

# Planning and Infrastructure Bill Part III

Development and Nature Recovery

Written Submission of Evidence from RSK Biocensus

24 April 2025

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## Submission Details

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## Executive Summary

Part III of the Planning and Infrastructure Bill on development and nature recovery introduces Environmental Delivery Plans and a levy system to address environmental impacts of development. Part III of the Bill:

1. will unfairly compete with, or fully subsume, private nature markets in the UK. This will redirect many billions of inward investment in the UK to alternative nature markets in alternative jurisdictions, while undermining the UK's international reputation for high integrity nature laws. This is because of the loss of the 'mitigation hierarchy' and built-in underfunding mechanism for restoration schemes;
2. brings no improvement to the developer experience. Lessons learnt from the Community Infrastructure Levy introduced in 2010 prove that viability-based and complex levy schemes slow (rather than speed up) the planning process, and rarely accumulate the funds needed to implement the intended projects;
3. will add cost and complexity to the developer experience. Developers will be required to navigate unpredictable, "dual" and overlapping legal frameworks that clash with the planning system. Some impacts on nature might be addressable via a levy, while others will require traditional surveys and site specific mitigation, and other impacts may require all three. Some parts of a development may fall within the levy, while other parts may not. Democratically created, locally-led planning policies will clash with the levy, adding tension, time and cost to the planning process;
4. will accelerate the decline of nature in England through a 'pay to pollute' system delivered through unchallengeable 10 year Environmental Delivery Plans. Part III of the Bill is a regression of environmental protections under Section 20 Environment Act 2021 and a departure from the Bern Convention. Without any consultation, pilots, impact assessment or evidence of corresponding benefit to the developer experience or the economy, this is a 'lose lose' outcome for the UK;
5. allows the unfair taxation of developers to fund Natural England's administration costs and SSSI conservation status (Section 64). This risks significantly increased costs to development, with no corresponding benefit to the developer experience or the economy. There is no scope for a developer to challenge a levy or contents of an Environmental Delivery Plan, which can remain in place for up to 10 years;

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6. will create an excessive (and currently unpublished) transitional cost burden to the public as unfunded Environmental Delivery Plans and complex levies are developed and implemented by an under-resourced Natural England;
7. will critically undermine the fundamental planning principles of the mitigation hierarchy and sustainable development, bringing added cost and pressure to the planning system. This clash will prompt the adoption of democratically prepared, local community-led planning policies that conflict with Environmental Delivery Plans and the levy, adding more cost, uncertainty, and complexity to the planning and development process;
8. erodes growing public and local stakeholder trust in developers delivering nature-positive schemes, clogging the planning process, and making local engagement for developers more challenging;
9. Will choke land supply, by expanding CPO powers to Natural England. Landowners with “patient capital” will wait for more favourable policy conditions before promoting their land for restoration projects and development. This stalls growth and hurts our economy.

## Recommendations

1. Continue the accelerated passage of the Planning and Infrastructure Bill, **but pause Part III** of the Bill to enable normal due process, impact assessment, consultation and pilots. This is necessary legally and constitutionally given:
  - a. the **scale** of potential adverse impacts this Part of the Bill has on **all aspects of nature**;
  - b. the **delay and costs** this will add to the planning and development process;
  - c. the **impact** Part III will have on the **majority of development projects in England**, both currently underway, and planned over the near to medium term; and
  - d. the **substantial transitional cost** to the public purse;
  - e. the **significant additional pressure on the planning system** and consequent implications for the delivery of housing.
2. Government’s **proposed [new approach](#) to environmental regulations**, which includes removing duplication, ambiguity and inconsistency in environmental compliance guidance, together with Government’s commitment to explore an accelerator for nature markets, **would address the key environmental barriers to development** without regressing on environmental protections, losing the confidence of investors, knocking the UK’s international reputation for standards, and without creating the ‘lose lose’ outcome for nature and the economy that Part III of the Planning and Infrastructure Bill would bring.

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3. Urgently update the **Secretary of State's ministerial statement on environmental regression at Section 20 Environment Act 2021** to acknowledge that the Bill in its current form constitutes regression of environmental protections and with a justification as to why legal advice was not sought by the Secretary of State pursuant to Section 30 Environment Act 2021.

## Sector Evidence

|    | Part III Planning and Infrastructure Bill               | Developer Experience   | Nature Protection and Recovery   | Economic Growth   | Planning Authorities  |
|----|---|--|--|---|---|
| 1. | <b>Environmental Delivery Plans: Overarching Impact</b> | EDPs and levy schedules have unpredictable geographic reach/range and scope and <b>cannot be challenged when being made</b> , or once made.<br><br>This allows excessive and unpredictable cost burdens on developers, <b>and disrupt internal processes and supply chains</b> for ecological services and products. | “Overall improvement” test for an EDP is <b>a weak and low bar in environmental terms</b> . This amounts to <b>regression under Section 20(4) Environment Act 2021</b> and a departure from the <b>Bern Convention</b> . | Uncertainty and bureaucracy <b>hinders growth</b> for developers and will collapse the emerging nature markets, set to be worth 1bn annually by 2030. | <b>Extra strain will be placed on local planning authorities</b> through complex negotiations around development viability, and clashes with local policies, <b>as was evidenced by the introduction of viability-based Community Infrastructure Levies in 2010</b> .   |
|    |   | Expanded CPO powers, and loss of ‘hope value’ will <b>choke available land supply for nature and for development</b> as landowners with ‘patient capital’ opt to wait for more favourable policy conditions.   | Once an EDP is made, it <b>cannot be challenged</b> (even if conservation measures are never implemented) <b>and may be in place for up to 10 years</b> .  | Local communities lose input and participation in development and <b>local nature restoration projects</b> harming rural and local economies.         | There is <b>no concept of ‘mitigation hierarchy’</b> in an EDP, <b>unravelling a key pillar of sustainable planning and development and 40 years of existing nature laws</b> . This will create a clash between the requirements of an EDP (to pay a levy) and local planning policies, adding cost and delay to development, and increased burden on local planning authorities. |

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| Part III Planning and Infrastructure Bill |  | Developer Experience  | Nature Protection and Recovery  | Economic Growth  | Planning Authorities   |
|---|--|---|---|--|--|
| 2.  |  |   | <b>Absence of reliable evidence bases</b> and built-in mechanisms for <b>underfunding compensation</b> for environmental impacts <b>severs the link between impact and compensation</b> . Failure is 'built in' to the system in primary legislation (see section 64 of the Bill) | <b>Significant private investment</b> into nature restoration, innovation and skills is <b>stalled or reversed</b> making bridging the £4.6-9.7bn nature finance gap increasingly difficult. |  |
|   | <b>Environmental Delivery Plans: Content and Scope</b> | Extremely broad potential scope. An EDP <b>may</b> cover impacts on <b>“all environmental features” in England</b> . EDPs may overlap with other EDPs, and may span different LPA boundaries. | Privately delivered <b>nature restoration projects currently in development lose viability</b> if demand is (or could in the near term be) subsumed into a central Nature Restoration Fund via an EDP.  | Unfettered scope of EDPs <b>erodes confidence in privately funded nature recovery</b> , unravelling many years of investment into nature and local communities.                              | <b>Added complexity and confusion for planning departments</b> as they grapple with what is, or is not, addressed via an EDP, and extended transitional provisions without case studies, or impact assessments for guidance. |

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|   | The broad potential scope of EDPs <b>upends existing developer forecasting and procurement processes</b> and makes tendering for cost-effective ecological due diligence services more challenging. | Risks of <b>closure of existing natural capital and restoration projects</b> due to unlimited scope of EDP. Many hundreds of millions of £'s already deployed by the private sector will be stranded, and ambitious projects for nature paused, or closed. | There are <b>no ring fences</b> around what an EDP may, or may not, cover so there is no protection for the private market against <b>unfair competition</b> from EDP schemes with lower environmental standards and no mitigation hierarchy. | <b>Local stakeholder concerns</b> around the effectiveness of EDPs will play out through the planning system <b>adding conflict, cost, complexity and Judicial Review challenge</b> to the planning process. |
|   | <b>Closure of existing natural capital projects</b> due to uncertain demand later will slow planning, and will <b>reduce immediately available competitive supply of environmental solutions</b> .  | <b>Delays/ reverses nature recovery:</b> as compensation measures under an EDP are delivered <i>after</i> the impact has taken place, this results in environmental "leakage" that has been avoided in policies such as BNG.                               | The centralisation of national efforts to restore nature is <b>anti-competitive and anti- growth</b> (akin to nationalising all housebuilding to deliver more homes quickly)  | <b>Added burdens on planning authorities:</b> Authorities will be given very short time-frames of <b>28 days to respond to any proposed EDP with unbounded scope</b> .                                       |

|    | Part III Planning and Infrastructure Bill               | Developer Experience   | Nature Protection and Recovery   | Economic Growth  | Planning Authorities  |
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| 3. | <b>Environmental Delivery Plans: Funding and Levies</b> | Section 64 of the Bill 'bakes in' the ability for Natural England to <b>set a levy that does not fully fund the compensation measures</b> required to off-set the impacts of development. At the same time, Section 66(4) allows Natural England to cover its administration costs via the Levy. <b>Developers may pay more, while delivering less for nature.</b> | Underfunded compensation projects are <b>set up to fail by design</b> , and so have <b>no chance of compensating for the impacts of development.</b> | Failed projects due to underfunding, <b>take revenue streams away from local communities and businesses</b> engaged to deliver those projects. <b>This impacts national capacity and skills for delivery of nature restoration projects in the long term.</b>      | The <b>loss of the mitigation hierarchy</b> will direct developer funds towards off-site <b>underfunded EDP compensation projects</b> in preference to more expensive, but viable, ways of addressing impacts.                            |
|    |   | Underfunded EDP compensation projects would lead to <b>increased legal and stakeholder opposition at planning, increased delays and added cost and complexity</b> for the developer. This undermines the growing trust in the public that development is nature-positive.  | <b>Cost-shifting</b> as envisaged under Section 66(4) of the Bill <b>takes cash away from</b> potentially already underfunded compensation projects. | Centralised administrative functions within Natural England will be funded by the development sector (Section 66(4)). <b>This crowds out (or unfairly competes with) private investment and innovation, is anti-growth, anti-competitive and lacks resilience.</b> | The attractiveness of underfunded alternatives could <b>reduce the quality of design of places for people to access nature on their doorsteps</b> , and reduce the opportunities for nature to be restored at scale within their LPA area |



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| <b>Environmental Delivery Plans: Funding and Levies</b> | Where SSSIs are included within an EDP, <b>there is no barrier to developers being required to fund the achievement of favourable conservation status of SSSIs via the levy</b> (cost-shifting). This has been one of Natural England's core functions, and most SSSIs are in 'unfavourable condition'. |                                |                 | Planning officers concerned about the efficacy of an underfunded EDP <b>may pressure developers to deliver more green open space</b> for nature within a development site <b>in addition to payment of a levy</b> . There is currently no clarity over the extent to which local or strategic plans may override what is required within an EDP. |
|   | LPAs concerned about underfunded EDPs may require additional protections for nature in their local policies, leading to <b>"double payments" by Developers for the same outcomes</b> .  |                                |                 | Diversion of developer funds towards Natural England's administration will <b>reduce expenditure on nature-positive interventions within the LPA area</b> , or within development schemes themselves.  |
|   | <b>Cost-shifting - requires developers to fund Natural England's administration costs.</b> This is - permitted at Section 66(4) of the Bill   |                                |                 |  |

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| 4. | <b>Environmental Delivery Plans and Nature Restoration Fund: Administration</b> | Levy Charging Schedules will be set by Natural England (who are also regulators). <b>Experience from CIL, particularly when applied to the complexity of impacts on nature</b> is that payments will be <b>complex, and difficult for developers to predict and budget.</b> | Levies are difficult to set accurately, and experience from CIL suggests that <b>sums recovered</b> (even ignoring the in-built protection of development viability) <b>are rarely sufficient to cover the work and administration required.</b> | Introducing a levy based system will have a <b>costly and protracted transitional period</b> while stalling development as existing natural capital schemes to support development lose investor confidence.              | Any administration costs and delays for the implementation of the Nature Restoration Fund <b>would delay planning, impact local and strategic policy-making,</b> and require further LPA consultation each time an EDP is proposed. |
|    |   | Natural England has <b>struggled in the past to administer District Level Licencing for Newts</b> , to the extent that they were <b>unable at times to receive payments from Developers</b> , adding cost, delay and confusion to the developer experience.                 | There is <b>no express requirement</b> for the Secretary of State <b>to take into account the appropriateness of the levy</b> when deciding if an EDP passes the “overall improvement” test.   | The private sector has shown measurable successes in licencing programmes such as District Level Licencing. Subsuming private schemes into the Nature Restoration <b>Fund will stymie growth and investor confidence.</b> |   |

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| 5. | <p><b>Environmental Delivery Plans: Residual application of existing legal frameworks</b></p> | <p><b>Environmental Impact Assessments and surveys will still be required</b> at significant cost to developers <b>in addition to the levy</b></p> | <p>Existing laws <b>continue to apply where an EDP does not cover a particular environmental feature</b>. With investor confidence in private nature markets having been lost due to NRF, investment and skills gaps would grow further, impacting national capacity and appetite for nature protection and conservation.</p> | <p>Twin systems for nature protection, where publicly funded solutions are delivered to lower standards, compete with private schemes that require integrity and adherence to the mitigation hierarchy. This undermines investor and public confidence, while <b>undermining the UK's reputation for environmental leadership in nature-markets internationally</b>.</p> | <p>Planning authorities will need to be <b>resourced to deal with a twin overlapping system of nature protection</b>: 1) levies under EDPs, and 2) the existing legal framework. This requires added resource, and a protracted burden throughout an extended, regionally variable, transitional period. Planning authorities will also become <b>delayed by complex negotiations around</b> development viability when applying the viability based nature levy.</p> |

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| <p><b>Environmental Delivery Plans: No ability to challenge or improve EDPs or levy schedules</b></p> | <p>Developers have <b>no ability to challenge a levy schedule - either when it is being made, or once made.</b> This is regardless of whether a levy is set artificially high, and regardless of whether conservation measures are ever implemented. <b>A levy schedule can apply for up to 10 years.</b></p> | <p>Local communities, charities or other organisations have <b>no ability to challenge an EDP when it is being made, or once made.</b> A deliberately short consultation window of 28 days allows for responses from the general public. <b>Charities and NGOs are not statutory</b> consultancy.</p> <p>The Secretary of State (for Housing not the Environment) <b>has discretion as to the weight to place on any feedback received.</b></p> <p>Regardless of effectiveness, an EDP may remain in place for up to 10 years, even if the conservation measures are <b>never implemented.</b></p> | <p>The loss of local ability to input, challenge or participate in nature recovery in their local area <b>harms rural economies and communities.</b> Clashes will be played out through the planning system, slowing development and harming our economy.</p> | <p>While local planning authorities will be statutory consultancy, they are given only <b>28 days to review and comment on a draft EDP.</b> The Secretary of State (for Housing, not Environment) has discretion as to the weight that is placed on those comments.</p> <p>The 28 day window is deliberately short. Once in place, the EDP can last for up to 10 years, and cannot be challenged <b>regardless of whether any conservation measures are ever implemented.</b></p> |