

Board Paper

Date

9 January 2024

Title

Report of the Chief Executive

Report by

Natalie Prosser, Chief Executive

Paper for information and decision

Open in part

Summary

1. As we start 2024, much of our immediate focus is directed towards our progress report in England and ensuring that our key messages are heard, including through our launch event on 18 January.
2. Outside of this and the issues of EIP quality, and cooperation which have been the focus of the Board's discussions in recent months, all teams are now fully engaged in our business planning for 2024/25 as well as keeping focus on maximizing our delivery this financial year.

Recommendation

3. The Board is recommended to note the progress in delivery of our strategic objectives.

Strategic Objective 1 - Sustained environmental improvement

Monitoring environmental improvement in England

4. A comprehensive communications and engagement plan is in place to support the publication and launch of the EIP progress report. This includes 'no surprises' briefings for Defra Ministers and officials, an embargoed media briefing and targeted stakeholder briefings the day before publication, an in-person launch event and an on-line stakeholder briefing the following day.
5. The launch event is designed to be larger than last year's and include contributions from external agencies with an interest in our key messages and issues. We invited stakeholders in November, and at time of writing just under 40 people have already confirmed attendance.
6. A briefing pack is being prepared to help disseminate the findings and messages of the report to different audiences through staff attendance at presentations, seminars and similar events, and we will also create video content and social media assets. Parliamentarians have been

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identified as an important audience which we need to do more to reach. Dame Glenys will speak to the Environment APPG on 23 January, the Environmental Audit Committee will scrutinise our report in a hearing on 21 February, and we are seeking to arrange a presence in Parliament to coincide with this. We also have a workshop on 29 January with the Parliamentary Network for the Environment and Climate, which includes committee clerks, researchers, library staff and others.

7. The Board will be briefed separately on our key messages, positioning and tone in its agenda. The draft press release and speech will be circulated separately, in advance of that discussion.

Monitoring environmental improvement in Northern Ireland

8. Work on the drivers and pressures impacting biodiversity in Northern Ireland is continuing. We now expect to publish our report in the first quarter of next business year. Our report will be informed by four sub-contracted evidence reviews on river hydromorphology and nutrient enrichment, lowland agriculture, upland agriculture and urban/rural development.
9. The Head of Northern Ireland Analysis has been invited to observe the DAERA expert working group examining the evidence and options to address nutrients in aquatic ecosystems, with a particular focus on Lough Neagh. This will be relevant to both our current report, and our development of a work programme in relation to nutrients in Northern Ireland.
10. We have also appointed Riccardo to carry out a coherence analysis of the vision, outcomes, targets and monitoring and evaluation of the draft Environmental Strategy and draft Climate Action Plan (CAP), required under the Climate Change Act (Northern Ireland). This work will include analysis of sectoral plans underpinning the CAP and a selection of overlapping strategies, once the draft CAP is released for consultation.

Marine

11. Our call for evidence on the drivers, pressures and data gaps affecting the achievement of Good Environmental Status in UK marine waters has been open since late November and closes at the end of January. We have appointed consultants to support the analysis of responses who will also run a series of workshops with stakeholders.
12. We have also appointed 2 short term secondees who will start early this year to support our marine work including reviewing the evidence landscape and continued analysis of fisheries management plans. We are considering how we develop potential activity to scrutinise and support government's goals to improve nature at sea, through our business planning.

Evidence

13. As well as those projects noted above, we have commissioned research projects as part of our active management of our resources:
 - a. ARUP have been appointed to undertake a foundational project to help us to develop our understanding of themes and issues relevant to green finance. The focus is how green finance can best be mobilised at scale and pace to support the delivery of the government's Environmental Improvement Plan (EIP).

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- b. We have extended an existing project scope to provide insights into the current status of resources and waste policy, regulations, governance and reporting in England; identify key risks, barriers to, and opportunities for progress on driving waste management up the waste hierarchy and the circular economy with a particular focus on economic incentives; and identifying and prioritising areas for further assessment.
- c. We are seeking to extend the scope of UKCEH's project on land use change to cover Northern Ireland, and deliver by year end. This is in negotiation.
- d. We are extending an existing project analysing Government's policies for delivering the Thriving Plants and Wildlife goal of the EIP. This will deliver a template for capturing and describing the key issues in each EIP goal area, in a way that enables the application of systems thinking; and a theory of change for Government's 'nature friendly farming' policies, which describes key delivery assumptions and anticipated contributions to the species abundance targets. These outputs will inform our next, and future, EIP progress reports.

Analysing the trajectory of environmental progress

14. IPSOS' work on environmental forecasting is progressing well. They have completed their synthesis of the literature and are currently developing an implications analysis ahead of developing a draft final report in February. The Board will consider our strategic approach to analysis of the trajectory of environmental progress at its strategy day in February.

Strategic Objective 2 - Better environmental law, better implemented

Progress in our existing programmes

15. We aim to publish our reports for England and Northern Ireland on the Water Framework Directive Regulations in March 2024. Within our analyses, we have identified a number of areas where we consider that implementation may not have met legal requirements. These include the approach to setting environmental objectives for water bodies and the adequacy of programmes of measures to achieve them. Our reports will set out our view on these matters, along with recommendations to address them and other implementation issues.

This section has been redacted as it relates to information recorded for the purposes of OEP's functions relating to investigations and enforcement.

16. We expect to complete our report on bathing waters towards the end of Q1 2024/25 and on the designation and management of protected sites in Q2.

Compliance monitoring

17. Our 2023/24 corporate plan commits us to scrutinise the implementation of arrangements for regulators to monitor compliance with environmental laws across several sectors. This work is underway, and we expect may result in two environmental law reports in England.

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18. As a first phase, we will examine when and how inspections are required in environmental laws and collect data on inspection rates in practice, associated licence or permit costs, and income received by the Environment Agency to carry out inspections.
19. As a second phase we will undertake a deep dive of how effective inspections in the waste and installations sector – a high percentage of the Environment Agency’s total inspection work – are in practice. Our approach is likely to include documentation review, surveys and interviews with businesses and inspectors, and testing the use of new technologies to see if unidentified non-compliance is taking place.

Length of consultation

20. The Board recommended analysis of whether there is a negative trend in the length of time stakeholders have to respond to consultations and other calls for evidence relevant to our remit. We have analysed the length of all the consultations and calls for evidence we have screened in the last 30 months. There is no general trend of concern, with two short windows for consultation evident: Defra’s air quality strategy consultation and an MMO consultation on seasonal closure of Crawfish fisheries.

Strategic Objective 3 - Improved compliance with environmental law

Complaints and enquiries

21. Since January 2021 we have received 1,055 enquires and 104 complaints. Since my last report, we have received 5 new complaints and handled 71 enquiries. We currently have 11 open complaints in the assessment phase.

This section has been redacted as it relates to information recorded for the purposes of OEP’s functions relating to investigations and enforcement.

22. We still have not received information on four of eight EU infraction cases on which we have sought information from Defra, and one case from DAERA. We are chasing Defra and DAERA on a regular basis.

This section has been redacted as it relates to information recorded for the purposes of OEP’s functions relating to investigations and enforcement.

23. Following DAERA’s decision on 18 December 2023 to direct NIEA to cease reliance on the extant operational protocol for the provision of ammonia planning advice, we are analysing the proposed approach to providing advice in the interim period between now and such time as a new ammonia strategy and operational protocol are published.

This section has been redacted as it relates to information recorded for the purposes of OEP’s functions relating to investigations and enforcement.

24. DAERA’s decision received significant press coverage in Northern Ireland and our threatened legal proceedings were widely referenced in the press stories. The Ulster Farmers’ Union has published a statement expressing its disappointment at the decision and stating that it is

considering its 'next steps'. We will monitor any developments that may impact our investigation.

This section has been redacted as it relates to information recorded for the purposes of OEP's functions relating to investigations and enforcement.

25. As we reported to the Board in November, DAERA has produced a timebound plan to review the Nutrient Action Programme for Northern Ireland during 2024, following a series of interventions and discussions we held with them during 2023. [We have published the correspondence we exchanged, including DAERA's timetable](#). We will monitor progress and make plans to input to the formal consultation process in 2024, if prioritised within our business planning. This will form part of the wider work we are scoping in relation to nutrients in NI.

This section has been redacted as it relates to information recorded for the purposes of OEP's functions relating to investigations and enforcement.

Strategic Objective 4 - Organisational excellence and influence

Financial management

26. Our 2022/23 annual report and accounts were laid in Parliament before the Christmas recess. Our last full reforecast of expenditure to year end (November) reported an expected year end underspend of £30k (0.3%)

This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.

This will increase to c£160k (1.5%) if we receive an additional £132k allocation of capital funding from Defra to offset our equivalent forecast capital overspend.

27. Management accounts to the end of December 2023, and a revised end of year forecast will be considered by the Audit and Risk Committee and Board in February. Our focus remains on maximising public value from our resource allocation this year. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.* We continue to take active decisions on expenditure in this light. Our ability to react to changes in forecast expenditure inevitably becomes more constrained as year-end approaches.

Resource Bid

28. We have no further information on the timetable within which Defra intends to decide our resourcing for 2024/25 alongside its wider budget priorities. We know that DAERA's decision is not likely until March, or the first quarter of next business year.

29. We are progressing our business planning with two planning scenarios: first that our resources and headcount cap remain as this year (2023/24) – requiring a reduction of around ten in our headcount at year end; second that we receive 50% of the additional sums we requested in our bid. The Board will further consider our priorities and budget allocation in February.

30. Following a number of parliamentary questions from Caroline Lucas MP seeking its publication. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.* Defra has now [published a summary of the business case for the creation of the OEP](#) which sets out some of the analysis it had undertaken in 2021 on our likely resourcing and headcount needs. Our current size and our bid remain within the modelling range of this initial analysis.

Business planning

31. Our business planning is progressing, with teams preparing detailed business plans and associated budget information for prioritisation. Outside of our business as usual, we will have a continuing programme of work extending into next business year in a number of programmes.

32. Our discretionary planning activity is focussed towards outcomes in the thematic priority areas the Board identified at its October strategy day: improving nature, environmental governance, clean water, improving nature at sea and nutrient management in Northern Ireland. We know that our discretionary capacity will be limited, particularly if our resources are static and that challenging prioritisation decisions are likely to be brought to the Board in February and March.

Recruitment and accessing expertise

33. Our original planned recruitment for the year is now all but complete. Candidates for two posts are in pre-employment checks and interviews will be held for a readvertised post in mid-January.

34. We have taken steps to maximise our resources within our existing headcount cap of 65 in England, and the total resources we expect to have in Northern Ireland in 2024/25. This has allowed us to plan to recruit to an additional three permanent posts (replacing three current temporary posts) in areas of particular risk into 2024/25, as well as extend one temporary role into the next financial year. That will see our total headcount on 1 April at c75 FTE.

35. We have the equivalent of 6.9 FTE in temporary posts in addition contracted to leave the OEP by 31 March, around 9% of our total capacity. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.*

36. College of Experts members have now all completed vetting checks. Names and biographies are provided at Annex A. Members are already providing support to OEP projects and we have recently sent a survey to all members to support our horizon scanning and intelligence gathering work.

Premises and hybrid working

37. Residual issues with Wildwood occupation have now been resolved. The heating is operating, and printers are now installed.

Working with our sponsor departments and agencies

38. The Board has a close understanding of issues relating to the cooperation we receive from Defra. We continue to engage constructively at a working level. Our sponsorship and liaison

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team came to Wildwood to meet a number of OEP staff and presented to all staff about their role, some of the operational challenges they face and how we can support them. A revised draft of the 'ways of working document' setting out the approach we have agreed is with us for review.

39. DAERA has finalised and circulated their 'Guidance to Staff on Engagement with the OEP'.
40. In December we held a ways of working workshop with Defra Group arm's-length bodies following feedback that there were improvements that could be made to our approach. Our focus for a series of workshops we intend is on practical measures we have or can put in place to address some concerns of the timescales they have to respond, and the predictability of when we call on resources. Broadly speaking we expect to adopt the learnings from our ways of working with Defra and DAERA to better structure our ways of working with them, likely including a single 'tracker', better forward notice of requirements, the opportunity to clarify information requests where needed and a documented basis for them to escalate concerns.

Selected stakeholder engagement

41. The Board was updated on the Chair's engagement with Ministers and Chairs of the House of Commons select committees in its December meeting. Dame Glenys and I also met with and presented to Peers for the Planet on our role and priorities.
42. Before the Board meets, we will have held engagement session with a range of NGOs, ALBs and the National Audit Office and National Infrastructure Commission on our priorities for our corporate plan, and areas of focus for our strategic review. This will be the first of a new quarterly series of regular engagement with the NGO community on corporate issues outside of our work programmes, which is intended to provide a further forum for us to engage and communicate with this stakeholder group.
43. We continue to closely monitor political developments in Northern Ireland. We have prepared an engagement plan for the potential restoration of the Assembly and Executive, to be implemented as circumstances change. We have also accepted a speaking invitation for the Chair to the NI Environment Forum on 18th April 2024, a rare significant platform to speak in Northern Ireland. Our Complaints and Investigations team will present to Local Government officers on the role of the OEP, later in January.

IT and website

44. Good progress is being made with the website improvement project with site-wide changes now in technical development. We expect to release changes to the live website incrementally during Q4.
45. Following a review, we are evaluating whether and how to move our complaints and investigation management system to Microsoft Dynamics to attain closer integration with Office365 apps, reduce operational management costs and improve overall security. Our existing system infrastructure was commissioned by Defra for the interim OEP, and is built on a legacy technology platform.

Board meeting in February – Humber Estuary

46. Preparations for the Board’s strategy event in the Humber at the end of February progress. Alongside the Board’s business, we aim to visit sites and hear from speakers connected to the local delivery of environmental policy – by industry and local authorities. Further information and logistical detail will be circulated as soon as is practical.

Impact Assessments

Risk Assessment

47. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.*

Equality Analysis

48. No material equality implications have been identified in this paper.

Environmental Analysis

49. This report gives an overview of strategic organisational developments which support the OEP’s principal objective. Consideration has been given in each case to how the activity contributes towards environmental protection and enhancement, and to ensuring the OEP meets relevant duties in environmental law. No specific proposal in this paper has a direct bearing on those duties.

Paper to be published	In part
Publication date (if relevant)	With meeting minutes
If it is proposed not to publish the paper or to not publish in full please outline the reasons why with reference to the exemptions available under the Freedom of Information Act (FOIA) or Environmental Information Regulations (EIR).	<p>FOIA/EIR exemptions for which we propose not to publish this paper in full are:</p> <ul style="list-style-type: none"> • publication would harm relations between UK and NI governments (s.28) • publication would harm the effective conduct of public affairs, including the Board's ability to receive candid advice and engage in free and frank discussion (s.36) • publication would reveal information subject to legal professional privilege (s.42) • publication would harm the OEP's commercial interests (s.43)

ANNEXES LIST

Annex A – College of Experts Biographies

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Annex A – College of Experts

1. *This section has been redacted as it contains information readily available*