Lifescape Response to Consultation on draft Environmental Delivery Plan for Norfolk: Broads Special Area of Conservation (SAC) (Yare and Bure), Broadland Ramsar and River Wensum SAC

Summary

Our concerns with the draft Environmental Delivery Plans (EDP) arise from:

i) Natural England's (NE's) apparent abandonment of its previous approach to potential further damage to the protected areas covered by it (Areas), and in particular its duty to prioritise damage *avoidance*;

ii) the uncertainties caused by the disconnect between the payment of the pre-determined Nature Restoration Levy (NRL) to greenlight damage which has not been assessed on a site-specific basis and where delivery of mitigation and compensation measures is poorly defined in terms of timetable, monitoring and interplay with mitigation damage other than from nutrient pollution, which is the sole focus of this EDP. Apart from constituting a radical departure from the existing system deriving from the European Habitats Directive (HD), the EDP ignores the precautionary and preventive principles underpinning environmental law; and

iii) the inefficient use of a single payment mechanism which neither has an evidence base nor a process of price realisation and which we are concerned will result in either under-capture of value or avoidance of the levy (in each case reducing funds raised).

Environmental background

Lifescape's mission is to catalyse the creation, restoration and protection of wild landscapes through law, science, economics, technology, and culture. Assessment of the introduction of EDPs falls within our expertise. While we support projects which aim to achieve strategic, large-scale restoration of landscapes, this cannot be at the expense of environmental integrity and appropriate risk management.

It is environmentally salient for Norfolk to be the location of the first EDP. NE banned homebuilding within areas now covered by this EDP in 2022, acknowledging their ecologically impaired state and risks to protected habitats and species from additional nutrient run-off. In October 2026, the courts found NE had breached its duty under Regulation 9(1) of the Conservation of Habitats and Species Regulations 2017 (HabRegs) and Article 6(2) HD to take active steps to protect a protected area given its knowledge that phosphate and nitrogen run-off was causing damage to a Norfolk fen (R (Harris) v Natural England).

Since 2022, the science has not changed. What has changed is the regional, "strategic" approach to assessing and mitigating environmental damage introduced by

the Planning and Infrastructure Act 2025 (PIA). Much was written during the PIA's passage about the new EDP regime's abrogation of fundamental environmental protections deriving from the HD and HabRegs. Lifescape shares many of those concerns and will not revisit those, but notes for present purposes that: i) while the Government refused to amend the PIA to address concerns over chalk streams (a rare habitat), it gave Ministerial Commitments to include appropriate provisions in later policy and law; and ii) each EDP offers an opportunity to assess whether the scheme is capable of genuine, regional restoration.

NE's responsibilities

NE's 2022 ban on building was recognition that, despite the protected status given to the Areas, they had been inadequately protected. That ban was precautionary and preventive in nature, reflecting i) the impossibility of carrying out any additional development in a way that would not cause further damage; and ii) duties under Article 6(2) of the HD and regulation 9 HabRegs not to allow (further) deterioration or disturbance to a site.

In table 8 of the EDP, NE proposes measures to mitigate and compensate for the pollution that the very existence of the EDP confirms will result from building over 15,000 homes in the Areas. Many of these seem sensible, such as land-use change from intensive agriculture to seminatural habitat / seminatural habitat contiguous with wetland creation, the creation and restoration of fen-type wetland, and hydrological restoration. Arguably, these are the types of measures that should already have been undertaken pursuant to regulation 9 HabRegs.

It is notable, however, that the measures wholly bypass "avoidance" which is the first step of the traditional mitigation hierarchy (and is loosely reflected in Art.6(3) HD and regulation 24 HabRegs) and also occupies the same position in the specific hierarchy brought in under regulation 3(1) of The Environmental Delivery Plans (Appropriate Prioritisation) Regulations 2026: "*When preparing a draft EDP [NE] must prioritise … (a) avoidance measures over mitigation measures and compensation measures*". We would therefore question whether, given the existing ecological state of the Areas, NE has appropriately considered avoidance. The EDP fails to indicate that it has, which could be a breach of NE's duties.

If NE has moved directly to mitigation and compensation of damage, that it is likely to be because the very premise of the EDP is that these are deliverable "offsite" within the region and at some undetermined time in the future. As many have commented,

these are significant ruptures with the previous regime deriving from the HD. The EDP will last 10 years (§17) but no timetable is given (beyond high level "phases") for the delivery of the mitigations in table 8. Without this, can NE rationally opine, as it must under section 63(2)(b) PIA (the Overall Improvement Test), that "*the package of measures will materially outweigh the negative effect of the EDP development on the conservation status of the environmental features*" (§2)? This is particularly concerning where the EDP acknowledges the existing ecological decline in the Areas and the need for *future* development of a Norfolk LNRS to assist restoration (§7). While Defra's guidance is that the favourable balance must simply be achieved at the end of the 10-year period, accountability would require interim, measurable planning for this outcome.

We are similarly concerned that the monitoring obligations are too high level and NE will not be adequately resourced to carry out these duties effectively. Notably, the EDP fails to address the interplay with residual damage assessment and monitoring arising from anything but nutrient pollution. This silo-ed approach is unhelpful to management of environmental risk.

The setting of the levy itself appears problematic. The lack of a detailed implementation plan suggests NE cannot satisfy its duties under section 75(1) PIA to have regard to the actual expected costs of the conservation measures relating to the impact of development on the relevant environmental feature.

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