

Briefing for Board discussion on the Planning Reform Working Paper¹

1. Context

In December 2024 Government published its '[Plan for Change](#)', in which it set out its priorities in the form of missions and milestones. Front and centre is the commitment to economic growth, with 'rebuilding Britain' as a core element – including the target of building 1.5 million homes in England and ambitions in respect of green energy and energy infrastructure. The Government has committed to planning reform where it sees this as key to unblocking development.

Successive governments have mooted changes to the way nature is considered when developments are approved. Recent reforms were made by the Levelling-up and Regeneration Act 2023. This gives government powers to change environmental assessments legislation for a more outcomes-focussed approach. These powers have not yet been exercised.

There has also been a recent policy shift towards a more strategic approach to such assessments, e.g. district level licensing for newts and strategic compensation for North Sea renewable energy projects.

The Secretaries of State for Environment and for Housing issued a [joint letter](#) to the eNGO community last summer setting out their intention to work together to deliver house building *with* nature recovery. This working paper, published in December 2024, fleshes out that idea.

2. The Working Paper

The working paper contains high level proposals and anticipates legislative change to enact them. This could be via the Planning and Infrastructure Bill, which could come forward as early as March 2025. It is not wholly clear how wide proposed legislative changes may go, e.g. in terms of current assessment processes to be covered. This note focusses on how reforms may apply to the current Habitats Regulations Assessment (HRA) process.

At present, a mitigation hierarchy applies to HRA. Alternatives must first be considered, then harm must be minimised, then mitigated, and any unavoidable harm which may still result must be compensated. European and domestic caselaw has shaped the interpretation of mitigation: it must be sufficiently certain of success at the time of the decision, should be focused on the specific features affected and, if it is to be delivered after the harm is caused, it should be regarded as compensatory in nature.

The main proposal of the paper is to simplify development consenting processes and drive environmental improvement by changing the approach to mitigation of environmental harm.

Current HRA process	Proposed process
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¹ See www.gov.uk/government/publications/planning-reform-working-paper-development-and-nature-recovery/planning-reform-working-paper-development-and-nature-recovery.

Developer provides the necessary information for environmental assessment and proposes mitigation and / or compensation measures if required.	Developer will pay into a central fund that delivers strategic mitigation / compensation if the anticipated harms fall under a Delivery Plan. Other effects would still need to be addressed.
Case by case mitigation / compensation agreed for each project. Developer offsets their own harmful effects.	Strategic mitigation / compensation via the delivery plan. Proposal is the plan will address baseline impacts, impacts from “in scope” development and present opportunities for “further environmental uplift”.
Developer responsible for delivery and ongoing management of the mitigation / compensation, secured for example through planning conditions.	Responsibility for planning and implementing the strategic mitigation will be moved to the State. A delivery body will determine what actions are required then secure these actions, funded through developer contributions.
Mitigation must be identified at the time of the decision with sufficient certainty that the decision maker can conclude there will be no adverse effect on site integrity.	It is unclear when mitigation will be in place under a Delivery Plan. If not at the time of development, this could be considered regressive

“Delivery Plans” appear key to the proposed new approach, and would be established by a “suitable public delivery body” at an appropriate geographical scale, to apply to certain categories of harm. It is acknowledged that this approach will not be suitable for all harms, in which case the status quo will apply. Government plans to have several Delivery Plans ready with the Planning and Infrastructure Bill and states that, subject to Bill passage, they will be operational at Royal Assent.

This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs and it contains information provided in confidence.

The Working Paper also states that Environmental Outcome Reports (provided for in the Levelling-up and Regeneration Act) will replace the current system of environmental assessment “in due course.”

3. What the OEP has said before

The OEP has responded to previous government proposals on related topics, including the [Nature Recovery Green Paper](#), [consultation on Environmental Outcomes Reports](#), and [proposed amendments to the \(then\) Levelling-up and Regeneration Bill regarding nutrient neutrality](#). We also published [an environmental law report](#) reviewing the implementation of HRA and certain other environmental assessment regimes.

Within those publications, the following recommendations appear most relevant to the working paper:

- a) Reform of the Habitats Regulations should be approached with caution so as not to undermine existing high levels of environmental protection.

- b) Government should carry out a careful review of how the current laws are being implemented before making changes, with any reform aiming to build on what other more immediate non-legislative improvements are already possible under existing legislation to make processes work better and faster.
- c) We agree that the use of strategic mitigation solutions to streamline the consenting process is sensible but can be undertaken under existing legislation. Government should diagnose and address any barriers affecting the wider use of strategic solutions, whether or not it also pursues more significant legislative reform.
- d) As part of any such proposals, compensation should remain a last resort in accordance with the mitigation hierarchy.
- e) When developing proposals for reform, government should apply the environmental principles.

We have also made relevant recommendations regarding improvements to the root causes of the poor implementation of the existing environmental assessment laws: access to data; post-decision monitoring, evaluation and reporting; and access to necessary expertise.

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The Board will hear from Tony Juniper (NE) and Alan Lovell (EA) at its meeting.

At a Westminster Policy Forum event in December, many attendees expressed cautious optimism in relation to the proposed changes. The building and development sector however were vocal about the extent to which their sector can be expected to pay for existing environmental problems. Some felt they are already viewed as a 'cash cow', and voiced concerns that onerous financial requirements are making building unprofitable and will disproportionately affect SMEs.

eNGOs are concerned that the proposals depart from the polluter-pays principle to a form of 'pay-to-pollute'. Alternatively, that this subverts the polluter pays principle by passing the cost of legacy nutrient pollution on to new home-owners.

IEMA voiced concerns that the proposals subvert the mitigation hierarchy and potentially water down nutrient neutrality requirements.

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The working paper also states that the EIP rapid review will lead to a plan that will protect and restore the environment at the pace and scale needed. It indicates that the proposed planning reforms will enable better environmental outcomes, including supporting nature's recovery.

The OEP may have unique views to offer in supporting government accountability through any planning reform, for example by pressing for:

- (a) transparency on how the EPPS has been applied to this policy development
- (b) information which allows Parliament and other to understand how the Government can have confidence that any legislative changes will not prove to be environmentally regressive (s.20 Environment Act 2021 statement for the bill), and
- (c) transparency on how proposals stack up against delivering the government's commitments (especially legally-binding targets).

We might also wish to press on how the proposals compare to the current approach to mitigation, e.g. in terms of the features affected, timing of delivery and (for some types of harm) proximity to the development site.

Building on our previous work, we might seek clarity on how proposals will be implemented in practice considering issues of resourcing, skills, expertise and data.

6. Suggested timescale/approach for response

The OEP can use the points in this working paper when talking to Ministers in the next few weeks to offer headline views e.g Minister Creagh on 28 January. This can be supported by ongoing engagement at officer level – we are working with MHCLG to understand more about their application of EPPS and s.20 of the Environment Act.

We understand Ministers are intending (imminently) to request advice from the OEP but we are not sure if they want s.30 advice or just a consultation response or how specific the request might be. This should be achievable by early-March. With that in mind, the Board might want to identify some key themes to develop for that response, following its discussion on 29 January. For example:

- Improved outcomes for Nature
- Coherent planning and delivery
- Strong governance and accountability
- Access to adequate expertise, resources, data, and local knowledge
- Monitoring and evaluation and adaptive management

Annex A - Suggested structure of the meeting of OEP Board, Tony Juniper and Alan Lovell

- 1) The briefest of introductions to the working paper to make sure everyone understands what is proposed
- 2) Debate on what we think are the key issues for environmental protection and improvement, suggested topics include:
 - a) Alignment with legally-binding targets
 - b) Consistency with environmental principles
 - c) Conditions for success i.e. to improve the environment, not lower protection
 - d) Transparency and accountability (move away from local level to national delivery body and Secretary of State)
- 3) What other things are important – key questions and challenges - Tony's (NE) and Alan's (EA) views?
- 4) OEP Board to discuss next steps.

Annex B – notes following pre-meet with Natural England on 15 January

We understand the following will be in Tony's briefing:

- Summary / update on proposed reforms by Tony (and Alan), plus any known timings for the Planning and Infrastructure Bill
- How the review of the EIP is expected to fit in ('upstream improvements' mentions improving protected sites, how do the planned wider environmental improvements fit into the delivery plans e.g. who resolves, who pays, timescales)
- Delivery body – concerns about resources, skills and expertise, pressure to find and implement the solutions
- Delivery plans – e.g. how are they intended to work in practice, how will they be secured, who will the delivery body report to (assume to SoS so interesting to see how this fits with the devolution agenda), would the SoS need to seek advice (who from if NE is the delivery body) what happens if the measures are not successful, what types of impacts are they expected to cover?