

## Board Paper

### Date

10 April 2025

### Title

Northern Ireland Governance Review

### Report Author

Craig McGuicken (NI Lead)

### Responsible Executive Director

Peter Ashford (General Counsel)

### Paper for discussion

### Open paper

## Issue

1. In November 2024 Minister Muir announced a review of environmental governance, and appointed an independent panel to take it forward.
2. We have prepared a written submission for the Panel (see Annex A), for the Board to consider.

## Recommendation

3. The Board is recommended:
  - a. to discuss the proposition that we remain neutral on the question of whether there should be an independent Northern Ireland Environment Agency as proposed in paragraph 17, but provide more general advice on the principle of independence
  - b. to consider and comment on the draft letter in Annex A and
  - c. note that in line with the scheme of delegation the final decision on the content of the letter is delegated to the CEO, in consultation with the Chair.

## Background

4. In November 2024 Minister Muir announced a review of environmental governance, and appointed an independent panel to take it forward.
5. The panel issued a 6-week long 'call for evidence' in January, which closed on 14 March. It will provide its draft report in Spring with a final report in late Summer 2025; the recommendations will be considered by the Minister and any proposed changes will need to be agreed by the NI Executive.
6. We have met with the panel twice, and noted that we would make two submissions. Firstly, by the closing date for the call for evidence, we supplied a range of information on previous OEP publications which contained material relevant to environmental governance. Secondly, we would provide a more substantial, written submission on the principles around environmental governance, by the **end of April**.
7. We have previously updated the Board on this programme through the CEO Reports in December and January, where we briefly set out our plan for providing submissions to the panel.
8. The panel's Call for Evidence was tightly focused on the performance of NIEA. However, we know from our discussions with the panel, that its review is wider than that: it has been given the task of looking at environmental governance more holistically.
9. We also know that the OEP is not within scope for the review.

## Analysis

10. We have seen at first hand, that environmental governance is a major issue in NI. There have been a number of instances where we have experienced or, through our research, found clear failings. We know that there is a widely-held feeling that weak governance in the past has resulted in poor environmental performance. We also know that many stakeholders feel that this is a fundamental barrier.
11. There is a long history of research and reviews into environmental governance in NI (see Annex B), going back to the 1960s. The creation of an independent environmental protection agency (IEPA) has been recommended on a number of occasions, and even Ministers for the Environment have stated that the governance arrangements were not fit for purpose. Few of the recommendations from these past reviews have been implemented, and there is a very strong sense amongst stakeholders that Northern Ireland is out of step with the rest of the UK and the Republic of Ireland.
12. The creation of an IEPA is politically charged. Concerns over the financial cost and economic impact (particularly on agri-food) have been major considerations. There is therefore a risk that, like past reviews, this one will not lead to the creation of an IEPA or wider governance reforms, at least over the near term.

13. That said, in recent years, the dynamic seems to have shifted. In 2020, the ‘New Decade New Approach (NDNA)’ agreement which ended a period of Assembly suspension (and which all of the political parties agreed to) included the establishment of an IEPA. The Terms of Reference of this review refer heavily to NDNA.
14. In more recent times, the crisis at Lough Neagh has brought further attention onto the issue, with a range of organisations, including some local authorities, highlighting the need for improved environmental protection – including an IEPA.
15. In recent times, there has also been growing attention on the relative lack of legally-binding environmental targets in NI. This has been the focus of a consultation regarding a potential private members’ bill, and also garnered much attention at the recent NI Environment Forum (which our Chair addressed).
16. Our objective is to provide advice which will help the Panel (and the Minister) to make considered and effective proposals for the long-term shape of environmental governance. We have been consistent in noting that we should focus on principles, and not veer into the specific functions/powers/performance of a specific body (such as NIEA).
17. We have discussed, and concluded, that we **should not** provide specific views on whether there should be an IEPA, as this could be perceived as stretching into policy development. However we may want to comment on benefits/risks of ‘independence’ of NI’s environmental regulator, and the factors to be considered, as this is sure to be a key issue in the debate. We may also wish to make a general statement that whatever form the regulator takes, we believe it should remain, and would benefit from being, within the scope of our oversight.
18. In our discussion with the Panel, we agreed that the most helpful advice that we could provide, would focus on three main areas:
  - a. the governance aspects of the Environment Act
  - b. how good governance could help with the delivery of Northern Ireland’s first EIP
  - c. relevant learning from our experience in England and Northern Ireland so far
19. The written submission is structured to fulfil these 3 areas. The main body of the letter deals specifically with the Environment Act and the EIP. There are then two annexes to the letter, which summarise our most recent relevant findings related to environmental governance. These are:
  - a. the Protected Sites Report for Northern Ireland, which includes a substantial analysis of the current environmental governance framework; and
  - b. the emerging findings from our draft report on Environmental Regulation.
20. Finally, given the totemic nature of this issue we may also want to offer to meet with the Minister separately. If the panel were to conclude that an IEPA was the preferred option, this would be a better setting for discussion of the detailed issues around such an agency.

## Finance and Resource

21. The resource for this project is largely staff time. A small core group has led on the engagement and drafting, taking advice from a larger cross-section of the OEP. We have been conscious to keep this work targeted.
22. Once the advice has been provided to the panel, it is likely that we will be invited to meet with its members. There is also the potential for engagement with the Minister at a later stage, depending on how the review is taken forward.

## Impact Assessments

### Risk Assessment

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

### Environmental Analysis

23. The OEP has frequently commented on the need for good environmental governance. This project is strategically significant, and could have a major, long-term beneficial impact on the environment. We have considered the OEP's duties in environmental law and believe that following the recommendations in this paper would be in line with those duties.
24. **Implementation Timescale**
25. The panel is working to a tight schedule. We have already submitted information (by mid-March) on previous publications by the OEP that we think may be useful for the panel. We have said that we would provide written submissions by end-April. Given the Panel's reporting requirements, this is probably the deadline for submission to allow them to consider our comments for their draft report.

## Communications

26. The project has been discussed with Communications colleagues. We will publish our letter to the panel on the OEP website.
27. Given the general level of interest in this topic, it has already featured in meetings with stakeholders. It will be discussed at quarterly meetings with DAERA/NIEA, and with the environmental NGOs.
28. It could also be included in upcoming speeches, and other stakeholder events. It is likely to be raised at the AERA Committee meeting on 29 May.

## External Stakeholders

29. External stakeholders are aware of the OEP's interest in this matter, and some are also aware that we plan to make submissions to the Panel which will be published. We have a strong sense of the views of stakeholders.
30. OEP staff have attended two of the Panel's engagement events, and the views expressed by others were very clear.

*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.*

Paper to be published	Yes, with some redactions
Publication date (if relevant)	Letter and annexes to be published May 2025
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). Please include references to specific paragraphs in your paper	<p>Publishing the Board paper is advised, but with redactions around some of the analysis – such the views of stakeholders, the failure of past reviews, and the risk analysis. This is based on the sensitive nature of the subject matter, the level of interest in our views and our proximity with the environmental governance framework. The aim of providing a submission is to assist the Review Panel; there is a risk that our paper could be something of a distraction.</p> <ul style="list-style-type: none"> <li>• Full 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)</li> </ul>

## ANNEXES LIST

Annex A Draft written submission to the Independent Panel

Annex B Outline timeline of previous reviews related to environmental governance in NI