

Minutes

Meeting of the Board

Wednesday 17 March – 9.15am

Online via Microsoft Teams

Members

Richard Greenhous	Chief of Staff
Julie Hill MBE	Board Member
Professor Dan Laffoley	Board Member
Dr Paul Leinster CBE	Board Member
Professor Richard Macrory CBE	Board Member
Natalie Prosser	Interim CEO
Dame Glenys Stacey	Chair

Attendees

Peter Ashford	General Counsel
Simon Brockington	Chief Insights Officer
REDACTED	Senior Monitoring Environmental Law Officer (item 22.18)
Alexis Edward	Head of Finance and Corporate Services
REDACTED	Private Secretary (item 22.23)
Neil Emmott	Head of Monitoring Environmental Law and Advice (item 22.18 to 22.20)
REDACTED	Principal Business Officer (item 22.22)
Mike Fox	Head of Communications and Strategic Relations
Andy Gill	Head of Environment and Climate Analysis (item 22.19)
REDACTED	Principal Environmental Scientist (item 22.19)
REDACTED	Northern Ireland Lead (item 22.21)
REDACTED	Principal Monitoring Environmental Law Officer (item 22.18)
Andy Lester	Head of Business Strategy and Planning
Helen Venn	Chief Regulatory Officer

22.14 **Apologies for absence and declarations of interest**

There were no apologies for absence and no new declarations of interest. The Interim CEO reminded the Board of her declared interest in issues of inland water quality, given her activities in open water swimming.

22.15 **Minutes and Matters Arising**

The Board **AGREED** the minutes of the meeting of 2 February 2022. The matters arising were noted.

22.16 **Report of the Interim CEO**

The Interim CEO noted some of the OEP's key programmes of work including those linked to the government's publication of its consultation on statutory targets and its nature green paper which are very keen areas of interest. The structure of our draft 25-year environment plan monitoring report provides a basis for tying together these, and other, work programmes where many of the key messages are likely to be mutually reinforcing.

The Interim CEO noted, and the Board welcomed, the feedback from Defra officials that the final form of government's environmental principles policy statement was directly influenced by our advice. How the principles are applied in practice remains a keen area of interest.

The Board discussed progress with triage of complaints received. All preparations are being made so that the OEP can make early decisions on cases after adoption of our strategy and enforcement policy, including those complaints that appear to meet our draft seriousness and prioritisation criteria. The Board requested that the reporting category of environmental governance be reviewed, and a summary of those complaints that appear more likely to meet the criteria be prepared so that the Board is briefed. ACTION Chief Regulatory Officer.

The Interim CEO explained the early development of an internal working group to coordinate intelligence. The Board recognised the potential of this approach, but that it should be proportionate and focussed on the value of the insight gained. The Board asked for a future discussion on the linked areas of horizon scanning (including how the OEP can take advantage of systematic horizon scanning of others) and the gathering and use of intelligence. ACTION Interim CEO.

The Board was updated on arrangements for the OEP's ring-fenced and indicative budget. This is to be outlined in a Written Ministerial Statement from the Secretary of State. The Statement will include a commitment to a review of resourcing this financial year. That review is critical to establishing medium-term sustainable resourcing arrangements for the OEP.

The Board's attention was drawn to the risks that arise from any challenges in finalising the closing and opening position of OEP/Interim OEP accounts. Active discussions with Defra continue.

This section has been redacted as its publication would be prejudicial to commercial interests.

22.17 **25-year environment plan monitoring report**

The draft report was introduced. It had evolved since last review by the Board, to take account of the feedback provided. It was explained that some small adjustments will be required to reflect recent consultations, in particular the potential ALB reform outlined in the Nature green paper.

The report makes recommendations to government, with many connected to the next review of the environmental improvement plan. The Board recommended that the OEP consider the specific response we want to see reflected in the next EIP, to underpin planning of how the report is to have impact and traction. The revised timeline for publication (allowing for Purdah restrictions) provides additional time to plan and deliver the engagement, and communications to have impact.

The Board discussed how the report together with other OEP activities can lead over time to the course adjustments needed, to enable the government to meet its aims for the environment. It suggested further thought can be given to how the OEP influences for the changes needed, in the medium or long-term. A direction of travel, and roadmap could be tools to support. ACTION Head of Business Strategy and Planning.

The Board judged that the report is distinctive. The Board argued for a final review for crispness in drafting, including a short elevator pitch to summarise the key points.

The Board AGREED the text of the report subject to these comments. It further AGREED that any further amendments will be agreed in consultation with the Chair, before presentation to the Board at its April meeting.

This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs and contains legally privileged advice.

The Board was informed that preparatory work had been undertaken to ensure the report, in this form, was expected by Defra and the implications for government's response understood. *This section has been redacted as it contains legally privileged advice.* The Board AGREED that the final report will be laid in Parliament and published making use of section 29 of the Environment Act and noted that the proposed publication will be in May, after the pre-election period. The Board encouraged officers to identify whether further activity could be undertaken to mitigate the risks it had identified and maximise the impact intended.

The Board requested a proposal on the future direction of monitoring reports.
ACTION Chief Insights Officer.

22.18 **Government's consultation on biodiversity net gain**

The paper was introduced, including the proposed key principles of our response and the broader opportunities for influence over a period of time as the policy is developed and implemented. The Board noted that the policy development is welcome.

The Board welcomed the focus of the proposed response and made a number of suggestions for content and emphasis. These included: to add emphasis to commentary on the governance of net gain claims including on the skills gaps in local planning committees; to press more firmly the need to avoid exemptions including on NSIPs; to emphasise that biodiversity net gain policy should be on a pathway to environmental net gain; to be clearer on the challenges of irreplaceable habitats; to argue for coherence in policy and rules across marine, coastal and terrestrial environments. The response should be explicit on the risk that the funding associated may be diverted to other priorities by financially pressed local authorities.

The Board considered the drafting. It argued for greater clarity in what the OEP aims to achieve, and suggested a distinctive OEP response could build on the key messages and building blocks of the 25YEP report. The advice should reinforce other messages clearly, where appropriate.

The Board drew attention to evidence that the marginal cost to move from 10% to 20% net gain is low, and we may wish to consider the case for a greater minimum percentage net gain.

The Board considered the form of the response. It noted that the advice concerns government proposals for changing environmental law and related matters. The Board noted that providing advice on this issue would be on the OEP's own initiative, not in response to a request from a Minister. It did not favour a general response as a consultee, nor answering specific consultation questions if these are not aligned with our analysis and objectives.

The Board AGREED to provide advice using our s30(3) Environment Act 2021 power. It further AGREED to hold an extraordinary Board meeting to consider the final advice to be provided.

22.19 Advice on statutory targets

The paper had been provided for steer, as the OEP's work in response to the consultation begins. This is in the context of roadmap to influence the development of a robust targets' framework, stretching beyond this specific consultation window.

The Board noted the proposed framework for considering the targets and that it clearly builds on the principles of the 25YEP report. This includes the need to emphasise the central provisions of the Environment Act and that each element (principles, targets, the next EIP and the OEP) must be as effective as possible, for the Act to achieve its purpose to the fullest extent. In this context, the Board queried the confidence we should have in the significant improvement test process.

The Board discussed the merits of targets as a powerful policy tool.

The Board requested a clear statement of our objectives for this work, to inform the tone, detail and nature of the response. It judged that the OEP may make most difference if our report is short and very clear on the optimal framework for targets as a policy lever, rather than a longer technical response.

It commended the focus on coherence in the framework, noting that we should identify areas where there is incoherence, conflict and trade-offs. It questioned whether analysis should add a focus on targets being time-bound and on milestones, with a focus on creating turning points.

The Board considered the planned engagement, seeking assurance that the engagement was for expertise and awareness. It questioned whether the OEP can engage with the expert groups that informed the development of the targets.

The Board AGREED to provide advice using our Environment Act 2021 section 30(3) power. It further AGREED the approach to assessing the targets through the proposed framework and presentation of the assessments and that it will receive the final response for sign-off after taking a draft response to the 27 April Board.

22.20 Government's joint fisheries statement

The Board discussed that government's consultation is the enactment of a fundamental shift in the stewardship of the marine environment under the Fisheries Act. This links fisheries to environmental management for the first time. It noted the important context that trawling in marine protected areas is a highly damaging activity that is not subject to rigorous environmental impact assessment.

The Board AGREED to the OEP submitting a high-level response to the consultation. This will set out our key expectations and thereby lay the groundwork for further intervention on marine issues.

The Board considered the key points of the response proposed. It noted that trawling is not the only environmentally damaging activity which does not require an environmental impact assessment and encouraged a broader focus – on the need for robust environmental assessment, rather than specifically an EIA. The Board noted that the Royal Commission on Environmental Pollution had made similar recommendations in 2004. We should carefully examine why those recommendations were not adopted.

The Board recommended an additional key point that fisheries should not have special status in comparison to other activities in marine spatial planning. It also recommended engagement with Environmental Standards Scotland and the Interim Welsh Assessor given the UK wide nature of the consultation, and the option to link recommendations to the ambition of the 25YEP to leave the environment in a better state.

The Board AGREED that Professor Dan Laffoley would provide oversight and expert input into the development and delivery of our proposed response. The Board AGREED that the consultation response would be agreed by the Interim CEO in consultation with the Chair, with the referral of any matter of strategic importance to the Board if required.

22.21 Northern Ireland operating model

The Board considered the paper. It was noted that a Northern Ireland Board member is yet to be appointed, albeit the process is almost completed. While the decisions are for the Board to take, it will wish to take the view of the NI Board member if that appointment is made sufficiently promptly. There is however a pressing need to progress as soon as resources are made available.

The Board reflected the importance of Northern Ireland expertise beyond those roles identified, particularly given the environment, environmental governance and the environmental issues are different in Northern Ireland. Expert panels are one route to access particular knowledge and expertise, as are commissions for expertise and similar. A spectrum of ways to secure expertise is needed.

The Board AGREED the proposed organisational design on the assumption that DAERA's additional funding contribution will be sufficient to secure this. It further AGREED to recruit the roles listed, with the experience requirements as set out.

The Board discussed the location of the roles. It noted that it is essential to ensure that we are one organisation, and treat staff well including regular contact and travel. It was recognised that the decision on location was balanced, but AGREED recruitment on an "agnostic location" basis, with successful GB-based staff contracted to Worcester and NI-based staff contracted as home workers.

22.22 **Business and corporate plan**

The Board considered the paper, and the proposed approach to the OEP's first corporate plan. It noted that any allocation of resources to our objectives will only be indicative, but this is expected in the Cabinet Office guidance.

The Board recommended that the corporate plan be short, include the elements of the OEP's work programme which are certain, and not commit where there are unknowns. It is important not to raise expectations we cannot deliver.

The Board noted the arguments either way over whether the OEP should consult on this corporate plan. It recommended this be reviewed in future years, including through understanding the mechanisms for consultation that had been most effective in developing the strategy and enforcement policy.

The Board AGREED the objectives for the OEP's first corporate plan, and the outline structure proposed. Given the extensive consultation already undertaken recently to inform the OEP's strategy and approach to enforcement, it further AGREED that to avoid duplication and stakeholder overload, the corporate plan shall not be subject to formal consultation.

The Board considered the key thematic environmental issues identified by the executive, and in particular those presented as the four principal areas to be prioritised for further scoping. It noted the intention that one or more of these priority areas form the basis for thematic work undertaken by the OEP in the forthcoming financial year. The number of issues to be pursued will depend on resource demands vs our capacity and capability.

It discussed the four issues in outline before endorsing broadly the prioritisation proposed.

The Board appreciated that difficult choices would need to be made, by reference to the approach to prioritisation once settled.

The Board discussed proposals developed for work that could primarily be commissioned externally. It recognised each as having merit, and that these could be important reviews into the implementation of environmental law.

The Board made general observations about our approach to prioritisation, noting that we are yet to have evidence of our impact. It recommended consideration be given to how feedback and experience will inform prioritisation in future, noting that we must be prepared to respond to changes in external context.

The Board commented on the overall portfolio of work to be developed. It noted that the portfolio could be balanced across the building blocks set out in the 25YEP, to see at which level the OEP is seeking to exert influence, and should aim to strike an acceptable balance across geographies.

The Board recommended that clear thought be given in each area to the strategic outcomes the OEP aims to achieve, and the interventions necessary to achieve them. This should include consideration of long-term ambitions, and where the OEP is the one body that can make a difference.

The Board requested that officers consider further the most pressing environmental issues in Northern Ireland, to support broader identification than that presented to date. ACTION Chief of Staff.

Subject to its discussion, the Board AGREED the thematic issues proposed to be subject to detailed scoping (for inclusion in the OEP's first business plan), those held for future consideration, and those not determined a priority now.

22.23 Culture, values and behaviour charter

The paper was introduced, and the context in which it has been developed with staff explained. The Board commended the approach.

The Board questioned how the organisation would judge the success of the culture over time, and how it would be embedded e.g. through staff performance objectives and appraisal. The Board noted the value of a purposeful culture survey, away days, rapid health checks and other mechanisms and recommended a review of the approaches of others.

The Board considered the draft culture charter. It queried whether there was enough emphasis on inclusiveness, and whether some duplication could be removed. It recommended adjustments to the 'trust' heading.

Subject to its discussion the Board AGREED the draft charter.

22.24 Finance report

The current financial position was reported, including an increased underspend arising following changes to the recruitment and procurement profile. The Board sought and received assurance on the activities in train to improve forecasting for the business year 2022-2023 and beyond. The Board noted that 2022/23 is a foundational year for the OEP, as it establishes. The rhythm of spending will develop over time, enabling better forecasting.

The Board requested more dynamic reporting to it of financial information, including through the rhythm of ARAC and Board meetings so that ARAC can scrutinise and consider the financial position in the most timely way. ACTION Chief of Staff.

In managing future years, the Board encouraged the development of a range of projects that can be deployed at short notice to maximise value for money should any underspend be identified. This flexibility will improve as the OEP's access to experts is established.

22.25 Delegation of functions

The paper was introduced within the wider context of the series of delegations that have been agreed and are proposed to be developed.

The Board AGREED the updated Financial Scheme of Delegation subject to the ARAC reviewing the supporting Finance Handbook and associated underlying policies and procedures and advising the Interim CEO that they are adequate.

22.26

Any other business and publication of papers

The Board requested that for future meetings papers be circulated before the weekend preceding those meetings, if possible and for all annexes to be provided, and not embedded within documents. ACTION Head of Business Strategy and Planning.