dangers to life, damage to property and wasteful expenditure of public resources on remedial works whether on the development site or elsewhere* (para 4).

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\*Footnote: Circular 22/80 (Development Control - Policy and Practice) also adds (in para 17, Appendix A) that "*Expansion of a town into the surrounding countryside is objectionable on planning grounds if...[inter alia] it conflicts with national policies for the protection of the environment such as those.....relating to flood plains, run-off problems....or water pollution*".

3.36 For convenience this Circular is reproduced in Appendix 6 and its contents can be summarised as follows:-

- i) In addition to statutory consultations contained in Article 18 of the GDO the NRA should also be consulted on planning applications:
  - o where land drainage considerations may arise,
  - o where development is proposed in a flood plain or washland,
  - o where development is proposed in areas susceptible to inundation by the sea or to tidal flooding,
  - o where significant development, including local authority development (such as highway works) or other schemes carried out by government departments or statutory undertakers, may have on-site or off-site drainage implications.
  - o where development on or near a flood or tidal embankment may reduce its effectiveness or seriously impair its proper maintenance,
  - o proposals for caravans and camp sites in flood risk areas.
- ii) When consulted by developers prior to making an application, planning authorities should advise the developer to discuss the proposal with the NRA if there appear to be flood defence/land drainage considerations.
- iii) If the NRA objects to development proposed in flood risk areas, prior to determining the application, planning authorities should consider whether steps can be taken to overcome the objection and ascertain whether the developer would agree to carry out or fund the costs of works considered necessary.
- iv) "*Where time permits*" the advice of the NRA should normally include an assessment of the potential flooding effect downstream and suggest measures (if any) needed to alleviate flood risk.
- v) Planning consent may be refused because of flood risk or held in abeyance while the applicant enters a formal agreement with the planning authority to carry out off-site works.
- vi) While it would be unreasonable to grant planning consent subject to conditions requiring off-site works to be carried out on land which is not under the control of the applicant, permission may be granted where the applicant produces evidence of an agreement between off-site owners to carry out such works.
- vii) Where land is in the control of the applicant it may be appropriate for the planning authority to grant permission subject to development not taking place until certain works have been carried out.

- 3.37 Interestingly, government advice on the need for liaison between planning authorities and land drainage authorities dates back to May 1947 when Circular No 31 was issued by the former Ministry of Town and Country Planning. Although superseded by a subsequent joint Circular issued by the former Ministry of Housing and Local Government and MAFF in 1962 (Circular No. 52/62 - reproduced in Appendix 6 together with Circular 31/47) and latterly by joint Circular 17/82, Circular 31/47 drew the attention of planning authorities to *"the importance of maintaining the closest liaison with the local land drainage authority, not only from the point of view of land drainage but also in the interests of planning itself"*.
- 3.38 In the appended 'Note on Land Drainage Considerations', the 1947 Circular suggested that *"wherever possible there should be sufficient space alongside a watercourse to allow for widening and the passage of excavating and earth moving equipment and to make possible works of maintenance, access to drainage works and watercourse and the deposit of spoil"*. Furthermore, the Circular stressed the importance of retaining flood plains (or *"flood reservoirs"*) and washlands to ensure that drainage problems are not aggravated by new forms of development and that *"Drainage authorities will be able to indicate lands which in their view shall remain undeveloped and available for use as flood reservoirs or washlands"*.
- 3.39 Circular 52/62, issued to *"reiterate and reinforce"* the advice contained in Circular 31/47, noted that under the provisions of the drainage acts, drainage authorities were able to control the erections of structures in, over or under main rivers and on the banks of such watercourses *"but the powers necessarily stopped short of encroachment on the wider powers of planning authorities. Apart from the provisions just described which enabled drainage boards to exercise limited means of control through byelaws and other means, development in flood plains and washlands is subject to normal planning control"*.
- 3.40 Thus in 1991 the situation is much the same as it was when planning legislation was formulated in 1947. These Circulars emphasise the importance the government attaches to land drainage/flood defence matters and the need to ensure that proper consultation takes place and such material considerations are taken fully into account by planning authorities in determining development proposals. Given this longstanding government concern it is surprising and puzzling that development affecting flood risk areas is not included as one of the statutory NRA consultations contained in Article 18 of the GDO.
- 3.41 The importance of such consultation with the NRA has been highlighted by recent incidents of flooding throughout England and Wales. The serious flooding caused by the breaching of the sea defences along the North Wales coast (around Towyn) in 1990 led to an inquiry from which the government's Welsh Affairs Committee recommended that the advice contained in Circular 17/82 should be updated and revised to remind local authorities to take account of comments made by the NRA concerning development in or affecting flood risk areas.
- 3.42 The D.O.E. have subsequently formally consulted the NRA on its views, prior to issuing revised guidance. Regional views are currently being canvassed, and the response coordinated, by NRA Headquarters.
- 3.43 The revision and re-issuing of this Circular clearly provides the NRA with a valuable opportunity to strengthen previous advice given to planning authorities regarding such planning consultations. In particular there is an opportunity to:
- i) State a general presumption against development in flood risk areas and stress the importance of land drainage and flood risk as material planning considerations and the need for planning authorities to take full account of these matters prior to determining planning applications.

- ii) Emphasise that the NRA has only limited public funds available to undertake flood defence schemes and that developers will be expected to meet the full costs of schemes needed to facilitate any new development.
- iii) Include consideration of the greenhouse effect and global warming in relation to development in areas of risk from tidal flooding.
- iv) Reflect the NRA's increased responsibility to consider conservation and the enhancement of the water environment.
- v) Advise planning authorities to consult the NRA at an early stage of the preparation of a development plan as at present, there is no statutory requirement or published advice indicating that the NRA should be consulted on such plans.
- vi) Restate that the NRA should be given a reasonable period within which to respond to all planning consultations.

#### Future Changes to the Planning System

- 3.44 The new Planning and Compensation Act 1991 (hereafter referred to as the '1991 Act') which received its Royal Assent during the writing of this project report, supplements and replaces some of the provisions contained in the Town and Country Planning Act 1990. Some of its provisions are already effective while others are expected to be phased in during the next twelve months (see Circular 14/91: Planning and Compensation Act 1991).
- 3.45 Where relevant, the provisions of the 1991 Act are explained further elsewhere in this report, but essentially, this legislation seeks to strengthen the operation of the planning system by placing greater emphasis on the importance of development plans and makes practical changes to development control, appeal and enforcement procedures.
- 3.46 Development control procedures will be streamlined by enabling;
- i) planning authorities to turn away repetitive planning applications submitted within two years of an unsuccessful appeal,
  - ii) the Secretary of State to dismiss appeals unduly delayed by appellants,
  - iii) developers to enter into unilateral undertakings where planning authorities are unwilling to enter planning agreements.
- 3.47 Of particular interest to the NRA, the 1991 Act also makes a contribution to existing environmental controls by requiring planning consent for some types of demolition and fish farming (for which the NRA will be either a statutory or advisory consultee). Furthermore, the requirement for environmental assessments will be extended and all development plans will be required to contain policies for the "*conservation of the natural beauty and amenity of land*".

3.48 With this new legislation will come other subordinate, enabling legislation together with the publication of new and revised Circulars and PPG's. In order to implement many of the provisions of the 1991 Act, the current GDO will need to be revised and it is understood that NRA HQ are currently making representations to increase the list of development for which the NRA is a statutory consultee (a copy of the current proposals are reproduced in Appendix 7).\*

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\*Footnote: These schedules form only part of the NRA's consultations submitted to the DOE as proposed revisions to Circular 17/82 and other DOE consultation documents.

## 4. THE NATURE OF PLANNING CONTROL

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- 4.1 The previous Section set out the framework for NRA planning consultations within the British planning system. This Section considers the nature of planning control and the constraints imposed upon the NRA in pursuing its interests through the planning system.

### Planning Applications

- 4.2 Essentially, planning applications are the means by which planning authorities implement development control. There are a variety of special types of application (eg listed building consent, advertisements, tree felling, removal or non-compliance with planning conditions, etc) but the general applications of relevance to NRA planning consultations are those for 'full' and 'outline' planning consent.
- 4.3 There is no nationally prescribed form of application although model forms have previously been issued by the DOE and have (with some variations) been adopted by most planning authorities. The 1988 Town Planning Regulations Order (SI No 1812) requires that applications should be made on a form issued by the planning authority, should include particulars required by the form and should be accompanied a site plan and details necessary to describe the development.
- 4.4 The amount of information submitted with an application (both in terms of written details and drawings) is of some importance to the NRA and difficulties often arise and delay is caused where such information is incomplete or inadequate. Common examples are where the proposed means of drainage is described in application forms as "to existing system" or "as existing". Further difficulties are caused where there is insufficient information (eg the number of dwellings proposed or number of industrial units) to enable the NRA's flood defence engineers to assess the possible implications of increased run off.
- 4.5 Difficulties of this type are most common in relation to 'outline' applications. Such applications were introduced by the GDO of 1950 and allowed planning authorities to give a decision in principle subject to a condition requiring that 'reserved matters' are submitted for subsequent approval. An outline application can however only be made to erect buildings and a full or 'detailed' application must be made for changes of use of land, engineering or other operations.
- 4.6 Reserved matters are defined in the GDO (Article 1 (2)) as any of the following; siting, design, external appearance, means of access and landscaping proposals. Planning applications for reserved matter approval must be submitted within three years of the date of planning consent (or the period specified in the consent) and there is a statutory right of appeal against the Council's refusal of any reserved matter.
- 4.7 It is important to note that in determining outline planning applications, any conditions relating to any other than a 'reserved matter' must be imposed when the outline consent is granted. The only conditions which can be imposed upon a reserved matters application (following outline consent) are those which directly relate to the reserved matter itself. Therefore as drainage does not comprise a reserved matter any drainage condition must normally be imposed at outline consent stage. Exceptions may occur where the siting, means of access or landscaping are reserved matters and subsequent details show that unless planning conditions were imposed these aspects would have a direct effect upon the site's drainage or upon the drainage of land further downstream, or have an effect upon other matters such as river or sea flood defences.



- 4.8 The fact that an applicant need not provide such details as access, siting of buildings and landscaping as part of an outline planning application sometimes causes difficulties for the NRA in knowing whether or not to recommend imposing drainage conditions on any outline consent. Furthermore without such details the NRA may not be able to determine whether the site might be adequately drained or result in exacerbating flooding problems downstream or causing flooding problems elsewhere.
- 4.9 While the applicant need not give details of any reserved matter in submitting an outline planning application, if the planning authority are of the opinion that the application cannot be determined without them, they can require the applicant to submit full details of any or all reserved matters (GDO Article 7 (2)). In the same way, the planning authority might direct that an applicant should provide additional information regarding a full or detailed application. It follows therefore that if an application contains insufficient details for the NRA to be able to assess the drainage consequences of a proposal, the planning authority can be asked by the NRA to direct that the applicant provides the relevant information. If such information is not forthcoming from the applicant, the planning authority could either withhold its decision or refuse an application on the basis that insufficient information has been provided to enable the planning authority to take account of all material considerations.
- 4.10 It should be added that the applicant has a right of appeal either against the Council's non-determination or refusal and although planning authorities have broad powers to require additional information, they have been urged by the DOE to use such powers sparingly and "*only if the information is indispensable in reaching a decision*" (Circular 22/80 paragraph 9).
- 4.11 If it appears to a planning authority (in England and Wales) that a proposal is likely to have a particularly significant environmental effect, the local planning authority can direct the applicant (private developer or public body) to submit an '*environmental statement*' to enable an '*environmental assessment*' of the proposals.
- 4.12 The types of development which require such environmental statements are set out in the Town and Country Planning (Assessment of Environmental Effects) Regulations 1988 (SI No. 1199) which implement European Community Directive No. 85/337. The provisions of these Regulations are explained in DOE circular 15/88.
- 4.13 The NRA is actively involved in assisting planning authorities in evaluating environmental statements, especially as the procedure aims to prevent the creation of pollution or nuisance at source, rather than subsequently trying to counteract their effects. Circular 15/88 states "*The information provided by the developer is to be published and authorities with relevant environmental responsibilities and the public are to be given an opportunity to express an opinion about the project. The information collected in this way is to be taken into consideration in the decision making process*" The local authority then has 16 weeks (i.e. not the normal 8 weeks) from the date the environmental statement is submitted to determine the application.
- 4.14 Extracts from the Regulations setting out the types of development requiring environmental assessments are reproduced in Appendix 8 together with Appendix A of Circular 15/88 which provides further clarification and indicates that such an assessment may be required for "*new drainage and flood defence works*".
- 4.15 It should be noted that the involvement of the NRA in environmental assessments is the subject of another R & D project (No. FO1.06.91) currently being undertaken by the University College of Wales, and therefore this matter does not warrant further consideration here.

### Reasons for Refusal

- 4.16 Government guidance contained in PPG1 (paragraph 15) states that *"there is always a presumption in favour of allowing applications for development, having regard to all material considerations, unless the development will cause demonstrable harm to interests of acknowledged importance"*. Furthermore, *"except in the case of any inappropriate developments in the green belt, a developer is not required to prove the case for the development he proposes to carry out; if the planning authority consider it necessary to refuse permission, the onus is on them to determine clearly why the development cannot be permitted."*
- 4.17 In refusing planning applications, perhaps as a consequence of NRA objections, Article 7 of the GDO requires local authorities to give reasons which are:
- o complete
  - o precise
  - o clear
  - o specific
  - o and relevant (both to the application itself and to the purposes of planning legislation)
- 4.18 Under the Planning Acts there is statutory right of appeal against a planning authority's decision to refuse a planning application. \* If a Council's reasons for refusing a planning application are subsequently challenged and they fail to produce reasonable planning grounds for their decision at a Public Inquiry, the DOE may order the Council to meet the appellant's costs incurred in defending one or all of the reasons for refusal. Thus each reason for refusal must be fully justified by the planning authority and each must stand alone as a reason for refusing the development.
- 4.19 This has an important bearing upon whether or not a planning authority is willing to refuse an application at the recommendation of the NRA. The planning authority must firstly satisfy itself that the NRA's concern is a material planning consideration and is relevant to the planning application and secondly they must satisfy themselves that the reason for refusal is sustainable upon appeal. This will be considered in further detail later in this Section together with the possibility of appeal costs arising from 'unreasonable behaviour'.

### Planning Conditions

- 4.20 In permitting planning applications, Section 70 of the 1990 Planning Act gives discretion to planning authorities to attach *"such conditions as they think fit"*. Limitations do apply however and fundamental principles are that conditions can only be imposed for *'planning purposes'*, and they must reasonably relate to the development permitted by the planning consent.
- 4.21 By virtue of the requirements of Article 25 of the GDO a planning authority is also required to state reasons for imposing each condition. An insufficient or vague reason can in itself imply there is no justification for a particular condition and a condition imposed without a stated reason is invalid.

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\*Footnote: It should be noted that under the provisions of Sections 17 and 47 of the 1991 Act, a planning authority may decline to determine a repeated application if submitted within two years of a dismissed appeal. There is no further right of appeal against the planning authority's decision.

4.22 Government advice contained in Circular 1/85 (The Use of Conditions in Planning Permissions) and elsewhere, is clear that limitations imposed through planning conditions may enable a development proposal to proceed where it would otherwise have been necessary to refuse planning permission. Furthermore, conditions can be imposed not only upon land within an application site boundary but also upon other land outside the application site (usually in close proximity) provided that such land is in control of the applicant. Any conditions imposed 'run with the land' (unless made personal to the applicant) and therefore restrictions imposed by conditions remain in force when the development is completed and applies to subsequent landowners and tenants.

4.23 As with the refusal of a planning application, there is a statutory right of appeal to the Secretary of State against the imposition of planning conditions and further applications can also be made to planning authority to vary, remove or seek non-compliance with a particular planning condition. It should also be pointed out that non-compliance with a planning condition is not in itself unlawful as the planning authority has discretionary powers to determine whether or not to take any enforcement action against any breach of a planning condition.

4.24 Circular 1/85 states that planning conditions should only be imposed if they are:-

- o Necessary
- o Relevant to planning
- o Relevant to the development permitted
- o Enforceable
- o Precise
- o Reasonable in all other respects.

4.25 It is common for all NRA regions to recommend to planning authorities that drainage and other matters should be controlled by the imposition of appropriate planning conditions if they are minded to grant consent for the proposal. Some regions go further and actually draft planning conditions together with reasons for imposing the condition (see paragraph 8.36). It is therefore important that the six tests set out in Circular 1/85 are considered carefully by the NRA in promoting the imposition of planning conditions. Clearly, a planning authority is much more likely to impose a condition recommended by the NRA if it meets all these tests and the planning authority understands fully the reason why the NRA wishes such a condition to be imposed.

A) Need

4.26 The Circular states (in para 12) that "*in considering whether a particular condition is necessary, Authorities should ask themselves whether planning permission would have to be refused if that condition were not to be imposed. If it would not then the condition needs special and precise justification*". The fact that a particular condition will do no harm is no justification for its imposition and a condition should not be imposed unless there is a definite and justifiable need for it.

4.27 A similar test is whether it would be expedient to enforce against a breach of the condition - if not, then the condition is unnecessary.

B) Relevance to Planning

4.28 A planning condition is '*ultra vires*' if its requirements go beyond the objectives of planning control. In other words a planning authority cannot impose a condition which is designed to achieve something which is not a material planning consideration.

4.29 The Circular also makes it clear that a condition is unnecessary and should not be imposed if it merely duplicates the controls of other legislation and is unreasonable if it conflicts with other statutory controls.

4.30 Thus, if the NRA have powers to control development for example under land drainage / flood defence byelaws, such matters should not (normally) also be the subject of planning conditions. Lord Denning (in *Pyx Granite Co. Ltd. v Ministry of Housing and Local Government*) ruled that:- "*the planning authority are not at liberty to use their powers for an ulterior object however desirable that object may seem to them to be in the public interest.*" Furthermore, planning conditions cannot be imposed to require the applicant to comply with land drainage byelaws or the requirements of the Land Drainage Act 1976. Where regional land drainage/flood defence byelaws are themselves overridden by the grant of planning consent (for example in the filling of a flood plain) it may nevertheless be appropriate to impose a planning condition otherwise the power to control the development under other legislation would be lost due to the benefit of planning consent. Thus, it may be appropriate in some circumstances to permit the use of land in a flood plain (for example as a car park) subject to the ground levels not being raised to ensure there is no harmful effect upon loss of flood storage or diversion of flood flows.

4.31 A condition may also be justified to prevent the proposal giving rise to onerous requirements under other powers of legislation. Thus, in certain circumstances, it may be appropriate to impose conditions to secure pollution control measures notwithstanding that the NRA has the powers to take legal action against anyone causing pollution. Such pollution control measures may be particularly relevant in ground water gathering areas where although the NRA has the power to fine polluters, any incident may have significant consequences for water resources in both the short term and the long term.

C) Relevance to the Planning Consent

4.32 Unless a condition fairly and reasonably relates to the development permitted it is *ultra vires*. While the objectives of a planning condition may be desirable in planning terms, the need for the condition must be created by the development proposed. Thus, a drainage condition could not be imposed which seeks to benefit other land users or development which is not the subject of the application applied for.

4.33 Conditions can, however, be imposed to protect an existing situation (e.g. to ensure that satisfactory access to a watercourse is retained where drainage byelaws do not apply). They can also be imposed to control the effect of development e.g. flood protection measures for adjoining land, even though the development itself is not directly affected.

D) Enforceability

4.34 A condition is without effect if it cannot be enforced by the planning authority. A planning condition is unenforceable if it is difficult to monitor or detect any infringement. Any enforcement action (which again is the subject of a statutory right of appeal) also requires clear evidence that a breach has taken place and that '*demonstrable harm to a (planning) interest of acknowledged of importance*' has resulted or is likely to occur.

E) Precision

- 4.35 A planning condition must be clear and concise in its requirement. Conditions which require specific action or works should state clearly what is required and when this should be undertaken. For example a condition requiring that *"a drainage scheme shall be submitted for approval for the local planning authority"* is vague and incomplete and would fail the test where as a condition on the following lines could be imposed; *"the development shall not be commenced until the means of surface water drainage have been completed in accordance with details previously submitted to and approved by the local planning authority"*. Equally conditions should not be open ended or vague in their requirement. Thus, a condition requiring a developer to carry out *"any necessary drainage works required"* would be *ultra vires* as the applicant would be unable to ascertain what is required in order to comply with such a condition.

F) Reasonableness

- 4.36 A planning condition may be unreasonable even if precisely worded, enforceable and properly construed within planning powers. A condition will be unreasonable if it unduly restricts or nullifies the benefit of a planning consent. If a planning authority considers that a proposed development cannot take place without such a limitation then the only option left is to refuse consent.
- 4.37 This is particularly relevant where a development may require works to be carried out on land outside the application site over which the applicant has no control at the time planning permission was submitted. If off-site works are required (as is commonly the case for drainage and flood defence works) a suitable enabling condition should not be imposed unless the planning authority is satisfied that the applicant has sufficient control over the land to carry out the works required. It is unreasonable to impose a condition which the applicant has no power to carry out. Such a condition could be open to a successful challenge on appeal.
- 4.38 It may however, be possible to overcome this difficulty by imposing a condition worded in a 'negative' form which prohibits development until specific works have been undertaken. While such works need not necessarily be in the direct control of the applicant, there must be a reasonable prospect of the works being carried out within a reasonable time period. Circular 1/85 advises:- *"the reasonableness of such requirements will in all cases depend on the likelihood of the precondition being fulfilled within such time as to enable the development to be commenced within the time limit imposed by the permission"* (i.e. the life of the permission which is normally five years).
- 4.39 Such negatively worded conditions requiring off-site works to be carried out prior to either the development of the site commencing or being occupied have become known as 'Grampian style conditions' following the House of Lords case concerning Grampian Regional Council v City of Aberdeen District Council in 1984. This case suggests that a negative condition may be used to achieve any legitimate planning objective relevant to the application notwithstanding it may not be within the power of the applicant to achieve.
- 4.40 A planning condition could therefore be imposed to prevent a development being occupied until a sewage works had been extended or similarly that development is not commenced until land drainage / flood alleviation works have been completed, but in both cases the works would need to have been programmed to take place within a reasonable time period to ensure that there is a reasonable prospect of the works being carried out. Otherwise development may have to be refused as being premature to the improvement or provision of off-site infrastructure. Other model conditions regarding drainage (set out in Circular 1/85) are reproduced in Appendix 9.

- 4.41 It is also worth noting that, while there is generally a presumption against such limitations, conditions can be imposed which restrict development otherwise permitted by the General Development Order or changes of use permitted within the Use Classes Order 1987 (which prescribes limitations of changes from one use to another).

#### Informatives

- 4.42 Informatives do not impose limitations on a planning consent but merely provide the applicant with information which is relevant to the development of the site, for example, information may note other statutory consents which may be required prior to development taking place (e.g. Listed Building Consent or Land Drainage Consent etc).
- 4.43 Informatives are normally appended to planning decision notices, although some local authorities actually append a copy of the letter received from consultees such as the NRA. Such informatives are seen by the NRA as an important means of making a developer aware of other consents required in addition to planning consent. At the regional project meetings however, it was apparent that some planning authorities objected to performing a 'post box' function in forwarding NRA information to prospective developers. Others on the other hand have no objection to including a copy of the NRA's response letter with a decision notice forwarded to the applicant. Examples of correspondence regarding this matter are reproduced in Appendix 10.

#### Planning Agreements

- 4.44 Section 106 of the Town and Country Planning Act 1990 (formally Section 52 of the 1971 Planning Act) provides a means by which planning authorities can negotiate with developers (and vice versa) to form legal agreements as a consequence of granting conditional or unconditional planning consent.\* Agreements entered into under the provisions of this Act can only be with persons with a direct interest in the land in question and only for the purposes of "*restricting or regulating the development or use of the land*" (Section 106). Wider powers for local authorities are available under Section 111 of the Local Government Act 1972, to enter agreements "*to facilitate, or is conducive or incidental to, the discharge of any of their functions*". Section 33 of Local Government (Miscellaneous Provisions Act 1982) extends the covenants to any successor in title to the original parties.
- 4.45 The use of planning agreements as a means of overcoming many of the restrictions to the development control machinery has become increasingly widespread during recent years. Planning agreements are widely regarded as being essential for achieving planning objectives which seek to regulate the development or use of land or require the transfer of land or financial contributions which could not be achieved by the use of planning conditions or other planning procedures. As such, the use of planning agreements is vital to securing NRA interests in the control of development.

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\*Footnote: The Planning and Compensation Act 1991, now supplements Section 106 of the 1990 Act by adding provisions for an applicant (or appellant) to offer a '*planning obligation*' as a unilateral undertaking (Section 12 of the 1991 Act). Such planning obligations will be by a deed registered as a local land charge under the Local Land Charges Act 1975. Any such person "*against whom a planning obligation is enforceable*" may, after 5 years, make an application for the objection to be modified or discharged if it "*no longer serves a useful purpose*", to which there is a right of appeal if refused.

- 4.46 The use of planning agreements has been controversial and criticised with accusations that planning authorities have engaged in the '*sale of planning permission*' in exchange for extraneous '*planning gain*' which may benefit either the local authority concerned, other public bodies or the general public at large, but with little relevance to the proposed development itself. Alternatively, a developer may offer or agree to onerous terms of an agreement to influence a planning authority to grant planning permission perhaps contrary to planning policies. The strong economic pressures derived from the value of land created by the granting of planning consent (which underlines negotiated planning control) can, if improperly used, result in harmful development being permitted.
- 4.47 Government advice on the use of planning agreements where public or other benefits are derived from a development proposal is set out in Circular 22/83. The advice states that "*wholly unacceptable development should not of course be permitted just because extraneous benefits offered by the developer*" (para 4).
- 4.48 This Circular (and PPG1) requires that requirements included in an agreement should be reasonable. This will depend upon:-
- i) Whether the agreement is needed to enable the development to proceed e.g. the provision of adequate "*water supply and sewerage and disposal facilities*" (para 6(1)).
  - ii) Whether financial payments are needed to "*contribute to meeting the cost of providing such facilities in the near future*" (para 6 (7)).
  - iii) Whether the provision of facilities relate to the development.
  - iv) Whether an agreement is needed to secure an acceptable balance of land uses.
- 4.49 A further test of reasonableness is whether the extent of what is required or sought is actually related to the development proposed:- "*Thus while the developer may reasonably be expected to pay for a contribution to the cost of infrastructure which would not be necessary but for his development, and while some public benefit may eventually accrue from this, his payments should be directly related in scale and kind to the benefit which the proposed development will derive from the facilities to be provided*" (para 7). Thus, financial payments via a legal agreement will be unreasonable unless the need for the facility or expansion of any existing facility "*arises wholly and substantially from that new development*" (para 8).
- 4.50 PPG1 (para 26) states that with the exception of enforceability, all the tests relevant to planning conditions also apply to legal agreements. Additionally, as there are no statutory rights of appeal against the requirements imposed by a completed agreement, matters which can properly be covered by planning conditions should not be included as part of a legal agreement. Furthermore, a developer cannot be required to enter into an agreement by means of a planning condition nor is the developer obliged to enter any agreement proposed by a planning authority. If a planning authority holds out for such an agreement, a developer may appeal against non-determination of the planning application.
- 4.51 The Circular states that "*where an appeal has arisen because of what seems to the Secretary of State to be an unreasonable demand on the part of the Local Planning Authority in such a case, and an Inquiry has been held, they will consider sympathetically an application which may be made for the award of costs*".

- 4.52 Discussions at the regional project meetings suggest that the NRA takes a reasonable and responsible approach if there are technical objections to a development which could be overcome by a negotiated agreement. Thus, the NRA will not normally seek an agreement with a developer merely because a proposal provides an opportunity to extract some other extraneous public benefit which may be of interest to the organisation. This pragmatic approach provides the NRA with important credibility in negotiating legal agreements with planning authorities and developers. In this way, the planning authority and the developer can be confident that where the NRA seeks an agreement it is absolutely necessary in order to protect an aspect of the water environment and that without such an agreement the NRA could produce strong evidence of harm in support of its objection.
- 4.53 In terms of flood defence and land drainage, the NRA normally seeks agreements under the provisions of the Planning Act in order to ensure a developer undertakes works (usually off-site works) and that these are completed to a satisfactory standard.
- 4.54 Alternatively, a development proposal may give rise to a need to upsize a capital works scheme programmed by the NRA (or other drainage body) such as a river improvement scheme, the lengthening or reinforcing of tidal defences, flood defence schemes etc. Thus, a legal planning agreement provides a means for the NRA to obtain funding from a developer (or number of developers) to undertake works to cater for the needs that arise from the proposed development. Given that limited public funds are available to enable the NRA to carry out all flood defence and other schemes it (or the public at large) may consider necessary, capital spending can only be used on schemes for which there is high priority to reduce flood risk to life and property. Where a scheme is programmed, but has a low priority, as well as securing a financial contribution from the developer to upsize the scheme, the NRA may also seek a financial contribution (perhaps 100% of the scheme costs) to bring it forward in its capital programme (in other words, the developers pays for increasing the priority of the scheme).
- 4.55 Therefore, developers' contributions for capital works in connection with main river and sea defences are only sought by the NRA where there would otherwise be an objection to the development i.e. there must be sufficient technical grounds for seeking such a contribution.
- 4.56 Some NRA regions are able to enter agreements directly with developers under the provisions of previous water authority legislation e.g. Southern Water Authority Act, the Anglian Water Authority Act etc. This may be preferable to planning agreements under Section 106 of the Planning Act as the NRA has direct control in drafting and enforcing the terms of such agreements.
- 4.57 In south-west Wales (NRA Welsh region) problems were encountered where a local authority drafted legal agreements for developers to contribute funds towards a flood alleviation scheme. Unfortunately due to an oversight in the drafting of the agreement it seems that no date was indicated as to when the contribution should be paid and to-date, only one financial contribution has been received. \*



- 4.58 If the NRA pursues a '*private agreement*', it nevertheless remains dependent upon the planning system firstly to be made aware of the development proposal and secondly because in order to enter a private agreement, a holding objection needs to be forwarded to the planning authority to ensure that planning consent is not issued prior to the agreement being completed. Otherwise, if planning consent is granted, the NRA has lost its lever to require the developer to enter the agreement (as the opportunity to object to the planning application has been lost). Once planning consent is granted, a private legal agreement can only be completed through the goodwill of the developer, and while this may be forthcoming in some cases (e.g. where the developer is a large volume house builder with many existing or potential dealings with the NRA) this cannot be relied upon.

#### The Call In Procedure

- 4.59 The Secretary of State (DOE) may intervene in a planning authority's decision-making process as he may issue directions to restrict the grant of planning permission (under the GDO) or he can direct that the application should be '*called-in*' for government rather than local authority determination.
- 4.60 This is an important procedure which can be of value to the NRA if they are aware that a local authority is likely to grant permission for a development notwithstanding the NRA's objection. In such instances, the NRA can request the Secretary of State to call-in an application and take the decision making power away from the local authority.
- 4.61 The Secretary of State is however only likely to call-in an application if it, or its effect, is of strategic significance (i.e. of more than local importance) or the proposal is a departure from an approved development plan. If an application is called-in it is likely to be treated in the same way as a planning appeal (although the local planning authority is normally on the same side as the appellant).
- 4.62 While this procedure seems to be rarely used by the NRA, the NRA's Welsh region (south-east area) was successful in persuading the DOE (Welsh Office) to refuse an application, against a local authority's original intention which was to permit the application. The NRA's Severn Trent region has also been successful in persuading the DOE (Welsh office) to call-in an application to tip in the flood plain of the River Severn (the outcome of which is still awaited). The success of the NRA's intervention in both these cases (which is documented in more detail in Appendix 11) clearly relied upon a good working relationship with local authority planning officers and careful monitoring of the progress of the application as the call-in procedure cannot be used once planning consent is granted.

#### Planning Appeals and Costs

- 4.63 The appeals process is fundamental to the planning system and one in which all NRA regions have regular involvement. The NRA may support a planning authority in their reasons for refusing an application or may be involved in the appeal as an objector on its own behalf i.e. as a '*third party*'.
- 4.64 The appeal procedure is important in that it not only gives an individual the right to challenge a local authority decision but it also provides a safeguard against arbitrary decisions made at a local level, provides a forum for public involvement (mainly through public inquiries) and provides the Secretary of State with a means of supervising local development control decisions in the light of national planning policies (i.e. government circulars, guidance etc).

- 4.65 An appeal may be by means of written representations, informal hearing or public inquiry and the statutory procedures, as summarised in the Table reproduced in Appendix 12 (see also Circulars 11/87 and 10/88), are contained in three sets of regulations: The Town and Country Planning (Inquiries Procedure) Rules 1988 (SI No. 944), The Town and Country Planning Appeals (Determination by Inspectors) (Inquiry Procedures) Rules 1988 (SI No. 945) and the Town and Country Planning Appeals (Written Representations Procedures) Regulations 1987 (SI No. 701).
- 4.66 In determining an appeal, the Secretary of State (or Inspector appointed on his behalf) will consider not only the planning authority's reasons for refusal but also any other material considerations. Thus, even if an application has not been refused for reasons requested by the NRA, the DOE must take account of all representations as if the application were made to it in the first place. It is therefore important that even where a planning authority does not include the NRA's objections as a reason for refusal, that the NRA still pursues its interests if there is an appeal. Furthermore, while the NRA may not object to an appeal proposal subject to the imposition of relevant planning conditions, it is important that the NRA submits representations to the DOE in order to ensure that such conditions are imposed if the appeal is upheld.
- 4.67 When reasons for refusal are included on a decision notice at the request of the NRA, these are usually of a technical nature unlike other planning objections which may be of a much more subjective nature e.g. loss of residential amenity or over-development. When the NRA objection is of a technical nature, the developer may often seek pre-appeal negotiations to try and overcome the objection and offer to carry out works or fund such works if the reason for refusal is withdrawn. In such cases, the DOE will normally require evidence that such an agreement (or planning obligation) is in place prior to disregarding any relevant reason for refusal.
- 4.68 This approach, while in itself eminently reasonable (as it would be unreasonable for the NRA to pursue its objections if an agreement can be reached for these to be overcome), is sometimes frowned upon by local authorities who may feel that the NRA's previous support for the refusal of an application added weight to the other reasons for refusal. Thus, concern is sometimes expressed when a reason for refusal is withdrawn by the NRA after having originally requested it. Nevertheless as stated in the preceding paragraphs, all reasons for refusal should stand alone and the withdrawal of one reason for refusal should not prejudice the Council's appeal case (unless of course it is the only reason for refusal).
- 4.69 In cases where no agreement can be reached at the pre-appeal stage either because no approach is made to the NRA or there are no technical solutions to overcome the NRA's objection, all NRA regions confirm that they would produce evidence in support of their objection. Indeed, a planning authority will not normally include NRA objection as a reason for refusal unless they are satisfied the NRA has sufficient evidence to defend such an objection.
- 4.70 The provision of a statement of evidence in support of any such objection is not only important in sustaining the NRA's future credibility in dealing with the planning authority concerned, but failure to produce adequate evidence can, if dealt with at a public inquiry, result in an award of costs either against the local authority or against the NRA as a third party. Moreover, the planning authority may (especially if they are uncertain about the strength of the NRA's case) ask the NRA to confirm a willingness to meet any costs arising as a consequence of an objection (i.e. the appellant's costs which arise in defending such an objection).

- 4.71 This was a question asked at all regional project meetings and the response varied. Some indicated that they thought that in such cases the NRA was morally obliged to offer to meet any successful claim by a developer for costs attributable to an NRA objection while others (e.g. South West region) have stated that they consider all such costs should be borne by the planning authority as they are the body with the executive powers to determine the application. In order that the NRA are consistent in their approach on this matter this may need to be the subject of further investigation perhaps with NRA HQ producing some national guidelines.
- 4.72 The concept of an award of costs is an important one and provides parameters for reasonable behaviour by planning authorities, developers and third parties involved in the appeal procedure. Costs can only be awarded however in the case of public inquires and not in association with either informal hearings\* or written representations appeals (except in the case of enforcement appeals). Furthermore costs are only likely to be awarded if both of the following circumstances apply:-
- i) That evidence has been produced by one party against another party to show that it has acted 'unreasonably';
    - a) In pursuing an appeal (for example if the application is the same as a previously refused appeal and there has subsequently been no material change in any of the circumstances);
    - b) By not providing sufficient evidence in support of a reason for refusal or late withdrawal of a reason for refusal;
    - c) In that the behaviour of one party has unnecessarily extended or delayed the appeal proceedings;
  - ii) That sufficient evidence has been produced that the claiming party has suffered additional expense as a consequence of i) above.
- 4.73 Tests of unreasonableness are set out in Circular 2/87 (entitled Awards of Costs Incurred in Planning and Compulsory Purchase Order Proceedings). If the Secretary of State (or Inspector appointed on his behalf) is satisfied that one of the parties have acted unreasonably and this has caused additional expense to another party, a full or partial cost may be made against the offending party.
- 4.74 It is important to note that while costs may be awarded against one party for unreasonable behaviour, the final decision on the planning application may also be in favour of the unreasonable party. In a case in the NRA's South West region, where the planning authority did not include the NRA's objection as a reason for refusal (and consequently did not include the NRA's objection in their 'pre-inquiry statement'), the NRA only subsequently became aware of the appeal and submitted a late objection. The developer successfully claimed that, as the NRA objection was not included in the Council's reason for refusal, he could not have been expected to anticipate it and as the inquiry had to be adjourned, costs were awarded against losses due to an extended appeal.

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\*Footnote: The 1991 Act extends the power to award costs where, in the view of the Secretary of State, either the appellant or planning authority unnecessarily cause a hearing (or inquiry) to be cancelled (Section 30).

- 4.75 Thus while in this case the developer was successful in his claim and costs were awarded against the NRA (and not the planning authority), the Inspector nevertheless accepted the recommendations of the NRA and, in allowing the appeal, imposed a drainage condition. The Inspector's decision letter is reproduced in Appendix 13. ))

#### High Court Appeals

- 4.76 A decision on a planning application, appeal or an approved development plan can be challenged in the High Court by a 'person aggrieved' on the basis that:-
- i) The determining body has exceeded its legal powers (i.e. those provided by planning legislation) or made a material error of law.
  - ii) The determining body failed to take material considerations into account or those taken into account were irrelevant.
  - iii) There has been a procedural irregularity by the determining body
  - iv) The action is taken within 6 weeks of the determination of the planning application or appeal or the adoption of a development plan.
- 4.77 While this procedure is both expensive and time consuming it may be of importance to the NRA especially if a local authority or government decision is open to legal challenge and either harms one of the NRA's interests or would create an undesirable precedent.

#### The Local Ombudsman

- 4.78 If a planning authority refuses to consult the NRA on a planning application prescribed in the GDO or fails to enforce a condition imposed at the request of the NRA, a complaint of maladministration could be submitted to the 'local ombudsman'.\* While a successful complaint usually results in little more than an apology (with compensation payable in some instances) the avoidance of further adverse publicity for the planning authority involved might result in improved practices in the future. Nevertheless, a complaint to the local ombudsman is very much a last resort and a better course of action is to try and seek improved communications and relations with the planning authority concerned.

#### Compensation for Lost Development Rights

- 4.79 A fundamental principle of the planning system is that no compensation is payable to a land owner for planning restrictions imposed upon the development or use of land. This does not however apply to the continuation of an authorised use or the revocation of a planning consent which carries with it the liability of compensation.

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\*Footnote: It should also be noted that a claim of maladministration may also be made against the NRA failing to make appropriate recommendations to a planning authority (see case involving Anglian region reported in the September 1991 edition of the Journal of Planning and Environmental Law, pages 904 to 906)

- 4.80 Worthy of a brief mention is compensation in respect of 'Purchase Notices'. The Purchase Notice procedure provides an indirect means for securing compensation for planning restrictions by allowing the land owner to require the planning authority to acquire the interest in the land, where planning restrictions have made it "*incapable of reasonably beneficial use in its existing state*".
- 4.81 While such notices are comparatively rare, the procedure is of relevance to the NRA's planning consultations in that restriction recommended by the NRA may result in the land owner asking the planning authority to purchase the land, who may in turn, ask the NRA to purchase the interest. If such a notice is refused, the Secretary of State may require a local authority or the NRA to purchase the land following an appeal.

## 5. NRA DEVELOPMENT PLAN CONSULTATIONS

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- 5.1 Development plans as prescribed by Part II of the Planning Act 1990 (and as supplemented and modified by Part I, Sections 26 and 27 of the Planning and Compensation Act 1991), are a vital part of the framework of planning control. Whilst '*statutory*' development plans have no direct legal impact (as their function is one of guidance rather than prescription) they are becoming increasingly important as their coverage spreads.
- 5.2 Section 26 and 27 of the 1991 Act, gives effect to the government's proposals for a more effective '*plan-led land use planning system*'. These new provisions (due to be introduced shortly) will require all planning applications to accord with development plans unless other material considerations can be shown to be of greater importance.
- 5.3 Thus, in determining planning applications, planning authorities must consider the provisions of development plans and government advice states (in PPGs 1 and 12), that where such plans are up to date and formally approved, considerable weight will be attached to them in determining planning appeals. Indeed, an appellant may be held as acting unreasonably and liable for costs, if an appeal is pursued at an inquiry where there are no other material considerations to over-ride development plan policies.
- 5.4 The formulation of planning policies and development proposals can have a significant and direct effect upon NRA interests as they seek to guide new development over a ten to fifteen year period. In doing so, they take account of conservation interests, measures to protect and enhance the environment as well as infrastructure constraints and that needed to facilitate proposed development.
- 5.5 NRA consultations and involvement in the production of development plans is also important in that it provides a valuable opportunity to pursue a '*pro-active*' response in helping to guide future development in parallel to a '*reactive response*' to individual planning applications.
- 5.6 It is not intended to examine NRA development plan consultations in detail in this report as this is the subject of a separate R & D project currently being undertaken by Middlesex Polytechnic on behalf of the NRA (Project No. 299\*) with a view to promoting NRA planning policies.
- 5.7 The growing awareness of the importance of the NRA's input into local authority development plan making was nevertheless a matter raised during the regional project meetings and subsequently discussed with planning liaison staff. Set against the importance of the NRA's involvement in such consultations is the time and staff resources needed to make an effective response and the backlog such development plan consultations can create in dealing with other more routine planning consultations.
- 5.8 This Section explores some of these difficulties and sets out the nature of development plans as it is apparent that there is confusion among some NRA staff as to the differences between types of plans and consultation procedures involved.

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\*Footnote: For information this project lies in Topic Area C3 and the project leader is Mr A Burch of NRA Wessex Region.

## The Nature of Development Plans

- 5.9 Statutory development plans comprise; '*structure plans*' which are broad policy planning documents concentrating upon strategic issues involved in planning the future of a county or its sub-area; '*local plans*' carry through structure plan policies and translate them into specific policies and proposals for the development of land within a district or smaller area; and '*unitary plans*', which were introduced by the Local Government Act 1985 for Greater London and the Metropolitan areas, are amalgams of structure and local plans.

### A) Structure Plans

- 5.10 Structure plans are prepared by county planning authorities and formally approved by the Secretary of State.\* They comprise a written statement and strategic planning policies and proposals supported by a diagrammatic plan (as it is not intended that policies and proposals should be site specific).
- 5.11 The NRA's input into such plans is therefore of a general strategic nature and as structure plans have now been formally approved for all counties in England and Wales (mostly prior to the NRA being set up in 1989), such consultation is limited to the '*alteration*' or '*replacement*' of existing approved plans.
- 5.12 PPG 15 (Regional Planning Guidance, Structure Plans, and the Content of the Development Plans) suggests that such alterations should concentrate on eight '*key structure plan topics*', none of which are of direct relevance to the NRA notwithstanding the strategic nature and importance of land drainage, flood defence and river corridor policy. While there may be some scope for including such matters in those counties where local plan coverage is limited or insufficient, PPG 15 adds that "*the Secretary of State will consider deleting policies on other topics*" (paragraph 19).
- 5.13 There is however an apparent contradiction within PPG 15 as Annex A (entitled The Content of Development Plans) appears to add "*environmental considerations*" to the list of key structure plan topics and specific mention is made of conservation matters, flood defence and pollution control - all of direct interest to the NRA. Proposals to alter and replace structure plans are therefore likely to remain of importance to the NRA as they will continue to indicate the scale of development provision and growth within a county wide area, the broad locations where such development is intended to take place and those areas of development restraint.

### B) Local Plans

- 5.14 In setting out a County Council's strategic policies and proposals for its area, the structure plan provides a policy framework for the production of local plans (normally produced by District Councils). Local plans comprise a written statement, detailed policies and proposals which are shown on an Ordnance Survey based '*proposals map*' (which may be accompanied by '*inset maps*' showing proposals at a larger scale).

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\*Footnote: This procedure will be changed under the 1991 Act. In future, county planning authorities will have the power to approve and adopt structure plan alterations without the approval of the Secretary of State. The Secretary of State nevertheless retains the right to call in and alter or delete any of the planning policies prior to them being adopted by the planning authority.

- 5.15 As local plans can only be produced within the context of formally approved structure plans, their production has been held back by the lengthy procedure involved and national coverage remains patchy. Government advice set out in PPG 12 (Local Plans) seeks to encourage an increase in the production of local plans to help guide day to day development control decisions especially in areas with strong development pressures.
- 5.16 This advice also stresses that the preparation of local plans should move ahead briskly; *"Where individual decisions are supported by clear up-to-date local plans, consistent with national and regional policies and with the relevant provisions of the structure plan, together with specific and relevant reasons for the particular decision, local planning authorities should find those decisions far less susceptible to successful challenge"* (paragraph 5). In accordance with this advice, and now that the coverage of approved structure plans is complete, many District Councils are preparing local plans for the whole of their area (indeed, this is now one of the new requirements of the 1991 Act) and this in turn has led to a surge in development plan consultations with the NRA in some parts of England and Wales.
- 5.17 At the local plan level, the NRA can offer site specific or area based advice regarding proposed land *'allocated'* for new development as well as identifying areas of development constraint (eg flood plains, washlands, areas at risk from tidal flooding, aquifers and water gathering grounds, etc) as well as promoting river corridor policies. Circular 22/84 (Memorandum on Structure and Local Plans) adds that all such plans should include land use policies and proposals to minimise the impact upon the physical environment including *"policy designed to control pollution"* (paragraph 4.34).

C) Unitary Plans

- 5.18 In Greater London and Metropolitan areas, planning authorities have been preparing *'unitary development plans'* following the issuing of various commencement orders since 1988. The need for such plans arose as a consequence of the abolition of the GLC and Metropolitan Councils which left no upper tier of local government able to undertake and prepare the revision of structure plans.
- 5.19 A unitary plan is a combination of a structure plan and local plan in that its first part provides a general statement with strategic policies while its second part provides detailed policies and site specific proposals which are shown on a proposals map. Such plans provide a radical change in not only tying together structural and local plan type policies but also in covering a different size of area than either structure plans or local plans. For example the former Greater London Development Plan will for instance be replaced by thirty-two unitary development plans prepared by the London Boroughs and therefore in order to ensure a co-ordinated approach, the strategic content needs to be closely monitored by the Secretary of State.
- 5.20 Currently there are a considerable number of unitary plans being prepared by planning authorities and the NRA is consequently heavily involved in consultation on the formulation of various policies and proposals.



#### D) Other Development Plans

- 5.21 Some planning authorities have produced '*non statutory*' or '*informal*' plans in the absence of approved statutory local plans and while these may be used to guide development control decisions, they carry significantly less weight in planning decisions than formally adopted plans.
- 5.22 In some parts of the country where little change is anticipated, a planning authority may give low priority to the production of any type of local plan and in such areas a local plan may not yet have been started. Until such time as statutory local plans are adopted, old style '*Town Development Plans*' (produced under the planning acts up to 1962) will remain effective and constitute a material planning consideration.
- 5.23 In addition to local plans, some planning authorities also produce '*development briefs*' and '*informational planning guidelines*' and whilst these do not have any strategic recognition, they are a means of providing useful supplementary advice on site specific or other detailed matters which it might not be appropriate to incorporate in a local plan. Consultations with the NRA on such informal planning guidelines and development briefs are therefore also of some importance especially if development sites are proposed adjacent to water courses or tidal defences.

#### Development Plan Consultation Procedure

- 5.24 While there is no statutory requirement for planning authorities to consult the NRA on development plans, Annex C of Circular 22/84 advises that consultations on structure and local plans should take place with Regional Water Authorities (i.e. now read as NRA). In addition paragraph 2 of Annex C states "*whenever possible consultees in the above list [i.e. that reproduced in Annex C] should be directed to those aspects of policies or proposals which are likely to interest them particularly. For example ... Regional Water Authorities should be consulted on matters related to land drainage and flooding as well as on drainage and water services generally*".
- 5.25 Similarly Circular 3/88 (Memorandum on Unitary Development Plans) advises (in Appendix A) that the "*Regional Water Authority should be consulted upon unitary development plans*".
- 5.26 The development plan consultation procedure is set out in the Town and Country Planning (Structure and Local Plans) Amendments (Regulations 1987) (SI No. 1760) and the Town and Country Planning (Unitary Development Plans) Regulations 1988 (SI No 134). The various procedures involved in the formulation of such plans are shown diagrammatically in Appendix 14 (reproduced from Circular 22/84 - Annexes I and J).

- 5.27 Essentially, the NRA may be involved in consultations at various stages of the development plan production:-
- i) Prior to publication of a draft plan.
  - ii) Upon the publication of the draft plan for consultation purposes.
  - iii) At the stage when the plan is '*deposited*' with the DOE.
  - iv) Following modification by the Secretary of State or local plan inspector.\*
- 5.28 Planning authorities have a statutory duty to give publicity to development plans and provide an opportunity for representations to be submitted. Normally, planning authorities give the NRA at least six weeks (from the date of the plan's notification) to return any representations. Any representations submitted must be considered by the planning authority and taken into account in proceeding to the next stage of the plan's production.
- 5.29 Circular 22/84 states that planning authorities "*are required to consider representations made during this period but they may additionally consider late representations*" (paragraphs 2.21 and 3.32). Paragraph 3.60 further adds that all objections made to the planning authority within the prescribed six week period must be considered by the planning authority "*providing they are made in writing and state the matter to which they relate and the reasons they are made. The authority may also consider objections made outside that period*".
- 5.30 If the NRA submits representations in response to a consultation draft of a local plan which are not subsequently taken into account in the deposit draft of the plan, the NRA may object and press for such objections to be heard at a local or unitary plan inquiry or at structure plan '*examination in public*'.
- 5.31 All NRA regions confirm that if necessary they would be prepared to produce and give evidence at a development plan inquiry either:-
- i) In support of the planning authority if there are objections to policies and proposals introduced in plans as a result of NRA consultations.
  - ii) In objecting to the plan if NRA advice has not been taken into account in drafting its policies and proposals. This will of course depend upon the importance the NRA attaches to particular representations and whether it considers that serious consequences would arise if the plan is not amended.

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\*Footnote: A shortened procedure was introduced for local plans in 1987 (see Circular 24/87) and in the 1991 Act to allow planning authorities to telescope the preparation period for altering existing approved plans (but not for new plans) where it is considered that the issues involved are not sufficiently important to warrant the full procedure. In the shortened procedure, the first public consultation stage is omitted and the plan may be placed immediately upon deposit. Nevertheless the procedure for public consultation and the reasons for its shortening must be explained to the Secretary of State who can direct that the full procedure should be utilised. Furthermore, the justification for the shortened procedure could be the subject of a legal challenge by any individual through the High Court and this could result in a greater time delay than that actually saved in using this procedure.

- 5.32 With regard to local plans and unitary plans, planning authorities are required to arrange a public inquiry to hear any objections, unless all objectors indicate in writing that they do not wish to appear. *"Where all objectors are contacted and do not wish to appear, the LPA will consider objections without holding an inquiry and therefore without the aid of an inspector"* (paragraph 3.62, Circular 22/84).
- 5.33 If only one objector wishes to be heard however, then the development plan inquiry must be held and an inspector appointed by the DOE (Secretary of State) will consider all objections and representations made (written and oral). In reporting on the inquiry, the inspector may make recommendations to modify the plan and while such modifications are normally accepted by planning authorities, they are not legally obliged to do so.
- 5.34 Following notice of the planning authority's consideration of the inspector's recommendations, there is a further six week consultation period. If the Council's revised policies and proposals resulting from the modifications give rise to new issues not previously considered, there may need to be a further public inquiry to hear any additional objections.
- 5.35 The Secretary of State has the power to intervene at any stage in the local plan / unitary plan making process but such call in powers are unlikely to be used unless matters of national and regional importance are at issue.
- 5.36 The procedure for considering objections to structure plans is different. As structure plans do not have an effect upon individual land uses or properties, the traditional form of public inquiry is considered inappropriate. Instead, provision is made for *'examination in public'* (EIP) of matters selected by the Secretary of State which normally involve national and regional policy issues, conflicts between policies and proposals within the plan (or with those of a neighbouring authority) and any proposals which arouse substantial controversy (eg housing land supply, commercial land supply, etc).
- 5.37 Although an EIP was required for all original structure plans, such a procedure is now discretionary for proposals to alter, repeal or replace structure plans. An EIP will only be held if the Secretary of State is satisfied that further information or investigation is needed to reach a decision on proposed alterations.
- 5.38 Any such EIP is normally conducted by a small *'panel'* appointed by, and reporting to, the Secretary of State who then considers any recommendations before proposing modifications. Such modifications are mandatory although there is a six week period for further representations to be made if the modifications raise any new planning issues.\*
- 5.39 Clearly, the development plan process is an important vehicle for expressing NRA views and interest and it is important that all NRA staff involved in such consultations are fully aware of development plan procedures and the need, if necessary, to push for any objections to be heard at a development plan inquiry or EIP.
- 5.40 It is also worth noting that unlike planning application appeals, even if an objector might be judged to have acted unreasonably in pursuing any matter at a development plan inquiry there is no procedure for claiming or awarding costs against such an objector.

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\*Footnote: The procedure set out in paragraphs 5.35 to 5.37 will be changed as a consequence of the 1991 Act (see footnote on page 36).

### NRA Development Plan Consultations

- 5.41 All regions confirm that they are regularly consulted by planning authorities in the production of development plans. While there is no statutory requirement for the NRA to be consulted, it seems that most planning authorities (with some exceptions) recognise that the NRA's interests are likely to be affected or indeed, that the NRA may be able to make a positive contribution to forward planning. Most planning authorities therefore appear keen to involve the NRA in such consultations and welcome observations on policies and proposals.
- 5.42 While there have only been a few occasions when the NRA has not been consulted on the production of development plans, there is clearly a need to make the planning authorities forward planners fully aware of the NRA's interests to ensure that adequate consultation takes place and at an early stage. This is especially necessary to overcome any remaining confusion as to the current role of the NRA as compared to that of former Regional Water Authorities.
- 5.43 The actual stage of consultation (particularly in relation to local plans and unitary plans) appears to be a matter of some concern and difference of opinion between NRA regions. One view is that such consultation should take place at the earliest possible stage while the other is that this should not take place until at least the first draft of the development plan has been produced for public consultation purposes.
- 5.44 Circular 22/84 advises that all bodies listed in its Annex C (which includes the NRA) "*may need to be consulted at an early stage*" (paragraph 3.40). A number of planning authorities therefore consult the NRA before producing any public draft of a development plan and will usually ask the NRA to comment on a number of potential sites as a sieve exercise in order to make a final selection of sites to be promoted in the development plan.
- 5.45 In some NRA regions, this approach is welcomed as usually, if a site is identified in the first public draft of a development plan and is then subsequently deleted from a later draft (perhaps at the NRA's request), invariably this will result in the landowner objecting at the development plan inquiry and/or challenging the decision through the submission of a planning application. Thus, if an identified site is subsequently deleted as a consequence of any NRA objections, the NRA is more likely to be involved in producing evidence in support of their objection at a local plan inquiry or planning application appeal. If on the other hand NRA objections are known to the planning authority at an early stage (i.e. prior to the publication of any draft plan) the likelihood is that the planning authority will not identify the land in question as having future development potential. Thus consultations at an early stage can often reduce problems which might otherwise arise when applications are submitted following the draft allocation of land.
- 5.46 The other view is one based upon the practical consequence of the above mentioned approach. Firstly, a planning authority may start its sieve exercise with an open mind about the nature and location of potential development sites and overwhelm the NRA by asking for comments on a great number of such sites. In the NRA's Yorkshire Region for example, prior to producing a public consultation draft of a plan, a planning authority sought comments upon 150 potential sites in one area alone (in and around Leeds). Most NRA flood defence personnel accept that in order to consider properly such development plan consultations, the potential development sites identified need to be visited and separately assessed (unless the consultee has extensive and detailed local knowledge of their area) which is exceedingly time consuming. This can have a knock on effect in delaying other routine work such as commenting upon planning applications or considering land drainage applications.
- 5.47 Furthermore, the run off effect upon a drainage catchment cannot be properly assessed on a comprehensive basis until a final combination of sites is known and identified in a local plan.

- 5.48 There are obviously advantages and disadvantages to either approach and essentially, it is for each region to consider which is best suited to its own needs given staff resources available and different development pressures experienced in different geographical areas. Hopefully catchment management plans should go some way to easing the problems identified in paragraphs 5.45 and 5.46 above by translating the policies into catchment specific strategies.
- 5.49 It would no doubt be of considerable assistance to planning authorities in formulating development plans if the NRA could provide constraints maps at an early stage showing such information as flood plains\*, washlands, tidal defences, areas at risk from tidal flooding, etc, in order to generally assist in the identification of areas suitable (and unsuitable) for potential development.
- 5.50 Such information might also include general flood defence, river corridor policies and other policies promoted by the NRA. While this particular matter is beyond the scope of this report (see the footnote on page 35) general development plan policies and planning guidance produced by the NRA's Anglian and Thames Regions are reproduced in Appendix 15.
- 5.51 Whilst such policies helpfully provide the planning authority with an awareness of the NRA's general interest they are no substitute for detailed consultation on individual development plans. It should also be recognised that PPG15 advises that *"non land use matters for example financial support, consultation arrangements and proposed methods of implementation should not be included in policies or proposals in development plans"* (paragraph 4 of Appendix A).

#### Surface Water Management and New Development

- 5.52 Policies and proposals set out in development plans may impact directly upon the NRA's interest and even those which appear unrelated may have an indirect impact. For example, the identification of *'built up area boundaries'* and *'countryside restraint policies'* increases development pressures on undeveloped land within settlements. Previously such land may not have been economic to develop perhaps because of poor drainage or flooding problems, but restrictive planning policies have pushed up the land value of such sites beyond previous infrastructure constraint costs. There is also added pressure brought about by the government's requirement that each planning authority should have at least a five year supply of housing land available within its area (PPG3 - Land for Housing).
- 5.53 The provision of adequate drainage for new development proposed in development plans without adversely affecting the river system, is a concern recognised by all NRA regions. No NRA funding is available to undertake such works.
- 5.54 The NRA nevertheless has an overall supervisory duty regarding all drainage matters in England and Wales and the development plan system provides an important and valuable opportunity for the NRA and planning authorities to work together to create a surface water management plan in advance of planning approvals and site development.

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\*Footnote: Determination of the extent of flood plain is the subject of another R&D project in the C3 Topic Area entitled 'Techniques for Identification of Flood Plains'. The project leader is Mr P Robinson of NRA Severn Trent Region.

5.55 The NRA's evolving approach to catchment planning is significant in that it can help identify facilities and schemes needed to overcome the drainage impact of development proposed in a local or unitary plan (together with any effect upon land outside the plan area or within another plan area of an adjoining planning authority).

5.56 Once the full drainage implications of proposed land release has been assessed, planning policies can identify:-

- o Drainage works and the appropriate surface water management needed to facilitate new development.
- o The source of funding for such works (i.e. local authority, development agency or private developer funding) and their future maintenance.
- o The phasing of development in accordance with the provision of drainage facilities.

A) Drainage Works Required

5.57 The NRA may identify drainage works needed on a site by site basis in responding to development plan consultations. NRA Regions are however increasingly conscious of the need in some areas to plan for comprehensive surface water management in the catchment and optimise the flood defence and environmental aspects of the river system as a whole, rather than adopting a piecemeal approach on a site by site basis.

5.58 In other words, rather than suggesting surface water attenuation measures on a site by site basis, all the sites identified for development in a settlement (or part of a settlement) might be provided for by planning comprehensive drainage facilities (e.g. balancing ponds, river improvement works etc). The nature of the works required and their source of funding could then be identified in development plans.

5.59 The whole question of flow attenuation and the arguments for and against many small storage facilities verses fewer, larger ones, has perhaps been superseded by the more recent promotion of infiltration and attenuation techniques of surface water management as described in CIRLA RP404. In general, it appears that there may be an increasing number of technical options for the control of surface water at source which might offer satisfactory resolutions to many of the present difficulties concerning 'balancing'.

B) Source of Funding

5.60 As stated elsewhere in this report, as the NRA will not (and cannot) fund such works, these must be funded either by the developer who would benefit from such a scheme or by a local authority or development agency which aims to promote development within a particular area.

5.61 While it may be sensible and appropriate for comprehensive drainage facilities to be promoted in this way, the phasing and timing of development is another issue which requires careful consideration (although the evolving source control techniques may offer a potential solution to this problem).

C) Phasing

- 5.62 Government advice is clear in that while the phasing of development and development plans should not be used "*as an arbitrary rationing process*" (paragraph 4.17, Circular 22/84), it may be justified in accordance with any programme of infrastructure provision. PPG12 states "*phasing of development over the period of the plan may be justified by considerations relating to infrastructure or the adequacy of other services, which may indicate that a particular area cannot be released for development until a particular stage in the planning period*" (paragraph 17).
- 5.63 The phasing of any comprehensive drainage facility is clearly dependent upon the timing of the development it is intended to serve. If financial contributions are required from developers on a pro-rata basis prior to each site being developed, it may however be unreasonable to delay the early development of a particular site if the drainage facility is dependent upon financial contribution from the development of all sites identified in the plan. Given that development plans cover a 10 - 15 year period, it may be some considerable time before all funding contributions are received from the sites identified.
- 5.64 This might be overcome by:-
- i) A development agency funding the drainage infrastructure and being reimbursed retrospectively as sites are developed.
  - ii) Providing an initial facility which can be enlarged as and when development takes place and financial contributions have been received (as has occurred in the NRA's South West Region).
- 5.65 Both approaches are not without their planning difficulties however and given the level of concern among NRA regions (particularly as regards the responsibility and costs of future maintenance of such works), this matter might benefit from further investigation which is beyond the scope of this report.
- 5.66 As already stated, many development sites may prove amenable to new methods of source control and the adoption of such techniques might provide a practical alternative to the well-known and sometime intractable difficulties outlined above.

## 6. THE ORGANISATION AND STRUCTURE OF THE NRA'S PLANNING LIAISON FUNCTION AT REGIONAL LEVEL

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- 6.1 In examining the efficiency and effectiveness of the NRA's planning consultations, in addition to being aware of the objectives and need for planning liaison and constraints imposed by the planning system, there is also a need to be aware of fundamental organisational and structural differences between the various NRA regions.
- 6.2 This Section aims to identify these differences in relation to the NRA's planning liaison activity although no attempt is made to examine either the reasons for such differences or their impact upon effective and efficient planning consultation. Consequently, no recommendations are put forward as to a preferable organisational structure for planning liaison within the NRA. Although these are matters which would no doubt benefit from further study, they are considered to be beyond the scope of this particular project which primarily concerns the NRA's flood defence interests rather than other wider functional interests dealt with by its planning liaison activity.
- 6.3 Essentially, while planning liaison is an activity common to all ten NRA regions, there are three significant variations as to its organisation and structure. Differences occur:-
- i) As to the main function within which planning liaison is based;
  - ii) As to the level at which day to day processing of planning consultations takes place;
  - iii) As to the staffing structure and numbers within each planning liaison team.

### Functional Differences

- 6.4 The schedules reproduced in Appendix 16 illustrate that planning liaison is an activity which finds itself based within different NRA functions throughout England and Wales. Functionally, the NRA's planning activity is based within either Flood Defence (Anglian, Yorkshire and Southern Regions), Legal and Secretaries department (North-West and South-West Regions), Environmental Quality (Northumbrian and Welsh Regions), Catchment Management\* (Severn Trent and Wessex Regions) and Technical Services (Thames Region).
- 6.5 At the regional project meetings, few of the NRA staff identified any major difficulties brought about by having planning liaison based within a particular function. Indeed, there appear to be two broad strands of thought that;
- i) In view of the fact that planning liaison provides an interface between planning authorities and all NRA functions, it is appropriate to locate it within a 'service' based function. It was suggested that because of the legal nature of the planning system, planning liaison should be based within the NRA's Legal and Secretary's Departments while others suggested that because of its general and technical nature, planning liaison is best placed within a Technical Services type function.

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\*Footnote: Catchment Management in these regions relates to a water resource based function.



- ii) In view of the fact that most planning consultations involve either flood defence, water resources or environmental quality matters, it is appropriate to place planning liaison within one of these three functions.

#### Organisational Differences

- 6.6 Differences between NRA regions also occur as to the organisational level of the day to day processing of planning consultations. While four of the regions deal with all planning consultations in one office at a regional level (North-West, Northumbrian, Southern and Wessex Regions), the other six split planning liaison between either two (South-West and Yorkshire Regions), three (Anglian, Thames and Welsh Regions) or four (Severn Trent Region) area offices. The boundaries of area based offices are, as far as possible, based upon planning authority boundaries.
- 6.7 These differences perhaps partly reflect the significant geographical differences between the various regions as well as different regional commitments to planning liaison in terms of staff resources.

#### Structural Differences

- 6.8 The schedules reproduced in Appendix 16 also indicate the different regional staff structures involved in the day to day processing of planning consultations (i.e. not the whole management structure involved with planning liaison). The structures only show NRA consultees based within planning liaison and those staff who are directly responsible for administering the system.\* It will be noted that there are large differences in the staffing structure between various NRA regions from just two planning liaison staff in Northumbrian Region to 26 planning liaison staff in the Anglian Region.

#### Other Differences

- 6.9 As mentioned previously, it is not within the terms of reference of this project to comment upon these organisational differences or make recommendations as to those which appear to be most appropriate in securing effective and efficient planning consultations. Nevertheless, it is important to bear these regional differences in mind when considering regional variations in planning consultation procedures, the number of planning consultations dealt with, response times etc.
- 6.10 Table 1 reproduced in Appendix 17 shows the number of planning consultations processed in each region between January and December 1990 (i.e. the first full calendar year of the NRA's operation). As indicated by Table 1, while in total the NRA dealt with more than 63,000 planning application referrals in 1990 (other planning consultations referred to in the Table are considered elsewhere in this report), there were substantial differences between regions; Northumbrian Region (with the smallest planning liaison team) handled some 905 planning applications, while Anglian, Severn Trent and Welsh Regions handled between 10,000 and 15,000 applications. Other Regions handled between 3,000 and just over 6,000 applications.

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\*Footnote: In some regions (e.g. Southern) the planning liaison staff are also responsible for undertaking duties other than just processing planning consultations. Other duties may include the processing and issuing land drainage consents, maintaining flood records, responding to flood enquiries from the public and acting on behalf of, and advising, Internal Drainage Boards.

- 6.11 Table 2 reproduced in Appendix 17 is helpful in illustrating other differences between NRA regions in terms of the number of planning authorities within each administrative area. Most NRA regions have between 30 and 60 planning authorities within their area but three Regions have significantly more: Anglian has 76, Severn Trent has 103 and Thames has 110.
- 6.12 Furthermore, as the NRA's regional boundaries do not coincide with those of the various planning authorities, there is a considerable degree of overlap between regions. Most NRA regions have between 3 and 10 planning authorities which overlap with adjoining regions but others such as Anglian, Thames and Severn Trent have many more with 34, 46 and 54 respectively. In addition, a planning authority may have 2 or more NRA regions within its administrative area and similarly, an NRA Region may overlap with 1 or more NRA regions in handling planning consultations from particular planning authorities. For example, Severn Trent Region deals with planning authorities which also extend into 5 other adjoining NRA regions (i.e. Yorkshire, Anglian, North-West, Thames and Welsh Regions).
- 6.13 The degree of such overlap has important consequences for the NRA as it not only affects the processing of planning consultations but also exposes policy as well as procedural differences between NRA regions.
- 6.14 In some regions there is an agreed inter-regional procedure for handling planning consultations where planning authorities overlap NRA regional boundaries. For example the Welsh and Severn Trent regions have an agreed arrangement whereby all planning consultations from a planning authority are forwarded to the NRA region which covers most of its administrative area. Therefore, while the planning authority may overlap with Severn Trent and Welsh regions, consultations will be forwarded to only one region. Once received by the NRA region concerned it will be sent to the other region for response and return directly to the planning authority. In this way, the planning authority is not confused as to which NRA region to consult and any regional differences in procedure or policy are masked, although the consultation time may increase as a consequence.
- 6.15 In other areas, where a planning authority overlaps with one or more NRA regions, it may find that each region asks for different planning consultations, responds over differing time periods, pursue differing policies and may even pursue different methods of consultation (for example some regions visit local authorities on a regular basis while others do not).
- 6.16 Such differences and their consequential effect upon planning consultations will be explored further in the next Section, but to achieve consistency between regions and reflect the fact that the NRA has been established as a '*national*' rather than '*regional*' organisation, would perhaps require a greater standardisation of planning liaison organisation, procedures and policies.

## 7. THE EFFICIENCY OF NRA PLANNING CONSULTATION

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- 7.1 The efficiency of the NRA's planning liaison activities is best examined by considering two main components:-
- o *The mechanism and method of consultation* - Is the NRA consulted on relevant development proposals and how is this achieved?
  - o *The speed of response* - Is the NRA able to give an appropriate response within a reasonable time period? What is being achieved at regional level and what administrative procedures are used?

### The Mechanism and Method of Consultation

- 7.2 Shortly after the NRA began its operation in September 1989, most NRA regions contacted individual planning authorities within their area to explain the nature, purpose and function of the organisation and stressed the need for consultation on particular types of development proposals (and that such consultation was needed in addition to that which might also be required by water companies). This process either took the form of correspondence or meetings/seminars or both.
- 7.3 Undoubtedly, privatisation of the water industry has caused some confusion among the local authority planning staff as regards the new responsibilities of the NRA (as a statutory consultee), and those of water companies and sewerage undertakers. The separation of functional responsibilities has also presented planning authorities with an increased burden of additional planning consultation. It is therefore important for local authority planning staff to be made aware of *relevant* planning consultations with the NRA and the need to take any representations into account given the NRA's very limited powers available to directly control new development.
- 7.4 Some regions (for example Anglian, Severn Trent, Southern, South-West, Thames and Yorkshire) have published comprehensive planning liaison guidance documents which have been circulated to planning authorities within their area. While this approach may cause some difficulties for the reasons identified in paragraphs 6.13 & 6.15 of this report, such guidance documents are helpful in providing planning authority staff with a reference manual which if necessary, can be up-dated from time to time and brought to the attention of any new staff.
- 7.5 Such documents may also be useful for NRA internal consultees who may either be new to the NRA's planning liaison function or new to the organisation itself. The NRA's Anglian and South-West region's have produced internal development control manuals which have been distributed to all planning liaison staff and their consultees to ensure:-
- i) That NRA regional and national policies which directly affect planning consultations are fully understood and implemented.
  - ii) A common approach to planning consultation response is maintained throughout the region.
  - iii) That new legislation and technical advice is incorporated into planning consultation response.

iv) That where any departure from the manual may be required, this matter is brought to the attention and discussed with appropriate managerial staff.

7.6 Many NRA regions continue to have regular dialogue with planning authorities to discuss general or particular matters regarding planning consultations. The National Development Control Forum advises that *"Effective and efficient consultation between organisations is most likely to occur where there exist good personal relations between officers"* and recommends that *"officers of planning authorities, as an essential part of their duties, should seek to maintain cordial officer level contacts with major consultees"*.

7.7 All regions agree that a continued and regular dialogue is desirable to ensure effective consultation but many also indicated that due to limited staff resources and other work pressures which assume a higher priority, such consultation with individual planning authorities is rarely possible except on perhaps an annual basis.

7.8 In some regions this consultation is supplemented by regular contact with planning officers at 'Development Control Forum' meetings. Such meetings (usually arranged at a County level) not only have representatives from planning authorities in the area but they may also include other development organisations involved in a planning process. While such Development Control Forums do not exist in all parts of England and Wales, where they do exist, the NRA's involvement can provide a valuable opportunity to promote its interest in town and country planning and to obtain information about important local (and often national) planning issues.

7.9 In the South-West region, this approach has been developed further in that a Strategic Planner has been appointed by the NRA to (amongst other duties) regularly liaise and meet with local authority planning officers and planning committee members. The South-West region are currently preparing and circulating manuals (which can be regularly up-dated) for each planning authority setting out specific development constraints and NRA interests which should be taken into account in determining planning applications or formulating development plans in the individual areas concerned. Following their distribution, the manuals are formally presented to and discussed with planning officers and planning committee members at joint seminars (perhaps before or after a council committee meeting). This undoubtedly raises the planning authority's awareness of the NRA's dependence on the planning system in regulating new development which may affect its interests, and helps to ensure effective consultation.

#### A) Schedules of Development Requiring NRA Consultation

7.10 As part of the initial consultation exercise with planning authorities, all regions produced schedules setting out development proposals upon which the NRA would wish to be consulted. These schedules have been widely circulated among development control officers and administration staff of all planning authorities in England and Wales.

7.11 Such schedules are of considerable importance as some NRA regions (e.g. Southern and North West) rely upon planning authorities forwarding relevant planning consultations by this means alone. It is therefore essential that the schedules are 'user friendly' to enable planning authority staff to identify those development proposals upon which the NRA would wish to be consulted. Indeed, Circular 22/88 recognises that where there is doubt as to whether a particular proposal falls within the selection criteria, any subsequent irrelevant consultation *"adds to delay and increases the demand on consultees' time and resources, and should therefore be avoided"* (paragraph 6 - Appendix C).

- 7.12 Similarly, it is not in either the planning authority's or NRA's interest if a planning application is unnecessarily requested by the NRA for consultation as this may not only delay the planning authority's determination of the application but also result in a wasteful use of staff resources and add to administrative costs for both organisations. The National Development Control Forum report that *"there are complaints from local authorities that some consultees are eager for all the consultations they can get, but are unable to cope with the consequent workload"* and recommends that *"Authorities should invite these consultees to ignore applications of a minor nature, but should continue to provide them with an opportunity to see all relevant applications, perhaps by notifying them of all applications received by the circulation of a list on a weekly basis"*.
- 7.13 Of even greater importance is the possibility that the planning authority may fail to consult the NRA on a relevant application if planning authority staff are uncertain about the selection criteria.
- 7.14 As previously examined in paragraph 3.12 of this report, planning authorities are required to consult the NRA on specific types of development listed in the GDO. Other than these *'statutory consultations'*, planning authorities have discretionary powers regarding the referral of other *'non-statutory consultations'*, although the government advises planning authorities to consult the NRA on some particular non-statutory consultations (for example development in flood risk areas).
- 7.15 The National Development Control Forum's guidelines on planning consultations recommend that consultation on a discretionary, as opposed to statutory basis should be undertaken only after the local planning authority has carefully satisfied itself as to the reasons for seeking the consultee's views and the part they play in helping to determine the application. They recommend that *"consultation beyond the provisions of the General Development Order and of Government advice should be undertaken only with considerable circumspection"*.
- 7.16 Copies of the schedules produced by each of the 10 NRA regions are reproduced in Appendix 18. While all the schedules vary, those covering 5 regions (Anglian, North-West, Northumbrian, Southern and South-West) are broadly similar in their definition of referral criteria. In these regions, this criteria is either based upon the intended location of proposed development or the type of development proposed.
- 7.17 In terms of the location criteria, these 5 regions wish to be consulted if development is proposed in or near any watercourse or within specific distances of main rivers (5 - 10 metres) or within *'Internal Drainage Districts'*. Other locational based criteria includes development in flood plains or washlands or land subject to tidal flooding, development within 5 - 10 metres of sea defences and that within *'Aquifer Protection Policy Areas'*.
- 7.18 In order that planning authority staff can interpret such schedules to determine whether or not the NRA would wish to be consulted on a particular proposal, the schedules need to be accompanied by maps defining flood plains, sea defences, Internal Drainage Districts and Aquifer Protection Policy Areas. It is understood however that to-date, whilst some regions have been able to supply maps showing this information, others have not yet been produced or are in the course of preparation.

- 7.19 Another difficulty is that none of these schedules provide any limit as to the type or scale of development that the NRA would wish to be consulted upon within such areas. For example, does the NRA genuinely wish to be consulted on all development in Aquifer Protection Policy Areas as implied in the schedules, or just those proposals which might potentially pollute ground water supplies? Furthermore, the terminology used in the schedules is also likely to cause confusion, as while NRA staff may understand what is meant by an 'Aquifer', 'washland', 'sea defence' or 'Internal Drainage District' it is doubtful whether all planning authority staff understand such criteria.
- 7.20 In addition to listing relevant development proposals by '*location criteria*', these schedules also list the '*type*' of applications upon which the NRA would wish to be consulted, although the description varies between the regions and all 5 schedules are lengthy listings of some 24 different categories of development.
- 7.21 None of these particular schedules provide the planning authority with any reason why the NRA would wish to be consulted on specified types of development (although in some cases, further explanations may be provided in planning liaison guidance documents or in covering letters attached to the schedule when circulated). Furthermore, while the NRA's interests may be self evident in the description, other categories appear to be of a non-specific or vague nature. For example '*development involving a discharge to inland or tidal water or to land or underground strata*' would appear to apply to virtually all forms of new development with a possible exception of applications relating to proposed change of use.
- 7.22 The schedule produced by the NRA's Southern region adds yet another variable whereby the type of development that the NRA would wish to be consulted upon is dependent upon the '*size and scale*' of the proposal (for example residential or commercial development exceeding 2 hectares in area, reservoirs with a capacity greater than 500 cubic metres, pipelines or roads greater than 500 metres or 200 metres in length respectively).
- 7.23 The other 5 regions (Severn Trent, Thames, Welsh, Wessex and Yorkshire regions) have issued schedules of a different format and content.
- 7.24 Whilst some regions have issued lengthy schedules which may present a daunting task for planning authority staff in cross checking with planning applications received, the Welsh region has issued the shortest schedule listing 12 categories of development (which includes two types which are different from all other regions namely; "*development requiring environmental assessment*" and residential development intended "*to house 10 or more persons*").\*
- 7.25 Severn Trent, Yorkshire and Wessex regions have adopted a similar approach in identifying and listing statutory consultations required under Article 18 of the GDO as well as other non-statutory consultations. In addition, these schedules are helpful in providing some interpretation on development types together with notes and short statements as to why the NRA would wish to be consulted.
- 7.26 The NRA's Thames region also adopt this approach but in addition produced a full schedule giving details of the consultations sought together with reasoning, as well as a single page summary listing development requiring consultation.

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\*Footnote: It should be mentioned that the Welsh region is not the only region which lists categories of development which do not appear in schedules issued by other regions.

7.27 The schedules produced by these 5 regions appear to be more 'user friendly' in providing planning authority staff with a better explanation of NRA planning application consultations. Given the importance of such schedules in ensuring that all relevant consultations are forwarded to the NRA, there may be some benefit in producing schedules which, as far as possible,\* are common to the organisation on the whole and which select the best features of the existing schedules produced by the various regions. If a schedule were to be produced that was common to all NRA regions (perhaps guided and co-ordinated by NRA HQ) this could help avoid some of the inconsistencies identified in paragraph 6.15 of this report.

7.28 In the absence of any full consideration of the consultation needs of all NRA functions (other than just flood defence) it would be inappropriate to consider this matter further in this particular report. Another matter which may benefit from further investigation is whether or not the NRA should continue to use such schedules partly as a means of identifying development which may require licensing or consent from the NRA. Other means of obtaining such information might be explored because, as far as planning authorities are concerned, the purpose of referring planning consultations to the NRA is to receive any comments which are material to the consideration and determination of the application and not merely to inform the NRA of development proposals which may require NRA licensing or consent.

B) Planning Application Lists

7.29 Most NRA regions receive copies of the weekly or fortnightly list of applications registered by most planning authorities. These are used by NRA planning liaison staff (or in some regions they are circulated to internal consultees) to check whether the planning authority have forwarded all relevant planning application consultations. Any relevant applications which have not been forwarded to the NRA are requested either by telephone, letter or fax.

7.30 This is a useful procedure which provides the NRA with an opportunity to double check that all relevant applications have either been received or requested.

7.31 It was evident from discussions with NRA planning liaison officers however, that there are some significant difficulties in administering this procedure in that:-

- i) Some planning authorities are unwilling to forward planning application lists without an annual payment (although as yet, this is an uncommon practice).
- ii) Some planning lists provide only limited description of proposals and this can result in an irrelevant application being requested.
- iii) The majority of planning lists produced by planning authorities do not include Ordnance Survey grid references and it is often difficult (and time consuming) for NRA staff to identify the location of planning application sites.

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\*Footnote: There may be a need for some regional variation due to the predominance of particular types of development which might not occur in all regions.

- iv) The sheer number of lists received by NRA planning liaison teams on a weekly or fortnightly basis can be overwhelming especially as once the sites are identified they need to be cross checked against main river maps, aquifer protection maps and other maps showing NRA constraints.
- v) This difficulty is compounded where a planning authority regularly receives a great number of planning applications (for example in metropolitan areas) or where planning liaison is dealt with at a regional level rather than at an area level within the region. In the NRA's Southern and North West regions, which deal with the most planning authorities (60) where planning liaison is dealt with at a regional level only, the checking of planning lists has had to be suspended because of the time consuming nature of the exercise.

- 7.32 All the regions confirm that while the checking of planning lists is a beneficial exercise it is time consuming and can result in a significant backlog in lists needing to be checked especially where there is no cover for this work during periods of staff absences through sickness, holiday leave etc. This can result in requests for applications being made many weeks after the planning lists have been published and possibly even after applications have been determined.
- 7.33 This procedure could perhaps be made significantly less time consuming if all NRA records and development constraints were held on computer based mapping systems, and if all planning authorities could be persuaded to include OS grid references on planning lists.

C) Weekly/Fortnightly Visits to Planning Authorities

- 7.34 The above mentioned procedures are of less importance in the NRA's South-West and Anglian regions where planning liaison staff visit the majority of planning authorities in their area on a weekly or fortnightly basis to inspect planning lists and examine any potentially relevant planning application files.
- 7.35 Visits are not made to planning authorities which normally have few applications of relevance to the NRA or which have only a small part of their district within the NRA region. County Councils are not normally visited as most applications concern either waste disposal or mineral extraction and are automatically forwarded to the NRA for consultation.
- 7.36 Planning liaison staff within the two regions involved in this procedure (hereafter referred to as "NRA visitors") deal with as many applications as possible during their regular visits to planning authorities, using manuals containing NRA constraints maps and 'standard paragraphs' (see paragraph 8.18 of this report). Any consultations which cannot be dealt with in this way (i.e. applications which the NRA visitor considers require comment from internal consultees) are copied and returned for processing and circulation.
- 7.37 The two regions only differ in their approach in that in the South-West region, NRA visitors may lodge objections to planning applications, while in the Anglian region no objections are submitted to the planning authority unless the application has been internally circulated among NRA consultees.



- 7.38 In 1990, the South-West and Anglian regions dealt with some 61,711\* planning applications in this way without referral for comment by internal NRA consultees. As shown in Table 1, reproduced in Appendix 17, in both regions in 1990, referrals to internal consultees accounted for a further 18,391 planning application consultations.
- 7.39 A similar 'visiting' procedure was adopted by the former South-West Water Authority and welcomed by the National Development Control Forum in helping to speed planning application consultations. In their '*Guidelines for Handling Planning Applications*', the National Development Control Forum states; "*it may be possible to hold regular meetings with major consultees. An example of this operates in Cornwall where a planning liaison officer from the Water Authority visits each local authority every week to inspect and comment on applications. With this method more than 90% of consultations are completed within one week. There are extra costs in travel and subsistence but the Water Authority consider that these are more than off-set by the shortened administrative procedures. We commend this practice, and hope that other Water Authorities, and other major consultees, perhaps promoted by the local planning authority, will be able to adopt it*".
- 7.40 Government Circular 22/80 adds that "*where a body is frequently consulted it may be useful to hold regular meetings with officers from that body to deal with a number of applications at one time. Some consultees have found it useful to send an officer regularly to inspect new applications in order to decide which warrant full comment and which will prove unobjectionable*" (Appendix C).
- 7.41 In discussion with planning liaison staff (and NRA visitors), the approach adopted by the NRA's Anglian and South-West regions appears to be generally welcomed by planning authorities within their area in that:-
- i) The consultation process can be significantly speeded up because all weekly applications can be checked and the majority of relevant applications can be commented upon immediately without the need for referral to and comment from internal consultees. The procedure also overcomes the difficulty of just scanning planning lists in that it is often difficult to determine the importance or relevance of an application without studying application forms and relevant plans.
  - ii) It avoids the need for planning authority staff to select, copy and send relevant planning applications, saving on staff time, copying and postal costs.
  - iii) It ensures that the NRA are only consulted on relevant consultations thus generally saving on a planning authority's (and NRA's) administration costs.
  - iv) NRA visitors can ensure that all relevant plans, supporting statements and background information accompanying planning applications are referred to the NRA where necessary.
  - v) There is an opportunity for direct contact between the two organisations for example if a planning authority's case officer wishes to discuss a particular consultation with an NRA visitor or wishes to discuss the contents of the planning officer's intended planning committee report.

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\* Footnote: It should be noted that if an NRA visitor opens a planning application file this is recorded as a 'consultation' even if the NRA visitor states "no comment" or "no objection" as a response.

- 7.42 Regular contact between the NRA visitors and the planning authorities concerned also provides a means whereby the NRA can monitor the progress of particular planning applications and obtain general feedback on NRA representations. This procedure nevertheless, relies upon the knowledge and experience of NRA visitors not only in having a comprehensive understanding of all the NRA's various interests but also of the operation and constraints of the planning system itself. Adequate training is likely to be a vital ingredient in maintaining the success of this approach.
- 7.43 In both regions, where applications are not copied and taken away for full consultation, NRA visitors note their comments directly on planning files or on printed pro-formas attached to files. Clearly, it is important to keep adequate records of such responses. This may be particularly important in the South-West region if the NRA visitor records an objection which subsequently leads to refusal of planning permission and a challenge on appeal. Another important factor is to ensure that NRA visitors investigate any previous NRA comments in order that all such responses are consistent (hence the need to record and to be able to retrieve previous response).
- 7.44 In general this approach appears to be very successful in the two regions where it is operated and the administrative procedure involved might be worthwhile exploring in further detail for possible adoption by other NRA regions. Its suitability for adoption in other regions will of course depend upon the availability of adequately trained staff resources and a consideration of a number of other factors such as physical differences in geographical areas (i.e. travel time between planning authorities), the number of planning authorities dealt with and number of planning applications submitted to planning authorities in each region.

D) Early Consultation with Developers

- 7.45 All NRA regions recognise the importance of early consultation with developers where proposals are likely to directly impact upon the NRA's interests. In particular, most regions seek to encourage an approach being made by developers prior to the submission of planning applications, particularly for large scale development proposals. Such early consultation with developers can:-
- i) Help identify and resolve potential problems prior to an application being submitted (e.g. the proximity of development to a watercourse).
  - ii) Reduce the time needed for subsequent consultation between the planning authority and NRA when the planning application is submitted.
  - iii) Identify possible scheme funding opportunities perhaps helping to accelerate the NRA's capital programme for improved surface water management.
- 7.46 Such early consultation is also beneficial in that as the NRA is a relatively new organisation, its interests and functions can be explained to developers many of whom remain unclear about the '*post-privatisation*' split in responsibilities between the NRA, sewerage and water supply companies.
- 7.47 To aid and encourage early contact with developers and to highlight development constraints in flood risk areas, some regions have produced information leaflets which have been widely circulated among planning authorities for distribution at their public reception areas. Examples of these are reproduced in Appendix 19.

7.48 As indicated in Table 1 (reproduced in Appendix 17), enquiries from developers or their agents account for a significant number of the planning consultations dealt with by the NRA's planning liaison function (over 6,000 consultations in 1990). As well as responding to letters (which require processing and circulation to internal consultees), considerable time is also taken up in meeting with developers. While such consultation is recognised as being of practical value to the NRA, staff resources and the need to process applications to meet regional target means that in some regions, consultations with developers may assume a lower priority than in other regions.

7.49 Further investigation might expand upon the work undertaken by Roger Tym and Partner on behalf of Thames region, in examining the possibility of improving this service by additional funding raised by charging developers for information, meetings etc. It is understood that Anglian and North West regions already charge for the provision of technical information for speculative development sites.

#### The Speed of Response

7.50 The speed with which the NRA is able to respond to planning consultations is of critical importance in that such consultations cease to be of any value if they are received by the planning authority after an application has been determined. As has been mentioned previously, the government is actively seeking to speed the planning application decision making process and planning authorities are under pressure to determine as many planning applications as possible within the statutory 8 week period following their registration. As a consequence, planning authorities have sought to streamline their decision making procedures including consultations on planning applications.

7.51 Government advice contained in Circular 22/80 urges that whatever means are pursued to speed the consultation process, *"local planning authorities should ensure that they adhere to deadlines for consultations so far as is practicable and should monitor the performance of consultees in achieving those deadlines. If some consultees are found to be constantly failing to achieve deadlines, authorities should discuss with them the methods of reducing delay."* (Paragraph 2 Appendix C).

7.52 Furthermore, the National Development Control Forum in their Guidance for the Handling of Planning Applications, recommend that *"authorities should strictly enforce consultation reply dates, that they monitor the "performance" of consultees and discuss this with those slow to respond"*.

7.53 While the GDO allows planning authorities to determine applications after a minimum of 14 days notice has been given to consultees (see paragraphs 3.18 - 3.21) most planning authorities recognise that this period is inadequate given the NRA's need to circulate development proposals internally, and have agreed to extend the consultation period to 21 days, or 28 days in line with the recommendations of the National Development Control Forum.

7.54 All NRA regions are conscious of the need to process planning consultations as quickly as possible and all monitor their performance in achieving reasonable response times. As might be expected from the regional variations identified in Section 6, response times vary widely between different regions. This is illustrated in Table 3 reproduced in Appendix 17 which sets out the NRA's regional performance in response times during 1990.

- 7.55 Table 3 further illustrates that in addition to response times varying between regions, regional target dates also vary as does the basis (i.e. the start date) for measuring regional performance. Some regions (e.g. South-West, Wales and Wessex) aim to respond to most planning consultations within 14 days, while others (e.g. Severn Trent) aim to respond within 21 days and the remainder seek to respond within a 28 day period. With regard to monitoring of performance, in some regions the commencement is the date of the planning authority's covering letter (e.g. North-West, Southern, South-West and Thames) while others commence monitoring from either the date of receipt of the consultation or the date entered into computer programmes used for internal processing.
- 7.56 As a consequence of these regional variables, it is difficult to analyse the NRA's overall performance but it would seem that in general, most regions were able to return 60% - 90% of their planning application consultations within a 28 day period. The response within 14 days ranged from 5% to 61% (excluding applications dealt with at planning offices in the Anglian and South-West regions).
- 7.57 Clearly, those regions which are able to return the majority of planning consultations within the shortest period are bound, not only to help the planning authority speed its decision making process, but also ensure that the NRA's representations are taken into account in the determination of planning applications. It should be appreciated that Table 3 only shows a 'snap shot' of the NRA's overall performance during its first calendar year of operation and all regions express confidence that the response periods are likely to be improved during 1991 as various processing techniques are developed or enhanced. In addition, methods of recording data used for monitoring purposes may require further examination to ensure a consistent approach between regions.
- 7.58 All NRA regions use computer based systems to help process planning consultations although again, different systems are used and some are at a more advanced stage than others. The Southern and Wessex regions have only partly computerised procedures at present while those used by Anglian, Severn Trent, South-West, Thames and Welsh regions have been extensively developed and modified. North-West and Yorkshire regions are currently developing their systems to permit direct access by consultees and to incorporate other enhancements.
- 7.59 The types of systems used by each region and their capabilities are examined in the schedules reproduced in Appendix 20.
- 7.60 There is undoubtedly scope for some regions to be able to benefit from the work undertaken by other regions in developing these programmes which not only help in the processing of planning consultations but also provide valuable analysis of various aspects of the NRA's performance as well as external factors such as postal delays etc. Furthermore, while individual programmes have been designed and tailored to meet individual regional requirements (and computer systems), prior to up-dating and modifying the various systems, it would be preferable to encourage greater inter-regional contact and communications to examine systems used in order to incorporate mutually beneficial facilities. Such improved contact (perhaps with guidance from NRA HQ) might help avoid any unnecessary duplication of work undertaken to up-date and modify such systems, and thus avoid wasteful expenditure.
- 7.61 Most of the various programmes used, although different, are invaluable in speeding up the processing of planning consultations and are important in monitoring the efficiency of the NRA's planning consultation procedure. An apparent limitation with most systems however, is the inability to readily recall any previous comments made, when new applications are entered.

- 7.62 It will be appreciated that any number of applications may be submitted on a particular site or within a particular location and this might result in a number of planning consultations with the NRA over the years. In responding to such consultations it is important that the NRA is aware of any previous comments made is consistent and ensures that no objections are raised where none were raised previously (or vice versa).
- 7.63 The NRA would therefore benefit from developing improved techniques to ensure that internal consultees are aware of any previous comments which may be of relevance. Whilst some regions do occasionally circulate previous letters (or even previous files), this is mostly an ad-hoc arrangement where the planning liaising staff can recall having been asked to comment on a site previously or are aware of particular problems within a specific location. Only in the Anglian, Southern and Thames regions are all previous comments circulated. While there are significant resource implications of ensuring consistency between regions, this might be greatly reduced by applying a G.I.S. related system.
- 7.64 An interim beneficial enhancement of the various computerised systems used, would be to develop programmes which automatically list previous planning history (i.e. previous application no's, dates and contents of previous NRA letters, etc perhaps in conjunction with an OS grid reference system), as new applications are entered into the system. Systems might also be developed to search within a specified distance of grid reference data to identify any previous consultations on nearby sites which might be relevant.
- 7.65 As well as shortcomings associated with the retrieval and circulation of previous planning history, planning liaison staff identified factors which often delayed the NRA's response to planning consultations. These include:-
- o External factors e.g. postal times, planning authority batching of consultations etc.
  - o The need to request additional information.
  - o The priority given to planning consultations by flood defence officers and other consultees.
  - o Staff cover during absences due to holidays and sickness etc.
  - o Consultation with Internal Drainage Boards.
  - o Other factors such as internal post, the physical location of internal consultees, typing delays etc.

A) External Factors

- 7.66 In some regions, planning authorities have made a conscious decision to use second class post and send consultees limited information in order to minimise costs. This particularly applies to those local authorities who have or who are likely to be threatened by "poll-capping". Some planning authorities also tend to batch relevant planning consultations and forward them to consultees such as the NRA on a weekly or two weekly basis. Where NRA regions monitor from the date of the local authority's letter, such batching of consultations may adversely affect the NRA's apparent performance where covering letters are dated in advance of the planning consultations being forwarded.

7.67 In such circumstances, relevant planning authorities should be identified and requested to (if necessary) lengthen the consultation period with the NRA. As these external factors are outside of the NRA's direct control it is unreasonable that they should inhibit the NRA's performance in responding to planning consultations and weaken opportunities for these comments to be taken into account.

B) The Need to Request Additional Information

7.68 As mentioned in paragraph 4.4 the information contained on planning application forms is sometimes inadequate and is of little assistance to flood defence consultees if details are excluded. Inadequate statements with regard to the means of surface water disposal are common occurrences which may require further information being sought from planning authorities. On detailed applications, there is sometimes also a need to request site layout plans and any additional information on surface water drainage which might have been submitted by the applicant (for example in the form of a consultant engineer's report).

7.69 The minimum information required to enable the NRA to consider the impact of the development upon its various interests is:-

- i) A full copy of the planning application form (ensuring that the description of development is adequate and the means of surface water disposal, foul drainage and trade effluent discharge are clearly stated)
- ii) A site location plan (including a 6 figure OS grid reference number)
- iii) All relevant plans (i.e. site layout plans, cross-sectional drawings etc)
- iv) Copies of any supporting statements, or drainage reports or letters containing information of relevance to the NRA.

7.70 The National Development Control Forum in their guidelines for the handling of planning applications, states that "*some consultees have indicated that they receive insufficient information to enable them to respond quickly to consultations. The local planning authority should ensure, therefore, that any consultation request includes a full set of application forms and plans.*"

7.71 Although (in those regions where the NRA visitor system is not operational) it is planning authority case officers who normally determine whether or not the NRA should be consulted on particular planning applications, the actual information sent is normally compiled by planning authority administrative staff. It is therefore of some importance that in regular consultation and meetings with planning authority staff, administrative staff are also included and informed of the need to forward relevant parts of planning applications to the NRA.

C) Priority given to Planning Liaison by Internal Consultees

7.72 At the regional project meetings, some flood defence staff indicated that they were unable to give a sufficiently high priority to considering planning consultations (especially time consuming development plan consultations) because of other duties which assume a higher priority. In particular, a backlog of planning consultations can occur where flood defence staff are also responsible for processing land drainage consent applications which assume a higher priority given that consent is deemed to be granted unless the NRA notifies the applicant otherwise within a period of 8 weeks.

7.73 Other duties may include responsibilities for maintaining flood records and investigating flooding incidents in response to public complaints. Such duties obviously cannot be identified or programmed in advance and during periods of heavy rainfall or high tides and inclement weather, the time which needs to be spent on such investigations, may significantly reduce other time available to consider planning consultations.

7.74 Whether or not the internal consultees of other NRA functions face similar difficulties in responding to planning consultations was not a matter considered by this project, but it seems that such delays are inevitable and likely to continue unless internal consultees are able to dedicate all (or the majority) of their time to considering planning consultations.

D) Staff Cover During Holidays and Sickness

7.75 Such difficulties as those identified above are compounded if there is no availability of staff cover when internal consultees and planning liaison staff are absent due to holiday leave, sick leave, training etc.

E) Consultation with Internal Drainage Boards

7.76 In areas where Internal Drainage Boards (IDB's) exist, the NRA has a duty to consult them as part of the development control process. In some areas, IDB's are directly consulted by planning authorities on relevant development proposals within their area while in others, the NRA acts as an agent for IDB's (usually because IDB's are not sufficiently resourced to consult directly with planning authorities) in selecting applications, forward them to IDB's and incorporating their response in the NRA's reply to the planning authority. Where a considerable number of IDB's exist within a region (e.g. Anglian and Yorkshire), this procedure not only increases the NRA's workload but can also result in significant delays to response times. On occasions, such consultations have even resulted in conflicting requirements between the NRA and IDB's (for example as regards the desirability of culverting) and time is needed to resolve such matters through negotiations prior to responding to planning authorities.

7.77 This is yet another regional variation which needs to be taken into account when considering regional response times and is another matter which might merit further investigation in order to streamline consultation procedures with IDB's and reduce delays in those regions most affected.

F) Other Factors

7.78 There are a number of other factors which can give rise to delays in processing and returning planning consultations to planning authorities.

7.79 As well as the delays that can occur because of the postal time taken between planning authorities and the NRA (and visa versa), delays may also occur where information has to be forwarded to internal consultees based at remote locations away from the office where the planning consultations are processed. Where consultees are based in outlying offices, consultations are usually forwarded by the external post or by utilising internal courier systems. This may add a number of days to the processing time especially if second class post is used.

- 7.80 Clearly, such delays could be minimised by ensuring that all consultations are forwarded to 'remote' consultees by first class post or a reliable and regular courier system. Some regions (e.g. North-West and Yorkshire) are developing systems whereby once the information is received by consultees, their comments can be feed directly into computer terminals with direct links to planning liaison sections, thus avoiding any delay in returning consultations via the post or courier systems.\* Unfortunately, only a limited amount of information could be forwarded to the consultee by the same means, as full consideration of the proposal usually depends upon the examination of plans and drawings which accompany the application and cannot (at present) be transferred by computer links.
- 7.81 Similar restrictions apply to development plan consultations. In addition, unless the planning authority can be persuaded to forward a number of copies of a development plan (or unless the NRA agrees to pay for additional copies) the usual procedure is that only one or two copies are circulated to consultees and passed on from one to another. Due to the factors identified in paragraphs 5.45 and 5.46 this may significantly delay development plan consultations.
- 7.82 Some delays can also occur where planning consultation responses are typed by a central typing pool also serving a number of other NRA functions. In some regions typing delays may increase the processing time by two to four or more days during periods of heavy demand upon the services of central typing pools.
- 7.83 In some regions (e.g. North-West, Northumbrian, Severn Trent, Thames, Welsh and Yorkshire regions), such delays do not occur as computerised processing systems can also be used by planning liaison staff to generate the majority of final letters to planning authorities. Some systems have full word processing facilities and can also generate letters to the applicant (for further details see Appendix 20).
- 7.84 The increased use of '*standard paragraphs*' has significantly reduced typing delays and is a procedure used by all NRA regions. Some planning liaison computer programmes can accept non-standard paragraphs while others have to be handwritten or dictated for copy typing / audio typing by a central typing pool. The use of standard paragraphs is a matter considered in the next Section.

#### Commentary

- 7.85 This Section has identified the regional differences in the time taken to respond to planning consultations and has highlighted some of the many reasons why delays can occur in the processing of planning consultations.
- 7.86 From this examination, it would appear that the NRA's overall target should be to make sure that it is only consulted upon relevant planning consultations and that responses to planning authorities are returned as soon as possible preferably within 14 days of receipt but generally no later than 28 days.

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\* Footnote: Alternatively wider use could perhaps be made of fax facilities between remote consultees and planning liaison sections (possibly at increased cost).



- 7.87 In those regions where planning authorities state that the NRA will only be given 14 or 21 days to respond and that a 'non-response' will be regarded as "no objection", encouragement should be given to change their view and extend the consultation period to 28 days. Planning authorities may require reminding of the advice contained in Circular 17/82 that the NRA should be allowed a period of 28 days to respond to planning consultations, in line with the National Development Control Forum's Code of Practice which recognises the fact that; *"investigations into possible consequences of run-off from new development can involve considerable time and labour, and it is important for applicants to provide any necessary information early enough to allow the authority [i.e. the NRA] to keep to this time limit and local planning authorities are asked to encourage applicants to provide such details at the earliest possible stage"* (paragraph 5).
- 7.88 If it appears likely that the NRA will be unable to respond to a consultation either within 28 days or the time stated by the planning authority, a holding reply should be sent to the planning authority to request an extension of time setting out:-
- i) Reasons why extra time will be needed,
  - ii) A possible 'attitude' or reason why the planning authority should withhold determining an application until the NRA has had an opportunity to respond,
  - iii) The date the planning authority might expect a response from the NRA.
  - iv) A request to the planning authority to contact the NRA immediately if such a request is not acceptable to them.

## 8. THE EFFECTIVENESS OF NRA PLANNING CONSULTATIONS

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- 8.1 As identified in the previous section, successful planning consultation is in part dependent upon the NRA being made aware of relevant planning applications (and all development plans) and the speed at which it is able to respond to such consultations. Of equal importance, is that any response is effective in influencing the planning authority (or DOE) to take full account of the NRA's interest prior to making planning decisions.
- 8.2 Two essential components in assessing the effectiveness of the NRA's planning liaison activity are:-
- o *The Quality of response* - Does the NRA respond in a form that can be readily understood and utilised by planning authorities either in the control of development or in the production in development plans?
  - o *The Monitoring of planning decisions* - Does the NRA monitor planning authority and DOE decisions to ensure that NRA views have been taken into account and ensure that planning consultation is effective and successful?

### The Quality of Response

- 8.3 The quality of the NRA's response to planning consultations could perhaps best be examined by directly contacting planning authorities themselves as in the recent planning liaison projects undertaken by the NRA's Thames and Severn Trent regions (see paragraph 1.8). Where relevant, account has been taken of this previous research but in this particular project, the brief (i.e. the *'Project Investment Appraisal'*) did not include any mandate for direct contact with planning authorities.
- 8.4 Instead, an assessment of the NRA's quality of response has been based upon a desk study comprising an examination of examples of mainly flood defence and conservation related responses provided by all the regions, including:-
- i) Correspondence recommending the imposition of planning conditions.
  - ii) Objections or recommendations that development should be refused.
  - iii) Correspondence associated with environmental assessment studies.
  - iv) Correspondence and statements regarding planning appeals.
  - v) Legal agreements.
  - vi) Correspondences and representations regarding development plans.
  - vii) Correspondences to applicants and developers.
- 8.5 In addition, all regions have provided schedules of standard paragraphs currently used in responding to planning consultations and provided examples where NRA observations and recommendations have been taken into account in either planning application or appeal decisions, legal agreements or development plans.

- 8.6 It is fully appreciated that any such sampling is by its nature limited and is dependent upon the examples of correspondence provided by each region.
- 8.7 Furthermore, while some regions have forwarded a broad and extensive range of relevant documentation, others have provided more limited examples, indeed, some regions have not yet been involved in environmental assessment studies, legal agreements or appeals concerning flood defence and/or conservation issues.
- 8.8 Nevertheless, it is hoped that the following analysis provides a fair representation of the type of NRA response being forwarded to planning authorities, the DOE and applicants/developers.

A) Planning Application Response

- 8.9 NRA's representations on planning applications (and development plans) are directed in the first instance, to the local authority's planning officer. It is for the planning officer to assess the weight given to the NRA response in light of all other material considerations and present a report on each application (or development plan) to elected planning committee members. Thus, the NRA's concerns about any particular proposal needs to be presented in a form that can be easily understood and readily utilised by the planning officer in reporting the matter to the planning committee and recommending a course of action.
- 8.10 The judgment as to whether or not to incorporate NRA recommendations in the form of planning conditions or reasons for refusal is therefore, normally the responsibility of the planning officer. Where a response from the NRA is unclear in its recommending course of action this may result in a planning officer failing to understand and take full account of the NRA's interests, particularly if the planning authority concerned is under resourced or lacking in expertise. This may result in an important matter being disregarded perhaps prejudicing the NRA's interests in the longer term.
- 8.11 Thus, the NRA's response is of no value if it is too technical to be understood by a planning officer and planning committee members, or if it is unclear in its recommended course of action or is inappropriate as a material planning consideration.
- 8.12 As the planning authority is ultimately responsible for the legality and reasonableness of decision notices issued by them (or planning policies formulated by them) they must be confident that any conditions (or policies) proposed by the NRA will stand the rigorous tests set out in Circular 1/85 (see paragraph 4.24) and robust enough to withstand any challenge on appeal.
- 8.13 Similarly, in assessing the strength of any objection, the planning authority needs to be satisfied that the NRA's concerns are material in planning terms and that without conditions or refusing permission, the development would result in '*demonstrable harm to an interest of acknowledged importance*' (PPG1). NRA objections must in particular, be explicit and state clearly why the development will result in such harm that it should be refused planning consent.
- 8.14 Even where a condition (or policy) is not tested on appeal, in order to secure the aims of effective town and country planning, a planning authority should use its best endeavours to ensure that planning restrictions are imposed fairly, reasonably and only when absolutely necessary.
- 8.15 Generally, the majority of examples provided by the NRA regions illustrate that the representations are of a material interest to planning authorities and of vital importance in protecting NRA interests. Indeed, many regions have provided examples where NRA representations have been included in decisions concerning planning applications, appeals and development plans.

- 8.16 Despite the undoubted success of many of these representations, closer inspection suggests that some could be made more effective.
- 8.17 From the examples of correspondence provided, all regions rely to a large extent upon the use of standard paragraphs in responding to planning authorities, developers and the DOE. Such standard paragraphs cover all aspects of the NRA interests although conservation matters are generally poorly represented (there are none for the NRA's Northumbrian, South West and Welsh regions) and flood defence standard paragraphs are still to be formally adopted in the NRA's Northumbrian region.
- 8.18 Each region has developed a different set of standard paragraphs and these may even differ between area offices within regions, and while in some regions consultees have an extensive list of standard paragraphs to choose from, in others the choice is far more limited.
- 8.19 While the use of standard paragraphs can significantly improve the NRA's performance in terms of speed of response (see paragraph 7.84):-
- i) Any over use or over dependence upon standard paragraphs can result in inflexibility in considering specific matters relevant to a particular application, and there is a danger that the NRA's internal consultees may seek to fit standard paragraphs to applications where non-standards comments might be more appropriate.
  - ii) Regular use of standard paragraphs might imply to a planning authority that the NRA has not taken full account of individual characteristics and differences between proposals.
  - iii) The unstructured use of standard paragraphs can present the planning officer with a confusing jumble of NRA comments leaving uncertainty about the NRA's overall attitude towards a proposal.
  - iv) Where conditions are incorporated into standard paragraphs these need to be in a form that are appropriate in planning terms and can be easily used in planning decisions. Often, no specific reasons are given to support recommended conditions and in many cases reasons and conditions tend to be fused together in one general comment making it difficult for a planning officer to disseminate.
- 8.20 The majority of regional responses can be criticised as having one or more of these characteristics although feedback from planning authorities appears to be influencing some regions to reassess the form and content of standard paragraphs and their effective use in responding to planning consultations. Furthermore, most regions are re-evaluating their response to planning applications in view of greater enlightenment about conservation duties imposed under Section 8 of the Water Act 1989.

- 8.21 Notwithstanding this, comments such as "*from a conservation point of view the proposal should not have a detrimental effect on the River Den and its corridor*" (North-West), "*there should be no detriment to the riverbank habitats due to development*" (Northumbrian) and "*ensuring that existing areas of conservation value within any watercourse are maintained*" (Southern), are of limited value as they may be open to interpretation and appear unclear as to whether they are matters which are conditionable from the planning authority's point of view (furthermore, the comments may appear ambiguous in that the words "*should not*" might imply that the NRA has already assessed this issue and concluded that such works should not have a detrimental effect). Comments such as "*adequate precautions must be taken to ensure that the local watercourse remains protected from disturbance during the construction and completion of the proposed development*" and "*the local watercourse should be retained as an amenity feature and should be suitability landscaped, if necessary, using native plant species*" (Yorkshire region) are two further examples.
- 8.22 In other examples NRA recommendations might appear to go beyond those matters which can reasonably be controlled by planning authorities. For example "*any future riverside planting of trees should be of native low land species, predominantly Willow and Alder*" are not conditionable matters (unless the planning authority is satisfied that full landscaping conditions are justified).
- 8.23 While such representations may not in themselves be sufficient to persuade a planning authority to refuse an application or attach planning conditions they may nevertheless, be sufficient to encourage it to consult other conservation bodies (e.g. the Countryside Commission, English Nature, the Council for the Protection of Rural England, Royal Society for the Protection of Birds etc) to obtain their views, which if collectively in support of the NRA, might be sufficient to impose restrictive planning conditions or refuse consent.
- 8.24 Other regions provide more concise and positive comments in assessing the impact of development upon the water environment (especially development which requires environmental assessment statements), but the NRA generally needs to give greater consideration to the quality of its response particularly regarding conservation matters.
- 8.25 As regards flood defence comments, a number of these are also likely to be misinterpreted and misunderstood. Greater clarification is required of technical terms used and in some instances, more information is needed as to whether technical objections can be overcome by appropriately worded planning conditions or '*Grampian style*' conditions (see paragraph 4.39). Some regions (e.g. North-West) will object to a proposal if it is likely to worsen flooding in advance of flood investigations or flood alleviation works, but add that such objections may be withdrawn if it can be satisfactorily demonstrated to the planning authority (in consultation with the NRA) that adequate measures can be undertaken to ensure no worsening of such flooding.
- 8.26 There is no doubt that the recommending of planning conditions is an important means by which the NRA can effectively protect its interests when responding to planning application consultations.
- 8.27 Nevertheless, comments of a vague nature are likely to be of a very limited value to a planning authority in wording an appropriate planning condition, for example, "*the applicants attention should be drawn to the necessity for ensuring that no building material or rubbish finds its way into the watercourse*" and "*the site is not known to flood. However, tests should be carried out in order to ensure that adjacent flood defence systems are not adversely affected and water locking/flooding of adjacent ground is not caused*".

- 8.28 Worse still, some regions may merely conclude a series of general standard paragraphs by adding that *"the authority would request that any planning consent be conditioned as outlined above"*, or words to that effect.
- 8.29 Similarly, some NRA objections do not provide sufficient information to satisfy a planning authority that an objection could or would be substantiated by the NRA at an appeal for example, *"the site lies within a flood waterway and is unsuitable for the proposed development. Refusal of the application is recommended"*. Such a comment not only relies upon the planning officer understanding the term *"flood waterway"* but no explanation is provided as to the consequences that might arise if development is allowed to take place.
- 8.30 Other comments such as *"no objections provided the District Council is satisfied with the surface water disposal arrangements"* are equally unsatisfactorily and unhelpful to the planning authority. If more information is required to enable the NRA to make a more positive comment then such information should be requested or a deferral of a decision should be sought to allow discussions to take place between the developer and the NRA. If necessary, the planning authority should be advised to refuse the application on the grounds of insufficient information being provided to satisfy the planning authority that the site can be adequately drained of surface water.
- 8.31 If NRA comments are not clear as to whether conditions, reasons for refusal etc are being recommended then there is less chance of them being taken into account by the planning authority. Similarly, such comments as *"it is requested that surface water drainage details are reserved for subsequent approval"* is also likely to be missed by a planning officer in drafting planning conditions for an outline approval.
- 8.32 Anglian, Severn Trent, Thames, Wales and Wessex regions have sought to reappraise the structure and contents of their replies to planning authorities in response to feedback received from planning authorities (and regional planning liaison research projects).
- 8.33 Within these regions, there is growing recognition of the need to maximise the NRA's influence upon the planning officer's judgment in considering its response. Clarity of intent, advice, conditions, objections and the difference between types of response have been reconsidered to prevent a potentially valuable planning input being obscure by sheer volume of comment. In particular, a clear distinction is being made between recommended conditions, reasons for refusal, informatives and what might loosely be termed, general advice.
- 8.34 Planning conditions promoted by the NRA are most likely to be accepted by the planning authority if previously drafted in agreement with them and accepted as being relevant to the development proposed. They are even more likely to be used if the same standard paragraphs are stored by the planning authority. At the very least, the conditions recommended by the NRA need to be clear in their intent so that they can be properly interpreted by the planning officer and if necessary reworded to form valid planning conditions.
- 8.35 As well as including sufficient explanation, all recommended planning conditions would benefit from the inclusion of concise reasons (usually a single line of text) which can be included on a decision notice. For example, reasons for conservation, surface water drainage and flood defence conditions might be:-
- o To avoid the reduction of flood storage and/or flow of flood waters.
  - o To protect (land) (buildings) (the development) from flooding in the interests of the public safety.
  - o To ensure that the proposed development is satisfactorily drained of surface water.

- o To (secure) (retain) satisfactory standards of access for watercourse maintenance or to enable satisfactory access to the river for maintenance purposes.
  - o To avoid exacerbating the risk of flooding.
  - o To protect the water environment in the interest of nature conservation.
  - o To ensure lowest habitable floor levels are constructed above highest recorded local flood levels.
  - o To accord with flood plain protection policies (or other policies of the development plan).
- 8.36 The expression of a condition and reason in this way closely follows the format used by planning authorities in drafting and issuing decision notices. This format of response has been adopted by Anglian, Severn Trent, Thames and Welsh regions and enables the planning authority to 'lift' the NRA's response and use it directly in decision notices (perhaps requiring some minor modifications to the wording of the conditions).
- 8.37 There is a need for all regions to carefully evaluate the wording and use of standard paragraphs and remove those which are unnecessary and do not contribute positively towards the planning authority's decision. Those which do not comprise valid planning conditions or reasons for refusal should be deleted for example, *"no objection provided that consent is obtained for discharge"*. Further research would be needed to establish the validity of all the NRA's standard paragraphs which relate to functions other than flood defence and conservation as this is beyond the scope of this report.
- 8.38 It would be helpful if, as in the NRA's Severn Trent and Thames regions, a response incorporates a clearly stated attitude towards the proposal (i.e. no objection, no objection subject to conditions or an objection) followed by justification for the response with detailed wording of any recommended conditions with short reasons (both perhaps in bold type) or detailed wording of a reason for refusal (again perhaps in bold type). Any informative or general advice to the planning authority should be clearly indicated as such perhaps by the use of sub-headings.
- 8.39 Where the NRA objects to proposals, additional recommendations should be added in case the planning authority is minded to grant planning consent notwithstanding the NRA's objection. A typical response from the NRA's Anglian region might be *"notwithstanding the objection, if the planning authority is minded to approve the proposal then the following conditions should be imposed...."*. The NRA's Thames region takes a firmer approach and normally adds *"I would be prepared to support this decision, with evidence, at an appeal. If you are minded to grant planning permission for the proposals despite the above, it is essential that you contact me prior to the determination being made. This will enable me to either 1) comment with regard to the authorities other interest [i.e. suggested possible conditions] or 2) consider requesting the application to be called in by the Secretary of State"*.
- 8.40 The Welsh region in objecting to development in the flood plain, commonly refers to the advice contained in Circular 17/82 and a typical response in objecting to such development might add *"if your Council decide to grant planning permission against this recommendation you should be aware that this authority will not be held responsible for any flood damage caused to existing or proposed properties due to the consequential loss of flood storage area"*.
- 8.41 Examples of standard paragraphs and responses produced by some of the regions mentioned above are reproduced in Appendix 21 together with planning authority decision notices showing that such responses have been directly transcribed into decision notices. Clearly this form of response can be highly effective.

B) Advice to Applicants/Developers

- 8.42 From the examples of correspondence provided by the NRA, '*informatives*' are normally well represented in the NRA's response to planning authorities. Some informatives provide the planning authority with general advice but more usually they are intended to bring the potential need for NRA consents etc, to the attention of the applicant.
- 8.43 As such information is not intended to limit any planning consent and is not material to the planning decision made by the planning authority, it needs to be clearly disassociated from other formal matters in order to avoid confusion in interpreting the response. In particular, the provision of too many informatives may be harmful in obscuring relevant planning concerns of material importance.
- 8.44 It is appreciated that such information nevertheless, needs to be passed on to the applicant in order perhaps to clarify the terms of any planning consent i.e. that planning permission does not override the need to obtain other consent for example under local land drainage byelaws. From other information provided by the regions, it appears that while some planning authorities are content to be utilised as a '*post box*' for passing on information to applicants (or providing the applicant with a duplicate copy of the NRA's response when issuing the planning decision notice) this is not universal and cannot be relied upon. Indeed some planning authorities have objected to this procedure as for the reasons already explained in paragraph 4.43.
- 8.45 It would therefore be preferable to keep informatives to an absolute minimum and seek to persuade planning authorities to include important informatives on planning decision notices so that they '*travel with*' the planning consent. Alternatively, where planning authorities do not object to this information being passed directly to the applicant by the NRA, there is no need to include information in correspondence to the local planning authority (unless requested by them) as this merely lengthens the replies and may possibly obscure important planning considerations.

C) Development Plan Responses

- 8.46 Development plans might be expected to generate a more detailed and lengthy response than planning applications and it is perhaps surprising that while standard paragraphs have been well developed and widely used in response to planning applications, only a few regions use them in responding to development plans.
- 8.47 As mentioned previously, Anglian and Thames regions have adopted model policies (see paragraph 5.50 and Appendix 15) which are promoted in all development plan consultations.
- 8.48 Most regions have provided evidence that policies promoted by the NRA are being successfully incorporated into development plans (both structure plans and local plans). Evidence suggests that planning authorities are willing to incorporate river conservation policies, flood defence policies and general policies regarding surface water management.
- 8.49 In one example in Thames region however, a planning authority was not initially prepared to adopt such policies in a local plan, preferring instead to include them in non-statutory planning guidance notes accompanying a local plan. Such a practice should be resisted as non-statutory guidance documents carry significantly less weight than adopted local plan policies, and this may be a valid reason for objecting to proposals at a development plan inquiry.



- 8.50 Where the NRA is successful in having policies incorporated in adopted development plans these could then be stored by the NRA as standard paragraphs and used in support of responses to planning applications within the development plan area i.e. in support of recommended conditions or reasons for refusal. While NRA recommendations would be significantly strengthened if supported by approved planning policies, no evidence has been provided to suggest that at present regions commonly refer to development plan policies in responding to planning application consultations.
- 8.51 Generally NRA response to development plans varies between regions. Some regions provide comments of a very general nature and do not promote specific policies and comment that "*specific comments will be reserved for individual planning applications when submitted on allocated sites*". Other regions do not specifically promote policies but instead comment on potential sites to be allocated in a plan, on a site by site basis.
- 8.52 Clearly, given the increasing importance of the development plan and the government's promotion of a '*development plan-led planning system*' (see paragraph 5.2), it is vital that the NRA promotes specific policies which protect its interests as well as commenting on potential development sites. While comments on sites will of course differ depending on the characteristics of individual sites, general policies concerning flood defence, surface water management and conservation could be established on a national basis and promoted by all regions. No doubt this matter will be considered by the R & D research project (no. 299) referred to in para. 5.6.

D) Response to Planning Appeals, Development Plan Inquires and Legal Agreements

- 8.53 While all regions have been involved in written representation appeals, the degree of involvement normally appears to amount to forwarding the DOE previous copies of representations sent to the planning authority together with any additional comments. Only Severn Trent and Thames regions provided evidence that they produced '*written representation appeal statements*' to seek to persuade the planning inspector (or Secretary of State) to either refuse the proposal or attach appropriate planning conditions.
- 8.54 In the same way that the NRA seeks to persuade planning authorities to take account of NRA interests in determining development proposals, it is equally important for the NRA to make full representations to the DOE concerning all appeals be they by the written representation procedure, informal hearing or public inquiry. It cannot be assumed that an appointed planning inspector will be fully conversant with all the NRA's interests or be aware that it is dependent upon the planning system in seeking to control the effect of new development. Furthermore, it is also helpful to remind inspectors of national policies and advice concerning NRA interests (e.g. Circular 17/82) together with any relevant structure and local plan policies.
- 8.55 Examples indicate that most regions are however, prepared to present oral evidence in support of objections at both development plan inquiries and planning application appeal inquiries. Evidence is normally prepared and given at a public inquiry by an internal NRA consultee with appropriate technical expertise and experience.
- 8.56 In view of the terms of reference of this project, only examples involving the NRA's flood defence and conservation duties have been provided, but no doubt other disciplines within the NRA provide evidence in a similar way in support of other functional interests.

- 8.57 All regions have confirmed that where conditions or reasons for refusal recommended by the NRA are to be considered at an appeal, the NRA are not only prepared to provide the necessary supporting evidence, but also, if necessary, be prepared to give evidence at planning application appeals or development plan inquiries as a *'third party'* independent of the planning authority's involvement.
- 8.58 Nevertheless, despite this obvious commitment, the potential effectiveness of the NRA's evidence is likely to vary as some inquiry statements are much more comprehensive than others. This does not necessarily reflect regional differences in presentation but rather the preference of format and structure of evidence chosen by individual NRA witnesses when preparing the evidence.
- 8.59 In order for such evidence to be effective, it is important that a planning inspector or the Secretary of State (whether concerning planning application written appeals, informal hearings, public inquiries or development plan inquiries) is provided with a full account of the NRA's case.
- 8.60 Many of the examples provided are adequate in informing planning inspectors of the NRA's general interests and concerns regarding a particular matter (indeed, evidence of appeal/local plan inquiry decisions support this), but the majority of statements could be significantly strengthened and made more effective if general guidelines were to be produced nationally and followed by NRA expert witnesses in preparing and presenting evidence at public inquiries on behalf of the organisation.
- 8.61 An example of suggested guidelines for the structure of a typical statement is set out in Appendix 22.
- 8.62 Only a few regions provided examples of planning agreements, but from the limited evidence available, it is apparent that these have been successful in obtaining financial contributions from developers towards flood defence schemes, or in ensuring that adequate off-site works are undertaken.

#### Monitoring Planning Decisions

- 8.63 The monitoring of planning decisions (both planning applications and development plans) is an important means by which the NRA can judge the effectiveness of its planning liaison activity. In particular, knowledge of decisions made is important to:-
- i) Ensure that sufficient account has been taken of NRA objections in the refusal of planning applications or in amending or deleting proposed planning policies or site allocations in development plans.
  - ii) Ensure that recommended conditions are imposed on planning consents or recommended policies are included in development plans.
  - iii) Undertake any subsequent action which may be required in conjunction with the planning authority or developer (e.g. planning agreements or appeal statements).

- iv) Enable the NRA to monitor permitted development which might affect its interests (e.g. in ensuring that land drainage consent is obtained) or in the monitoring of planning conditions.\*

8.64 In practice, such monitoring could be achieved by the NRA requesting and obtaining planning decision notices for each planning application where conditions are requested or objections made. In particularly important cases, the dates of planning committee meetings could be obtained together with a copy of the planning officer's report to ensure that the NRA comments are reasonably represented.

8.65 Similarly, the NRA could formally request to be notified of any decisions incorporating NRA recommendations which are the subject of an appeal. If further evidence is submitted to the DOE a copy of the appeal decision should be requested.

8.66 Where representations are made to development plans, a copy of the planning authority's report upon the public consultation stage could be used to assess whether further representations are likely to be required at a development plan inquiry. If representations are made to a local plan inquiry then a copy of the Inspector's report on modifications should be requested.

8.67 If such monitoring reveals that a planning authority (or DOE) is not taking proper account of the NRA's representations, further action may need to be taken;

- i) To examine why the decision making body has not taken NRA representations into account.
- ii) To ascertain whether such a decision forms part of a trend concerning other decisions made by the same determining body.
- iii) To explore whether legal action might be required (e.g. judicial review, ombudsman submission etc) or whether a high level meeting is required between representatives of the NRA and the determining body to seek to ensure that NRA interests are taken into account in the future.

8.68 While the monitoring of planning decisions is an important activity for the NRA, this task is commonly neglected by the majority of regions due to a shortage of available resources. Only just over half of the regions request planning decision notices as a matter of course (Anglian, Severn Trent, Southern, South-West, Thames and Wales) and very little evidence has been provided that the NRA has actually acted upon any adverse decisions (with the exception of the cases highlighted in Severn Trent and Welsh regions - see paragraph 4.62).

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\*Footnote. Once a development secures planning permission, there is currently, no statutory obligation upon the planning authority to monitor whether development takes place in accordance with approved drawings or planning conditions. Failure to comply with a permitted drawing or adhere to a condition (or the planning permission itself) is not a legal offence as the planning authority's enforcement powers are discretionary. In practice, most planning authorities are reactive to breaches in planning law rather than proactive in monitoring and enforcement. Some monitoring is achieved via building control inspections (for development under construction) and by planning officers or committee members noticing suspected unlawful development, but most enforcement action however usually occurs as a result of complaints from local residents.

- 8.69 There is little doubt that all regions could benefit from the feedback provided by obtaining planning decision notices and comparing them against the NRA's original representations. It is fully appreciated that in practice however, limited staff resources make this task virtually impossible, compounded by the fact that some planning authorities are not willing to forward decision notices without levying a charge for doing so.
- 8.70 Of perhaps greater importance is the need to monitor appeal decisions and in particular a need for inter-regional dissemination of significant decisions affecting the NRA's interests. Such decisions are not only of importance in establishing that NRA interests comprise material planning considerations, they might also involve important matters of precedent or comprise important 'test cases'.
- 8.71 One such example recently involved a case in the NRA's North-West region where an application to culvert a watercourse was refused planning consent at the recommendation of the NRA on the basis that its interest under Section 8 of the Water Act 1989 would be compromised. Both the NRA's appeal statement and the Inspector's decision letter is reproduced in Appendix 23.
- 8.72 This particular case highlights the importance of monitoring appeal decisions and if necessary making other regions aware of them. Of special interest in this case is that:-
- i) The application was refused by the planning authority for nature conservation reasons recommended by the NRA and for no other reasons.
  - ii) The Inspector appeared to accept that the planning authority's reasons for refusal comprise a material planning consideration in noting that the main issue was *"the effect of the proposed development on the character and appearance of the surrounding area with a particular reference to the landscape and interest of nature conservation"*.
  - iii) While the open watercourse might have *"nature conservation potential"*, the Inspector concluded that it has *"very little conservation value in its present state"*. Moreover, he concluded that the *"culverting of the entire length of the appeal site would provide an opportunity for a comprehensive landscape treatment the visual benefits of which would be likely to outweigh the loss of the section of open watercourse much of which is at the present time in an unsafe condition and acknowledged to be of little landscape or conservation interest"*. He consequently allowed the appeal and granted planning permission.
  - iv) In granting consent, the Inspector imposed a condition regarding the submission and approval of details of the proposed culverting but the validity of such a condition is perhaps questionable given that the NRA has separate powers to refuse consent for such works under the Land Drainage Act 1976.
  - v) No mention was made of the NRA's statutory powers but the decision no doubt weakens the NRA's case for refusing land drainage consent on the grounds of duties imposed on the organisation by virtue of Section 8 of the Water Act 1989.
  - vi) The decision is of special importance in establishing that while culverting or similar works to a watercourse may not in itself conserve and enhance the water environment as required by Section 8 of the Water Act 1989, there may be other issues of overriding importance e.g. the overall environmental benefits of the proposal or perhaps other social or economic benefits.

- 8.73 At the time of writing, the six week period for any further appeal to the High Court had not expired and it is not known whether the NRA intend to pursue any further action regarding this important issue. Nevertheless, this case serves to illustrate the importance of not only monitoring but also assessing the impact of planning decisions made by planning authorities and the DOE.

Commentary

- 8.74 While all examples of the NRA's response provided as part of this project have been carefully analysed and examined, in practice the effectiveness of such consultations cannot be fully evaluated without seeking the views of planning authorities and in particular planning officers who are required to take account of such representations in making planning decisions. Evidence provided in association with this project indicates that the NRA's response is becoming increasingly more effective as planning authorities obtain a greater awareness of the NRA's interests. Similarly, the improved structure, format and content of response being developed by some of the regions indicates an increasing awareness of the nature of the planning system and the NRA's potential influence upon it.
- 8.75 Further research might investigate the use and effectiveness of standard paragraphs perhaps with the aim of establishing a common set of planning conditions and development plan policies (perhaps in consultation with the Association of County Councils and District Councils and/or the National Development Control Forum) to ensure greater co-ordination and consistency between NRA regions in producing effective responses to planning consultations. Such research might also aim to provide guidance for NRA consultees in the use of standard paragraphs in responding to planning consultations which in itself may be a helpful 'aide-memoire' for existing staff as well as a valuable teaching aid for new staff.

## 9. CONCLUSIONS

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- 9.1 Efficient and effective planning consultations with planning authorities and the DOE, is of vital importance in seeking to achieve the NRA's objectives concerned with flood defence and river conservation. Otherwise, new development might not only be subject to flooding itself or adversely effect flooding elsewhere but also establish an undesirable precedent for similar development, the cumulative effect of which might be to give rise to increased risk of flood damage to land and property, possible danger to life and wasteful expenditure of public resources on remedial works. Planning consent could also invalidate the NRA's few powers of control (e.g. the raising or infilling of land within a flood plain) or compromise the NRA statutory conservation duties.
- 9.2 Essentially, if the NRA is unsuccessful in either opposing such development, or having restrictive conditions imposed (or entering a legal agreement with the applicant), the NRA has no control over the management of surface water disposal once planning consent is granted.
- 9.3 It is also important that the NRA promotes flood defence, surface water management and water environment conservation policies in the formulation and adoption of local authority development plans as these are likely to have increasing importance in decisions made about new development.
- 9.4 The NRA's planning consultation procedure cannot be efficient and effective however, unless firstly, it is aware of relevant development proposals, secondly it responds to consultations prior to planning decisions being made and thirdly, that such a response is in a form that can be readily understood and acted upon by the planning authority concerned (or DOE).
- 9.5 While these requirements are recognised by the ten NRA regions responsible for processing and responding to planning consultations, this research project has identified wide variations between regions both in the number of consultations processed and the speed of response. Similarly, there are variations as to the quality of response and the degree to which such consultations are likely to be effective in influencing planning authorities (or the DOE) in taking full account of the NRA's interests in making planning decisions.
- 9.6 Some regions process over 14,000 planning consultation referrals per year while others process less than 2,000; some are able to respond to 61% of such consultations within 14 days while others can only respond to 50% within 28 days; some regions have developed a form, style and content of response which is likely to be more effective than others where inadequate replies might reduce the NRA's chance of influencing planning decisions.
- 9.7 This in part is no doubt a reflection of the wide regional differences not only in geographical size, the spread of population, development pressures and the number of planning authorities dealt with, but is also partly a reflection of different organisational structures and staff resources available to undertake planning consultation and liaison duties.
- 9.8 As a general observation, it appears that priority and staff resources dedicated to processing planning consultations can be related to the extent to which any individual region has developed its planning role as a means of achieving NRA objectives. Clearly only a reactive stance can be expected from those regions where consultation pressures are high and staff resources are low, but where such a ratio is better balanced, a more pro-active consultation procedure is possible.

- 9.9 It seems apparent from this research that initiatives which are helping to improve efficiency and effectiveness in planning consultations (i.e. by refining and speeding up consultation procedures and making a response which is relevant to planning matters and relevant to the development proposed), have come from those regions which have resources which are best able to pioneer this work.
- 9.10 Such advances in processing techniques and improvements in the content of response made should be brought to the attention of other regions and made available for their adoption. In this way, pioneering work will benefit not only the region involved but the NRA as a whole, and help avoid wasteful duplication of research and development.
- 9.11 At present however, there appears to be only very limited contact between regional planning liaison staff and their consultees and only a few regions (e.g. Thames) regularly liaise and consult each other on matters of mutual interest and potentially mutual benefit. It is hoped that this project will help spread information about planning liaison activities being undertaken by the various regions, but there may be a need for a greater co-ordinating role by the NRA's HQ.
- 9.12 The NRA's HQ could also have an important and influential role in helping to promote a consistent approach between regions as regards the standardisation of development schedules, standard paragraphs, development plan policies etc as well as providing a national forum for regional representatives to discuss advances in processing techniques, important appeal decisions or changes in planning legislation and government policy advice.
- 9.13 Evidence from this project research suggests that regions might also benefit from additional national advice and guidance regarding the implementation of the NRA's Section 8 responsibilities. While all regions are fully aware that these duties apply to works carried out or consented by the NRA, there appears to be some confusion as to the extent of NRA involvement in giving advice to planning authorities in the determination of planning applications or in the formulation of development plan policies (although this may become clearer as planning appeals are determined and as case law develops).
- 9.14 Improved education and training is another area where the NRA regions could benefit from co-ordinated guidance from NRA HQ particularly as regards the availability and suitability of national and regional short courses organised by various planning schools and other bodies, throughout England and Wales. Generally, there appears to be a shortfall in the level of understanding of the scope of the planning system by some NRA staff. Clearly, in order to seek to ensure an effective response to planning consultations, planning liaison staff and their consultees need to be fully aware of what can and cannot be achieved through the planning system in protecting the NRA's interests.
- 9.15 While there is an identifiable need for additional training of NRA staff, the NRA could also benefit from greater education of planning authorities to ensure a proper understanding its interests and dependence upon decisions made by planning authorities in protecting its flood defence and conservation interests.
- 9.16 This might be achieved by more regular round table discussions between the NRA and planning authorities to air and discuss matters of mutual concern, to improve the understanding of each others role and to obtain feedback regarding the effectiveness of planning consultations. The more widespread production and circulation of planning liaison manuals could provide planning authorities with helpful information and also provide a focus for such discussions. In addition there is a need to nurture and promote good personal contacts with planning authority staff to ensure they take full account of the NRA's representations in weighing up all other material planning considerations and in recommending a course of action to planning committees.

- 9.17 Thirdly, there is a need to educate developers as clearly some still remain confused as to the NRA's role since privatisation of the water industry in 1989. If intending developers are aware of NRA interests, drainage or flood risk problems (or conservation requirements) can be identified and resolved at an early stage, perhaps prior to the submission of planning applications. This might best be achieved by the more widespread production and distribution of the type of leaflets already produced by some NRA regions. ✓
- 9.18 All these measures might help improve the effectiveness of the NRA's planning consultation activity (others are set out in the recommendations) but perhaps the ultimate test is to monitor planning decisions and investigate proposals which have been developed either in the absence of NRA consultation or contrary to NRA advice, and assess the impact upon NRA interests. ✓
- 9.19 As part of this project, all regions were asked to give examples where local authority planning decisions had directly compromised NRA interests. Very few examples were provided and most related to former Water Authority consultations. This lack of evidence might suggest that the NRA is already very effective in protecting its flood defence and conservation interests. While this may in part be true, other factors might relate to the long lead in time associated with development and the general lack of monitoring of planning decisions. Undoubtedly, the majority of any "problem" sites will only come to light after major storms, which themselves are of an infrequent nature.
- 9.20 This and other matters identified in this report would benefit from additional research. Indeed, the limitations of this project in only investigating flood defence and conservation based issues points towards the need for a wider-based, multi-functional research project to assess the efficiency and effectiveness of the NRA's planning consultation activity in protecting all of its various interests. It is nonetheless recognised that some of the reports findings will be common to other NRA functions.
- 9.21 Overall, the NRA must continue to strive for greater efficiency and effectiveness in responding to planning consultations and greater inter-regional contact and co-ordination is required to benefit the organisation as a whole as well the community at large, as "*guardians of the water environment*". The basis of a sound planning consultation system is already in place, but a clearer understanding of the planning system is required in order to fully safeguard and promote the NRA's flood defence and conservation interests. The summary of recommendations that follow are put forward as constructive proposals to seek to deal with problems and difficulties identified by this report.



## 10. SUMMARY OF RECOMMENDATIONS

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### Section 1

- 10.1 The prime objective of this project is to consider how the NRA's flood defence function can be protected and promoted through planning consultations with local authorities and the DOE. It is recognised however, that flood defence is only one of the NRA's many interests and in order to assess other functional needs and requirements there is a need for further work to build upon the findings of this research project (paragraphs 1.2 and 1.3).
- 10.2 Throughout the report it is noted that there are significant variations between regions regarding planning liaison activities and at present there is very limited inter-regional contact between planning liaison staff and their consultees. Further research may also be needed to examine methods of improved inter-regional contact (paragraph 1.16).

### Section 2

- 10.3 There is a need to consider the role of planning liaison in a wider context to include all of the other NRA's functions and establish the full extent of the NRA's dependence upon the town and country planning system. This was a matter raised by a number of regional personnel who considered that any recommendations regarding flood defence interests might be premature in advance of a wider based investigation of the role of planning liaison.
- 10.4 There are nevertheless areas which impinge upon flood defence interests which might also benefit from further examination. For example, discussions at the regional project meetings indicated that;
- i) There is a need to investigate the extent to which the NRA's conservation duties comprise material planning considerations and there is a need for the adoption of a consistent approach between regions perhaps with guidance from the NRA HQ (paragraph 2.39).
  - ii) While global warming was not a matter generally canvassed at the regional project meetings this was raised as an issue and in particular, the need to adopt a policy attitude towards the development in coastal locations or areas at risk from tidal flooding. The NRA's response to planning applications and development plans might also benefit from guidance from NRA HQ for consistent implementation by the various NRA regions (paragraphs 2.44 - 2.45).

### Section 3

- 10.5 In order to help ensure effective and efficient planning consultations, the NRA's planning liaison staff and their consultees need to be fully aware of the nature and purpose of the planning system, its controls and the constraints placed upon planning authorities in determining planning applications and formulating planning policies.
- 10.6 From the regional project meetings and interviews with planning liaison staff, it is evident however that at present, the NRA provides very little training which is directly relevant to the work undertaken by planning liaison staff and their consultees (paragraph 3.2).

- 10.7 A number of regions recognise this shortfall and at least one (Severn Trent) has organised courses for its planning liaison staff in association with the School of Planning at Birmingham Polytechnic. There are a number of other courses run on a regular basis by recognised planning schools at universities and polytechnics throughout England and Wales. Appendix 3 contains a few examples of the many courses which might be of benefit to those involved in the NRA's planning liaison activity.
- 10.8 It is therefore recommended that each region identifies specific training needs including training of a procedural nature such as negotiating legal agreements and preparing and giving evidence on behalf of the NRA at planning application and development plan inquiries. Each region might research planning courses which may be available locally (perhaps aided by NRA HQ) with a view to organising training for its planning liaison staff and consultees.
- 10.9 Planning liaison staff and their consultees also need to be kept informed of legislative changes, new planning advice issued by the DOE and other potential changes such as amendments to the GDO. Such information may be made known to planning liaison staff and their consultees through press releases or memos circulated from the NRA's HQ to regions or by the NRA's regional legal departments.
- 10.10 The Planning and Compensation Act 1991 has only recently received its Royal Assent from Parliament and is to be introduced in stages. At the time of writing this project report, the full consequences of this legislation were not known and therefore there is a need for all regional staff involved in planning liaison to be made aware of the implications of this new legislation.
- 10.11 Thus, any future projects associated with the NRA's planning activity should seek to take account of this legislative change together with any other changes such as new government advice issued in Circulars and Planning Policy Guidance and any amendments to the GDO.

#### Section 4

- 10.12 There are few recommendations arising from Section 4 which are not considered elsewhere and set out in the paragraphs above or below.
- 10.13 Recommendations to be drawn from this Section are:-
- i) **Planning Agreements** - The NRA should consider the desirability of pursuing negotiations with developers through private legal agreements in order to retain adequate controls over their drafting and enforcement (paragraph 4.56). There is also a need to take account of the consequences of '*planning obligations*' as provided for under the new Planning and Compensation Act 1991.
  - ii) **Planning Appeals and Costs** - Regions should continue to make it clear to planning authorities that where conditions are imposed or applications are refused at the recommendation of the NRA, the NRA's full support can be expected if such decisions are challenged on appeal (paragraph 4.19). National guidelines are needed however, as to the NRA's approach in meeting costs if a developer is successful in a claim of unreasonable behaviour against an objection pursued by the NRA (paragraph 4.71). This is required in order to ensure that the NRA at a regional level, is consistent in its liaison with planning authorities.

## Section 5

- 10.14 Development plans are of considerable importance to the NRA in providing an opportunity to influence the location and form of future development. Any recommendations as to the desirability of producing nationally based planning policies for incorporation within development plans would however, be premature in advance of the findings and recommendations of the NRA's R & D project no. 299 (paragraphs 5.6 and 5.50).
- 10.15 Nevertheless, any further research work might combine the findings of both projects with a view to promoting effective and efficient planning consultations regarding development plans. Consideration might be given to the production of NRA constraints maps for circulation to planning authorities to assist in the production or review of development plans (paragraph 5.48). Consideration might also be given to the impact of more recent advances in surface water management and the consequences for site allocation in development plans (paragraphs 5.59 and 5.65).

## Section 6

- 10.16 Organisational and structural differences between the ten NRA regions give rise to many variations in the operation of planning liaison. While further investigation may be required to examine the reasons for such differences and to assess the impact upon the effectiveness and efficiency of planning consultations, there is a need for a consistent approach between regions when liaising with planning authorities, especially those which overlap NRA regional boundaries (paragraphs 6.15 and 6.16). This may give rise to a need to consider greater standardisation of the NRA's organisation and structure of planning liaison at regional level and agree a national procedure for the handling and monitoring of planning consultations.

## Section 7

- 10.17 All regions should consider producing manuals and guidelines setting out the nature and purpose of the NRA's planning liaison procedure. Flood defence sections might produce guidance on development in flood risk areas or surface water management techniques etc. Such documents are not only of assistance to planning authorities (paragraph 7.3) and developers (paragraph 7.47) but also the NRA's own planning liaison staff and their consultees (paragraph 7.5). Guidance documents and leaflets currently produced by some regions could be utilised as models for similar production by other regions. Greater inter-regional contact might also help in their production.
- 10.18 Leaflets aimed at passing on information to those involved in developing land should be made available and widely distributed not only via NRA reception areas, but also at public reception areas of planning departments (obviously subject to agreement). Such leaflets could also be forwarded to volume housebuilders and large commercial developers. Generally, the service provided to developers might be improved by funding raised from charging for the provision of technical information, advice or services and this could be explored further (paragraphs 7.47 and 7.49).
- 10.19 All regions should seek to ensure that regular meetings take place with planning authorities within their area (at least on an annual basis) in order to discuss matters of mutual concern as well as obtaining feedback as to the effectiveness of NRA consultations (paragraph 7.6). Where staff resources permit, the NRA might consider wider use of the practice adopted by the South West region, where development constraint manuals are produced for each planning authority area and formally presented at meetings with planning officers and planning committee members (paragraph 7.9).

- 10.20 On a day to day basis, NRA planning liaison staff should continue to nurture and promote good working relationships with local authority planning staff, particularly case officers and administrative staff whose duties include the copying and forwarding of planning consultations to the NRA (paragraphs 7.11 and 7.71).
- 10.21 Where local Development Control Forums exist, the NRA should seek wider membership and be represented at relevant meetings not only to promote its own interest but to enable information to be obtained about important local, regional or national planning issues (paragraph 7.8).
- 10.22 A key area of efficient consultation is to ensure that the NRA is made aware of all relevant development proposals (planning applications and development plans). There are clear advantages to the visitor system adopted by the NRA's South West and Anglian regions (paragraph 7.41) in ensuring that the NRA has an opportunity to be consulted on all relevant applications. This practice also provides an opportunity to note those applications which might require various NRA consents without unnecessarily referring them to the NRA for formal comments (paragraph 7.28).
- 10.23 Where such a system is used it is important that NRA visitors are adequately trained and made aware of all NRA interests and that where comments are made directly at planning offices, planning history is checked and copies of responses are retained for reference purposes (paragraph 7.43). NRA visitors should only lodge objections to proposals if they are confident that the NRA will support such objections on appeal otherwise, all such consultations should be circulated among internal consultees (paragraph 7.37).
- 10.24 The visitor system appears to have been very successful in the two regions where it is operated and should therefore be explored in further detail for possible adoption by other NRA regions (paragraph 7.44) although this would undoubtedly have implications for staff resources.
- 10.25 In those regions which (for reasons identified in paragraph 7.44) might have to continue to rely upon planning authorities selected and forwarding relevant applications, the development schedules circulated to planning authorities should be re-evaluated and made more user friendly for planning authority staff, to ensure that all relevant consultations are forwarded to the NRA (paragraph 7.11 and 7.19).
- 10.26 It is also recommended that in order to avoid inconsistencies between regions, development schedules should be produced which (as far as possible) are common to the organisation as a whole and select the best features of the existing schedules produced by the various regions, perhaps with a co-ordinating role played by NRA HQ (paragraph 7.27) and in consultation with the National Development Control Forum (or similar body). This will however, require further study to examine the needs of other functions such as Water Quality or Water Resources.

- 10.27 Within those areas where an NRA visitor system would not be practical, the receipt of weekly or fortnightly planning lists (paragraph 7.29) will continue to provide a useful opportunity to double check that all relevant applications have been received for comment (paragraph 7.30). The checking of planning lists could be made significantly less time consuming if all NRA records and development constraints were held on comprehensive mapping systems (preferably computer based) and if all planning authorities could be persuaded to include Ordnance Survey grid references on such lists (paragraph 7.33).
- 10.28 The speed at which the NRA is able to respond to planning consultations is of critical importance given that any response ceases to be of value once a decision is made by the planning authority. Planning authorities are themselves under government pressure to determine the majority of planning applications received within an 8 week period (paragraph 7.50).
- 10.29 While the GDO allows planning authorities to determine applications after a minimum notice period to consultees of 14 days, the NRA should encourage them to extend the consultation period to 28 days in line with that recommended by the National Development Control Forum (paragraph 7.53). If the NRA is unable to respond within this period (or any other stated by the planning authority) an extension of time should be sought with reasons given (paragraph 7.88). Generally however, the NRA should aim to return as many consultations as possible within 14 days of receipt and all consultations within 28 days of receipt (paragraph 7.86).
- 10.30 To enable an assessment of response times for the NRA as a whole, all regions (perhaps with guidance from NRA HQ) should select a common starting date for the periods monitored (paragraph 7.56). While the GDO is unclear as to the precise starting date for statutory consultations (paragraph 3.14), it would be reasonable to assess NRA performance from the date that the consultation is received by the NRA (rather than the date of the local authority's letter or the date the consultation is entered into computer programmes).
- 10.31 Many of the computer programmes used to process planning consultations and produce management reports are well developed and invaluable in speeding up processing of planning consultations (paragraph 7.61). Data used for monitoring purposes should also be examined to ensure a consistent approach between regions (paragraph 7.57).
- 10.32 In regions where systems are less well developed, and prior to other regions up-dating and modifying their systems, greater inter-regional contact and consultation should be encouraged to examine existing systems used and to incorporate mutually beneficial features and facilities. Such improved contact (co-ordinated by the NRA HQ) would help avoid unnecessary duplication of work to up-date and modify systems and thus avoid wasteful expenditure (paragraph 7.60).
- 10.33 All processing systems need to incorporate features which help search and retrieve previous planning consultations on particular sites or within particular areas in order to aid internal consultees and avoid inconsistent replies to planning authorities (paragraphs 6.63 and 6.64).
- 10.34 With regard to other factors which can delay the processing of planning consultations:-
- i) Where consultations are posted rather than collected by NRA visitors, all planning authorities should be encouraged to forward consultations by first class post or accept lengthier consultation periods (paragraph 7.68). Similarly the NRA should ensure that first class post is used in circulating consultees to remote consultees (or preferably develop increased use of linked computer systems - paragraph 7.80). All replies to planning authorities should be sent by first class post and increased use of fax facilities should be considered to return (or circulate) urgent consultations (paragraph 7.80).

- ii) Delays in returning flood defence consultations are inevitable and likely to continue unless consultees are able to devote more (or preferably all) of their time to considering planning consultations rather than dealing with them as part of a range of other duties (paragraph 7.74). Similarly, delays are likely to occur where there is no available staff cover during periods of absence (paragraph 7.75).
- iii) Consultation with Internal Drainage Boards can significantly delay planning consultation response times in some areas. Further investigation is needed to examine whether consultation procedures can be streamlined in those regions most affected (paragraph 7.77).
- iv) Computerised processing systems should be further developed and enhanced (where possible related to a geographical information system to facilitate identification, previous history etc and, with full word processing facilities) to enable the planning liaison sections to generate and store final letters (and letters to applicants etc) and avoid delays that can otherwise occur through the use of central typing pools (providing that planning liaison sections have, or are provided with staff with word processing skills paragraphs 7.82 and 7.83).

#### Section 8

- 10.35 The use of standard paragraphs is undoubtedly beneficial in speeding the processing of planning consultations but to be effective they must be used with care. Regions should re-evaluate standard paragraphs to ensure that they are relevant to planning matters, are necessary and are not too technical to be understood by planning authority staff (paragraphs 8.19 and 8.37). Further studies are needed to assess the effectiveness of other standard paragraphs used in relation to other functional interests (paragraph 8.37) perhaps with the aim of establishing a common set of regional standard paragraphs to ensure greater co-ordination and consistency between NRA regions in responding to planning consultations (paragraph 8.75).
- 10.36 The NRA can effectively protect its interests where planning conditions recommended by the NRA are imposed by planning authorities in granting planning consent (paragraph 8.26). Planning conditions recommended by the NRA are most likely to be used by planning authorities if they are satisfied that such matters comprise material planning considerations, that they are relevant to the proposal and that environmental harm might arise if such conditions are not imposed.
- 10.37 Conditions recommended by the NRA should be clear as to their intent so that they can be properly interpreted by planning officers and if necessary reworded to form valid planning conditions.
- 10.38 A number of NRA regions store conditions recommended to planning authorities as standard paragraphs. These are likely to be more readily accepted by planning authorities if drafted in discussion and agreement with them. At a national level, it might be appropriate to consider the adoption of standard conditions applying to all regions drafted in agreement with such bodies as the National Development Control Forum, the Association of County Councils and District Councils, etc (paragraph 8.75). Where NRA standard conditions can be agreed, planning authorities should be encouraged to store them with their other standard planning conditions.

- 10.39 All recommended conditions should contain sufficient justification to satisfy the planning authority that they are necessary and meet the other tests set out in Circular 1/85. In addition, the NRA should put forward concise reasons for each recommended condition which could be included on the planning authority's decision notice (paragraph 8.35). Such short reasons could also be agreed with planning authorities and stored as standard paragraphs by both organisations.
- 10.40 As far as possible, the NRA should provide planning conditions and reasons in a form that closely follows that used by planning authorities in drafting and issuing decision notices, to enable the NRA response to be directly lifted and used in such decision notices (paragraph 8.36).
- 10.41 As with recommending planning conditions, the NRA should provide sufficient justification for an objection and evidence that the NRA will support any recommended reason for refusal on appeal. Similarly, in recommending reasons for refusal, these need to be clear to enable the planning officer to interpret them and reword them if necessary and standard reasons for refusal might also be agreed with planning authorities and stored as standard paragraphs by both organisations.
- 10.42 In recommending refusal of a proposal, the NRA should also add recommended conditions in case planning authorities are minded to approve the application notwithstanding the NRA's objection. Alternatively, comments should be added to ask the planning authority to defer making the decision if it is minded to grant consent, in order to provide the NRA with an opportunity to reconsider its position (paragraph 8.39).
- 10.43 All NRA response letters should be structured so as to avoid presenting planning officers with a confusing jumble of comments (paragraph 8.19) and to prevent important recommendations being obscured by sheer volume of comment. In particular, a clear distinction should be made between recommended reasons for refusal, recommended planning conditions, informatives and general advice (paragraph 8.33).
- 10.44 Recommended conditions (with short reasons) and recommended reasons for refusal should be clearly indicated in the NRA's response perhaps in bold type, italics or indented paragraphs. Similarly any informatives or general advice should also be indicated perhaps by the use of sub headings (paragraph 8.38) and clearly disassociated with any other material planning considerations (paragraph 8.43).
- 10.45 Where informatives need to be brought to the attention of applicants (e.g. because of the need for land drainage consent) regions should ascertain whether planning authorities within their area object to such informatives being sent directly to the applicant/developer concerned. Where there is no objection, the NRA should exclude such informatives from letters to planning authorities and instead forward them directly to applicants (paragraphs 8.44 and 8.45).
- 10.46 In areas where planning authorities object to this approach, informatives should be kept to a minimum but included in the response letter with a request that they are passed onto the applicant preferably as informatives attached to the decision notice where consent is granted (paragraph 8.45).
- 10.47 With regard to development plan response, all regions should promote river conservation, flood defence and general surface water management policies as well as providing comments on individual development sites proposed (paragraphs 8.48 and 8.51).

- 10.48 Where regions are successful in having such policies included in development plans these should be stored by the NRA as standard paragraphs and used when responding to any relevant planning applications subsequently submitted within the plan area, in order to justify a recommended course of action (paragraph 8.50).
- 10.49 It is important that NRA regions continue to make representations in response to development plan consultations and continue to be willing if necessary, to provide evidence at development plan inquiries.
- 10.50 In all development plan and planning application inquiries (and written representation appeals), the NRA should make the fullest representation possible (paragraphs 8.54 and 8.59) and should produce a check list (example given in Appendix 22) to aid those responsible for structuring evidence on behalf of the NRA (paragraphs 8.60 and 8.61).
- 10.51 The monitoring of planning decisions is a key area of importance in judging the effectiveness of NRA planning consultations. All regions should as far as possible monitor planning decisions and take appropriate actions where such decisions might prejudice the NRA's interests (paragraphs 8.63 - 8.67).
- 10.52 In particular, all appeal decisions should be requested where the NRA has had an involvement and important decisions (especially those involving possible precedent) should be carefully examined (and challenged if necessary) and communicated to NRA HQ for dissemination to other NRA regions (paragraphs 8.70 and 8.72).

#### Section 9

- 10.53 In order to fully assess the efficiency and effectiveness of NRA planning consultations, research needs to include other NRA interests apart from conservation/flood defence matters. Furthermore, the views of planning authorities (and planning officers) need to be obtained and examined before concluding any such future research (paragraphs 8.74 and 9.20).