# Development and nature recovery working paper: Link response

7 February 2025

This response is on behalf of environmental coalition Wildlife and Countryside Link (Link).

---

## Introduction

The Government's working paper proposes changes to environmental legislation to allow developers in some circumstances to discharge their environmental obligations through payments into a central fund, administered by a delivery body.[1] The Government's starting position is that this proposal would speed up development progress, whilst enabling a more strategic approach to contributions from the planning system to nature recovery.

This response explores the second part of this proposition, drawing on the environmental expertise of Link members. We appreciate the early engagement from the Government on these proposals, and the chance to input at working paper stage. However, we also highlight that continued rhetoric from parts of Government about nature being a 'blocker to development' is inaccurate and unhelpful and undermines constructive engagement on the proposals. Changing well-established systems for the betterment of nature can only be done with a collaborative and collegial approach. And we hope that ongoing engagement will be conducted in this spirit.[2]

Amending environmental legislation that has served as an effective safeguard for nature for decades, at a time of sustained nature decline,[3] is a very serious step. The UK is one of the most nature-depleted countries in the world, and in many cases, sites protected by the Habitats Regulations represent one of a few remaining strongholds of a particular habitat or species. Without appropriate legal protection these threatened habitats and species will continue to decline.

As this response sets out, any proposed strategic approaches must not:

- Undermine the integrity of the Habitats Regulations and associated legislation.
- Extend a strategic approach to areas and issues where it will be unsuitable for habitats and species.
- Undermine the mitigation hierarchy and the priority to avoid harm in the first instance, for example, by removing site survey work necessary for the effective application of the hierarchy.
- Fail to establish compliance and outcome monitoring necessary that ensures that mitigation or compensation measures deliver a net gain for nature.
- Allow developer contributions to fall short of what nature recovery requires from the planning system.

[1] Planning reform working paper: Development and nature recovery
[2] Link statement, 30.01.2025
[3] State of Nature report 2023

To reduce these risks, the next stage of the Government's working paper proposals should include:

- Only minimal changes to the Habitats Regulations and associated legislation, including the Wildlife and Countryside Act. Any changes should retain or improve current levels of protection (i.e. no regression), and be targeted to improve certainty, with a clear statement of purpose (improving nature recovery and better protecting threatened habitats and species; expediting delivery of legal responsibilities without diminishing them; and a clear statement of non-regression). All possibilities to deliver the proposed approach without changing the Habitats Regulations should be thoroughly explored before actual amendments are made.
- Clarity that the new approach will not be applied to all developer obligations, and that it is understood that it would not be appropriate for developer obligations relating to some environmental issues, including some protected species. Certain Habitats Regulations obligations should never be covered by Delivery Plans. Within Delivery Plans, some sites will need to be excluded, as suggested on page 8 (paragraph 31) of the working paper.
- Clarity that application of the new approach will be staggered, starting with a pilot, to allow for new systems to bed in and for teething issues to be spotted and resolved, and for effective governance arrangements and implementation guidance to be developed.
- Robust assessment and post-decision monitoring and reporting provisions for wherever the new approach is applied, to enable habitat management and maintenance and adaptive approaches. Such a commitment to improved environmental monitoring should be embedded as a key principle across the planning system.
- A scale of developer contributions which goes beyond offsetting, to offer compensation in excess of the damage inflicted. This funding should be a contribution to nature restoration and enhancement, but it is important that it is not used as an excuse to 'cost shift', i.e. replace other appropriate funding streams, notably government funding. Financial contributions from the development sector and other parts of the private sector should complement sustained public funding for nature recovery.
- Confirmation that the new approach will be supported by a significant uplift in resourcing for statutory bodies and local planning authorities, to allow for better management of development and nature impacts.
- Articulation of how the new approach will align with existing strategies designed to protect and restore nature, including Local Nature Recovery Strategies, Catchment Plans, and national species and habitat recovery programmes.
- A shared understanding of what works and doesn't work with regard to existing strategic approaches, including for nutrients, district level licensing, and provision on Suitable Accessible Natural Greenspaces (SANGs).
- Assessment of the implications of the proposals for the achievement of the Government's environmental commitments, taking into account the Office for Environmental Protection's January 2025 assessment that progress is off track.[4]

If these elements can be secured, these evolved proposals could be capable of maintaining current environmental standards and even improving some outcomes for nature, if applied to **specific and**

[4] OEP environmental progress report, January 2025

**appropriate issues** such as nutrient neutrality, water availability and air quality. The core aim of the policy should be to secure meaningful improvements to environmental standards.

If the Government is to stand any chance of meeting the Environment Act targets it is committed to and fulfilling its international obligations under the Kunming-Montreal Global Biodiversity Framework,[5] it must go beyond changes to environmental legislation where impacts are uncertain (and could be significantly adverse, if not done right). Nature needs a planning system that prioritises space for nature recovery on land, in freshwaters and at sea,[6] strong regulation to protect against harmful human activities, and environmental investment, drawn from a variety of public and private sources, to fund habitat restoration at scale.

The reason that protection under the Habitats Regulations and the Wildlife & Countryside Act affects development is that nature has reached critical thresholds. The starting point for any reform should be that changes will deliver **demonstrable** improvements to the natural environment, contributing to nature-recovery, meeting Environment Act targets – improvements that could also create environmental "headroom" away from legal thresholds. A thriving natural world constitutes green infrastructure which underpins our economy and wider society.[7] The delivery of this green infrastructure, essential for economic resilience, public health and net zero should be given weight alongside the housing infrastructure the working paper has been drafted to help deliver.

**Response to questions in working paper**

a) **Do you consider this approach would be likely to provide tangible improvements to the developer experience while supporting nature recovery?**

As with all business activity, certainty and clear timelines provide the best regulatory environment for development.[8]

There is a significant risk that changing the application of environmental legislation that has been in place for decades, and is well understood, could create further uncertainty. This is particularly acute given the strained resources across the planning system. A 2021 report funded by Defra suggested that 1 in 4 local planning authorities no longer have access to ecological expertise.[9] A further MHCLG study has found that almost all (97%) planning departments reported some planning skills gaps. For those reporting any gaps, the most commonly reported gaps (selected from a list) were in ecology and biodiversity (72%).[10] Statutory consultees like Natural England and the Environment Agency are currently under-resourced which negatively impacts their ability to carry out their planning functions.[11] Changes to the Habitats Regulations will create uncertainties that will further strain these limited planning capacities.

[5] Kunming-Montreal Global Biodiversity Framework
[6] See Wilder by Design campaign
[7] See Natural England Green Infrastructure Framework
[8] See essays from business leaders, collected by Unchecked
[9] See ADEPT, ALGE & Defra assessment of local planning authorities resourcing
[10] MHCLG survey
[11] See ENDS Report article, October 2024

This combination of significant change and limited capability amongst front-line organisations has created conditions which could result in a fragmentary and slow application of the proposed new approach, undermining development certainty and wider confidence in Delivery Plan outcomes. In order to ensure that the new approach leads to improved development timelines without reducing developer certainty, it is essential that any progression of the working paper proposals is preceded by a significant uplift in resourcing for ecological expertise in local planning authorities and statutory consultees.[12] This would equip the bodies that must be integral to Delivery Plans to prepare for the changes, enabling smooth implementation.

This uplift in funding is also a predicate for easing congestion points in planning more widely.[13] Many of the delays to development wrongly attributed to nature protections are actually due to a lack of capacity amongst local planning authorities and statutory consultees to apply the required processes in a timely manner. Necessary decisions made during the austerity of the past decade to keep core functions viable have stripped out services that previously allowed nature requirements to be processed quickly and effectively.[14] Major studies in 2012 and 2018 both found that the Habitat Regulations and associated legislation were not intrinsically 'blockers' to development, but that resourcing issues affected their successful implementation.[15] A 2023 report by the Office for Environmental Protection came to similar conclusions, finding that issues with the Habitats *Regulations 'do not come so much from the design of the law itself as from inadequate implementation of the law within the wider context of systems for development control overall'*.[16] The proposed move to greater Environmental Outcome Report use could create further uncertainties that exacerbate these resourcing issues (see also answer to question f).

This long-term diminution of the processes that allowed speedy development and nature protection to be delivered alongside each other still needs to be addressed (instead of being mis-represented in ill-considered rhetoric about nature being a 'blocker'), including for planning proposals which do not trigger Habitats Regulations obligations. Increased developer contributions could play a role in addressing these lingering capacity and expertise shortfalls, to ease the pressure on the public purse.

It should also be noted that there is a need for developers to better schedule the time required for assessments and surveys well in advance of applying for planning permission. Many supposed "delays" due to ecology, are in fact because of a failure on behalf of the applicant to provide adequate information in a timely fashion. Further support to local planning authorities and other regulators to help developers meet the obligations, through clearer statutory guidance on survey and impact assessment and further funding, would improve this situation.

[12] See letter from forty organisations requesting this uplift, October 2024
[13] See Planning Portal report
[14] See letter from Chair of Natural England to Chair of Environmental Audit Committee, 2020
[15] Habitats Regulation Review 2012 and Red Tape Review 2018
[16] OEP report on environmental assessment, 2022

**b) Which environmental obligations do you feel are most suited to this proposed model, and at what geographic scale?**

The Habitat Regulations state that the decision maker must not consent to a development unless they are able to ascertain that it will not have an adverse effect on the integrity of a site and/or species protected by the regulations, except for where there are imperative reasons of overriding public interest. These are the primary provisions which result in the environmental obligations the working paper is concerned with.

Some adverse effects on sites may be able to be addressed by the strategic approaches the proposal recommends. Adverse effects which come from multiple sources are more likely to be suitable, as a strategic approach can be used to counteract an increase in effect from one source with a decrease in effect from another. This means that adverse effects on water systems and on landscapes, where effects on their habitats and species are multiple (from the highly connected nature of water systems in the former case and the range of impacts inherent to the scale of landscape in the latter) could be addressed by use of a strategic approach.

A modular approach to developing and implementing the working paper proposals - if taken forward - is a must. We would recommend that the working proposals are explored first in circumstances where Habitats Regulations requirements are triggered by impacts on water and large protected sites (large enough to function as a landscape, with a wide variety of inputs). The geographic scale at which this model is applied to particular issues must be ecologically appropriate, i.e. catchment-scale to address water quality and passability. The ecologically appropriate geographical scale will vary, with county-level scales sometimes being appropriate, and much smaller boundaries sometimes being preferable for some habitat and species needs.

Freshwater and coastal protected sites affected by nutrient neutrality rules would provide a good starting point. The strategic approach developed in catchments like the Solent over recent years closely aligns already with that proposed in the working paper, with developers in the area already purchasing 'credits' from a central pot to fund solutions at scale rather than negotiating site-specific mitigation agreements.[17] Sharing learnings from these existing schemes should spur its extension to all nutrient effected catchments.

The proposals would however change the element of the current strategic schemes whereby developers can only purchase credits and discharge obligations when sufficient credits are available. Under the working paper proposals one developer payment would instead be made at the start, regardless of the availability of credits, and a developer's obligations would then be discharged. This raises the risk of damage being inflicted before mitigation and compensation is applied. To address this, it will be necessary to instruct delivery bodies responsible for delivery plans in nutrient-affected catchments to swiftly over-deliver on mitigation and compensation measures from the start of the delivery plan, with the aim of always ensuring that a development is mitigated for before occupation (the point of adverse effect). Pump priming from the Government, recommended later in this response, would assist with this.

[17] See Link briefing on nutrient neutrality

All Delivery Plans should include explicit timelines for project delivery, and a schedule of measurable gains for relevant features beyond parity so that gains are traceable and predictable. Timelines should focus on the point at which environmental benefits are actually achieved; in the case of habitats, when habitats are mature and ecosystems are functioning well.

The heavily caveated support expressed above is for strategic approaches in specific circumstances. Case by case, different 'strategic approaches' will be appropriate within the framework of robust regulatory regime and properly monitored outcomes

**Link would be concerned at this early stage to extend the strategic mitigation approach beyond nutrients and potentially water and landscape-scale protected sites.** Further expansion of strategic approaches beyond nutrients would need to be explored in detail on a case-by-case basis, with impacts where evidence shows that such strategic approaches would be inappropriate ruled out early. This applies particularly to protected species. We welcome the modular approach to adding additional environmental requirements on a case-by-case basis; we recommend that Defra sets out a transparent set of scientific tests that must be met before additional legal requirements are covered by strategic approaches. These tests should be assessed with independent scientific advice, in a way that is easily open to scrutiny. Pilots for potential new policy areas should be conducted with a view to informing decisions on the basis of sufficient practical and scientific evidence.

Without adequate site-level avoidance and/or mitigation, development often negatively impacts protected species by damaging or destroying the habitat they rely on and risking the health and life of populations. Further research is required to assess the potential for replacement habitat, provided through a strategic approach, to effectively mitigate these losses. It is highly likely that this potential will vary with different protected species, as interactions with compensatory habitat vary with different protected species and different habitat types and features. Whilst some protected species, like Great Crested Newts, can quickly colonise newly created habitats, others such as UK bat species are site loyal and may never use replacement habitat.[18] Some species will be unable to adapt to a new environment, and to use it to feed, shelter and breed, risking local extinctions. It is not credible to assume that what might work for one species will automatically apply to others.

Further species-specific research is needed at scale before this approach can be considered to discharge some (not all) protected species obligations. Such research should draw both on outcomes from the strategic approach to licensing for Great Crested Newts (District Level Licensing (DLL) led by Natural England and District Licensing (DL) by NatureSpace), prototypes for applying the strategic approach to species,[19] and on wider evidence on the level of species 'take' to new habitats and on other relevant ecological factors. Differences between the outputs of different strategic approaches, and differences between the needs of specific species, should be particularly closely considered.

If research shows that a protected species could potentially be suitable for inclusion in a strategic approach, and there is consensus amongst species experts that clear scientific tests for inclusion have been met, it should be brought forward on a one-off basis. We would expect some species, including all bat species, to be ruled out as unsuitable at an early stage. It is also important to consider that a

[18] See material from Bat Conservation Trust
[19] See Natural England blog on District Level Licensing and NatureSpace material

strategic approach to addressing a development's impact on a singular species may not be appropriate everywhere, with strategic mitigation more likely to be a success in some localities than others.

Irreplaceable habitats are habitats which are extremely difficult or not possible to restore and/or re-create within a reasonable timescale (or at all), and are often rare, vulnerable to ecosystem collapse and are highly ecologically distinctive. As a result, mitigation and compensation are rarely appropriate responses to potential development damage to an irreplaceable habitat.

Further clarity on how Delivery Plans will interact with irreplaceable habitats is required.

**c) How if at all could the process of developing a Delivery Plan be improved to ensure confidence that they will deliver the necessary outcomes for nature?**

**The proposed loss of site-specific surveys is a cause of major concern**, which reduces our confidence in the ability of Delivery Plans to secure good outcomes for nature. Without survey information, nature restoration attempts can become an exercise in shooting into the dark.

Nature conservation takes place field by field, pond by pond, wood by wood. What happens in detail on the ground is important, and surveys map out that detail. Properly conducted site-specific surveys are needed to safeguard nature and help to reduce the kind of delays and costs the working paper is concerned about. Surveys do this by providing data at an early stage about where important and vulnerable habitats can be found and where development is appropriate, and informing the best options for mitigation, compensation and enhancement measures within a development. Removal of site-specific survey work will reduce the early data inputs needed for good outcomes and a smooth development timeline risks damage being done including to particularly sensitive habitats.

An initial application of strategic approaches only to specific water catchments or terrestrial landscapes, as proposed above, could speed up environmental mitigation for some effects, but the requirement for surveys that identify the environmental impacts of a development must be retained in order to ensure the application of the polluter pays principle. Delivery Bodies drawing up Delivery Plans covering these discrete geographical areas should be tasked with collating and expanding survey data pertaining to that area, drawing on both existing research and newly commissioned surveys funded through Government pump-priming the fund and developer payments (as per DLL/DL). Indeed, DLL/DL provides a good example of this process, capitalising on novel eDNA technology to provide monitoring data that informs ongoing delivery of compensation habitat. It should be noted that with upfront surveys to inform great crested newt District (Level) Licensing, considerable expense was required in order to gather sufficient data at landscape scale, even though it deployed a method that was relatively inexpensive per use. Surveys to give similar resolution and confidence for other species are likely to be more complicated and require bespoke methods and considerable 'upfront' funding. Good survey work will continue to require both technology and detailed work on site by trained ecological experts.

Investing Delivery Plans with survey obligations would still lift survey requirements from developers, a key time-saving objective of the working paper, but would secure relevant environmental data to

underpin and eventually monitor the effectiveness of, and potentially inform the improvement of, the Delivery Plan, which would grow through time.

Proper site-specific surveys are particularly important when development may affect a protected species, to establish the presence and size of the affected population on site and to inform how best adverse impacts can be avoided. Further research into whether the proposed strategic approach could work for individual protected species, as recommended above, should include consideration of how species surveys could be retained, along with some on-site mitigation elements. This is also true for habitats such as ancient/veteran trees and chalks streams. Indeed, for our most rare and vulnerable species and habitats targeted site surveys may be the only way to ascertain their presence in a local area.

Beyond the Habitats Regulations obligations which are the focus on the working paper, it is important to also retain existing requirements for surveys for other species, including species not protected under the Habitats Regulations but listed under Section 41 (S41) of the 2006 Natural Environment and Rural Communities (NERC) Act. Surveys are an essential precursor to successful application of the mitigation hierarchy and should remain a key pillar of the planning system, across the board.

As well as surveys at the start of the process, it will also be essential to monitor the efficacy of Delivery Plan interventions. Although it is still in its early days, the flagship Biodiversity Net Gain (BNG) provides a salutary lesson; monitoring is poor, enforcement is weak, and many of the promised gains are yet to appear.[20] This must not be the case for Delivery Plan measures. If the Government proceeds with these proposals it should, therefore, require post-implementation monitoring, reporting and improvement of habitat gains from Delivery Plans, with legally secured measures in place to secure good management of habitat restoration sites in perpetuity.

Good monitoring needs to be based on good data, which requires investment in Local Environmental Records Centres (LERCs) and programmes run by other stakeholders, in order to allow the incorporation of species monitoring and specialist analyses. Post-decision monitoring, data collection, reporting and improvement is not currently a clear requirement in planning processes, something that has been identified as a concern by the OEP.[21] A change to require sustained monitoring could be an opportunity to improve the current process considerably. This monitoring information and management capability would enable Delivery Plan actions to be changed by the Delivery Body, if the evidence shows changes are needed to better achieve plan objectives.

Robust monitoring provisions have been key to the success of DLL/DL in England,[22] and of the comparable 'Natural Communities Conservation' strategic approach to nature and development that applies in California.[23] These lessons about the critical importance of monitoring should be applied to Delivery Plans from the start. These lessons include the need for flexibility for different ecological circumstances; multiple and differing Delivery Plans will be needed rather than a single size fitting all.

[20] See Link briefing on BNG for recommended reforms to improve BNG outcomes for nature
[21] See OEP report on environmental assessments
[22] NatureSpace DL monitoring results
[23] See conclusion from 2016 study of strategic approach in California: *'It is essential to institute robust but targeted monitoring and incentivize institutional actors to adapt management strategies to account for new information and changes in circumstances'*

Developer payments should be set at a level sufficient to fund this long-term monitoring, maintenance and management of habitat gain sites included in the Delivery Plan. Applications of strategic approaches to developer contributions elsewhere in the world have seen habitat gain placed into public or civil society ownership in order to secure permanent good management and nature benefits.[24] Where possible this should be applied in England, aided by the use of conservation covenants. All such habitat gain should be genuinely additional, i.e. it would not have been delivered but for the Delivery Plan. Given their long experience of practical habitat delivery work, Link members would be very happy to advise on what contribution levels are required to ensure good quality habitat creation and management.

One tricky aspect of similar schemes is the lack of predictability and visibility of environmental gains and securing the mitigation and compensation in advance of any impacts to the environment being realised. Promised gains are put off into the future, while damage is clearly visible. Development plans should include explicit timelines for project delivery, with actions for nature getting underway as early as possible, and a schedule of measurable gains for relevant features beyond parity so that gains are traceable and predictable. Timelines should focus on the point at which environmental benefits are actually achieved; in the case of habitats, when habitats are mature and ecosystems are functioning well. In some cases, 'better' habitats gains will be more ecologically preferable than 'faster' gains.

The chances of Delivery Plan success could be upped by reducing the regulations on plan actions, to allow them to be delivered faster on the ground and to take swift effect for nature making real the working paper's 'win-win' intentions. This reduction in regulations could include a presumption in favour of Delivery Plan actions within the planning system and a possible exemption from Biodiversity Net Gain (as a careful extension of the current biodiversity gain exemption, only if it can be demonstrated that the action is delivering nature gains in excess of parity), in recognition of the environmental character of the action. Delivery Plans would also benefit from close involvement of eNGOs, CaBA Catchment Partnerships, and Local Nature Partnerships, in creation, application, review and monitoring of the Plan, and close alignment with relevant Local Nature Recovery Strategies (LNRS). Where possible, Delivery Plans should look to co-deliver LNRS priorities.

A local connection to Delivery Plan actions will be important. Where possible, Delivery Plan actions should take place in the Local Nature Recovery Strategy area or in the same catchment area or landscape area, whatever is most ecologically appropriate, as the project that generated a developer payment. This will ensure that areas affected by development see a commensurate boost to local nature recovery.

[24] See for example the Palos Verdes Nature Preserve in California, a 1,400 acre nature reserve created and maintained through the Natural Communities Conservation strategic approach

**d) Are there any additional specific safeguards you would want to see to ensure environmental protections and / or a streamlined developer experience?**

Two further safeguards are required to ensure environmental protections.

The first is to keep changes to the Habitats Regulations, and any associated changes to the Wildlife & Countryside Act and other relevant legislation,[25] minimal. The current wording of the Habitats Regulations is outcome focussed and already allows for strategic approaches, as the successful development of strategic licensing for Great Crested Newts and catchment scale nutrient neutrality schemes demonstrates. **Our understanding is that the Government could introduce much of its proposed approach without opening up the Habitats Regulations,** if the approach is appropriately designed. Sufficient scope already exists. The Government's argument for legal change appears to be that these approaches need more certainty to give confidence they won't be challenged when rolled out on a greater scale. Further clarity on this point is needed, so eNGOs can better understand why legal changes to enable strategic approaches are felt to be necessary.

We believe that these regulatory provisions should be retained, and we disagree with the sense of the government's argument that these are blockers that must be removed (see 2012, 2018 and 2022 reports into efficacy of the Habitats Regulations cited above).

If legal changes really are needed, they should be kept to a strict minimum. After decades of application, the Habitat Regulations and associated case law comprise a legal framework important for protecting nature.[26] If too many legal threads are removed, the whole tapestry could unravel, with cascading effects and unintended consequences that will be difficult to remedy. Any legal changes must be carefully targeted to meet specific objectives to enable strategic approaches.

Such changes must be also carefully limited, with cast-iron safeguards to ensure that the mitigation hierarchy remains at the heart of the Habitats Regulations and their application. The hierarchy, and its requirement that avoidance of harm to nature should be prioritised, followed by mitigation with compensation only applied as an option of last resort, should be the golden thread running through effective nature protection. Its principles should remain integral to the Habitats Regulations, to ensure that developers explore every option to avoid causing damage before moving to mitigation.

If changes to the Habitats Regulations are required, the Government should also consider including elements that would strengthen the core effectiveness of the protections. This could include the greater focus on monitoring recommended above, and the establishment of Favourable Conservation Status in law as a guiding principle for species and habitat conservation.[27]

The second safeguard is financial. The amount of developer contribution accrued through the working paper approach must be sufficient to more than compensate adverse effects from development permitted under the proposed approach. Recent years have shown that offsets frequently fall short, and

[25] Including the Natural Environment and Rural Communities (NERC) Act 2006, The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017, Salmon and Freshwater Fisheries Act 1975
[26] See Link briefing on the Habitats Regulations
[27] Link briefing on Habitats Regulations, pages 7-8

that significant over-provision of mitigation is essential to even achieve parity with the development harm inflicted. It is for this reason that the 10% gain in BNG was proposed at the inception of the policy by Defra as the *'lowest level of net gain that the department could confidently expect to deliver genuine net gain, or at least no net loss, of biodiversity'*.[28] The UK is a signatory of the 1992 Rio Declaration, which recognises that a precautionary approach should be taken when assessing action to be taken to redress environmental damage.[29] Developer payments should fund delivery bodies to deliver far more gain than harm inflicted to actively increase gains for nature, delivering major nature restoration. Payments should be sufficient to cover all the pre-requisites of successful restoration - staff, surveys, management, maintenance and future protection.

**e) Do you support a continued role for third parties such as habitat banks and land managers in supplying nature services as part of Delivery Plans?**

Yes.

Private sector involvement in both nutrient neutrality strategic schemes and in strategic licensing for Great Crested Newts has proven to be effective. It is important that the Government's new strategic proposals build on this approach and allows good, proven private sector providers to smoothly transition into the new framework.

It is also important that governance for the new strategic approaches is clearly articulated. Strong rules should be in place to ensure that public bodies do not end up "marking their own homework" as regulator and delivery body. Regulation should be kept separate from delivery to avoid perverse incentives and decisions being made around a desire to generate funding, or the temptation to dilute standards to promote delivery. In some circumstances, it may be appropriate for Natural England or another responsible body to develop a delivery plan and implement some aspects of it. In many circumstances, however, they should commission work as appropriate from local authorities, private providers, eNGOs and wider civil society.

As evidenced by the success of the NatureSpace partnership in delivering strategic mitigation for Great Crested Newts (due in part to developer payments being set at a high enough level to secure effective conservation work) there is a strong case for enabling ongoing provision of compensation habitat through alternative private and third-sector delivery bodies, with oversight from public sector regulators.[30]

The expectations of these roles should be clearly set out in the policy framework for the strategic approach, with a high bar for monitoring and reporting that should apply just as much to public bodies as it should for private and third sector providers.

[28] See BNG impact assessment, 2018
[29] Principle 15, Rio Declaration
[30] NatureSpace monitoring results

**f) How could we use new tools like Environmental Outcomes Reports to support this model?**

Environmental assessment, including Environmental Impact Assessment (EIA), Strategic Environmental Assessment (SEA) and Habitats Regulations Assessment (HRA), are vital processes for gathering information on potential environmental impacts of development proposals to inform good decision-making and development design. They also provide transparency to local communities and the public. Government has, unfortunately, allowed a narrative to grow that these are unhelpful when, in fact, the existing environmental assessment legislation has been found to be fit-for-purpose. As with the Habitats Regulations, the issue is not that they are inappropriate but that the government has failed to properly implement and champion them.[31] The focus must, therefore, be on improvements to implementation which would boost their effectiveness for nature and for those interacting with the planning system to provide better outcomes for nature, along with greater clarity for developers and communities.

Analysis by the Office for Environmental Protection identified three practical barriers to effective implementation of environmental assessment regimes, including access to information, the extent of post-decision monitoring, evaluation and reporting, and access to expertise (which exists both in statutory bodies and eNGOs).[32]

While in principle a move to a more outcomes-focused approach to environmental assessment sounds positive, undertaking reforms to a fit-for-purpose and well-understood regime of environmental assessment and associated case law will involve a long transition period, create uncertainty, and potentially cause delays for those involved in environmental assessment. In addition, a new system of environmental assessment will not necessarily solve the underlying implementation issues that must be addressed for any system to work effectively. For these reasons, **taking action to improve the existing environmental assessment regime is overdue and is far more preferable in our view.**

Environmental assessment should support this model by providing the right environmental information at the right time and by supporting post-decision monitoring, evaluation and reporting. SEA could be used to help identify environmental issues in a particular region that could be usefully tackled at a strategic scale with a Delivery Plan. EIA and HRA could help provide the site-specific survey and information needed to support the development of a Delivery Plan.

Where a Delivery Plan for a particular environmental concern is in place, the SEA, EIA and HRA could not have to design mitigation or compensation measures, but for clarity and transparency, they should still identify the environmental issue and refer to the Delivery Plan. If the Government shifts the responsibility of site assessments and post-decision monitoring and management for some environmental issues to the Delivery Body, then these requirements would not have to be fulfilled in the EIA or HRA. For issues not dealt with in the Delivery Plan, the baseline site assessments and post-decision monitoring, management evaluation and reporting should still need to be conducted as part of the EIA or HRA. Assessments provide the basis for successful outcomes and should be retained.

The existing environmental regime could be usefully tweaked, or any new regime such as Environmental Outcomes Reports could be designed, to improve the implementation of environmental assessments

[31] See OEP report on environmental assessments
[32] See OEP report on environmental assessments

and to support strategic approaches to mitigating or compensating some environmental issues, as proposed in this paper.

**g) Are there any other matters that you think we should be aware of if these proposals were to be taken forward, in particular to ensure they provide benefits for development and the environment as early as possible?**

There are three proposals in the working paper which Link strongly supports and would like to see retained and extended as the approach evolves further.

The first is the commitment that '*the Government may in some instances provide upfront funding to a delivery body*'. This will be necessary to enable delivery bodies to start work on nature gains straight away, whilst waiting for the first developer payments to be made. The 2025 Comprehensive Spending Review should include pump-prime funding to deliver the first Delivery Bodies (for water and landscape sites, as recommended above) and ensure that they can get environmental assessments and gains rolling ahead of development, with the Nature Restoration Fund then operating on a cost-recovery basis.

Second, we support the proposal that wider development standards could be set in areas covered by strategic approaches to contribute to nature recovery efforts. For example, in catchments affected by nutrient pollution or lack of water availability it would be advisable to set strict standards for water consumption; stronger standards for developments to incorporate appropriately designed and located wildlife habitats would be complementary, such as mandatory sustainable urban drainage systems (SuDS).

Link also welcomes the suggestion that Delivery Bodies could be given land acquisition powers, including compulsory purchase. These powers could enable Delivery Bodies to make interventions that grow and connect important spaces for nature, delivering the *'more, bigger, better and joined'* natural habitats highlighted by the Lawton Review as essential to nature's recovery.[33] Acquisition powers should also enable the purchase of rights and management of freshwaters.

Finally, it is welcome that Government has committed to going beyond simply offsetting harm to unlock greater development contributions to nature recovery. This is a sound principle that should apply at all stages of development of proposals in the working paper.

---

For further information, contact

- Emma Clarke, Link Advocacy Lead, emma.clarke@wcl.org.uk

7.2.2025

[33] Lawton Review, 'Making Space for Nature'

The following members of the Wildlife & Countryside Link coalition express their support for this response:

Amphibian and Reptile Conservation
Buglife
Bumblebee Conservation Trust
Campaign for National Parks
Chartered Institute of Ecology and Environmental Management (CIEEM)
CPRE, The countryside charity
Freshwater Habitats Trust
Friends of the Earth
Institute of Fisheries Management
National Trust
National Forum for Biological Recording
People's Trust for Endangered Species
Plantlife
Rivers Trust
RSPB
Seal Research Trust
The Wildlife Trusts
Woodland Trust