

Policy, legal and planning requirements

Government guidance on biodiversity now requires developers to protect and enhance biodiversity in their schemes, particularly priority habitats such as mudflats and saltmarsh. Estuary and river edge design must improve the environment for fish and other wildlife, as well as meet national, regional and local Biodiversity Action Plan targets.

First of all, what is the ‘estuary edge’? As a minimum this should be the entire zone set by the byelaws relating to Flood Risk Management (Land Drainage) consent under Schedule 25 of the Water Resources Act (1991). On the tidal Thames, for example, this extends 16 metres from the inland limit of any statutory flood defence.

National policy – The national encroachment policy for tidal rivers and estuaries states that development should not encroach further into the river channel or estuary.

European policy – The European Unions’ Water Framework Directive highlights the need for maintaining and improving the ecological value of rivers, estuaries, lakes and coastal waters. It *discourages* actions that would reduce this value.

Further key elements of the main policy and legal framework for estuary edge design in the UK are summarised in *Building a better environment: A guide for developers*. These include:

- *Making Space for Water* – the Government strategy that promotes retreat of estuary edges for environmental gain as well as flood risk management.
- *Technical Advice Notes (Wales) 15: Development and Flood Risk* – this emphasises the environmental drawbacks of over-engineered river and estuary edges.
- *PPS9: Biodiversity and Geological Conservation (Section 2.2.4)* – this emphasises the need to ensure ecological enhancement in UK development projects of all kinds.
- *The Natural Environment and Rural Communities Act 2006* – this has given a duty to all public authorities to conserve biodiversity so far as consistent with carrying out their other functions (this relates fundamentally to the National Biodiversity Action Plan).
- *PPS1 Delivering Sustainable Development and Planning and Climate Change* – these provide policy support for the wider benefits of ecologically designed estuary edges.

A general approach to sustainable development is explained throughout *Building a better environment: A guide for developers*. The policies and licensing requirements of the local Navigation Authority should also be consulted. You should also check whether local policies promote particular estuary edge designs. For example the London Plan requires that new development be set back from the river and estuary edge for reasons of flood risk management and the environment.

Building a better environment: A guide for developers discusses the relevant Environment Agency permissions. Developments concerned with building in, over, under or beside our tidal rivers and estuaries will require flood risk management permission through local byelaws (in addition to planning permission from the local authority). The Environment Agency can recommend approval or refusal of applications or request

planning conditions and legal agreements to be attached to any planning permissions granted. Consents issued by others that may be necessary for working on estuary edges may include (but may not be limited to):

1. **Planning Permission** from the Local Authority.
2. **Food and Environment Protection Act (FEPA) Licence** from the Marine and Fisheries Agency/ Welsh Assembly Government. This will be replaced by the Marine Licence following the enactment of the Marine Bill.
3. **Coastal Protection Act Consent** from the Marine and Fisheries Agency. This will be replaced by the Marine Licence following the enactment of the Marine Bill.
4. **Navigation or Harbour Authority Consent.**
5. **A Rights of Way Diversion Order** from the Local Authority or Highways Authority (for example, where a footpath or track follows the river or estuary edge).
6. **Natural England or Countryside Council for Wales Assent** where works may affect a site carrying a statutory designation for nature conservation (for example, Ramsar Site, Special Protection Area, Special Area of Conservation, Site of Special Scientific Interest or Local Nature Reserve) and licences where certain legally protected species might be affected.
7. **Listed Building, Scheduled Monument or Conservation Area Consent** from the consenting body via consultation with English Heritage or Cadw where planning permission is required and works might affect the demolition of buildings that are listed or in conservation areas, or the alteration of nationally important listed buildings or monuments.
8. **Landowner Consent** (for example, Crown Estate, Harbour Authority, etc.).

As legislation can change, you need to keep up to date – we will help you with this when you consult us.

Consulting with the Environment Agency

Call 08708 506 506 (Mon–Fri, 8–6) and ask to be put through to your local planning team.

Building a better environment: A guide for developers sets out the consultative process that we would expect you to follow in presenting any design option to us. In the case of estuary edge works you will involve officers from at least four out of our five main departments (see Section 1.3 of *Building a better environment: A guide for developers*).

You will need to demonstrate that your design is the most ecologically beneficial and locally appropriate solution that will maintain *all* of its functions through its required design life. You should consider further ‘hard’ engineered elements only as absolutely necessary.

Another key point to emphasise is that you should consider flood risk management using the Government’s advice on assessing flood risk (PPS25).