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Nature Restoration Fund - Overall Improvement Test

Dear Tony,

I am writing to set out HM Government's view on the interpretation of the overall improvement test in the Planning and Infrastructure Act 2025 that should be applied both when Natural England drafts, and when the Secretary of State considers making, an Environmental Delivery Plan (see Annex).

This annex is explanatory in nature, does not introduce new substantive reasoning, obligations, or criteria, nor differ materially from the draft previously shared with Natural England by my officials on 30 June.

Yours sincerely,

THE RT HON DAME ANGELA EAGLE DBE MP

Annex: HMG Overall Improvement Test Interpretation

The overall improvement test (“OIT”) applies to Natural England (“NE”) when it is preparing an Environmental Delivery Plan (“EDP”). NE is required by s.63(2)(b) Planning and Infrastructure Act 2025 (“PIA 2025”) to set out in an EDP its opinion on how the conservation measures will enable the EDP to pass the OIT. In turn, the Secretary of State may only make an EDP if she considers that the EDP passes the OIT: s.65(3) PIA 2025. Because the same test applies to both NE and the Secretary of State, it is desirable that both should interpret the OIT in the same way – although it will be for each to apply the test and reach their own judgements when doing so.

The OIT

In summary, s.65(4) PIA 2025 provides that an EDP passes the OIT if “*by the EDP end date, the effect of the conservation measures will materially outweigh the negative effect of the EDP development on the conservation status of each identified environmental feature*”. The concept of “*the negative effect of the EDP development*” is defined by s.65(5) PIA 2025 to mean “*the effect, caused by the environmental impact, as identified in the EDP in accordance with section 61(1)(b), of the maximum amount of development to which the EDP may apply, as specified in accordance with section 60(5)*”.

The balancing exercise required

The Secretary of State considers that the OIT involves a balancing exercise which involves weighing the “*negative effects of the EDP*” (as defined in s.65(5) PIA 2025) and the “*effects of the conservation measures*”. The OIT is passed if the positive effects of the conservation measures “materially outweigh” the negative effects of the EDP “*by the EDP end date*”.

The time by which the favourable balance must be achieved and the requirement to maintain it for the duration of the negative effects

Having regard to the purpose of the OIT as an environmental safeguard, the Secretary of State interprets this to require a two-limbed consideration:

(1) By the EDP end date, a favourable balance must have been achieved in practice i.e. the material outweighing of negative effects of EDP development that has occurred by the accrued benefits of the conservation measures on the conservation status for each

identified environmental feature. In other words, the situation on the ground is that benefits materially outweigh negative effects by the EDP end date; and also

(2) a favourable balance between conservation benefits and negative effects from development will be maintained for as long as the development will be causing negative effects.

The meaning of negative effects

In terms of the negative effects side of the scales, the statutory definition in s.65(5) PIA 2025 means that one has to consider the terms of the particular EDP. Section 61(1) PIA 2025 requires an EDP to identify “(a) *one or more environmental features which are likely to be negatively affected by development to which the EDP applies, and (b) one or more ways in which that negative effect is likely to be caused by the development (the “environmental impact”)*”. Additionally, s.60(5) PIA 2025 requires an EDP to “*specify the maximum amount of development to which it may apply*”. Thus, the “*negative effects of the EDP*” is the “environmental impact” (as described in the EDP) of the theoretical maximum amount of development that the EDP applies to. Whenever the OIT falls to be applied, that is what the “*negative effects of the EDP*” means (although as explained below the actual assessment of the extent of those negative effects may vary over time in light of the most up to date data and scientific knowledge).

Passing the OIT

In terms of the positive side of the scales, when preparing or making an EDP it is relevant to consider all the conservation measures that are proposed to see if what is proposed will achieve a favourable balance by the end date and maintain it thereafter.

To pass the OIT at the EDP end date, the following conditions must have been met:

- (1) the positive impact of implemented conservation measures by the EDP end date materially outweighs the negative impact of development that has been realised by the EDP end point. This is a question of scientific assessment of these impacts; and also
- (2) The projected impact of conservation measures that will happen if they are required must be such that it will maintain a favourable balance against the projected impact of the maximum level of development under the EDP (i.e. total

EDP capacity as specified under s.60(5) PIA 2025) as it is brought forward. This is a question of predictive evaluation which will require an exercise of ecological and practical judgement. This can be informed by the negative impacts of development and performance of conservation measures during the life of the EDP up to this point, identified through monitoring.

When looking at the projected impact of conservation measures that will happen, it is relevant to consider any conservation measures (including backup measures) which as a matter of fact and degree are judged to be within NE's control to deliver. That may be through NE having secured the measure by a legally binding mechanism, or some other state of affairs that means the decision-maker can be reasonably confident that the conservation measure is within NE's control to deliver e.g. NE owns the land required to implement the measure and does not need any other form of permission or licence, or because the market for the particular conservation measure is sufficiently liquid that there would be no difficulty in NE putting the measure in place.

Judging if benefits materially outweigh harm

In terms of the balancing exercise, the Secretary of State considers that whether the "*materially outweigh*" requirement of the OIT is satisfied will be an evaluative judgement. The factors that may need to be considered will be context-specific, however they may include factors such as:

- (1) the likely efficacy of the conservation measures in delivering their intended aims;
- (2) the relevant modelling of the timeline for negative effects materialising from development;
- (3) the expected timeframes for delivering conservation measures and the sequencing of the delivery of those measures relative to the delivery of development.;
- (4) the strength of monitoring measures and the robustness of the back-up measures they would trigger;
- (5) the strength of proposals for maintenance and the ongoing funding of conservation measures.

The term "*materially*" is not defined in the PIA 2025 and will be a matter of judgement for NE and the Secretary of State in any given case whether conservation benefits materially

outweigh negative effects. In particular, there is no minimum or fixed percentage to meet the “*materially outweigh*” threshold. Instead, it is a broad question of ecological judgement.

What is “*material*” will depend on the context. In judging materiality it would also be relevant to consider the matters specifically identified as relevant to the exercise of NE and the Secretary of State’s functions in s.94(3) PIA 2025, including the current environmental improvement plan and any Environment Act 2021 strategies.

The degree to which the conservation measures outweigh the negative effect of the EDP development does not have to remain constant beyond the EDP end date. However, a favourable balance (i.e. a material outweighing) does need to be maintained. The specific level of outweighing at the EDP end date does not have to continue at the same level thereafter. But it needs to continue as a favourable balance beyond the EDP end date.

No need to second guess the midpoint assessment when preparing or making an EDP

The OIT is also relevant at the midpoint because NE must publish a report on an EDP covering the period from the EDP start date to the EDP midpoint (s.67(1)(a) PIA 2025) and that “midpoint report” must include “*an assessment of whether the EDP is likely to pass the overall improvement test*”: s.67(6) PIA 2025. But the Secretary of State does not consider that NE (when preparing an EDP) or the Secretary of State (when making an EDP) need to try to predict what a midpoint report might say in relation to the OIT. Rather, the assessment when preparing or making an EDP looks forward to the EDP end date and asks whether the OIT will be met at the end date: see the definition of passing the OIT in s.65(4) PIA 2025 which is framed by reference to the position “*by the EDP end date*”.