

Meeting of:	Cabinet
Date of Meeting:	Thursday, 13 April 2023
Relevant Scrutiny Committee:	Environment and Regeneration
Report Title:	Response to the Welsh Government consultation on further amendments to 'Technical Advice Note (TAN)15: Development, Flooding and Coastal Erosion'
Purpose of Report:	To report to Cabinet the draft response to the Welsh Government's consultation on 'Technical Advice Note (TAN)15: Development, Flooding and Coastal Erosion - further amendments', and to seek approval to submit it to the Welsh Government by the consultation deadline
Report Owner:	Cabinet Member for Community Engagement, Equalities and Regulatory Services
Responsible Officer:	Marcus Goldsworthy, Director of Place
Elected Member and Officer Consultation:	<p>Director of Place Head of Sustainable Development Lawyer - Legal Division Operational Manager, Accountancy Operational Manager, Strategy and Resources Operational Manager, Public Housing Services Housing Development Manager Operational Manager, Neighbourhood Services, Healthy Living and Performance Operational Manager Engineering Engineering Manager Principal Regeneration Officer Operational Manager for Regeneration Team Leader Countryside Services Major Project Manager, Regeneration and Planning Strategic Estates Manager Programme Manager Project Zero (Climate Change) Principal Planner (Development Contributions and Applications Team – North) Principal Planner (Development Contributions and Applications Team – South)</p>
Policy Framework:	This is a matter for consideration and Executive approval by Cabinet

Executive Summary:

This report relates to a draft consultation response to the Welsh Government's consultation on Technical Advice Note (TAN)15: Development, Flooding and Coastal Erosion - Further Amendments.

In October 2019, Welsh Government published for consultation an updated version of their existing Technical Advice Note on Flooding (TAN 15). During the consultation, the Vale of Glamorgan Council raised concern for several reasons, including that it was overly restrictive and lacked local flexibility. Following concerns raised by a number of organisations on the amended document, Welsh Government suspended the implementation of the amended TAN 15 in November 2021 to allow local planning authorities additional time to complete work on Strategic Flood Consequences Assessments. In January 2023 an amended version of the document was published that seeks to introduce an increased element of flexibility in TAN15 to allow for appropriate regeneration and redevelopment on sites that are identified within flood zones. The Council is now seeking to respond to this amended version.

Following consideration by Officers it is judged that the amended document includes some of the additional flexibility requested and has addressed some key concerns previously raised. However, the Council's consultation response sets out that concern remains in relation to the scope of development that this additional flexibility relates to, as well as suggesting that further flexibility should be afforded in the justification tests. The Council's response also includes further comments and concerns on detailed sections of the amended TAN15.

Approval is sought from Cabinet to submit this consultation response to Welsh Government before the end of the consultation on 17th April, 2023.

Recommendations

1. That Cabinet considers and endorses the content of the consultation response on 'Technical Advice Note (TAN)15: Development, Flooding and Coastal Erosion - Further Amendments' for submission to the Welsh Government by the consultation deadline.
2. That use of the urgent decision procedure as set out in Section 15.14 of the Council's Constitution be approved in order for the response to be submitted to Welsh Government by the required deadline of 17th April, 2023.

Reasons for Recommendations

1. To ensure that the Council's concerns and comments in relation to Technical Advice Note (TAN)15: Development, Flooding and Coastal Erosion - Further Amendments are received by the Welsh Government within their identified timeframe.
2. To allow the response to be returned to Welsh Government by the required deadline.

1. Background

- 1.1 Technical Advice Note 15 Development and Flood risk was originally published in 2004 to provide Local Planning Authorities and developers in Wales with supplementary guidance in relation to flooding. This was reviewed in 2017 and it was considered that the document required updating.
- 1.2 As a result of the review of the original TAN 15, a proposed updated document was published for consultation in October 2019. The remit of the TAN was broadened to also cover Coastal Erosion, which was previously addressed by TAN 14: Coastal Planning. The Vale of Glamorgan Council responded to this consultation, identifying that it was overly restrictive and lacked flexibility, amongst other concerns and comments.
- 1.3 Following this consultation, the Welsh Government set out that the updated TAN15 would come into effect on 1st December, 2021. However, following concerns raised by a number of organisations, the Minister for Climate Change wrote to all Local Authorities in Wales identifying that the updated TAN15 was being suspended until June 2023. This suspension was to enable Local Planning Authorities to consider fully the impact of the climate change projections in their respective areas. To do this, it was required that every Local Planning Authority complete a Strategic Flood Consequences Assessment.
- 1.4 Following engagement with key stakeholders, and the completion of Strategic Flood Consequence Assessments, the Welsh Government published an amended draft of TAN 15 on the 23rd January, 2023, for consultation. The period for responding ends on the 17th of April, 2023. The consultation documents can be viewed on the Welsh Government website via the following link: [Further amendments to Technical Advice Note \(TAN\) 15: Development, flooding and coastal erosion | GOV.WALES.](#)

2. Key Issues for Consideration

2.1 The Welsh Government identify that they are not seeking to re-consult on the fundamental principles of the TAN, but instead propose to introduce increased flexibility to allow for appropriate regeneration and redevelopment in flood zones. Broadly, the proposed changes are set out by the Welsh Government as follows:

- A clearer recognition that appropriate redevelopment and regeneration activities are not incompatible with the overarching principles of the TAN which seeks to avoid placing highly vulnerable development in the highest risk areas;
- The introduction of more flexibility regarding less vulnerable development to facilitate the provision of necessary infrastructure;
- A recognition that redevelopment of existing sites in flood risk areas can take place if carefully planned and include appropriate mitigation measures;
- The requirement to produce Community Adaptation and Resilience Plans (CARPs) for any strategic regeneration scheme. CARPs would consider and identify an appropriate pipeline of flood defence measures to protect the area covered by the regeneration scheme as well as necessary mitigation measures;
- A revised section on the justification of development in flood risk areas which steers new development away from greenfield sites in flood risk areas; and
- Clarification that redevelopment resulting in highly vulnerable development can proceed with caution but will need to demonstrate clear flood risk resilience.

2.2 Whilst the intent of the changes are welcomed, the Council remains concerned in relation to the forms of development that the new flexibility is applicable to, as well as the scope of flexibility offered in the justification tests. The justification tests set out the circumstances under which development would be justified in flood risk areas and can be found in Section 10 of the revised TAN 15 document. The Council's comments and concerns are contained in full in the consultation response, which can be found Appendix 1. However, the main points raised are identified below:

Question 1

- In response to question 1 it is emphasised that there are issues with the way in which 'Redevelopment' has been defined in paragraph 4.2, which has direct implications in the amended justification tests. At face value, the definition of 'Redevelopment' in paragraph 4.2 only appears to apply to buildings that are currently in use, and this is confirmed in paragraph 10.4. However, paragraph 10.5 goes on to advise that redevelopment applies to buildings with an existing use, contradicting the previous paragraph. In planning terms, a building being currently in use and having an existing use are distinctly different circumstances, and the consultation response explains this in full. The response highlights that constraining the definition of

redevelopment to buildings currently in use significantly limits the scope of development that would benefit from the additional flexibility, is an uncommon definition elsewhere in the planning system, and should not be the approach taken. Instead, the Council recommends that the definition explicitly applies to buildings with an existing use, which would include buildings that may not have recently had an occupier but are not dilapidated or abandoned.

Question 2

- It is set out that the Council consider, notwithstanding concerns identified elsewhere in the consultation response, that the TAN draws sufficient attention to climate change and flood risk .

Question 3

- Community Adaptation and Resilience Plans are beneficial in principle and could unlock development opportunities in localities that are currently constrained by flooding. However, further guidance is required on what these are and what they need to set out.

Question 4

- Paragraph 7.25, which relates to essential infrastructure, is beneficial. However, it does not add any additional weight to these forms of development when considering them against the justification tests. Specific concerns are raised in response to Q4 in relation to the justification tests.

Question 6

Question 6 provides respondents with the opportunity for further comments in relation to the amended TAN. Here, specific points are made in relation to: greenfield development in TAN15 Defended Zones; the justification tests for flood zone 2; the acceptance mechanism for challenges to NRW's Flood Map for Planning; and the development vulnerability categories.

- 2.3.** Subject to endorsement by Cabinet, Officers will submit the consultation response summarised above and appended to the Welsh Government ahead of the deadline on 17th April, 2023.

3. How do proposals evidence the Five Ways of Working and contribute to our Well-being Objectives?

- 3.1 Long Term** – The purpose of TAN15 is to ensure long term resilience against increased flooding and coastal erosion, which is being exacerbated by climate change. The Council support the principle of an updated document due to this and are identifying where a lack of clarity may cause future issues with the interpretation and application of the document.
- 3.2 Prevention** – The updated TAN15 seeks to ensure inappropriate new development away from the areas at greatest risk of flooding. The Council's response endorses this, whilst seeking to ensure consistency in the document.

- 3.3 Integration** – The updated TAN15 and the content of the Council’s consultation response reflect the intention of wider Council policies to adapt to the consequences of climate change and facilitate regeneration where appropriate.
- 3.4 Collaboration** – The consultation response was subject to engagement within the Planning and Building Control Department and a wider internal consultation, in order to ensure that all Officers that had concerns were provided the opportunity to respond.
- 3.5 Involvement** – This report has been drafted in response to a consultation exercise and has been informed by internal consultation.

4. Climate Change and Nature Implications

- 4.1** The purpose of TAN15 is to ensure long term resilience against increased flooding and coastal erosion, which is being exacerbated by climate change. The Council support the principle of an updated document due to this and are identifying where issues exist that may cause future issues with the interpretation and application of the document.

5. Resources and Legal Considerations

Financial

- 5.1** The preparation of this response has been undertaken by officers within existing budgets.

Employment

- 5.2** There are no employment implications arising from this report.

Legal (Including Equalities)

- 5.3** There are no legal or human rights implications arising from this report.

6. Background Papers

[Technical Advice Note 15: Development and Flood Risk \(2004\)](#)

[Technical Advice Note 15: Development, Flooding and Coastal Erosion \(2021\)](#)

[Letter sent by the Minister for Climate Change to Local Authorities on the Suspension of TAN15: 23 November 2021](#)



Number: WG46419

Welsh Government
Consultation Response Form

Technical Advice Note (TAN) 15: Development, flooding and coastal erosion - further amendments

Date of issue: 23 January 2023

Action required: Responses by 17 April 2023

CONSULTATION RESPONSE FORM

Technical Advice Note 15 – Technical Advice Note (TAN) 15: Development, flooding and coastal erosion - further amendments

Name		
Organisation	Vale of Glamorgan Council	
Preferred contact details (Email address, phone number or address)		
Type (please select one from the following)	Business	<input type="checkbox"/>
	Local Planning Authority	<input checked="" type="checkbox"/>
	Local Authority Councillor responding in a personal capacity	<input type="checkbox"/>
	Government Agency / Other Public Sector	<input type="checkbox"/>
	Professional Body / Interest Group	<input type="checkbox"/>
	Voluntary sector (community councils, community groups, volunteers, self-help groups, co-operatives, enterprises, religious, not for profit organisations)	<input type="checkbox"/>
	Other groups not listed above	<input type="checkbox"/>
	Responding in a private capacity	<input type="checkbox"/>

Responses to the consultation are likely to be made public, either on the internet or in a report. If you would prefer your response to remain anonymous, please tick here.

CONSULTATION QUESTIONS

Q1	Do you agree that the amended version of TAN 15 makes it sufficiently clear when appropriate redevelopment and regeneration activities can be acceptable?	X
Agree		
Neither Agree nor Disagree		
Disagree		X

Comments

Issues with the definition of 'New Development' and 'Redevelopment'

Whilst the principle of added flexibility in section 10 is welcomed it is undermined by the definitions of 'new development' and 'redevelopment' utilised, as set out in paragraph 4.2. This is especially the case in relation to the way that redevelopment has been defined. Resultantly, the Vale of Glamorgan Council (the Council") consider that additional clarity is required on what is meant by redevelopment, and would object if the intent of the definition is to exclude sites with buildings that are currently unoccupied.

It is accepted that new development on brownfield sites that have not previously included built development on may not be acceptable (for example, a car park- the example provided in the POSW briefing session). However, the use of the wording 'vacant or disused' alone does not go far enough to clarify that these types of sites are the only ones meant to be included in the 'New development' definition.

'Redevelopment' is defined as only relating to 'in-use' buildings, which is interpreted at face value as meaning buildings that currently have an occupier or are not vacant. This isn't a common interpretation of redevelopment, which would normally relate to buildings generally, whether occupied or not. The Council concludes from this that the TAN seeks to exclude development on brownfield sites with buildings that are not in use currently (i.e. with no occupier or 'vacant'), which clearly would reduce flexibility. This has significant implications for the scope of redevelopment that can take place in flood risk areas.

This is against the intent of the redrafted TAN as presented at the POSW briefing. It may be that this is meant to apply to buildings with an existing use (where the use has not been extinguished due to abandonment), however, this is not immediately clear. Resultantly, the Council believe a stronger definition is required, and new definitions are suggested as follows, with additions in red:

New Development

Development on any greenfield land; development of vacant or disused brownfield sites, except **where the site is occupied by building(s) with an existing use**

Redevelopment

Replacing a building(s) **with an existing use** (fully or partly) with a new building(s).

It is considered that this definition would exclude sites that have been largely rewilded, where existing buildings have become dilapidated, and which could be considered to have lost their lawful use due to abandonment. This definition is considered to align with buildings that are no longer considered to be previously developed land, as set out in the exclusions from the definition of previously developed land in PPW:

- 'land where the remains of any **structure** [emphasis added] or activity have blended into the landscape over time so that they can reasonably be considered part of the natural surroundings;'

If it is the intention to only allow the redevelopment of sites that are 'currently in use', **the Council would object to the definition of redevelopment** for the reasons set out below.

Further uncertainty on this is introduced in paragraphs 10.4 and 10.5. Paragraph 10.4 clearly identifies that the redevelopment definition applies to buildings that are '**currently in use**'. However, paragraph 10.5 states: 'Redevelopment schemes, for the purposes of this guidance, propose to replace a building with **an existing use** with a new building (or buildings).'

In planning terms, a building being 'currently in use' and possessing 'an existing use' are distinctly different things. Fundamentally, a building can have 'an existing use' even if that building is vacant, and that would be its lawful use. It would continue to have 'an existing use' until the use is extinguished due to abandonment. Case law on abandonment sets out when it has occurred, and this would regularly require a building to have been abandoned or dilapidated for years. The use of 'currently in use', in paragraph 10.4, which implies a building needs an extant use (at an undefined point in time), does not therefore mean the same as 'existing use' used in paragraph 10.5. This requires revisiting as these two paragraphs are contradictory and adds additional uncertainty to the definition of redevelopment as set out in paragraph 4.2. The Council strongly believe that the broader 'existing use' interpretation should be adopted.

The 'currently in use' interpretation causes immediate concern and will inevitably cause issues when determining applications. First, this approach significantly reduces the scope of sites that are being provided additional flexibility for redevelopment, by excluding buildings with no current occupier. It may also mean that in some areas where buildings are both occupied and unoccupied, only some will be able to come forward causing problems with development deliverability or undesirable patterns of development. By nature, areas being redeveloped may have low occupancy rates, which is why redevelopment is being considered, and this penalises businesses that cannot afford to remain open from realising the redevelopment potential of their sites. This is especially arbitrary if a business

closes a short period before the cut off point for when a building is required to be 'in-use'.

At the application stage the 'currently in-use' interpretation will create a new, and avoidable, potential point of conflict between LPAs and developers. It will inevitably lead to developers trying to evidence their buildings are occupied even when they are not. This introduces additional investigatory work for Development Management Officers and creates a potentially acute issue could result in refusals, appeals and legal challenges. Especially as significant redevelopment value could be impinged by this.

Furthermore, where a building has an existing lawful use but is vacant, it can simply be reoccupied without any control from the planning system. At this point the building would comply with the 'currently in use' definition and the occupiers would also be back at risk from flooding.

In summary, occupancy seems an arbitrary and problematic benchmark to identify whether the redevelopment of a building is acceptable, which is not known to be employed elsewhere in the planning system as a criterion for permitting development. In view of this, **if the intent of the definition of redevelopment is to exclude unoccupied buildings, as suggested in paragraph 10.4, then the Vale of Glamorgan Council objects to this definition** because it would result in the redevelopment potential in flood zones being undermined, uncertainty in the resultant TAN, and inevitable conflict between LPAs and developers. Instead, the Council believes a definition that follows an 'existing use' interpretation, as set out in paragraph 10.5, should be followed.

Notwithstanding the above concerns, whilst the Council's preference would evidently be for the 'existing use' approach to be taken, if the 'currently in use' approach is used, then further clarity on when the building is in use is required – is this at the point an application is submitted? Determination of an application? Or immediately before the commencement of development?

Issues with the 'Redevelopments, changes of use and conversions' in paragraph 10.10

The inclusion of the paragraph outlining additional flexibility for redevelopments appears only under Zone 3. Is this supposed to be under a separate paragraph distinct from Zone 3? At face value, this is not the case.

This has the result of affording additional flexibility for these forms of development in Zone 3 only and not Zone 2, where flood risk is less. By not identifying redevelopments, COU and conversions under Zone 2 explicitly it means that development that can take place in Zone 3 can only take place in Zone 2 if it meets the three tests set out. This includes the Development Plan criteria, which is above and beyond the criteria set out for this form of development under Zone 3. The Council believe that either the section on 'Redevelopments, changes of use and conversions' should be inserted under Zone 2 or distinctly separated out as its own paragraph, similar to paragraph 10.11 that focuses on greenfield land.

Q2	The amended TAN seeks to ensure that climate change and flood risk are factored into planning decisions, and that decisions are taken in the knowledge of the associated risks. Do you agree that the TAN does this?	X
	Agree	X
	Neither Agree nor Disagree	
	Disagree	
Comments		
Yes, whilst issues with the TAN have been identified as drafted, it is considered to draw attention to climate change and flood risk. It sets out the risks clearly and in collaboration with the FMfP displays where the greatest risks exist.		

Q3	In seeking to allow for strategic regeneration the TAN requires local authorities to prepare Community Adaptation and Resilience Plans outlining how they intend to ensure that adequate flood defences are built and how other resilience measures will be incorporated. Do you agree with the need for such a requirement?	X
	Agree	X
	Neither Agree nor Disagree	
	Disagree	
Comments		
CARPs could act to enable development in areas constrained by flooding, and they facilitate a process whereby development can come forward in locations currently constrained by flooding. Whilst the guidance set out in Section 7 is useful and indicates what a CARP should do, it is considered that further guidance is required on how a CARP should be properly composed. For example, a guidance		

note outlining the expected structure of a CARP, and the detail required in each section, appended to the TAN.

Also, this section sets out that development should not be considered until an approved CARP is in place. Clarity is required on the consenting process for the CARP. How does a CARP get approved and who is responsible for this?

Q4	Some infrastructure is essential for economic, social or environmental wellbeing. A new section on essential infrastructure has been included in the revised TAN. Do you agree that this is necessary and that it is clear?	X
Agree		
Neither Agree nor Disagree		
Disagree		X

Comments

The section is necessary but the clarity is undermined by the subsequent reference in section 10 to essential national Infrastructure. The inclusion of 'national' in the justification tests means that paragraph 7.25 does not add anything in terms of a policy hook for these forms of development that makes them compliant with the policy by overriding the justification tests. Issues with the justification tests are identified as follows:

Highly Vulnerable Development in Zone 3

The benefit of this section is likely undermined by the justification test for highly vulnerable development in Zone 3 only being applicable to 'essential national infrastructure'. It is likely that not all infrastructure considered essential by an LPA would be considered nationally essential. Also, there are two bullet points under this subsection, but it is not clear whether both or only one needs to be complied with. Is this a case of AND or OR?

Less Vulnerable Development in Zone 3

The inclusion of previously developed land in the justification tests for less vulnerable development undermines the usefulness of the addition of the section on essential infrastructure. This prejudices a potential new active travel route along a strategic corridor in the Vale of Glamorgan, despite the importance of this being communicated in the essential infrastructure section.

It is considered that if exceptional circumstances are established, such as a strategic active travel route in the context of national planning policy on sustainable transport, then it should not be prevented by not being located on

previously development land. In this context, the Council recommend that the justification test for less vulnerable development in Zone 3 are amended to omit the criteria relating to previously developed land. The issue of whether a greenfield site would be appropriate could then be considered under criterion 3 and in the context of paragraph 10.11.

Omission of continued economic development

Whilst paragraph 7.25 identifies that new infrastructure is essential for continued economic development, there is no reference to this in the justification tests.

Discrepancy in terminology relating to climate change

Paragraph 7.25 refers to infrastructure 'essential to addressing the causes of climate change', whereas the justification tests refer to developments which 'mitigate the impacts of climate change'. The wording should match and include references to developments that both mitigate the causes and adapt to the consequences of climate change.

Q5

We would like to know your views on the effects that the revised TAN would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

- What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?
- Please also explain how you believe the proposed amendments to the TAN could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and
- no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Comments

The Council have no comments in response to this question.

Q6

We have asked a number of specific questions. Are there any other related issues which we have not specifically addressed?

Comments

Greenfield Development in TAN15 Defended Zones

The section on TAN15 Defended Zones in paragraph 10.10 has had the reference to previously developed land removed. In the first instance, this indicates that development on greenfield land in Defended Zones is permissible. However, paragraphs 7.14 and 10.11 set out that this is not the case.

The Council believe that greenfield development should be possible in areas that become defended. This provides additional flexibility to meet contrasting demands, specifically in relation to forms of development that are viewed as being required for exceptional circumstances but fail justification tests.

Issues with the Justification Tests

The justification tests in Zone 2 appear overly onerous. If a development is considered to meet the Development Plan criteria (1) then it is not understood why this can only exist on brownfield land if criteria (3) is also satisfied and the potential consequences are acceptable. Thus, the following amendment is suggested in red:

1. It will assist, or be part of, a strategy supported by the Development Plan to regenerate an existing settlement or achieve key economic or environmental objectives; **OR**
2. Its location meets the definition of previously developed land;

AND

3. The potential consequences of a flooding event for the particular type of development have been considered and found to be acceptable in accordance with the criteria contained in section 11.

Please see issues set out in relation to the justification tests, in the context of paragraph 7.25 and essential infrastructure in response to Q4.

NRW Accepting Map Challenges

The addition of the sentence advising that NRW acceptance of FMfP challenges are to become material considerations is welcomed. However, clarity is sought on what form acceptance by NRW will take. Will a decision notice, letter, or something similar be provided to somebody that is successful in their challenge? The Council's position is that email correspondence from an individual officer would not be appropriate and could easily be taken out of context to misrepresent NRW's position on a challenge.

Development Vulnerability Categories

There appears to be a potential ambiguity in the development vulnerability categories in relation to 'power generating and distribution elements of power stations' located in the highly vulnerable development category and 'renewable energy generation facilities' located in the less vulnerable development category. Renewable energy generating facilities may relate to power stations for example. There needs to be some clarification added here.