



Response to Consultation on Biodiversity Net Gain Regulations and Implementation

Wildlife and Countryside Link, Land Use Planning Group, April 2022

Covering letter – submitted via email

Thank you for the opportunity to respond to this consultation on Biodiversity Net Gain Regulations and Implementation.

Wildlife and Countryside Link is a coalition of 65 environmental organisations in England, using their strong joint voice for the protection and enhancement of nature. This Link response is supported by: Association of Local Environmental Record Centres (ALERC), Amphibian and Reptile Conservation, Buglife, Bumblebee Conservation Trust, Chartered Institute for Ecology and Environmental Management (CIEEM), CPRE – The countryside charity, Friends of the Earth, Open Spaces Society, Plantlife, the RSPB, Wildfowl and Wetlands Trust, and the Woodland Trust. For more information about this response, please contact Emma Clarke at Link (emma.clarke@wcl.org.uk).

The joint Link response consists of this covering letter, which highlights our key points and concerns with respect to the regulations and implementation of Biodiversity Net Gain (BNG), and our responses to the consultation questions below, which were also submitted via the online consultation form.

In addition to the proposals in this consultation, changes to the National Planning Policy Framework (NPPF) and to Local Plans will be needed to support the effective delivery of BNG and we urge the Government to think these through. For example, the NPPF should make clear the strong connection between Local Nature Recovery Strategies and BNG and local authorities should put in place Local Plans or supplementary guidance that specify development types for which more than a 10% net gain can be achieved, as part of delivering on national commitments to empower Local Planning Authorities (LPAs) to go beyond minimum standards. We welcome the Government's commitment to update National Policy Statements with biodiversity net gain statements.

The implementation of BNG must reinforce the mitigation hierarchy, to first steer development away from important sites for habitats and species. BNG must not be a lever to allow development that would not otherwise be permitted. We welcome the Government's acknowledgment that net gain cannot be achieved on irreplaceable habitat and, therefore, that the net gain conditions should not be applied to those areas. The guidance defining irreplaceable habitats and setting out guidelines for bespoke compensation measures in exceptional circumstances will be essential to ensuring these habitats are protected.

In principle, there should be no development on statutory nature conservation sites. The Government should strengthen the protection of designated sites to rule out significant development in SSSIs, SACs, SPAs and Ramsar Sites. However, unfortunately, and inappropriately, we know that development does occur in statutory nature conservation sites. In these cases, we agree with the Government that mandatory BNG should apply. Demonstrating and delivering genuine additionality of BNG measures on top of any existing or policy requirements in protected sites is essential. There should be transparent and separate accounting processes for statutory

funding and private funding, to ensure that private finance is not used to meet statutory obligations and goals, as a substitute to providing required and necessary public funding for nature.

We welcome the application of mandatory BNG to Nationally Significant Infrastructure Projects (NSIPs) and look forward to engaging further on a net gain approach for the marine environment. However, the Government should go further, faster, to apply mandatory BNG to NSIPs, as these projects are often the most environmentally damaging. The Government should go beyond a 10% mandatory minimum net gain and increase the current 30-year maintenance period to ensure the delivery of genuine gains for nature. Many NSIPs already have committed to the principle of net gain or no net loss and should be pushed to go further. While many aspects of the approach for TCPA applications can be applied to terrestrial NSIP projects, we want to flag that the delivery of net gain for large-scale projects like NSIPs may need to take strategic approaches in order to deliver the best outcomes for biodiversity. There should also be a different approach to BNG in the intertidal and marine environment and we look forward to engaging with Government further on these topics.

There are significant risks to statutory credits as a mechanism to meet the BNG requirement where BNG is not actually deliverable. If it is too easy to access credits, it risks undermining the effectiveness of the BNG policy as a whole. In areas of high land value, having statutory credits too easily available runs the risk of leading to all developments opting for statutory credits and creating whole areas diminished for wildlife. If there are statutory credits, the system must ensure that these are a last resort for developers by pricing statutory credits significantly above market value and ensure the administrative requirements are not simpler than those of registering offsite gains.

We welcome the Government's acknowledgment that BNG must be delivered on top of, not replace, existing statutory duties or requirements. However, we disagree with several of the Government's proposals on applying the principle of additionality (please see our response to Q44 – 47 for more detail). BNG must be additional to any existing statutory duties or requirements, including for protecting and enhancing protected or designated sites or habitats.

BNG should not be stacked with any offset-type environmental service payments, such as carbon offset credits, to prevent net environmental loss. However, with the right advice, standards and accounting, BNG could be stacked with other environmental service payments that are providing genuinely additional public benefit, such as Environmental Land Management scheme payments. An integrated, robust and transparent accounting and reporting system will be essential to demonstrate and ensure that BNG measures are genuinely additional to other measures.

We are concerned that the monitoring, reporting and enforcement requirements, in particular for onsite delivery of BNG, but also offsite gains, are not sufficient to ensure genuine gains are being delivered over the long-term. Currently, onsite gains have no monitoring or reporting requirements. Also, any breach of the planning condition of BNG is practically unenforceable by the local planning authority (see the response to Q52 for more detail and explanation).

Onsite and offsite gains should be monitored to the same standard, a stronger level than is currently proposed. Offsite gains are proposed to be monitored through self-reporting by landowners, which will not ensure the right expertise, training and transparency in monitoring and reporting. There should be a requirement for the scrutiny of onsite and offsite gains by ecological experts through the local planning authority to monitor and report on the delivery of offsite gains. Local planning authorities need the resources and ecological expertise to monitor and scrutinise onsite gains over the full obligation period (30 years). The Government should introduce an enforcement mechanism for local planning authorities if promised onsite or offsite gains are not delivered.

There is not yet sufficient detail on the proposals to assess whether the policy-level reporting, evaluation and enforcement will be sufficient to ensure the success of the BNG policy as well as evaluate BNG's contribution (among other tools and mechanisms to drive better environmental outcomes) to the achievement of other ambitions, such as the objectives in the 25 Year Environment Plan and the species abundance target in the Environment Act. In particular, BNG will have implications for species conservation, and there is a lack of reference and monitoring plans to evaluate the impact of BNG on species and assess the contribution of BNG to halting the decline of species abundance by 2030.

We agree with the proposal in the consultation for a requirement to share biodiversity gain plans and monitoring report data with local environmental record centres (LERCs). As well as an obligation to submit to long-term repositories like LERCs, there should be a requirement for these data to be in national standards and formats to ensure they are FAIR (findable, accessible, interoperable and reusable). This will improve transparency and scrutiny and contribute to the overall environmental information base. There is a need to specify that this robust evidence base must be consulted to inform all aspects of BNG at project level and policy level.

Finally, we wish to flag a number of areas where there are opportunities to support the effective delivery of Biodiversity Net Gain or where there are gaps in the considerations of the consultation.

- Local Nature Recovery Strategies should help inform the application of the mitigation hierarchy to first direct development away from protected and important habitats, including those identified for nature's recovery, and then help direct the delivery of onsite and offsite biodiversity net gain to ensure the best outcomes for local biodiversity and to achieve national environmental targets and objectives for habitat creation, restoration and connectivity. Defra should set out how biodiversity net gain plans and planning authorities should connect LNRSs to delivery of BNG.
- The consultation briefly touched on how to encourage securing net gain for longer than the minimum 30-year maintenance period. Conservation covenants will have an important role to play. What are the incentives for landowners to enter their land under BNG schemes into conservation covenants? What are other sources of long-term funding for nature restoration? What is the route from BNG delivery to protecting net gain sites in perpetuity? What is the route to designation and appropriate policy protection, to help achieve the Government's commitment of 30x30?
- The £4 million committed in the CSR21 for Local Planning Authorities to help prepare to implement Biodiversity Net Gain is not adequate, especially as BNG will now apply to NSIPs, as well as TCPA applications. We estimate that £43 million per annum will be required to build Local Planning Authorities' capacity to deliver Biodiversity Net Gain. In addition, many local authorities will also be producing Local Nature Recovery Strategies, will require an additional £16.4 million annually for LNRS operational costs. LPAs are currently under-resourced and many lack the ecological expertise crucial to the delivery of LNRSs and BNG (only 39% of LPAs have in-house ecological ecologists). A holistic funding approach to ensure that currently under-resourced LPAs have the adequate resources and the ecological expertise necessary for LNRS, BNG and the general scrutiny of planning applications is essential and missing from this consultation.
- As it has the potential to cause negative and lasting environmental impacts, permitted development should not be exempt from BNG. This is especially in relation to the agriculture to residential conversion and in the conversion of office space to residential. At a minimum, species legislation, Green Infrastructure and BNG should be made matters for local consideration through the 'Prior Approval' process which most permitted development rights are subject to.

- We look forward to further consultation and updating of the biodiversity metric. The biodiversity metric must be fit-for-purpose, including to accurately capture brownfield sites, acknowledging that it does not cover species, and must be applied and interpreted by a trained expert ecologist.

Response to questions – submitted via email and via the online consultation form

Part 1: Defining the scope of the BNG requirement for Town and Country Planning Act 1990

Part 1.1: Exemptions

1.1.1: Developments impacting habitat below a minimum size 'de minimis' threshold for biodiversity net gain

1. Do you agree with our proposal to exempt development which falls below a de minimis threshold from the biodiversity net gain requirement?

a) for area-based habitat:

- **No (please explain why not)**

No, we do not agree with the proposal to exempt development which falls below a de minimis threshold from the biodiversity net gain requirement, especially for medium distinctiveness habitats. The size and extent of a habitat is not always related to its value or the potential impacts of its loss or damage, including for connectivity and cumulative effects. This is particularly true in the urban environment.

b) for linear habitat (hedgerows, lines of trees, and watercourses):

- **No (please explain why not)**

No, we do not agree with the proposal to exempt development which falls below a de minimis threshold from the biodiversity net gain requirement, especially for medium distinctiveness habitats. The size and extent of a habitat is not always related to its value or the potential impacts of its loss or damage, including for connectivity and potential fragmentation of a landscape for species use. This is particularly true in the urban environment.

A de minimis exemption for linear habitats, whether hedgerows, treelines or watercourses, could have a serious fragmentary effect and damage connectivity at a landscape scale. This poses serious consequences for species and in particular in light of the permeability needed in a climate change scenario. For example, any impact on watercourses has the potential to affect the flow of water and the movement of wildlife, potentially further damaging habitats and species in the rest of the watercourse. Furthermore, habitats on the edge of watercourses can reduce damage to the watercourse, for example by preventing sediment and pollutants from entering the watercourse. Damage to these can mean damage to the watercourse as a whole through increased pollution. Therefore, any impact on linear habitats, especially watercourses and their immediate surroundings, needs to be accounted for in biodiversity net gain.

Road verges must be included in the definition of linear habitat. There are nearly 313,500 miles of rural road verges in the UK – equivalent in area to our remaining lowland species-rich grassland. 700 species of wildflower grow on road verges – nearly 45% of our total flora – but there has been a 20% drop in floral diversity due to poor management and nutrient pollution. This has a knock-on effect for many other species and ecological connectivity across the landscape.

1.1.2: Householder applications

2. Do you agree with our proposal to exempt householder applications from the biodiversity net gain requirement?

- **Yes**

Yes, notwithstanding our objections to the proposed de minimus threshold and PDR exemptions, we agree that householder applications should be exempted from the biodiversity net gain requirement, except in the circumstance where a proposed extension results in significant loss of medium or high-distinctiveness habitat, such as the loss of an adjacent woodland or meadow.

It will remain important to ensure biodiversity impacts can still be considered and that gardens are not universally lost to development. Guidance and other incentives should be provided to discourage biodiversity loss by a thousand cuts.

1.1.3: Change of use applications

3. Do you agree with our proposal to exempt change of use applications from the biodiversity net gain requirement?

- **No (please explain why not)**

No, change of use applications should not be exempted from the biodiversity net gain requirement.

Change of use applications can have impacts on existing habitats, for example, changing use of a grassland habitat to recreational use, such as in Lincolnshire where the Wildlife Trusts have found that a growth in change of use applications to caravan parks has resulted in disturbance from increased footfall and recreational pressures on adjacent reserves and fragile coastal areas. Another example where change of use applications can have impacts on habitats is changes in grazing type and pressure on a given site, such as in Worcestershire where the Wildlife Trusts have found that change of use applications from agriculture to livery stables resulted in relatively low intensity grazing by cattle being replaced by more intensive grazing by horses and ponies.

As it has the potential to cause negative and lasting environmental impacts, permitted development should not be exempt from BNG. This is especially in relation to the agriculture to residential conversion and in the conversion of office space to residential. At a minimum, species legislation, Green Infrastructure and BNG should be made matters for local consideration through the 'Prior Approval' process which most permitted development rights are subject to.

1.1.4: Creation of biodiversity gain sites

4. Do you think developments which are undertaken exclusively for mandatory biodiversity gains should be exempt from the mandatory net gain requirement?

- **No (please explain why not)**

No, we do not agree with the proposal to make an exemption for projects which enhance biodiversity for the purpose of discharging the mandatory net gain condition by applying a no net loss requirement to them. Applying mandatory BNG to these projects will reduce the risk of inappropriate net gain design by ensuring they apply the mitigation hierarchy when delivering net gain: first avoidance of impacts, then mitigation, then compensation, then gains. It also will remove the risk of projects claiming they were undertaken exclusively for BNG in order to be exempt from mandatory BNG.

This exemption should also not exist for other environmental impact mitigation purposes because these types of projects can change habitats or manage them in different ways, with the potential to

have implications for biodiversity. Applying mandatory biodiversity net gain will ensure each project and its impact on biodiversity is evaluated in order to maximize co-benefits of the project for biodiversity and to ensure that biodiversity loss is minimised or compensated through BNG.

1.1.5: Self-builds and custom housebuilding

5. Do you think self-builds and custom housebuilding developments should be exempt from the mandatory net gain requirement?

- **No (please explain why not)**

No, self-builds and custom housebuilding developments should not be exempt from the mandatory net gain requirements. Net gain can be delivered on self-builds and custom housebuilding developments. The small site metric could help simplify the BNG process for self-builds and custom housebuilding sites.

It is not always the case that self-builds are both sustainable and small-scale. There is an increased tendency for self-builds to be in more rural areas where the likelihood of biodiversity impacts is greater. Small developments may have large indirect impacts upon adjacent sites or for ecological connectivity.

Even when self-builds and custom house-building are of a small scale, they can still result in the loss of priority habitats. For example, the Wildlife Trusts reports that there have been applications approved for a self-build on a former Local Wildlife Site in Cheshire, which contains areas of dry-heath and acid grassland.

The cumulative impacts of multiple developments, even at small scales, can result in cumulative loss of habitats and biodiversity, especially in areas of high biodiversity value. For example, the Government's impact assessment for mandatory BNG shows that 12% of permissioned residential units are small sites – these will add up to have large cumulative environmental impacts.

There should not be a blanket exemption which creates a loophole for developers or self-builders who are building multiple sites. Where self-builds and custom housebuilding is part of a larger site, it will be important to ensure phasing on BNG through these elements.

1.1.6: Brownfield sites

6. Do you agree with our proposal not to exempt brownfield sites, based on the rationale set out above?

- **Yes**

Yes, we strongly welcome the Government's proposal not to exempt brownfield sites from mandatory BNG. We agree that brownfield sites can be of high environmental value, in which case BNG should be applied. In cases where a brownfield site is of low environmental value, this offers significant potential for achieving BNG.

As well, applying BNG to brownfield sites, which are typically found in urban or suburban environments, is consistent with the approach of maximizing the co-benefits of nature's recovery for people's health and wellbeing.

The biodiversity metric must be fit-for-purpose and applied and interpreted by a trained ecologist in order to accurately capture the biodiversity of brownfield sites.

1.1.7: Temporary permissions

7. Do you agree with our proposal not to exempt temporary applications from the biodiversity net gain requirement?

- **Yes**

Yes, we agree that temporary applications should not be exempted from the BNG requirement. Longer temporary permissions might cause significant and long-term negative impacts on biodiversity. For example, solar farms are considered 'temporary' as they are time-limited projects, but are often long-running and can be environmentally damaging. As well, sensitive or semi-natural habitats can suffer long-term and even potentially irreversible damage from short periods of vehicle use.

1.1.8: Developments for which permitted development rights are not applicable due to their location in conservation areas, areas of outstanding natural beauty or national parks

8. Do you agree with our proposal not to exempt developments which would be permitted development but are not on account of their location in conservation areas, such as in areas of outstanding natural beauty or national parks?

- **Yes**

Yes, we agree with the proposal not to exempt developments which would be permitted development but are not on account of their location in conservation areas, National Parks or Areas of Outstanding Natural Beauty. These locations are important for nature and the standards for protection of biodiversity in these areas should be maintained.

In general, as it has the potential to cause negative and lasting environmental impacts, permitted development should not be exempt from BNG. This is especially in relation to the agriculture to residential conversion and in the conversion of office space to residential. At a minimum, species legislation, Green Infrastructure and BNG should be made matters for local consideration through the 'Prior Approval' process which most permitted development rights are subject to.

1.1.9: General question on exemptions

9. Are there any further development types which have not been considered above or in the previous net gain consultation, but which should be exempt from the biodiversity net gain requirement or be subject to a modified requirement?

- **No**

No, there are no further development types which we believe should be exempt from the biodiversity net gain requirement or subject to a modified requirement.

As it has the potential to cause negative and lasting environmental impacts, permitted development should not be exempt from BNG. This is especially in relation to the agriculture to residential conversion and in the conversion of office space to residential. At a minimum, species legislation, Green Infrastructure and BNG should be made matters for local consideration through the 'Prior Approval' process which most permitted development rights are subject to.

We would also like to flag a potential large loophole, if not addressed, which is how BNG will apply to retrospective planning consents and planning consents granted through the enforcement process or in relation to appeals.

Part 1.2: Development within statutory designated sites for nature

10. Do you agree with our proposal not to exempt development within statutory designated sites for nature conservation from the biodiversity net gain requirement?

Yes

Yes, we agree that development within statutory designated sites for nature conservation should not be exempted from the biodiversity net gain requirement.

The Government should strengthen the protection of designated sites to rule out significant development in SSSIs, SACs, SPAs and Ramsar Sites.

The mitigation hierarchy must be properly applied to steer development away from protected sites (statutory and non-statutory). We think the Government's proposals and communications should be stronger in emphasizing the mitigation hierarchy to ensure it is properly applied. For example, the chart on page 7 (also the Annex B form on page 99), does not address avoidance as the first principle to be exhausted, and the site selection and mitigation hierarchy section of the chart on page 14 should be made more clear. The pre-application submission of biodiversity information should include checks on how the mitigation hierarchy has been adhered to, by requiring sections F, G and H of the BNG template form to be submitted. Information on how alternative locations and separate designs have been considered to avoid harm should be included (there may be overlaps with any required EIAs).

However, we know that unfortunately, and inappropriately, development does occur in statutory nature conservation sites and in these cases, mandatory BNG should apply. BNG should not excuse otherwise unacceptable developments or impacts on statutory sites – the NPPF must be clear that BNG must not factor in decisions about whether the harms outweigh the benefits and BNG must not be used to justify development being approved. Any planning application or BNG assessment coming forward which shows a protected site will be impacted should serve as a red flag.

We agree with the Government's statement that the biodiversity net gain requirement is additional to any existing legal or policy requirements for statutory protected areas and their features (species are often features of designated sites), including restoration and conservation of designated features and the achievement of favourable conservation status and favourable condition. We strongly agree that demonstrating and delivering genuine additionality of BNG measures in protected sites is essential.

In particular, we are concerned that there is a risk of using private finance to meet statutory obligations and goals and reducing or not increasing crucial statutory funding. Sufficient public investment is needed to fulfil statutory obligations, such as improving the condition of statutory protected sites, and meet statutory environmental goals. We cannot and should not rely on private finance through mechanisms such as BNG to bring our statutory sites up to favourable conservation status and favourable condition. There should be transparent and separate accounting processes for statutory funding and private funding, to ensure that private finance does not lead to reductions in statutory funding.

We also want to highlight some of the practical challenges in demonstrating and delivering genuine additionality of BNG in statutory protected sites. It will be challenging to separate out the mitigation and compensation needed to meet statutory requirements, especially for protected species, from the biodiversity net gain requirement. There will be overlap with irreplaceable habitat - we recommend that the Government map out how much irreplaceable habitat is within the designated sites network. Allowing enhancements of statutory sites creates the possibility for two different

management strategies within the designated boundary. While the consultation recognises delivering BNG on non-designated features only, management of these features poses a risk of unintended impacts upon designated features. Enhancement of non-designated features of protected sites should only be permitted if it does not adversely affect the designated features or interfere with the achievement of the conservation objectives of the site. This may not be straightforward or easy to determine. There are also practical difficulties in that landowners of a SSSI sign up to manage the whole SSSI, not just designated features - it is all covered under the same legal requirement.

It is important that a process is in place prior to any BNG plan being implemented on a given statutory site, and that the current BNG template is fit for purpose to include designated sites, including information on the applicant's plans for the BNG enhancements on protected sites and how these are additional to the bespoke compensation for the protected site. There should be monitoring and evaluation of the condition of the statutory sites. Training and guidance must include the necessary training and information to ensure that BNG does not undermine protection and, in some rare cases, contributes to additionality.

Part 1.3: Irreplaceable habitat

11. Do you agree with the stated proposals for development (or component parts of a development on irreplaceable habitats), specifically:

a) the exclusion of such development from the quantitative mandatory biodiversity gain objective?

· **Yes**

Yes, we agree with the exclusion of development impacting irreplaceable habitats from mandatory biodiversity net gain because the BNG cannot be achieved and therefore is not applicable when irreplaceable habitats are lost or damaged.

However, being irreplaceable, the controls in the planning system to avoid harm in the first place to irreplaceable habitat must be robust. BNG should not form part of the decision in allowing developments or impacts on irreplaceable habitats, i.e., it should not be part of the 'wholly exceptional reasons' consideration, nor is it a suitable compensation strategy, nor form part of this strategy. The NPPF must be updated to include clear policy on this.

As acknowledged in the Government's consultation document, any mitigation and compensation for damage or impacts on irreplaceable habitat will also require a different approach. This approach will need to ensure requirements for compensation of loss of irreplaceable habitats go beyond the requirements for habitat mitigation compensation and gain for 'replaceable' habitats - including ensuring a high level of transparency of impacts, and compensation higher than any required within the biodiversity metric. This is essential to avoid undermining the protection of irreplaceable habitats.

The NPPF can also learn from some of the standards set by a BNG approach. The Environment Act enables use of an earlier baseline for habitat assessment. This should also apply to the application to deliberate degradation, including tree felling to enable development, of irreplaceable habitats. There are cases where pre-emptive damaging of development sites was discovered using past satellite imagery. We recommend that local authorities or central Government should use past Google Earth imagery to confirm that the site has not been damaged or cleared.

A suitable compensation strategy for impacts to irreplaceable habitats must be significantly above the maximum ratios in the biodiversity metric. Without this key principle, there is a risk that it will be

easier (and therefore be an incentive) to damage and compensate for loss of irreplaceable habitats, than other habitats under net gain.

Defra's commitment to consult on and improve the NPPF policy protection for ancient woodlands must not be delayed.

Another important aspect of ensuring our irreplaceable habitats are protected is surveying for and identifying these habitats with a trained ecologist. For example, the Ancient Tree Inventory, Grasslands Inventory and Open Mosaic Habitat Inventory should be updated. Having the environmental information available upfront or as early as possible in the planning process will save the local authority and developer time and resources. While robust national inventories can be used by developers, consultants and LPAs to exclude sites from development or from off-site BNG delivery, this is insufficient to prevent the loss of irreplaceable habitats as national inventories may never be 100% comprehensive. Those sites which are not excluded on the basis of existing national and local data must always be subject to a full and independent ecological assessment to establish the existing biodiversity value of the site.

The above response applies to terrestrial irreplaceable habitat only. In the intertidal and marine environment, opportunities to improve irreplaceable habitats in these environments that are more likely to be affected by development, including from strategic approaches, would be missed if net gain opportunities were excluded. Irreplaceable habitats in the intertidal and marine environments need to be considered separately, in line with the work being undertaken by NE.

b) the inclusion of a requirement to submit a version of a biodiversity gain plan for development (or component parts of a development) on irreplaceable habitats to increase proposal transparency?

· **Yes**

Yes, there should be a separate irreplaceable habitats document and plan that is supported by the IH guidance currently under development. While a plan is important to increase transparency about the impacts on irreplaceable habitats, it should be clearly defined as a separate document from the biodiversity net gain plan.

This separate document for irreplaceable habitats should outline how impacts on IH are avoided and reduced and how bespoke compensation will be secured for the long-term. It should detail the impact on the species supported by the affected irreplaceable habitat and include how those impacts are being avoided both spatially and temporally. For example, an area of ancient woodland or grassland lost or impacted would support species that are reliant on this for their survival, including legally protected species. What needs to be considered is the availability of that irreplaceable habitat within the affected species functional range and/or the time between compensation provision being made and it acquiring the features that support the obligate species associated with it. If these two points are not satisfactorily discharged then the plans should be rejected. It should also include information about the baseline biodiversity unit value of the compensation site to ensure there is an actual uplift in units on the compensation site, to help prevent the loss of other valuable habitats, for example by inappropriate tree-planting on valuable grassland habitats when compensating for the loss of ancient woodland. It could also be informed by NE/FC's checklist of questions to aid local authorities for Ancient Woodland.

c) where there are no negative impacts to irreplaceable habitat, to allow use of the biodiversity metric to calculate the value of enhancements of irreplaceable habitat?

· **Yes**

Yes, we agree that where there are no negative impacts to irreplaceable habitat, the biodiversity metric could be used to calculate the value of enhancements of irreplaceable habitat.

The absence of negative impacts on irreplaceable habitats should first be established through a comprehensive site-based assessment, before any enhancements to the irreplaceable habitat can be counted. Careful consideration needs to be given to how these enhancements are calculated and carried out due to the special nature of irreplaceable habitat. We suggest a separate section of the biodiversity gain plan which shows only the value of enhancements to irreplaceable habitats.

The metric should always be underpinned by trained ecological expertise and on-the-ground ecological surveys.

Any enhancements to irreplaceable habitat delivered as part of mandatory BNG must be truly additional to any statutory obligations or existing commitments. For example, where there is overlap between SSSI and IH designation, BNG should not be allowed to fund enhancements on designated features. BNG and private investment should not be used to plug gaps in public funding for statutory obligations.

d) to use the powers in biodiversity net gain legislation to set out a definition of irreplaceable habitat, which would be supported by guidance on interpretation?

· **Yes**

Yes, we agree in principle with the proposal to set out a definition and list of irreplaceable habitats, which would be supported by guidance on interpretation. However, this depends on the agreed definition and how it will be applied to identify which habitats are irreplaceable. We look forward to ongoing engagement with Defra and Natural England on the definition, list and guidance to ensure it is fit-for-purpose and we strongly recommend the guidance be subject to consultation to ensure it is robust.

The controls in the planning system to avoid harm in the first place to irreplaceable habitat must be robust. We suggest the NPPF should be updated with the list of irreplaceable habitats, rather than just in guidance, to ensure weight is given to key aspects in decision-making and to expand and strengthen the protection for irreplaceable habitats from negative impacts from development.

To support the implementation of regulations and guidance on irreplaceable habitat, irreplaceable habitats will have to be surveyed, identified and recognised. For example, the Ancient Woodland Inventory is being updated, so should other important inventories, such as for Ancient Trees, Grasslands and Open Mosaic Habitat. Recognition should be given to the Ancient Tree Inventory and ancient hedgerows. However, for other habitats, the datasets are not complete. For example, peatlands and species-rich grasslands have not been comprehensively mapped. Thus local data, mapping and knowledge will be required to supplement existing data and update the inventories. These data should inform and be informed/updated by the Local Nature Recovery Strategy process as well. Having the environmental information available upfront or as early as possible in the planning process will save the local authority and developer time and resources.

National datasets can be used to exclude sites from development or off-site delivery but these are not a substitute for on-site ecological assessment of any site that does not feature on the inventories, before any intervention.

e) the provision of guidance on what constitutes irreplaceable habitat to support the formation of bespoke compensation agreements?

· **Yes**

Yes, we agree in principle with the proposal to provide guidance on what constitutes IH to support the formation of bespoke agreements, but again, this depends on the agreed guidance and how it will be applied. In particular, the guidance should advise that the precautionary principle is applied if there is not enough evidence to determine the replaceability of a habitat, particularly in the context of BNG. We look forward to ongoing engagement with Defra and Natural England on the guidance to ensure it is fit-for-purpose and we strongly recommend the guidance be subject to consultation to ensure it is robust.

The controls in the planning system to avoid harm in the first place to irreplaceable habitat must be robust. We suggest the NPPF should be updated with the list of irreplaceable habitats, rather than just in guidance, to ensure weight is given to key aspects in decision-making and to expand and strengthen the protection for irreplaceable habitats from negative impacts from development.

Part 2: Applying the biodiversity gain objective to different types of development

Part 2.1: Phased development and development subject to subsequent applications

12. Do you agree with our proposed approach that applications for outline planning permission or permissions which have the effect of permitting development in phases should be subject to a condition which requires approval of a biodiversity gain plan prior to commencement of each phase?

· **Yes**

Yes, Link agrees with this approach to phased development and development subject to subsequent applications to outline how the overall development will achieve net gain at the outset and prior to each phase beginning work.

Considering the BNG requirement as part of the Master planning for the whole development will help ensure the process is streamlined and transparent and help each developer (where multiple developers are involved) understand their contribution. It is also important that as much information as possible is provided upfront to aid stakeholder and community engagement. We appreciate that some flexibility is required to accommodate changes over time, and in phased developments, additional BNG information will be needed to be submitted, including a strategy for how it will be delivered and tracked on a phase-by-phase basis. There is a risk that in phased developments where there is a long period of time between phases, valuable habitats could develop, changing the ecological baseline. The guidance should be clear that the ecological baseline may be required to be re-surveyed and updated during the phases.

In the BNG proposals, there must be clear consideration of the potential impacts on statutory sites and irreplaceable habitats, ensuring the development and its biodiversity net gain proposals do not adversely affect designated features and irreplaceable habitats or interfere with the achievement of the conservation objectives of protected sites or protected species. An upfront metric calculation must be completed and an updated metric should be completed for each phase of the outline development when brought forward at reserved matters, given the potential for changes in the

biodiversity value of the undeveloped parts of multi-phase sites. In later stages there should be effective engagement on the details to ensure the mitigation hierarchy is applied from approving the development site right through to the detailed design. Also, there must be clear guidance about the application of the 30 year time frame, given the development may be phased over a number of years.

We support the process being as front-loaded as possible in terms of BNG delivery. BNG and consideration to species impacts or compensation for the whole scheme should be implemented in advance of any losses, in order to prevent cumulative impacts. If this is not possible, each phase of a scheme must be accompanied by an agreed percentage of BNG.

There must be an accountability mechanism to ensure the original applicant or master planner has the overall responsibility to secure and maintain the proposed net gain to ensure delivery, monitoring and enforcement. Robust secondary legislation will be essential to getting this right.

13. Do you agree with the proposals for how phased development, variation applications and minerals permissions would be treated?

- **No (please suggest alternative approaches)**

The Review of Mineral Permissions should require mandatory biodiversity net gain, or at least bring forward new conditions to require no net loss. This is an opportunity to bring existing Mineral Permissions up to current standards. Otherwise, existing Mineral Permissions risk undermining the Government's domestic and international environmental targets and ambitions.

Part 2.2: Small sites

14. Do you agree that a small sites metric might help to reduce any time and cost burdens introduced by the biodiversity gain condition?

- **Other (please tell us more)**

The metric must be fit-for-purpose and used and implemented by trained ecologists, for example professionals who are full members of the Chartered Institute of Ecology and Environmental Management (CIEEM) or have another professional accreditation and also have training in the BNG metric by the relevant training provider. Guidance on its use and application will be important. We welcome the Government's commitments to consulting again on the Small Sites Metric before being in use for mandatory BNG.

15. Do you think a slightly extended transition period for small sites beyond the general 2-year period would be appropriate and helpful?

- **No (please explain why not)**

Biodiversity net gain must be implemented as soon as possible. The transition period for small sites should not be extended. The Government's impact assessment for mandatory biodiversity net gain shows that 12% of permissioned residential units are small sites and for non-residential developments small sites make up 90% of applications. Collectively, small sites have a large impact on biodiversity and any delay would see habitat destroyed without compensation, delaying nature's recovery.

The small sites metric should mean that this is a simpler system and therefore could be implemented at the same time as the wider BNG requirement. There is no merit to the argument that the implementation of BNG for small developments should be delayed in order to learn from larger developments: there are many resources already on applying BNG, and the approach for smaller and larger developments will be different anyway.

There is also potential for confusion around what is required and when if implemented at different times and a risk that developers could split their sites into smaller sections to avoid requirements.

16. Are there any additional process simplifications (beyond a small sites metric and a slightly extended transition period) that you feel would be helpful in reducing the burden for developers of small sites?

- **Do not know**

Clear guidance and training for LPAs, developers and consultants on the use and the application of the small sites metric will be useful and important for effective delivery of BNG on small sites.

Part 2.3: Nationally significant infrastructure projects

2.3.1: Proposal 1 - Scope, percentage, and targeted exemptions

17. Are any targeted exemptions (other than that for irreplaceable habitat), reduced biodiversity net gain objectives, or other modified requirements necessary for the application of the biodiversity net gain requirement to NSIPs?

- **No**

No, Link does not think any targeted exemptions (other than that for irreplaceable habitats), reduced biodiversity net gain objectives, or other modified requirements are necessary for the application of the biodiversity net gain requirement to NSIPs.

The minimum requirement of 10% gains must be the absolute minimum and applied to all NSIPs to ensure that gains are not within the margin of error for the valuation of habitats.

Given the simplifying nature of the metric and the continuing decline in biodiversity, developments should be encouraged to go above the 10% minimum requirement wherever possible. Given that NSIPs are the most ecologically damaging in the short and long term, a minimum requirement above 10% is more likely to secure better ecological outcomes. We know there is willingness from developers for biodiversity net gain East-West Rail have voluntarily committed to delivering net gain. Defra's own research (published alongside this consultation document) demonstrates that the predicted costs of achieving 10% or 20% BNG outcomes is similar, at just 1% of the capital costs of these schemes.

To ensure NSIPs genuinely deliver BNG, we would like to highlight a few other points for the application of BNG to NSIPs:

- a. The mitigation hierarchy must be correctly applied in the application of BNG to NSIPs. Avoidance is first and projects must demonstrate how they have first exhausted avoidance, in line with Government guidance or advice, before moving on to minimisation.
- b. The delivery of net gain, especially for large-scale projects like NSIPs, may need to be strategic in order to deliver the best outcomes for biodiversity. There is an opportunity for

the National Infrastructure Commission, given its strategic role, to improve its approach to biodiversity and help integrate biodiversity needs and other national infrastructure needs.

- c. BNG and compensation will require a different approach in intertidal and marine environments, as most of the intertidal area is covered by SSSIs. These approaches should be reflected in any future template updates for the BNG plan, including the Habitat Management and Monitoring Plans template.

2.3.2: Proposal 2 - Setting the requirement and transition arrangements through 'biodiversity gain statements'

18. Do you agree that the above approach is appropriate for setting out the biodiversity net gain requirement for NSIPs?

- **Yes (please explain why)**

We welcome the Government's commitment to update National Policy Statements with the biodiversity net gain statements, with the net gain requirement, date from which the objective is expected to apply, and the stage of project design to which the commencement threshold applies. We also welcome the intention to consult on the Biodiversity Gain Statement(s).

19. Do you consider that November 2025 is an appropriate date from which NSIPs accepted for examination will be subject to the biodiversity net gain requirement?

- **No, it should be sooner (please provide any supporting evidence or justification)**

The application of BNG to NSIPs should commence as soon as possible, if the policy is to make a genuine contribution to reversing the decline of species abundance by 2030, delivering on the ambitions as set out in the 25 Year Environment Plan and to more generally recover nature. NSIPs are some of the most environmentally damaging and long-term projects. Failure for mandatory BNG to be applied earlier risks discouraging projects that are already working towards delivering a BNG ahead of the deadline (e.g., the current proposals for the A27, Arundel Bypass, to deliver a BNG) and risks many developments being approved for examination ahead of 2025 without mandatory BNG which can take many years of planning, design and construction before completion, which is out of step with the Government's environmental targets and ambitions.

All NSIPs should currently be achieving no net loss (NNL) as a very minimum due to existing policies and international obligations. There are big infrastructure programmes which have already achieved net gain, e.g., Thameslink. The Environment Act (2021) sets out some clear minimum requirements on which NSIP developers should, with reasonable confidence, be able to plan for BNG ahead of the formal publication of the policy statement(s). For example, the Biodiversity Gain Schedule 2a, section 103, Paragraph 3, Sub Paragraphs (1 and 2), makes clear that the minimum requirement for BNG should be 10% unless amended by the Secretary of State (sub-paragraph 3). A Defra metric will be published ahead of BNG coming into force for TCPA developments, which will be available for developers of NSIPs to use as well. Furthermore, this consultation states on page 45, that the Government proposes 'applying an approach for NSIPs that would be broadly comparable to that for development granted permissions under the Town and Country Planning Act 1990.'

20. Do you agree that a project's acceptance for examination is a suitable threshold upon which to set transition arrangements?

- **No (please explain why not)**

The Government's proposed approach would effectively exempt a significant proportion of new projects that are already in the pipeline, which are likely to have significant environmental impacts. Coupled with a 2025 start date, this would mean that BNG would only apply to projects reaching examination in 2027/2028. Many NSIPs are already committed to delivering no net loss and many are already preparing to deliver biodiversity net gain. Given the urgency of the nature and climate crises, we urge the Government to consider options for speeding the transition arrangements for the application of mandatory BNG to NSIPs.

2.3.3: Proposal 3 - NSIP off-site gains and a 'portfolio approach'

21. Would you be supportive of an approach which facilitates delivery of biodiversity net gain using existing landholdings by requiring a lighter-touch registration process, whilst maintaining transparency?

- **No (please explain why not)**

No, Link is not supportive of an approach which facilitates delivery of BNG using existing landholdings by requiring a lighter-touch registration process. There is no reason why BNG enhancements delivered on their own estate should not be captured through the same register.

Any biodiversity net gains delivered on existing landholdings must be additional. Many organisations will already have a duty to further the conservation and enhancement of biodiversity, as well as having to have regard to the relevant Local Nature Recovery Strategies, Species Conservation Strategies and Protected Site Strategies.

It is essential that there is transparency and a level playing field for all habitat providers and for wider stakeholders. A single central biodiversity net gain site register which accommodates all sites is required to support the strategic planning of offsite, the transparency needed for habitat providers and wider stakeholders, and the monitoring of BNG at both a project and policy level.

2.3.4: Proposal 4 - Process and demonstrating biodiversity net gains

22. Do you consider that this broad 'biodiversity gain plan' approach would work in relation to NSIPs?

- **Yes**

Yes, Link considers that the broad biodiversity gain plan approach would work in relation to NSIPs.

23. Should there be a distinction made for NSIPs between on-site habitats (which are subject to the biodiversity net gain percentage) and those habitats within the development boundary which are included solely for environmental mitigation (which could be treated as off-site enhancement areas without their own gain objective)?

- **No (please explain why not)**

No, there should be no distinction made for NSIPs between on-site habitats subject to the biodiversity net gain percentage and those habitats within the development boundary which are

dedicated mitigation areas, because while mitigation areas cannot contribute to net gain, impacts to these areas must be captured in the site's baseline metric to ensure that any uplift is truly additional.

24. Is there any NSIP-specific information that the Examining Authority, or the relevant Secretary of State, would need to see in a biodiversity gain plan to determine the adequacy of an applicant's plans to deliver net gain (beyond that sought in the draft biodiversity gain plan template at Annex B)?

- **Yes (please state what information)**

Yes, there is further information that should be supplied for NSIPs biodiversity gain plans than is currently required in the draft gain plan in the annex. Currently, the template form does not require information about following the mitigation hierarchy, the presence of irreplaceable habitats and statutory sites and protected species with the biodiversity net gain information at the pre-application stage. Link believes this information should be a requirement at the pre-application stage in order to reinforce the mitigation hierarchy in the application of BNG to NSIPs. More clarity is needed about the steps that have been taken to first prove avoidance, before moving to minimisation.

There is a need to specify that a robust evidence base needs to be consulted to inform the design of the biodiversity net gain and the biodiversity gain information and plan should reflect that. The process should be prescriptive about which data sources are used to inform the process, setting a minimum requirement of checking MAGIC, NBN Atlas and LERC data.

There should also be a requirement to share biodiversity gain plan and monitoring report data with local environmental record centres (LERCs). As well as an obligation to submit to long-term repositories like LERCs, there should be a requirement for these data to be in national standards and formats to ensure they are FAIR (findable, accessible, interoperable and reusable). This will improve transparency and scrutiny and contribute to the overall environmental information base.

2.3.5: Proposal 5 - Maintenance period for Nationally Significant Infrastructure Project developments

25. Do you think that 30 years is an appropriate minimum duration for securing off-site biodiversity gains allocated to NSIPs?

- **No, it should be longer**

No, the maintenance period for biodiversity gains allocated to NSIPs should be longer than 30 years. Given the length of these projects and the longevity of most infrastructure, the biodiversity net gains should be secured for longer than the currently proposed period of 30 years.

Even for habitats considered to be of lower difficulty in creating, such as ponds which will require long-term maintenance and monitoring to ensure that they serve their purpose (e.g. ponds can easily silt up and dry out if not managed), this period (30 years) does not suffice. An extension beyond this minimum period is even more important where the replacement of rarer habitats is considered in which higher maintenance is required and to support the creation of habitats that take longer than 30 years to establish. Examples include heathlands and lowland bogs which can take potentially hundreds of years to form, and due to the current management and degradation of some of this, will take time to be restored and recover.

There are several mechanisms that could help secure biodiversity net gain for longer than 30 years, including funding for habitat creation, restoration and ongoing management, conservation covenants, the Wildbelt designation.

The proposed maintenance period should be continually reviewed after practice and biodiversity gain markets are evaluated in order to be increased only, as is the case for other biodiversity net gain developments.

2.3.6: Proposal 6 - Compulsory acquisition

26. Are further powers or other measures needed to enable, or manage the impacts of, compulsory acquisition for net gain?

- **No**

While further powers might need considering, the use of powers should not be the default. There are many steps that should first be taken to avoid compulsory purchase for BNG and a strong steer should be provided in any future Biodiversity Gain Statement on these steps. As well, by the time NSIP BNG is introduced, the biodiversity market should be better established.

2.3.7: Proposal 7 - Marine infrastructure

27. Is any guidance or other support required to ensure that schemes which straddle onshore and offshore regimes are able to deliver biodiversity net gain effectively?

- **Yes (please explain what is needed)**

The development and implementation of marine BNG could be significantly different to the BNG approach developed on land. We welcome Defra's proposal to consult further on marine biodiversity net gain.

BNG will also require a different approach in intertidal areas. Once marine BNG has been developed, guidance will be required to decide whether applicants should use terrestrial or marine BNG when considering regimes that cover the intertidal areas.

Part 3: How the mandatory BNG requirement will work for Town and Country Planning Act 1990 development

Part 3.1: Biodiversity gain plan

28. Do you agree with the proposed:

a) content of the biodiversity gain information and biodiversity gain plan?

- **No (please explain why not)**

We do not disagree with any content currently proposed for the biodiversity gain information and biodiversity gain plan, but we believe there is some content missing from the information and plan that will be crucial to effective delivery of BNG.

More specific information should be requested and supplied in both the biodiversity gain information and biodiversity gain plan to ensure the applicant applies and demonstrates following the mitigation hierarchy in a rigorous and transparent way. Specifically, the biodiversity gain information and plan should include 'steps taken to avoid, mitigation and compensate' (as well as 'minimise', as is currently in the proposals) to demonstrate how first avoidance has been pursued and exhausted, before moving on to the next step of the mitigation hierarchy. Information on how alternative locations and separate designs have been considered to avoid harm should be included (there may be overlaps with any required EIAs). We think the Government's proposals and communications should be stronger in emphasizing the mitigation hierarchy to ensure it is properly applied, for example, the chart on page 7 (also the Annex B form on page 99), does not address

avoidance as the first principle to be exhausted, and the site selection and mitigation hierarchy section of the chart on page 14 should be made clearer. The biodiversity information currently requires initial information about how BNG will be delivered, but does not currently require information on the mitigation hierarchy, irreplaceable habitat and statutory sites. As the design of any BNG must first consider this information in order to apply the mitigation hierarchy correctly, the biodiversity gain information should include sections F, G and H of the BNG template form.

In addition, there should be a stronger reference to species in the biodiversity gain information and plan – the current reference is under Section G and only deals with impacts at the development sites. The information in the biodiversity gain plan required should include a target date for habitat creation, including a target for the level of distinctiveness and condition required. There should also be stronger emphasis in the template on what management approach is required to deliver the BNG. The biodiversity gain plan should also make clear how any off-site habitat enhancement fits with local and national nature recovery priorities, especially LNRs and the NRN, or explain why it fails to fit with these priorities.

Finally, not all on-site enhancements will have to be formally secured (such as amenity planting areas or individual street trees). Habitat enhancements should be formally secured wherever possible and non-secured enhancements should not make up a significant percentage of the post-development biodiversity value. Where they are not formally secured, the biodiversity gain plan should clearly set out the strategy for management of these enhancements to ensure they are maintained for at least the 30 year minimum period.

We also believe there is a need to specify that a robust evidence base needs to be consulted to inform the design of the biodiversity net gain and the biodiversity gain information and plan should reflect that. The process should be prescriptive about which data sources are used to inform the process, setting a minimum requirement of checking MAGIC, NBN Atlas and LERC data.

More guidance and clarity around how the biodiversity net gain information and plan should be prepared, with further content or guidelines in the template and case studies to help illustrate, for example, as to how the information and plan should demonstrate the mitigation hierarchy and consult a robust evidence base.

b) procedure for the submission and approval of biodiversity gain information and the biodiversity gain plan?

- **No (please explain why not)**

It is essential that the biodiversity net gain information includes information on the mitigation hierarchy, for example by requiring sections F, G and H of the BNG template form to be submitted, and wider biodiversity obligations, e.g., statutory sites, protected species and irreplaceable habitats, as that information and considerations will inform the biodiversity net gain approach to be submitted at the pre-application stage. The requirements around this information to demonstrate the mitigation hierarchy should be strengthened to include 'steps taken to avoid, mitigation and compensate' (as well as 'minimise', as is currently in the proposals) to demonstrate how first avoidance has been pursued and exhausted, before moving on to the next step of the mitigation hierarchy (also see our response to 33a). These sections are also particularly important for many stakeholders and the local community, who require access to the information in these sections in order to scrutinise applications properly during the consultation phase.

Also, the consultation document does not address the approach for the submission and approval of the biodiversity net gain information and plan when the local planning authority is also the developer. The regulations and guidance should be clear about the approach in these circumstances.

29. We will continue to work with external stakeholders and industry on the form and content of the template. Do you agree with the proposed information to be included in a biodiversity gain plan as shown in the draft template?

- **No (If not, is there anything in particular that ought to be removed, added, or changed to make the biodiversity gain plan fit for purpose?)**

The form should be changed to require the sections F, G and H on the BNG template form on the mitigation hierarchy and wider biodiversity obligations, e.g., statutory sites and irreplaceable habitats, to be submitted with the biodiversity net gain information.

In Section E, more than 'a brief description of planned (post-development) habitat creation or enhancement' is needed, e.g., maps of existing habitat and a proposed post-development landscape plan to demonstrate how opportunities for onsite creation and enhancement have been taken, in order for LPAs to assess proposals for onsite habitat.

In Section H1 and around monitoring, there is a need for further information on the measures in place in the event that monitoring shows failure in delivery. At present it would be possible to submit reports showing non-delivery and there is no requirement for remedies or sanctions specified.

Along with further information in the template form to specify that a robust evidence base needs to be consulted and which data sources are used to inform the process, setting a minimum requirement of checking MAGIC, NBN Atlas and LERC data (see our response to 33a), the form should refer applicants to these data sources by including links to these databases.

The template form should also provide links to an Ecological Impact Assessment report or Environmental Statement, and An Appropriate Assessment although not carried out by the applicant, if these reports are required, they should inform the applicant's biodiversity gain plan).

We also suggest more guidance and clarity around how the biodiversity net gain information and plan should be prepared, with further content or guidelines in the template and case studies to help illustrate, for example, as to how the information and plan should demonstrate the mitigation hierarchy and consult a robust evidence base.

Part 3.2: Off-site biodiversity gains

30. Do you agree that further guidance is needed to support decision-making about what constitutes appropriate off-site biodiversity gains for a given development?

- **Yes (please state what in particular would help most)**

Yes, further guidance is critical to ensure good decision-making and accurate records on off-site biodiversity gains.

The guidance should make it clear that a competent and qualified ecologist must be involved in the process of choosing and registering offsite habitat gains. There should be more of an emphasis on BNG-related training covering BNG design, use of the metric, UKHab, habitat condition assessment for ecological consultants.

Providers of net gain may not have any knowledge or expertise in habitat creation and management, so they must be supported by an expert. Monitoring and reporting on outcomes must also be done by a competent person, supported by training on developing management and monitoring plans once Natural England guidance and templates are available.

It is essential that planners and other disciplines get the training required to be competent in BNG. The local planning authority must be able to see the monitoring and reporting of gain sites and provide guidance where needed. While CIEEM is developing resources and training, other organisations should also be pursuing further training, supported by the right Government funding. The Government should provide further guidance and training on what a good balance between onsite, offsite, and statutory credits might look like for ecological consultants and local planning authorities who will be evaluating the biodiversity net gain plan.

As the consultation document states, delivery of offsite gains should be strategic and ecologically coherent, joined up with Local Nature Recovery Strategies. It should be local to the site where possible and necessary (e.g., where habitats are geographically restricted or require to be associated with an existing connected network of habitats). It should also ensure that the impact of the location of offsite provision takes fully into account the impacts on protected and priority species. If there are going to be losses to the habitats and structures that support these species, is the offsite provision going to be within the functional range of the affected species? If not, this could lead to deterioration of local populations or even their local extinction, including of protected species. More guidance and detail on how the delivery, monitoring, reporting and enforcement will work is needed, including when this may be across administrative boundaries.

31. How should the UK Government encourage or enable developers and landowners to secure biodiversity gain sites for longer than the minimum 30-year period?

We welcome and strongly support longer time periods than the current 30-year minimum being required. Other sites, such as Suitable Alternative Natural Greenspaces (SANGs), have a requirement to be managed in perpetuity.

We recommend the Government increase the minimum mandatory time period for new developments and registrations after evaluating mandatory biodiversity net gain practice, as enabled by the Environment Act.

To encourage developers and landowners to secure sites for a longer period (or in perpetuity) where possible, policy and guidance, including on conservation covenants, and additional mechanisms to secure long-term funding, will all be important. We also recommend a planning designation to protect land for nature's recovery, such as Wildbelt designation, should be considered to help give Local Nature Recovery Strategies weight in the planning system and to help protect land to put it on a journey to good ecological condition. Engagement with landowners, including through Local Nature Recovery Strategies conservation covenants will be important. When possible, handing BNG sites over to conservation bodies, such as Natural England, and Local Authorities to manage in the long-term should occur, helping protect and manage them in perpetuity to contribute to nature's recovery across the country. We suggest Defra monitor and evaluate the barriers for those landowners entering into longer-term agreements with a view to considering how these barriers could be reduced or removed.

Part 3.3: The market for biodiversity units

32. Do you agree with our proposals for who can supply biodiversity units and the circumstances in which they may do so?

- **Yes**

Yes, in principle we agree with the consultation document's proposals for who can supply biodiversity units and the circumstances in which they may do so. However, many landowners will not have experience of habitat creation and management, so evidence should be required that the right competence, expertise and advice is in place to create and restore habitats, to secure long-term management and to properly conduct monitoring and reporting. The right enforcement measures must also be in place.

In addition, tenants selling biodiversity units need to be able to guarantee delivery of commitments across the full 30 year period, with the landlord willing to deliver in the event the tenancy ends.

33. Do you agree that developers which are able to exceed the biodiversity gain objective for a given development should be allowed to use or sell the excess biodiversity units as off-site gains for another development, provided there is genuine additionality?

- **No (please explain why not)**

No, we strongly disagree with the Government's proposal that developers which exceed the biodiversity gain objective should be allowed to use or sell the excess biodiversity units as off-site gains for another development. By incentivising the selling-off of any 'excess' biodiversity gain, this proposal would result in a ceiling of 10% net gain. This would also undermine LPAs who are trying to pursue policies that set the minimum as higher than 10%. Rather, 10% gain should be the minimum, not the maximum, to be achieved.

In addition, this proposal risks incentivising developers to overestimate the number of onsite units, so that they can sell off the 'excess' gains. We are concerned about this proposal especially in light of the lack of strong governance, monitoring and enforcement for the delivery of onsite net gain in particular, as explained in more depth in our covering letter and in our response to Q52 of the consultation on reporting, evaluation and monitoring.

34. Do you agree with the proposed scope of the UK Government's role in facilitating the market, as set out above?

- **Other (please tell us more)**

Some form of centralised trading platform is important to ensuring that net gains are delivered and the prices are recorded in a transparent public database. This will help ensure that net gains are delivered and that third parties can hold the system to account.

However, there are benefits to local platforms or systems, for example the county-wide approach being pursued by Cornwall and others. These would tie in better with Local Nature Recovery Strategies. The UK Government could support these platforms and set minimum standards to ensure their consistency and robustness.

Part 3.4: Habitat banking

35. Are the proposals outlined here sufficient to enable and encourage habitat banking?

- **No (please specify what else could be done and why it is needed)**

No, we believe that further measures are needed to make habitat banking work.

Guidance is needed on a good baseline assessment and environment impact assessment, criteria to ensure long-term management, and recording and provision of suitable monitoring information to demonstrate delivery, to ensure that habitat is created and managed to a high standard by accredited managers.

There is a risk to the integrity of habitat parcels if the surrounding habitats/land is managed in a way that isolates it or causes negative impacts. Further consideration is also needed for instances where there are not clear boundaries between land parcels, to ensure there is sufficient land available. The location of habitat banks and all offsite gains should also be guided by Local Nature Recovery Strategies and contribute to the Nature Recovery Network.

There will need to be monitoring methods in place to ensure the quality of the units being sold is representative of the individual land parcel. There should also be mechanisms and sufficient resources for enforcement and penalties applied if the promised gains are not delivered.

36. Do you agree with our proposal that to be eligible to supply biodiversity units for mandatory biodiversity net gain, habitat must be created or enhanced on or after a specified date, proposed to be 30 January 2020?

- **Yes**

Yes, we agree with the proposal and the specific date. A specific date will ensure that existing habitat is not wrongly counted as contributing to net gain, undermining the policy.

In addition, for the biodiversity gains to be additional and eligible as units, there should be clear evidence of the pre-existing distinctiveness or condition to prove the gain and evidence that the habitat creation or restoration was undertaken solely for the purpose of biodiversity net gain and was not funded by other mechanisms.

37. Should there be a time limit on how long biodiversity units can be banked before they are allocated to a development? What would you consider to be an appropriate time limit?

- **Do not know**

There are several issues to consider. If there is a time limit on how long biodiversity units can be banked before they are allocated to a development, this needs to ensure that the creation of habitats that take longer to establish, for example woodland, are not disincentivised. A safeguarding mechanism would also be needed to ensure that areas are not damaged so that they can subsequently be restored for the purpose of BNG. On the other hand, if there is no time limit, there must be checks in place to ensure that habitats that were created several years ago cannot be offered to the market (this would not deliver additionality).

Part 3.5: The biodiversity gain site register

3.5.1: Proposal 1 - The criteria and process for registration

38. Do you agree that the eligibility criteria for adding sites to the biodiversity gain site register are sufficient?

- **Yes**

Yes, we agree with these criteria. We welcome the intention for onsite gains to be added to the register.

In general, all onsite delivery should be recorded on the register and should be subject to the same scrutiny, transparency and enforcement processes as offsite gains. We are currently concerned about the lack of monitoring, reporting and enforcement to ensure the delivery of onsite net gain. It is not a level playing field with respect to offsite gain, which have more clear and transparent MRE measures. This proposal risks creating more, lower quality and unenforceable BNG as current evidence suggests the majority of BNG will be delivered onsite.

39. Do you agree that the register operator should determine an application within a maximum of 28 days unless otherwise agreed between both parties?

- **Do not know**

There must be adequate time for the register operator to sense-check and perform on-site validation of the application.

3.5.2: Proposal 2 - Information that will be required by and recorded in the register

40. Do you agree that this list of information requirements will be sufficient to demonstrate that a biodiversity gain site is legitimate and meets the eligibility criteria?

- **No (please explain which additional information should be included or which existing information should be excluded, and your reasons for this)**

In addition to the information requirements listed in the consultation document, we believe stronger evidence about the baseline condition of the habitat is necessary. The information should also include a map or diagram of the biodiversity net gain site showing the habitat types and their location. There should be a requirement to consult a robust existing evidence base to inform this information. This will allow for monitoring and scrutiny by third parties, including researchers, and local communities to ensure the correct application of the mitigation hierarchy, the principle of additionality, and the genuine delivery and maintenance of habitat creation or enhancement through BNG.

In order to stop landowners reducing the quality of their land, reducing the baseline so that they can generate the maximum biodiversity uplift, this requires third party oversight. Researchers have identified this as a key risk. There are cases where pre-emptive damaging of the site was discovered using past satellite imagery. We recommend that local authorities or central Government should use past Google Earth imagery to confirm that the site has not been damaged or cleared.

41. Do you agree that the UK Government should require a habitat management plan, or outline plan, for habitat enhancement to be included on the register?

· **Yes**

Yes, the UK Government should require a habitat management plan for habitat enhancement to be included on the register. This is important for transparency, as well as to monitor progress against the habitat management plan and ensure delivery of gains.

There should be a level playing field for onsite gains and offsite gains. Onsite gains should be subject to the same scrutiny as offsite gains, by being included in the national register, to be able to demonstrate management and monitoring expertise, and to be subject to external validation.

Providing a Habitat Management Plan on the register is important for transparency, as well as to monitor progress and ensure delivery of biodiversity net gain in the long term. The habitat management and monitoring plan (HMMP) must be clear on the structure of the document and its contents from the outset, and ensure the following are included:

- An overview of the roles and responsibilities, including management period and principal contractor.
- Specification details for that given habitat - e.g., wildflower mixes, and should include not just the management but maintenance of the habitat in the long and short term.
- Contractor competencies - ensure that those carrying out the habitat management are qualified to do so.
- Cost - to ensure the given project can afford the required management and monitoring for the 30-year period minimum. The plan should also include information about the financial risk and back-up plan if the delivery of the BNG scheme fails due to external circumstances, e.g., environmental risk or uncertainty, poor management, bankruptcy of the BNG provider, etc.

3.5.3: Proposal 3 - Application fees and penalties for false and misleading information

42. Do you agree that the UK Government should allow the register operator to:

a) set a fee for registration in line with the principle of cost recovery?

· **Yes**

Yes, we agree with the proposal to allow the register operator to set a fee for registration in line with the principle of cost recovery to ensure the register has the resources to operate effectively.

b) impose financial penalties for provision of false or misleading information?

· **Yes**

Yes, financial penalties will help prevent the provision of false or misleading information. When information demonstrates that the BNG conditions are not met (or where false or misleading information aims to obscure that BNG conditions have not been met), planning permissions should be revoked and there must be an enforcement process or mechanism in place.

3.5.4: Proposal 4 - Appeals against rejection of a biodiversity gain site application or non-determination of an application by the register operator

43. Do you agree with our proposal to allow applicants to appeal a decision by the register operator where the applicant believes that the registration criteria have not been appropriately applied?

- **Other (please tell us more)**

A less confrontational approach might help to resolve any concerns about the application of registration criteria. This could involve, for example, a consultation with Natural England to discuss the failed application, followed by an amended submission to the register operator.

As a last resort an appeal process may be helpful, but more information and detail about how this would work is needed. An appeal process will need transparency and consistency. It will need to involve the appropriate planning and ecological experts, and there may be a role for external stakeholders. The process should not be able to lead to multiple appeals for the same piece of land.

Part 3.6: Additionality

3.6.1: Proposal 1 - Additionality with respect to wider environmental planning policy and legislation

44. Do you agree with our proposals for additionality with respect to:

a) measures delivered within development sites?

- **No (please explain why not)**

No, we do not agree that any measures delivered within development sites, including those delivered as part of a statutory obligation, can be counted towards part of the BNG requirement.

Onsite measures that should be happening anyway under statutory obligation or as part of good design should be happening anyway and therefore will not be additional and be able to be counted towards mandatory BNG.

All onsite delivery should be recorded on the register and should be subject to the same scrutiny, transparency and enforcement processes as offsite gains. We are currently concerned about the lack of monitoring, reporting and enforcement to ensure the delivery of onsite net gain. It is not a level playing field with respect to offsite gain, which have more clear and transparent MRE measures. This proposal risks creating more, lower quality and unenforceable BNG by incentivising developers to deliver BNG onsite.

b) protected species and off-site impacts to protected sites?

- **No (please explain why not)**

The Government has made clear that biodiversity net gain does not replace statutory obligations with respect to protected species (this should also include priority species, e.g., Section 41 species affected by development) and protected sites. Measures taken to mitigation or compensate for damage to protected species and sites that would have occurred anyway though statutory obligations are not additional and should not count towards BNG.

There are some cases in which measures for species might go beyond statutory requirements and, in these cases, these measures could count towards BNG. For example, if there is an impacted bat roost which, once the statutory processes have been completed, additional habitat provision or restoration takes place, it might be a significant benefit to another roost that forages within this range but for which the roost and immediate surroundings are unaffected.

Where genuine additionality to compensation and mitigation measures under statutory obligations is demonstrated, BNG that enhances protected species and off-site impacts to protected sites could be included in the BNG calculations on top of the 10% minimum net gain requirement.

We suggest commissioning research into the levels of mitigation and compensation currently provided in order to be more certain that any requirements on additionality are genuinely additional.

c) on-site impacts on protected sites, and any associated mitigation and compensation?

- **Other (please tell us more)**

Development should not occur on protected sites or impact protected sites, it should be steered away from these sites by the avoidance principle of the mitigation hierarchy. Development that impacts the features of a protected site should not be considered to have achieved biodiversity net gain (in the same way as irreplaceable habitats).

Where a development does impact a protected site, we agree with the Government's proposal that the impact should be measured using the biodiversity metric in order to be calculated.

However, as measures taken to mitigate or compensate for damage to protected sites are statutory obligations, they should not contribute to the achievement of BNG. Measures taken to mitigate or compensate for damage to protected sites and species need to be bespoke and should reflect the uniqueness of protect sites and species compared to other habitats and wildlife. To include them within Biodiversity Net Gain would not only reduce additionality with respect to protection for biodiversity, it would suggest that effects on these sites and species are acceptable because of work to achieve biodiversity net gain. This would send a message that these sites and species can be damaged as long as net gain is achieved, effectively reducing their protection.

d) achievement of River Basin Management Plan Objectives?

- **No (please explain why not)**

No, we do not agree with the proposal that actions taken for the achievement of River Basin Management Plan Objectives could contribute to the required biodiversity net gain. This is because these plans are a statutory requirement put into place to protect and enhance nature and so should be properly funded. They should not rely on ad-hoc private finance, including BNG, to deliver the RBMP objectives.

e) the strengthened NERC Act duty on public authorities?

- **No (please explain why not)**

No, we do not agree with the proposal that actions under the strengthened NERC Act Duty on public authorities could contribute to the required biodiversity net gain. The proposals do not go far enough to ensure transparency such that any units that are sold for BNG are not double counted within an organisation's own biodiversity accounting system. There is also a risk that, over time, resource-depleted public bodies will increasingly become dependent on funds generated through the sale of biodiversity units, and de-prioritise the use of their own statutory funds to address biodiversity issues or obligations. This would result in decreasing the overall (public and private) investment directed towards nature recovery.

3.6.2: Proposal 2 - Enhancements in statutory protected sites for nature conservation

45. Do you think that A) the non-designated features or areas of statutory protected sites and/or B) local wildlife sites and local nature reserves, should be eligible for enhancement through biodiversity net gain?

- **Other (please tell us more)**

We agree with the Government's statement that the biodiversity net gain requirement is additional to any existing legal or policy requirements for statutory protected areas and their features, including restoration and conservation of designated features and the achievement of favourable conservation status and favourable condition. We strongly agree that demonstrating and delivering genuine additionality of BNG measures in protected sites is essential.

In particular, we are concerned that there is a risk of using private finance to meet statutory obligations and goals and reducing or not increasing crucial statutory funding. Sufficient public investment is needed to fulfil statutory obligations, such as improving the condition of statutory protected sites, and meet statutory environmental goals. We cannot and should not rely on private finance through mechanisms such as BNG to bring our statutory sites up to favourable conservation status and favourable condition. There should be transparent and separate accounting processes for statutory funding and private funding, to track government conservation funding separately from funding derived from Biodiversity Net Gain, to ensure that private finance does not lead to reductions in statutory funding.

We agree with the Government's proposals that non-designated features of statutory protected sites should be eligible for enhancement through biodiversity net gain where it is clear that this is additional to, and not a replacement for, public funding to protect designated features and where this enhancement will not interfere or have a negative impact on the designated features or the existing management plan. There should be clear guidelines to ensure additionality and to ensure any enhancements to non-designated features undertaken through BNG are consistent with existing site management plans to protect designated features.

For Local Nature Reserves, Biodiversity Net Gain should not be used to fund ongoing restoration or management for these sites. However, it could be used to fund the expansion of a nature reserve, by buying low quality adjacent land and delivering biodiversity net gain, with the land itself then being incorporated into the reserve.

For Local Wildlife Sites, Biodiversity Net Gain should not be delivered on Local Wildlife Sites that are in good condition and where there are existing commitments, duties or requirements to manage them for nature. On privately owned Local Wildlife Sites in poor condition, where there is no other feasible way of securing conservation management, Biodiversity Net Gain could be delivered on these sites.

46. Do you agree that the enhancement of habitats, including designated features, within statutory protected sites should be allowed in the coastal, intertidal and marine environment as defined above?

- **Yes**

The biodiversity net gain requirement is and should be additional to any existing legal or policy requirements for statutory protected sites and their features. Biodiversity net gain should not replace proper public funding for protecting, maintaining and improving statutory sites. We cannot and should not rely on private finance through mechanisms such as BNG to bring our statutory sites

up to favourable conservation status and favourable condition. There should be transparent and separate accounting processes for statutory funding and private funding for statutory sites, to track government conservation funding separately from funding derived from Biodiversity Net Gain, to ensure that private finance does not lead to reductions in statutory funding.

However, in the intertidal area, a large proportion of this zone is designated. This means that most development in this zone will impact on statutory sites and there are fewer opportunities to deliver net gain outside these areas. As well, even if there is a requirement to develop and implement a management plan and intertidal designated sites can be in unfavourable condition or declining condition due to a range of offsite impacts that the landowner has no control over. Thus in the intertidal zone, non-designated and designated features of protected sites should be eligible for enhancement through biodiversity net gain where it is clear that this is additional to, and not a replacement for, public funding. Any enhancement undertaken for biodiversity net gain should be consistent with existing site management plans to protect designated features.

The marine environment may also require a different approach, but we strongly recommend that this approach should be further consulted on.

3.6.3: Proposal 3 - Stacking of payments for environmental services

47. Do you agree with our proposed approach to combining payments for biodiversity units with other payments for environmental services from the same parcel of land?

- **No (please explain why not)**

We are concerned about the risks of achieving true additionality through stacking and therefore do not agree with the approach set out in the consultation document to combining payments for biodiversity units with other payments for environmental services from the same parcel of land.

Combining environmental payments on one piece of land allows multiple streams of revenue on one parcel of land in order to deliver multiple benefits. It provides incentives to landowners to pursue good land management for nature and funds important nature restoration projects that may not have been pursued with just one income stream.

Environmental credits which are not additional (e.g., those that would have occurred anyway under BNG) can be actively damaging if they are registered as 'offsets' by a polluter, even though the damage they have done has not been compensated for. This risk of 'asymmetrical accounting' on the offset and impact side could enable overall net environmental damage. Biodiversity Net Gain itself is already an offset-type credit, compensating for environmental damage done elsewhere, and it is also implicitly bundled, as the BNG metric accounts for the habitat impact of the project which is a proxy for the wider environmental harm of the development (potentially including species loss, water pollution). So it is not appropriate to stack BNG with other offset or compensatory environmental service payments, such as carbon offset credits.

However, with the right advice, transparency and accounting, if demonstrated to provide genuine additionality, stacking could take place where only one payment represents an offset (to avoid the hidden harm problem) and the other provides verifiable additional public benefit. Our position is that, in principle, BNG could be stacked with other environmental service payments for habitat restoration, nature-based removals, and other management measures that are not being used to compensate for damage elsewhere, such as Environmental Land Management scheme payments and non-offset carbon credits.

While we believe that stacking of BNG with other non-compensatory environmental service payments is acceptable, there are several concerns with the practicalities of stacking. The evidence shows that, in reality, stacking environmental payments is very challenging to demonstrate and rarely leads to additional benefits. The risk of stacking is that the same land could be paid for environmental credits but delivers no or very small additional environmental improvements. For example, it should not be possible to stack biodiversity uplift credits on top of biodiversity net gain. At worst, other environmental services could be in conflict with biodiversity outcomes. For example, woodland carbon code funding should not be stacked on top of peatland code funding

Clear and robust guidance will be needed on baselines, what constitutes additional outcomes between BNG, ELM, and other non-compensatory environmental service payments that could be stacked, and monitoring and how to demonstrate additionality. Many environmental service payments already have robust approaches to additionality that should not be undermined by the BNG approach. For example, habitat creation or restoration required via planning permission is not eligible to be sold as a carbon unit certified by the Woodland Carbon Code as it is rightly considered not to be additional.

Bundling, an alternative arrangement to stacking where a single buyer purchases the full suite of biodiversity units and ecosystem service credits generated by a site as a single 'bundle', should be considered by the Government as an approach that could help ensure additionality and transparency for effective monitoring and enforcement.

There are also concerns about a lack of robust and transparent accounting. If the registers or systems of different environmental services are not joined up and transparent, there risks double payments to one piece of land for the same measures. In any decision about combining payments from biodiversity units with other payments from environmental services on the same piece of land, a comprehensive and transparent registry system, map and accounting system, that can account for multiple types of credits is fundamental.

We welcome the suggestion in the consultation that the approach to stacking would be reviewed after three years in order to evaluate its effectiveness and correct any failing policies.

Part 3.7: Statutory biodiversity credits

3.7.1: Proposal 1 - Use of statutory biodiversity credits

3.7.2: Proposal 2 - Credit price and sales

48. Are these proposals for statutory biodiversity credits sufficient to:

a) ensure, when supported by suitable guidance, that they are only used by developers as a last resort?

- **No (please explain why not)**

There are significant risks to statutory credits as a mechanism to meet the BNG requirement where BNG is not actually deliverable. If it is too easy to access credits, it risks undermining the effectiveness of the BNG policy as a whole. In areas of high land value, having statutory credits too easily available runs the risk of leading to all developments opting for statutory credits and creating whole areas diminished for wildlife. If there are statutory credits, the system must ensure that these are a last resort for developers by pricing statutory credits significantly above market value and ensure the administrative requirements are not simpler than those of registering offsite gains.

To avoid perverse incentives, the local off-site system should be made more attractive than the use of biodiversity credits, for example through an easier system to register for off-site gains than the process used to register biodiversity credits.

b) mitigate the market risk associated with the sale of statutory biodiversity credits by the UK Government?

- **Other (please tell us more)**

Statutory credits should not be the easiest or cheapest option, they should be priced significantly above market value to ensure they are a last resort for developers.

To avoid perverse incentives, the local off-site system should be made more attractive than the use of biodiversity credits, for example through an easier system to register for off-site gains than the process used to register biodiversity credits.

49. Do you think there are any alternatives to our preferred approach to credit sales, such as those outlined above, which could be more effective at supporting the market while also providing a last resort option for developers?

No reply.

50. Do the principles for how we will set, and review credit price cover the relevant considerations?

- **No (if not, what further considerations should be included?)**

It is essential for the effectiveness of the BNG policy to ensure that the price of statutory credits is very unattractive to developers so that there is a strong incentive to look at local options and delivery of net gain first.

Therefore we disagree with the consultation document's principle for statutory credits to be 'cost-effective for developers' – this should not be a priority for the credit price review.

3.7.3: Proposal 3 - Credit investment

51. Do you agree with the proposed principles for credit investment?

- **No (please explain why not)**

There are useful criteria on alignment with Local Nature Recovery Strategies, underpinning with robust ecological criteria and meeting the same standards as other biodiversity gains.

Credit investment should be mapped to a strategic plan, taking into account the Nature Recovery Network and wider government nature restoration policies. In general, credit investment should seek to maximize co-benefits, such as tackling flooding through nature-based solutions, delivering carbon storage, improving water quality through the creation of habitats which manage pollutants naturally, and improving human health and wellbeing through the creation of natural blue and green spaces.

However, these criteria must be strengthened and added to in order to support a robust and effective BNG system. Credits should go above the minimum standards, for example, being secured for longer than just 30 years.

In addition, the credit system should include information about the type of habitat lost and the type of habitat which is being created as part of net gain, in order to ensure transparency. We suggest that Defra outline how projects will be identified for investment and criteria to demonstrate how additionality will be ensured.

Part 3.8: Reporting, evaluation, and monitoring

3.8.1: At a project level

52. Do the above project-level management, monitoring, enforcement, and reporting proposals seem sufficient, achievable, and not overly burdensome on practitioners, developers, or planning authorities?

- **No, not sufficient**

We are concerned that the monitoring, reporting and enforcement requirements, in particular for onsite delivery of BNG, but also offsite gains, are not sufficient to ensure genuine gains are being delivered over the long-term. Monitoring requirements must be clear, transparent, ongoing and demonstrate a genuine cumulative net biodiversity gain over the full 30-year period against a genuine baseline.

Currently, onsite gains have no monitoring or reporting requirements. Government needs to get the governance right: onsite and offsite gains should be monitored to the same standard, a stronger level than is currently proposed.

Offsite gains are proposed to be monitored through self-reporting by landowners, which will not ensure the right expertise, training and transparency in monitoring and reporting. There should be a requirement for the scrutiny of onsite and offsite gains by ecological experts through the local planning authority to monitor and report on the delivery of offsite gains. Onsite gains must be added to the register. Local planning authorities should be required, supported by sufficient resources ring-fenced for the delivery of BNG and ecological expertise, to monitor and scrutinise onsite gains over the full obligation period (30 years). The scrutiny of reports in a planning authority must be done by trained ecologists.

Also, any breach of the planning condition of BNG is practically unenforceable by the local planning authority. Current requirements on LPAs only allow them to consider enforcement action where there is a 'serious harm to local public amenity' – this current requirement is likely not to be applied to enforcement action against a lack of monitoring, reporting or delivery of BNG. The Government should introduce an enforcement mechanism for local planning authorities if promised onsite or offsite gains are not delivered, for example, LPA guidance could make it clear that this includes the delivery and maintenance of BNG.

We agree with the proposal in the consultation for a requirement to share biodiversity gain plan and monitoring report data with local environmental record centres (LERCs). As well as an obligation to submit to long-term repositories like LERCs, there should be a requirement for these data to be in national standards and formats to ensure they are FAIR (findable, accessible, interoperable and reusable). This will improve transparency and scrutiny and contribute to the overall environmental information base.

53. Do you think earned recognition has potential to help focus enforcement and scrutiny of biodiversity net gain assessments, reporting and monitoring?

- **Other**

Self-reporting by or earned recognition for a developer or an offsite BNG provider is not sufficient to ensure BNG outcomes. Third party expert monitoring and reporting, as well as scrutiny and enforcement is necessary.

Accreditation is essential in ensuring the third party body has the expertise and experience to carry out BNG monitoring and reporting. While we do not support earned recognition for a developer or biodiversity net gain offsite provider, there may be a role for earned recognition for another recognised and accredited third party body to carry out BNG assessments, reporting and monitoring. We would be keen to discuss any earned recognition proposals with Defra at an early stage.

3.8.2: At a policy level

54. Do the above proposals for policy-level reporting, evaluation and enforcement seem sufficient and achievable?

- **No (if not, how could they be improved?)**

There is not yet sufficient detail on the proposals to assess whether the policy-level reporting, evaluation and enforcement will be sufficient to ensure the success of the BNG policy as well as evaluate BNG's contribution (among other tools and mechanisms to drive better environmental outcomes) to the achievement of other ambitions, such as the objectives in the 25 Year Environment Plan and the species abundance target in the Environment Act.

In the early years of BNG, more regular assessment of the policy will be required in order to address any issues at an early stage.

Further detail is needed on who will be responsible for this policy level monitoring, and what will happen if Local Planning Authorities fail to deliver BNG requirements.

In order to effectively monitor the overall success of the policy, onsite enhancements will need to be clearly recorded and registered, particularly as research has found that the vast majority of early delivery of BNG was delivered onsite.

As well as monitoring conservation outcomes, a key part of policy monitoring should be around uptake, compliance, and enforcement. We suggest a requirement for LPAs to supply information about how many enforcement actions were taken against projects that fail BNG monitoring and delivery requirements.

In addition, core statutory nature funding should be accounted for separately from funding derived from Biodiversity Net Gain, in order to ensure transparency and so that core statutory funding is not being displaced by private investment, rendering biodiversity net gains not additional and undermining the whole system and ecological outcomes.

55. Considering the data requirements set out above and in greater detail in Annex C:

a) is there any additional data that you think should be included in the Biodiversity Reports?

- **Yes (please describe the data and explain the reasons for your view)**

Yes, Link believes there are several additional data that should be included in the Biodiversity Reports, including:

- Species data. As species are not in the Biodiversity Metric, it is unclear how the overall impacts of BNG on species and on progress towards the species abundance target will be evaluated.
- Information on how well BNG is joining up with Local Nature Recovery Strategies (LNRSs) and the Nature Recovery Network (NRN). E.g., what percentage of BNG is being delivered in areas identified by the LNRSs, how BNG is contributing to the delivery of the priorities identified in the LNRS.
- Enforcement information. As outlined in the Link response, we are concerned about the lack of enforcement mechanism for the delivery of both onsite and offsite gains. We suggest a requirement for LPAs to supply information about how many enforcement actions were taken against projects that fail BNG monitoring and delivery requirements.

We also strongly recommend a requirement for LPAs to use a robust evidence base to inform their reporting, for example Annex C indicates that data to be collected by LPAs include the number of developments impacting irreplaceable habitats, designated sites and protected species. LPAs will not be able to respond accurately to these questions if they are not checking existing data. (This robust evidence base is the same as we think should be required to be consulted to inform the design of biodiversity net gain, biodiversity gain information and biodiversity gain plan, including a minimum requirement of checking MAGIC, NBN Atlas and LERC data.)

b) is there any data included here that should not be required as part of the Biodiversity Reports?

No reply.