

Natural England Board



Title: **Confirmed minutes of the 87th Natural England Board meeting 20th March 2019**

| Members attending | Senior Leadership Team |
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| Lord Blencathra, Chairman | Marian Spain, Interim Chief Executive |
| Professor Sue Hartley | Julie Lunt, Chief Officer Legal and Governance |
| Teresa Dent | Dr Tim Hill, Chief Scientist |
| Simon Lyster | Gleny Lovell, Interim Chief Officer of Planning and Performance |
| Professor Michael Winter | Alan Law, Deputy Chief Executive |
| Henry Robinson | James Diamond, Director Operations |
| Dr Julia Aglionby | Amanda Craig, Director Operations |
| Apologies | Guests |
| Dr Andy Clements | Sonia Phippard, Director General for Environment, Rural and Marine, Defra (items 1-4). By invitation |
| Catherine Dugmore | Abdul Razaq (items 1-5) |
| | Richard Broadbent |
| | Caroline Cotterell |
| | Ian Fugler (for item 4) |
| | Greg Smith (for item 5) |
| | For item 9: Jonathan Burney, Stephanie Bird-Halton, Martin Kerby and Ben Fraser, Natural England; Anthony Greally, Planning Director, Lichfields Darren Edmonds, Project Manager, South Tees Development Corporation |

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| | Duncan McLaughlin, Ecologist, Peter Brett Associates |
| | Secretariat |
| | Tom Roberts, Legal and Governance Team |

Welcome from the Chairman and Declarations of Interest

The Chairman welcomed everyone to the meeting.

Apologies were received from Catherine Dugmore and Dr Andy Clements,

In response to the Chairman's invitation for any perceived or potential declarations of interest in respect of the Board agenda:

- With regards to item 9, Dr Lyster declared an interest as a non-executive Director of Northumbrian Water. Northumbrian Water own a small area of land which is part of the area which is subject to consideration for confirmation as a SSSI;
- Dr Aglionby made her usual declarations in respect of Environmental Stewardship and Countryside Stewardship referencing her work as an agent for commoners party to such stewardship schemes;
- Henry Robinson made his usual declarations as an HLS agreement holder;
- Teresa Dent made her usual declarations.

The Chairman welcomed Sonia Phippard, Director General for Environment, Rural and Marine, at Defra to the meeting.

The Chairman reminded the Board that the meeting would be Julie Lunt's final attendance at the Board and thanked her for her contributions.

1. Confirmation of January Minutes and Matters Arising (NEB M85 01)

1.1 The Board discussed the unconfirmed February minutes and agreed the following amendments to those minutes:

- Amendments to Simon Lyster's declaration of interest on page 2.
- Correction of the typo in clause 2.1.6
- Inserting 'Economic' in front of Social Research Council in clause 2.11.5
- Amending the declaration of interest of Simon Lyster at the start of item 9 to make reference to his non-executive director role and correctly refer to Northumbrian Water and Essex and Suffolk Water.

Action: Legal and Governance Team to make necessary amendments to February Board minutes and produce confirmed minutes.

2. Chief Executive's Report (NEB 87 01)

2.1 General

The Board noted that:

2.1.1 an offer had been made and there had been verbal acceptance of the role of Chief Operating Officer by an external candidate. The Board expressed their thanks to Amanda Craig and James Diamond for the work they had done in picking up the workload for this role over the past 12 months.

2.1.2 interviews for Chief Officer Legal and Governance would take place at the end of the month Until a replacement is found Ken Roy will be acting Chief Officer Legal & Governance and Richard Broadbent will be acting Director of Legal Services.

Uplands Position Statement

2.2.1 The Board noted the steps that had been taken in relation to updating stakeholders on the Uplands Position Statement.

2.2.2 In discussion the Board:

- recognised the successes of Natural England staff's handling of the issues on the ground, their confidence on the position statement and the open and honest conversations that were taking place with stakeholders and the clarity that was emerging between Natural England and the estates.
- Welcomed the inclusion of cutting consents as a means of providing a workable solution.
- Agreed that work should continue at pace to ensure the positive results needed.

2.2.3 The Chairman reiterated the Board's thanks to staff for their work in this area.

2.3 KPI Report

2.3.1 In relation to performance:

- The Board conveyed their concern in relation to the reporting of workforce effectiveness development. It was explained that the KPI reflects the staff survey results.
- sought assurance on the working relationship with the Rural Payments Agency.
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- noted that recognition should be sought in relation to Natural England's work in respect of Marine Conservation Zones.
- Noted that the CEO would be meeting with Lord Gardiner and the Secretary of State to discuss the ECP

2.4 Staff Wellbeing

2.4.1 The Board:

- registered their concerns in relation to staff wellbeing as detailed in the report and discussed the importance of a motivated workforce and adequate resourcing to deliver the 25 Year Environment Plan
- noted the dedication of staff and acknowledged the challenges and opportunities affecting wellbeing
- noted that the Staff Survey was a snapshot in time and that this had taken place at a particularly low point during a time of leadership change.
- Noted that a further report on actions to address issues raised in the staff survey would be brought to the May board
- Were informed that a 'pulse survey' would take place in the autumn

2.5 Financial Position

2.5.1 The Board were advised that the 2018/19 budget would be brought in largely on target.

The Board recognised the extraordinary achievement of the finance team to manage such tight budgets.

- 2.5.2 The issue of ARAC membership contingency cover was raised and the Board agreed that measures should be considered to reduce the risk of having to cancel future meetings.

2.6 25 Year Environment Plan

- 2.6.1 The Board were provided with an update on actions arising from the 25 Year Environment Plan. It was confirmed that the Executive would continue to provide information about the Plan so that the Board can provide strategic direction and leadership within the scope of the retained authority scheme.

- 2.6.2 The Board discussed the expertise that Natural England can provide and contribute to the new Environmental Land Management Scheme (ELMS). The Board confirmed that further discussions were required on the implications of ELMS. The Board were reminded that the theme for the June Board meeting was 'Farming / ELMS'.

Action: Board Services to arrange for a stakeholder pre Board dinner engagement event the evening before the June Board meeting.

- 2.6.3 It was noted that Natural England had produced a draft report setting out proposals for 'Supporting Natural Capital through Healthy Soils' and requested a copy of this report.

Action: Legal & Governance team to provide a copy of 'Supporting Natural Capital through Healthy Soils' report to the Board.

- 2.6.4 The Board noted that Defra has published its consultation on conservation covenants and asked to see a copy of Natural England's response before it is sent.

Action: Legal and Governance Team to provide the Board with a copy of Defra's consultation paper on conservation covenants.

2.7 Chief Scientist Update

- 2.7.1 The Board's attention was drawn to Natural Capital Accounts that had been published for Natural England's National Nature Reserves and the fact that this was a pioneering approach with wider benefits, and that positive feedback had been received from SNH who expressed a desire to adopt a similar approach for their NNR.

- 2.7.2 The Board welcomed notice that the July meeting would have a focus on Science Strategy.

2.8 Legal Update

- 2.8.1 The Board noted the position in relation to on-going judicial reviews.

- 2.8.2 In respect of the JR about the trial brood management of hen harriers, Dr Clements who was unable to attend the Board meeting provided a written note. Julie Lunt reported the content of this note to the Board, a copy of which is appended;

Given that the licence to trial brood management for Hen Harriers resulted from the formal advice of Natural England Science Advisory Committee (NESAC) I would like this short reflection (in my absence) on the outcome of the Judicial Review judgement handed down by Mrs Justice Lang last week, to be heard by the Board, and to be minuted.

First, and in general, it was common ground in front of the Court that the main threat to the conservation of Hen Harriers is unlawful persecution by those associated with the grouse moor industry. In addition, it was recognised that NE takes enforcement as seriously as the next person, and that NE agrees enforcement is of limited effectiveness. And finally, in general, it was recognised that NE's purpose in licensing the trial was to seek to further the conservation of Hen Harriers (para 89). These are now matters of fact which represent elements of Natural England's position on this issue, irrespective of the views and opinions of others.

In particular:

1. NE correctly relied upon published, peer-reviewed literature, and considered advice presented from its own NESAC, that evidence for BMHH was lacking and a trial could provide that evidence to inform future practice (para 22)
2. In enabling the *Joint Action Plan* to be published by advising a licensing trial, NE was carrying out Government policy (para 24)
3. The licence was correctly considered under section 16(1)(a) of The Wildlife & Countryside Act (WCA) 1981 for scientific, research or educational purposes (para 57), and further NE was conscientious in doing so (para 61), correctly construed a narrow interpretation of alternatives (para 58) and exercised its statutory powers lawfully (para 67).
4. The Habitats Regulations Assessment was carried out in accordance with the regulations and reached lawful conclusions (para 109).

Natural England has been tested, and we have been seen to use evidence appropriately and to have implemented the law correctly – this is what we do. Whilst any person may have an emotional or partial point of view regarding Hen Harrier persecution, Natural England has been seen to chart a careful course through a very difficult area, and to do its job.

The Board would like to thank all who have worked so hard and so carefully on this issue. NESAC members, advised in the first instance by Adrian Jowitt, Richard Saunders and others at our discussion in October 2015, our policy, evidence and legal team including Julie Lunt, Richard Broadbent, David Harrison, Rob Cooke, Amanda Craig and Pete Brotherton, and other NE staff whose views have held our feet to the fire. I have thanked Paul Luckhurst, our advocate in the High Court, separately.

Had the Board of Natural England simply endorsed the principle of BMHH, as was the first suggestion at the meeting in summer 2015, and not taken the advice of NESAC, we would be in a very different position now.

Andy Clements, NESAC Chair and Natural England Board member

18 March 2019

- 2.8.3 The Board noted their thanks to all teams involved in the brood management trial and the subsequent challenge. They commented that the judgment reflects the detail of work, time and effort involved.
- 2.8.4 It was noted that that the risk of legal challenge was growing and that a strategic approach to unplanned legal costs should be considered.
- 2.8.5 The Board acknowledged, following its firm steer at February's Board meeting that the approach to setting maximum and minimum numbers for 2019/20 bTB control operations

should remain with the Animal and Plant Health Agency (APHA). It was noted that it was no longer necessary to refer this matter to NESAC.

2.8.6 The Board noted the proposal for an increased value SLA with HS2 Ltd and confirmed that they were content to delegate signature of the SLA to the Chairman.

3. General Licensing Update (NEB 87 02)

3.1 The Chairman provided the Board with a recess from the meeting to consider further papers made available to the Board detailing the General Licensing Update and threatened litigation.

3.2 The Board received an update on the legal and operational issues arising from the threatened action. In discussion of the legal challenge:

- The Board noted the nature of the challenge;
- Noted the advice from Counsel that had been received by Natural England and also Defra's own legal advice;
- Determined that they wanted to reflect on that advice and understand the consequences for future licensing;
- Were concerned about the impact of any decision on the conservation of the relevant species.

3.3 The options for handling general licensing in the future were discussed. The Board recognised:

- that there were a range of options, some of which would need to be implemented immediately and others which would require more consideration and long term planning such as legislative change to section 4(3) WCA if that was chosen as an option.
- the difficulties of taking an individual licence approach.
- The need for careful handling with stakeholders.

3.4 It was agreed:

- that officers should do further work on the immediate short term options and come back to the Board with a recommendation on how to proceed. It was recognised that it would be necessary to do this ahead of the next Board meeting in light of the imminent proceedings.
- That the planned review of general licences should be accelerated.

4. Business Planning (NEB 87 03)

4.1 The Board received a presentation about the current financial position in relation to Grant in Aid, the current commitment on staff costs and the income from various programmes.

4.2 In discussion the Board:

- Noted that areas of investment had been identified, including in the case of charging for wildlife licensing where investment and the improvement of service delivery will allow for the recovery of costs.
- that the planned programme would require a number of changes in the staff team in terms of work to be undertaken and that there would be further impacts on staff as a result of any budget cuts.
- Acknowledged the need to demonstrate clear tangible delivery and evidence of this and to provide a positive picture to increase confidence with Defra to secure a better long term settlement.

- Confirmed that they were content with the level of risk around some of the income assumptions and over programming in planning.
- noted that the incoming Chairman, Tony Juniper, had sent a letter to the Secretary of State containing seven bullet points in relation to business planning and delivery.

4.3 The Chairman requested that Natural England's Senior Leadership Team provided evidence to back up the seven bullet points listed in Mr Juniper's letter.

Action: Chairman's Office to circulate a copy of Tony Juniper's letter to Board members.

Action: Finance Director and Director Business Planning to provide a briefing to the incoming Chair.

5. Natural England Roadmap update (NEB 87 04)

5.1 The Board were provided with an overview of the roadmap themes and the governance underpinning the new arrangements and the link to the Spending Review and 25 year environment plan initiatives.

5.2 The Board noted:

- that the four themes within the Roadmap directly correlated with Natural England's Conservation 21 Strategy, the Government's 25 Year Environment Plan, and the activities that Natural England carries out at present.
- that implementing the roadmap would need significant changes in the way we organise our work and in areas such as staff capabilities and income strategy.
- Agreed that Natural England's Senior Leadership Team should keep the Board informed of progress on the Natural England Roadmap.

6. Governance Update (NEB 87 05)

6.1 The Board considered the final version of the UK Government Investments (UKGI) *Natural England Governance Review*. Julie explained the process by which UKGI drew up the detail of the report.

6.2 The Board noted UKGI's proposals, along with Natural England's current position, as set out in Annex 2 to Board paper NEB 87 05.

6.3 Acknowledged the importance of ARAC within the Review and the ways we might evolve best practice learning from others such as JNCC approach to ARAC.

Action: Gleny Lovell / Ken Roy to review the JNCC Audit and Risk Assurance Committee approach.

6.4 In discussion the Board:

- Welcomed the findings of the UKGI report and the opportunities that it presented to improve processes;
- Noted that Ken Roy would be standing over the implementation of the recommendations.
- Acknowledged the cost implications and the need to implement the recommendations in the most efficient manner.

6.5 In terms of the recommendations the Board noted:

- that a Terms of Reference for Governance should be considered.
- that the Board Register of Interests processes should be reviewed and strengthened
- that members of Natural England's SLT attending Board meetings was very beneficial but recognised that it may not be appropriate that they sit as members of the Board, so as to allow a separation in functions.
- that the identified risk on the quality and quantity of advice on finance and Human Resources to the Board needs to be improved.

6.6 Discussed the proposed Board effectiveness review and that this would be conducted by an independent third party.

7. Board sub group updates

7.1 NESAC

Professor Sue Hartley provided an update from the NESAC committee that met on 6 March. This included discussion on:

- 7.1.1 Advice on revising the scientific basis for selecting new NNR as part of the implementation of the new NNR strategy
- 7.1.2 An update on the development of 25 Year Environment Plan Metrics and Indicators
- 7.1.3 An update on progress with the evaluation programme for the uplands programme, including the impact of the new position statement
- 7.1.4 NESAC views on the merits of, and possible approach to, developing principle of Natural England developing a compensatory biodiversity metric for habitats within designated protected sites 'irreplaceable' habitats.
- 7.1.5 The Board noted that above and Henry Robinson asked if copy of the 25 Year plan metrics and indicators could be circulated once they are available.

Action: Tim Hill to circulate copy of 25 Year plan metrics and indicators once they are available

7.2 JNCC

7.2.1 The Chairman provided an update of the JNCC meeting. The Board noted that JNCC have been briefed on the legal challenge to general licences. Also noted JNCC cuts and their approach to this.

8. Board Diary and Forward Look (NEB 87 06)

- 8.1 The Board's attention was drawn to Annex 1 to Board paper NEB 87 06 which provided the themes to each Board meeting along with the date and location of the meeting.
- 8.2 The Board noted that the themes for the meetings at the latter end of 2019 had not yet been concluded and that suggestions could be made to Ken Roy.
- 8.3 Acknowledged the benefits for the Board to discuss diverse issues that are not on the formal agenda, however noted that this was a matter for the incoming Chairman to direct upon.
- 8.4 The Board noted that SLT may be able to provide the Board with webinars to provide more detailed briefings and updates.
- 8.5 The Chairman provided the Board with an update on the selection of the new CEO.

9. PUBLIC SESSION – Teesmouth and Cleveland Coast SSSI (NEB PU87 01)

- 9.1 Dr Simon Lyster declared that he is a non-executive director of Northumbrian Water which, as noted on page 34 of the SSSI papers, had submitted a representation requesting some assurances.
- 9.2 The Chairman introduced the item to consider whether or not to confirm the notification of Teesmouth and Cleveland Coast SSSI. He reminded the Board that for the consideration of whether or not to confirm the SSSI notification it was meeting as the Board of Natural England. That, the Chief Executive, Marian Spain, although a Board member, in relation to SSSI cases was here as an officer to advise the Board and would not be part of the decision making process. The Chairman advised the Board that a full record of the proceedings for this agenda item would be taken by a stenographer. A summary of the discussion is given below. The minutes would become a formal record and would be posted in due course.
- 9.3 The Chairman informed the meeting that Board member Dr Andy Clements was absent from the meeting but had visited the site and provided a report which would be presented by Dr Simon Lyster.
- 9.4 It was noted that there were 13 objections to the notification and that one of the objectors was attending in person: the Chairman welcomed representatives from the South Tees Development Corporation (STDC) to the meeting. Seven of the objections had been resolved subject to the Board agreeing the officers' recommended boundary modifications and the other six objections were wholly or partially unresolved.
- 9.5 Julie Lunt, Chief Officer Legal & Governance drew the Board's attention to the information in the papers on the Board's role and responsibilities in relation to the legislation, the process of notification and the matters they needed to bear in mind during their deliberations. In particular, she reminded the Board that its decision should be made only on the basis of the scientific information presented, that it needed to ensure that due process had been followed and the role of the consenting and appeal process in providing objectors with a means of addressing any concerns about the use and enjoyment of their land. She also clarified the extent of discretion available to the Board under s28C of the Wildlife and Countryside Act 1981 (as amended) where a SSSI is being enlarged.
- 9.6 Officers outlined the case for designation by setting out how the site meets the SSSI selection guidelines and the context and rationale for designation.
- 9.7 In response to the Chairman's invitation, Board members asked questions of the officers to satisfy themselves on the scientific interest of the site and to have a clear understanding of the rationale for notification.
- 9.8 The Chairman asked Anthony Greally, Planning Director at Lichfields, representing STDC, to state their case and stressed the importance of these representations to the Board. Mr Greally provided an overview and background to STDC, set out its concerns about the SSSI notification and noted that these were supported by a number of other organisations.
- 9.9 The Chairman invited the Board to ask questions of STDC's representatives or the Natural England officers. In response to the Chairman's invitation, Board members posed further questions to the Natural England officers present.

- 9.10 The Chairman thanked STDC for their representations and indicated that whatever the outcome of the notification process, Natural England would work, consistent within its functions, with partners to facilitate sustainable development.
- 9.11 Officers highlighted the nature of the remaining objections, representations and officer recommendations to the Board. The Chairman invited the Board to consider the evidence that had been submitted in writing.
- 9.12 Dr Julia Aglionby provided a verbal report to the Board on her visit to the area and, at the Chairman's request, Dr Simon Lyster presented a verbal summary of Dr Andy Clements' written report following his site visit.
- 9.13 The Board noted Dr Tim Hill's confirmation, in his role as Chief Scientist that he was assured that the case had been made for the scientific interest of the SSSI.
- 9.14 The Chairman invited the Board to take a formal decision. The Board having had due regard to the legal context, having considered the objections in detail and the officer recommendations and having noted that these did not extend the boundary of the SSSI nor add any activities to the list of activities requiring consent, confirmed the notification of Teesmouth and Cleveland Coast SSSI as follows:
- with modifications to the boundary to exclude 17 areas of land totalling 12.66 ha and, consequently, to the area figure stated on the citation. The confirmed area of the SSSI is 2,964.37 ha; and
 - without modification to the other matters specified in the 31 July 2018 notification; namely the 'reasons for notification' listed in the citation, the list of operations requiring Natural England's consent and the statement of Natural England's views about the management of the SSSI.

Action: Area Team to serve formal SSSI notification papers on owners, occupiers, the Secretary of State, Local Planning Authorities and other relevant statutory consultees.

10. Approval to submit advice to Defra to classify Teesmouth and Cleveland Coast potential Special Protection Area (pSPA) and proposed Ramsar Site (pRamsar) (NEB PU87 02)

- 10.1 The Chairman introduced the agenda item for the Board to consider the approval to submit advice to Defra recommending it classifies Teesmouth and Cleveland Coast potential Special Protection Area (pSPA) and to recommend designation of the proposed Ramsar Site (pRamsar). The Chairman welcomed Jonathan Burney to the meeting.
- 10.2 Jonathan Burney set out the reasons for Board paper NEB PU87 02 and outlined the nature of remaining objections, and explained what had been done to either meet these or try and explain Natural England's position.
- 10.3 Jonathan highlighted the differences from the SSSI notification in relation to the boundary debates at South Gare Road and Portrack Marsh, especially that these areas had pSPA interest but less so very close to the boundary, which had been drawn along visible features for clarity on maps and on the ground, in line with normal practice.
- 10.4 The Board raised questions about maintaining the SPA/Ramsar site boundary at Portrack Marsh but not at Warrenby Reedbed. Natural England officers Allan Drewitt and Martin

Kerby provided explanations in relation to the ecological and practical considerations affecting the respective features. The Board was content with the officers' reasoning.

10.5 The Chair sought reassurance that the scientific process was as robust as for SSSIs.

10.6 The Board agreed the recommendations of the report.

Action: Jonathan Burney to submit advice to Defra to classify Teesmouth and Cleveland Coast potential Special Protection Area (pSPA) and proposed Ramsar Site (pRamsar)