



## **Consultation on Natural England's Draft Protected Landscapes Policy**

### **A response by the English National Park Authorities Association September 2009**

#### **General Comments**

The English National Park Authorities Association warmly welcomes this policy consultation and in particular the commitment by the organisation to develop and embed this policy into its decision making and operations. As you can imagine we attach particular importance to ensuring this policy creates a supportive framework for protected landscapes and what they can achieve.

Members of ENPAA staff have been involved informally in early discussions on the policy. We appreciate this early dialogue and have been pleased to see Natural England respond positively to suggestions already made. There is much to praise in the document and we do not intend to identify each and every aspect of our support. We would, however, like to indicate that we are particularly pleased to see:

- the policy written in a way that makes it more accessible to policy audiences;
- recognition of the intrinsic value of protected landscapes as well as the many ecosystem services that they provide;
- the challenge to be exemplars in the field of climate change and environmental management;
- the need for a strong framework (embodied in Policy 3) that includes reference to the responsibilities of all public bodies regarding protected landscapes;
- the review of the National Parks Circular as a priority along with a commitment to engage proactively in its review;
- the need to address issues around the setting of protected landscapes; and
- increased references to the place of recreation and enjoyment within the text.

This does not mean that we do not believe that the policy could be improved further in some places. Whilst recognizing that this is a policy document rather than an action plan, and that Natural England has adopted a particular house style, we continue to note that the policies are written more as statements rather than policies of intent. In a number of areas, there is a lack of detail about how this policy will be implemented. ENPAA hopes the final protected landscapes statement can include an indication of the main mechanisms by which the organisation envisages each of the policies being implemented. We understand this might be through developing an Action Plan and hope protected landscape organisations would be involved in this process.

The discussion around the legal underpinning of designations does need, in our opinion, a bit more careful drafting. It is important that this policy and its call for greater clarity on "natural beauty" does not undermine the legal basis of existing and planned National Parks. Were this to become a risk, and given the small number of future inquiries that there are likely to be over new designations – we would recommend references to legislative changes to be removed from this policy.

We also believe that the wording under policy 3 should be amended in a number of places to avoid unforeseen adverse implications, and to strengthen the relationship between Natural England and Protected Landscapes in how NE implements its 'have regard' duty towards other public bodies.

Whilst recognizing that references to the historic environment have been added compared to previous drafts, ENPAA believes that more needs to be done to recognise this aspect of National Park purposes. Overall, the document continues to make very little mention of the historic environment and the importance of this in the landscape, and makes no mention of the built environment. The statutory purposes of National Parks give equal weighting to cultural heritage alongside wildlife and landscape and we consider that it is of great importance within designated landscapes. We would wish to see this better reflected in this policy, as well of course as in the forthcoming policy on the Historic Environment. One example would be to include the historic environment in the Evidence Section of Policy 1.

Connected to this, Protected Landscapes are 'lived in landscapes' and whilst the definition recognises the interaction between people and the landscape there is little said about the communities that live in protected landscapes and have helped to shape, and continue to shape these landscapes. The document does not refer to the socio-economic duty placed upon NPAs and whilst we recognise this is not directly applicable to Natural England, it does provide important context for how National Parks are managed in this country and should (we believe) be referred to in this policy statement.

## **Specific comments**

### Introduction

Through out the document there are repeated references to the protected landscapes providing access to the 'natural environment'. This term needs to be clarified since although it appears in the general purpose of Natural England (where it is defined as including landscape), it does not appear in the statutory purposes of National Parks.

### Context

Page 2, 3<sup>rd</sup> paragraph, last sentence – reference to ENPAA should be to the English National Park Authorities Association.

### Issues

Page 3, 3<sup>rd</sup> paragraph – this refers to the fact that there have been 'few nationally co-ordinated surveys of the environmental condition of protected landscapes and the environmental outcomes they deliver'. This is also referred to in policy 3. We agree, and would like to see Natural England use the opportunity of this policy statement to seek to rectify this. Natural England should be aware that the English NPAs are looking to deliver common 'State of the Park' indicators that will allow us to show what the environmental (and other) condition of the National Parks are. This should provide useful evidence based information. We would, however, like to explore with Natural England how it might be possible to compile data necessary to paint an overall picture of the condition of all National Parks. This would, in all probability, need to extend beyond the scope of CQuEL given the various strands (beyond landscape) that would need to be considered.

Page 3, 4th paragraph – reference is made to the need for clarity in legislation and the need for a legally sound approach to delivery of statutory functions in respect of designations. Although we recognize the need to keep such things under review and ensure they meet the priorities of today and of the future, the current wording rather infers that Natural England does not have a sound basis for its decision making. We believe this is not the intention and could lead to unwelcome implications for future protected landscapes if pursued.

Page 4, 2<sup>nd</sup> paragraph – reference is made to the 60<sup>th</sup> anniversary of the 1949 Act. We warmly welcome the commitments and intention in this paragraph. We would like it to be retained, but would suggest that it be amended slightly to refer to building on the anniversary. References to ‘the 60<sup>th</sup> year’ will quickly date the document, given that consultation on the draft policy does not finish until October 2009.

### IUCN Categories (issues and Policy 7)

The issues section and paragraphs 6-7 under Policy 7 refers to the changes that are occurring at IUCN level in terms of classification of protected areas. ENPAA welcomes recognition in the policy that our National Parks and AONBs are living landscapes and the product of human interaction over many centuries. Whilst the document highlights the issue, it does not yet include a Policy related to this to set out Natural England’s stance or to make a commitment to addressing this. Nor is it clear whether the perceived need to place greater priority on nature conservation is at a legislative level, policy level or operational level? We believe that it should not be left ‘hanging’ as an issue, but should be addressed in a new policy.

We do welcome the recognition that any change needs to be in the context of sustainable development and delivered alongside other conservation, economic and social objectives. Indeed, should the IUCN (which by definition is focused on the conservation of nature) redefine the role of its category V designation this does not necessarily mean that it should be automatically accepted as the guiding principle for England’s designated landscapes. The designations and their statutory purposes have the strength of being integrated and are set out under UK law. In common with Natural England’s statutory purposes they do not give priority to nature conservation over landscape. We would therefore hope that NE would not support such a crude simplification of the Parks role given its own balanced conservation purposes. Instead, we hope the policy would commit Natural England to stimulate debate within the IUCN, and the UK, on the interpretation of nature conservation in ways which are suitable for National Parks and AONBs and aim to help sustain their position as international exemplars in the governance and management of both natural and cultural interests.

We do believe the current paragraphs should also include reference to the ‘Sandford Principle’ which is already set out in statute - section 62(2) of the Environment Act 1995. This makes it clear that in exercising or performing any functions, any relevant authority shall, if there is a conflict between the two statutory purposes for National Parks, ‘attach greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area comprised in the National Park’. In referring to the Sandford Principle, it will be important for Natural England to acknowledge that this purpose relates to landscape and cultural heritage as well as nature conservation.

Whilst noting the potential need to place greater priority on nature conservation there is no reference in the draft policy to this in terms of proposed measures that Natural England will be taking forward.

### **Policy 1**

We warmly support the intent and content of policy 1.

1<sup>st</sup> paragraph – the document refers to designations affording the ‘highest level of statutory protection for our nationally important landscapes’. Whilst this may be true, it should be noted that there are in practice a limited range of conservation mechanisms available within protected landscapes over and above those available in the wider countryside. The ability to influence land management within our nationally important landscapes, for example, is far less than that for our nationally important wildlife sites (SSSIs). It would be helpful to have Natural England support for a review of mechanisms available to protected landscape authorities and their effectiveness, with a view to making recommendations for strengthening

and/or developing new mechanisms if necessary. This would complement the intentions included in existing draft Policy 1 or Policy 2.

Evidence, 2<sup>nd</sup> paragraph – it might be worth noting that the figures for SSSIs almost certainly exclude the South Downs.

Evidence, 3<sup>rd</sup> paragraph – we welcome the recognition that significant sums of carbon are locked up in bogs founds within National Parks. Given the latest data that exists on this topic, we would recommend a slight amendment to qualify the point being made. It would thus read, ‘...by far our largest terrestrial carbon store per hectare...’.

## **Policy 2**

We support policy 2 and its recognition that protected landscapes can achieve much which is relevant to areas beyond designated areas. This is obviously a collective effort, made by a wide range of different bodies in the public, private and third sectors. It should be noted that while there is every intention to maximise the relevance of protected landscapes to society, this will be confined (in large part) by the availability of resources. The list of policy objectives when summarised does seem rather daunting. The Budget and staff complement of NPAs remains very small given the area they cover; and the breadth of National Park purposes and aspirations which people rightly have of them. This is even more the case for AONBs.

We note and appreciate the reference to adequate resources under Policy 6, but there is no reference to the likely resource implications or to the mechanisms by which all of the aspirations in Policy 2 (and elsewhere in the document) might be achieved. It would be helpful if Policy 2 could at least refer to the fact that more can be achieved, and the intent of policy 2 made easier, if protected landscapes received additional resources.

2<sup>nd</sup> paragraph, last sentence – this reference, ‘the geographic distribution of protected landscapes is important, as key strategic areas across England in leading the delivery of climate change activity’, is a bit cryptic and would benefit from unpacking. We assume this relates in particular to the conservation of significant carbon stores, and the ability to look at climate change adaptation at a landscape scale.

Evidence, 2<sup>nd</sup> paragraph – we welcome recognition of the benefits that have been achieved through the Sustainable Development Fund. This paragraph should be amended to make it clear that SDF is ‘administered by the National Park Authorities...’. It is not the national parks (which are geographical areas) which administer the Fund.

## **Policy 3**

We warmly welcome the intent and content of Policy 3.

New issue – we believe the scope of the policy should be extended to embrace the urgent need for clarity between management planning and spatial planning. We look to Natural England (working with protected landscapes) to cross reference and explain in policy and guidance - the roles of Management Plans, Sustainable Community Strategies and Local Development Frameworks. Lack of clarity in this area has created difficulties in the preparation of Core Strategies in National Parks and led to differences in approach and procedure.

2<sup>nd</sup> paragraph – we would recommend omitting reference to ‘legally vague’ in the first sentence. We believe the NERC Act provides greater clarification on what is meant by natural beauty. With respect to National Parks, we believe this has not been a limiting factor in the work of NPAs or other working within National Parks. Indeed, there are considerable programmes to promote health enhancing activity; improve biodiversity; engage with young and new audiences; and work with utilities and land managers on innovative climate change and water management projects. We do not see references to natural beauty as stifling such

a debate, and believe it is important that such an important criteria for protected landscapes as natural beauty is given profile. Indeed, the concept of 'natural beauty' resonates well with the public. While National Parks provide an integrated approach that considers landscape, biodiversity, cultural heritage and access in the round, it is our work on natural beauty which is arguably unique amongst the public sector. The Secretary of State, Rt. Hon Hilary Benn MP, in celebrating the 60<sup>th</sup> anniversary of the 1949 Act (whilst on a visit to the Peak District National Park) spoke of how rare it was for Governments to legislate for natural beauty. We hope Natural England will reinforce this and be a vocal supporter of the concept of natural beauty.

2<sup>nd</sup> paragraph, last sentence – this refers to NPAs being able to carry out work outside their designated areas. We would be happy to have discussion with Natural England about landscape and habitat connectivity, but do not consider the issue to be as clear cut as suggested. Whilst the authorities have the power to 'do anything' which they consider will further their purposes (section 65 (5) of the Environment act 1995) this is closely linked to the definition of those purposes. The conservation purpose of the parks refers to '*conserving and enhancing the natural beauty, wildlife and cultural heritage of the areas specified....*' (section 61 Environment Act 1995). We understand this to mean that the authorities' actions to implement conservation are mostly limited to the area within their boundaries with exceptions confined to circumstances where action outside the boundary has a clear conservation benefit to the designated area.

3<sup>rd</sup> paragraph – the paragraph starts by suggesting that planning contributes to protected landscape objectives 'indirectly'. ENPAA believes this significantly undersells the importance of spatial planning in contributing to National Park Statutory Purposes. Indeed, this is arguably the only significant lever available where the NPA has direct control over. We recognise the same is not true of AONBs, but would ask that the word '*indirectly*' be deleted or amended. Separately, we warmly welcome the attention given to the setting of protected landscapes. As Natural England will be aware this is an issue that affects most National Parks, and we are sure many AONBs. We would like to suggest the addition at the end of the last sentence of '*integrating policy objectives in the setting of protected landscapes...where damaging development can undermine the purposes of designation. Natural England will seek greater protection of the setting of our finest landscapes*'.

3<sup>rd</sup> paragraph - we would like Natural England to include within this policy, a statement to the effect that it will work with ENPAA and the NAAONBs on seeking greater clarity in policy on how the setting of Protected Landscapes is to be addressed.

3<sup>rd</sup> paragraph – the same paragraph says that '*we want to see the level of statutory protection afforded to AONBs and National Parks maintained...*'. Given that the degree of pressures on protected landscapes is only likely to increase; that the policy framework needs updating; and our comments regarding the limited number of mechanisms currently available to protected landscapes, we would ask whether the term 'maintained' is adequate? We believe that in some cases, in order to achieve the same public benefits, the level of protection will need to be strengthened and that this should be reflected in this sentence.

4<sup>th</sup> paragraph – we warmly welcome Natural England's intent to reinforce the 'have regard' duty. We believe the strengthening of Section 62 is long over-due. The paragraph also refers to the need to modernise specific aspects of the 1949 legislation and guidance regarding designation such as the natural beauty criteria. While ENPAA recognises that Government guidance may need updating, we would like to know more detail of the legislative changes that might be sought. In particular, we would like to know how this differs from the amendments made to the NERC Bill that were introduced to provide greater clarity on this point. It is particularly important that in seeking any changes to the 1949 Act, this process does not undermine the designation basis for existing protected landscapes. Were it to do so, or create a risk of doing so, then ENPAA would seek its removal from this policy.

5<sup>th</sup> paragraph, 3<sup>rd</sup> line – reference should be to ‘National Park Authorities’ rather than National Parks.

Evidence, 1<sup>st</sup> paragraph – we recognise the description of the difficulties that have been encountered in relation to the New Forest and South Downs National Park designation process. And we understand why Natural England may wish to look to legislative changes to clarify certain aspects. We would ask first, however, to consider whether the issue lies with the wording of the legislation, or the understanding of the Planning Inspectorate of it. The opportunity to legislate on this topic looks slim in the immediate future, whilst there may be risks for existing protected landscapes of doing so. We, therefore, believe that the focus of Natural England’s attention should be on working with the Planning Inspectorate on raising awareness of Inspectors into the legislation governing protected landscapes. ENPAA would be happy to support any activity that Natural England pursues in this regard.

Evidence, 2<sup>nd</sup> paragraph – ENPAA recognises that Natural England has a statutory role with regard to monitoring National Park purposes. We believe the sentence referring to a lack of consistent monitoring could be translated into something more positive, and inclusive. Were Natural England to develop a work programme in this area we would expect it to cover NPAs and other partners who are key to delivering the National Park Management Plan, including of course Natural England itself.

Evidence, last two sentences – we would recommend deleting the last two sentences regarding the difficulties of proving or disproving the have regard duty. Whilst we have great sympathy with this and believe this is a significant reason for strengthening the existing duty, its inclusion in a published Natural England policy may have unfortunate unforeseen consequences in future. ENPAA would also re-iterate that it would be helpful if Natural England could indicate that, while its statutory duties to advise on the ‘have regard’ duty apply to itself alone, that the organisation will (where possible and barring any necessary confidentiality) wish to liaise with protected landscapes before coming to an assessment or issuing its advice on this duty to individual bodies. This would simply reflect that those managing the protected landscape concerned will be in a good position to help inform Natural England in coming to such judgements.

#### **Policy 4**

We welcome this policy as it identifies the need for designation to be based on merit.

1<sup>st</sup> paragraph – we welcome the decision of Natural England to recommence its work on the north west region boundary variation, and its inclusion in the policy. We note, however, that the paragraph starts with ‘now that greater clarity over the application of current designation legislation has been provided...’. We welcome this statement but believe it rather contradicts the text under policy 3.

2<sup>nd</sup> paragraph – this paragraph effectively rules out future designation on merit as it limits changes to boundary variations. Given the parameters set by points i to vi, which are very clear, ENPAA believes it would be a shame to limit the likely scope of future designations. If the policy on new designation is robust such a limitation could be counterproductive. Similarly, the evidence is rather defensive and we would hope that Natural England could adopt a more open position on new designation providing the policy requirements are fully met.

#### **Policy 5**

We welcome the renewed focus on Heritage Coasts and the acceptance of their importance. We would welcome greater clarity over Natural England’s intentions or objectives regarding Heritage Coasts.

Evidence, 3<sup>rd</sup> paragraph – we would suggest a brief explanation of ‘littoral zones’ as this may not be understood by the lay reader.

## **Policy 6**

We warmly welcome this policy and supportive text but believe it would benefit from greater clarity. As currently written, the policy largely celebrates the importance of partnership working. We believe the text contained in the second supporting paragraph is a lot clearer about the policy direction Natural England wishes to achieve. We would encourage Natural England to consider swapping this text.

1<sup>st</sup> paragraph – ENPAA welcomes the inclusion of text on agri-environment schemes under this policy and the recognition of their importance in protected landscapes. These very often provide the only mechanism by which cultural heritage, wildlife and landscape conservation can be achieved. In this respect, the meaning of the second sentence of the first supporting paragraph is not clear. It would be helpful to see a recognition of the importance of *'appropriately structured and adequately financed schemes if the purposes of designated landscapes are to be achieved'*.

2<sup>nd</sup> paragraph – Natural England might consider including within this paragraph mention of the Protected Landscapes Forum that exist in both the South West and South East regions as one mechanism for assisting in the delivery of this policy.

2<sup>nd</sup> paragraph, last sentence – in addition to the various areas of joint working outlined, it might be appropriate on some occasions for Natural England to be working through other organisations to deliver.

Evidence, 2<sup>nd</sup> paragraph, 5<sup>th</sup> line - reference should be to 'National Park Authorities' rather than National Parks.

Evidence, 4<sup>th</sup> paragraph – reference is made here to the annual trilateral meetings that are held between NPAs, Defra and Natural England covering funding needs and pressures. As Natural England will be aware, the models for these meetings vary between National Parks and (at Defra's request) are broader than simply discussing funding. We hope this might be reflected in the text. The same paragraph should also be amended to reflect the fact that the Shared Outcomes Agreement has now been signed by both ENPAA and Natural England, rather than being in a stage of development.

Evidence, last paragraph – this says that a large part of HLS targeting is within protected landscapes. As this is evidence, we believe it would helpful to include statistics on the proportion of land in agri-environment agreements both within and outside protected areas.

## **Policy 7**

We welcome reference to the role of protected landscapes in supporting the implementation of the European Landscape Convention and in developing exemplary management. Indeed, this is included within the Shared Outcomes Agreement that Natural England has with ENPAA (and which is referred to under Policy 6). We believe from the Guidance that Natural England is preparing, it should be possible to have greater clarity on the role of Protected Landscapes in helping implement the ELC.

2<sup>nd</sup> paragraph - it is unclear what is meant by the last sentence of the second supporting paragraph which would benefit from more transparent wording. We would also suggest that the term 'environmental outcomes' should be replaced by 'environmental benefits' since outcomes can be both negative and positive.

Evidence, paragraphs 4-5 – these paragraphs refer back to the debate over IUCN category v and the priority for nature conservation. Notwithstanding the need to see this issue addressed, this does not seem to have a relevant place in a policy related primarily related to landscape issues and the ELC.

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