

Wildlife and Countryside Link response to Defra net gain consultation proposals

Response by Wildlife and Countryside Link

8th February 2019

Wildlife and Countryside Link (Link) is the largest environment and wildlife coalition in England, bringing together 49 organisations to use their strong joint voice for the protection of nature. Our members campaign to conserve, enhance and access our landscapes, animals, plants, habitats, rivers and seas. Together we have the support of over eight million people in the UK and directly protect over 750,000 hectares of land and 800 miles of coastline.

This response is supported by the following organisations:

ALERC; Amphibian and Reptile Conservation; A Rocha; Institute of Fisheries Management; Bat Conservation Trust; The Rivers Trust; Woodland Trust; Wildfowl and Wetlands Trust

Additionally, the “key principles” section below is supported by *Campaign for National Parks*

Key principles for a successful net gain policy

Before responding to specific consultation questions, we have set out overarching principles on which any net gain approach should be based if it is to succeed and which would be prerequisite to our support.

- Net gain must operate entirely within the **mitigation hierarchy** and never become a ‘licence to trash’.
- Net gain should be incorporated into improved strategic spatial planning, and implemented within the context of coherent, long-term, national, regional and local strategies for the restoration of nature and natural capital. This is essential to support the application of the mitigation hierarchy as well as delivery for the Government’s environmental obligations and commitments, and the aspirations of *A Green Future*.
- Application of net gain must be consistent with the existing system of biodiversity protection for sites and species under national and international legislation and national and local planning policies. *For example, planning authorities and developers must not be permitted, in any way, to use net gain to override planning or other protections which apply to sites such as Natura 2000 sites, SSSIs, National Parks, AONBs and marine protected areas, including the strong presumption against major development in such locations; to historic designations; and to protected and priority species.*

- *Some habitats and environmental features are irreplaceable and should be strict no-go areas for development. Since they cannot be recreated, and neither loss nor damage could ever be properly compensated for, a net gain approach would not be appropriate. Where, in wholly exceptional circumstances, having followed the mitigation hierarchy, it is concluded that destructive or damaging development have to go ahead, these irreplaceable features must be subject to a separate bespoke net-gain procedure. This must start at the highest point of the metric.*
- A net gain approach could deliver positive benefits for biodiversity, people and the wider environment. *However, it is just one of a suite of tools and policies which will need to work in concert to meet environmental objectives and obligations.*
- What benefits should be delivered, where and for how long, and how this will synergise with other initiatives will need to be clearly set out within national and regional strategies and, at local level, in detailed delivery plans if the full value of a net gain approach is to be realised and retained.
- Biodiversity net gain should apply to development of most types and scale and must be mandatory, with a statutory basis. *However, the obligation should be appropriate to the scale, location and impact of the development.*
- *Improvements under any system of net gain must be additional to any habitat compensation that would have occurred anyway, including any actions required to comply with existing legal obligations*
- A development's net gain obligations must be assessed objectively, and defined using a set of robust, standardised metrics to provide clarity, consistency, comparability and transparency, requiring and delivering a genuine biodiversity net gain.
- The net gain obligations for a development must be measured against a robust and baseline assessment of the site, taking account of its context in time and space.
- Both the collection and availability of data on existing species and habitats (including importance, status, local significance and irreversibility of harm) and the extent and mode of use needs to be significantly improved and better supported in support of assessing, delivering and monitoring net gain.
- Any metric calculator should include an adequate risk multiplier be set to address the likelihood that not all expected gains will accrue as intended.
- Net gains should be delivered on site or as close to it as possible and this should be planned for from the outset. Where circumstances preclude this, any remaining obligation should be discharged in accordance with agreed local strategies.
- Success will be measured not just by the quantity but by the ecological relevance, quality and long-term integrity of net gains in relation to local, regional and national biodiversity objectives, and in particular the quality of development proposals.
- Any net gain system must be regulated, properly managed and adequately resourced. *Performance must be monitored, reviewed and reported on so as to ensure accountability and timely delivery on commitments, increasing effectiveness, maintaining public confidence and conferring transparency throughout.*
- The permanence of net gains and the degree of uplift should be determined such that the system will be viable *financially* (for developers and net gain administrators and delivery

bodies) and *ecologically*. *The adopted net gain regime must ensure the restoration and enhancement of species, habitats and other key features, whilst taking account of climate change and other pressures, as a normal part of the development process.*

We welcome the recognition already given to many of these points within the consultation document itself but wish to stress their importance. In considering what could be introduced and what would be needed for it to work efficiently and effectively in relation to the infrastructure currently in place there are significant gaps and weaknesses which need to be addressed, even with regard to the implementation of the mitigation.

We recognise that the basis for adopting a mandatory biodiversity net gain regime are presently further developed than the measures for wider environmental net gain but consideration should be given to how a unified system may be adopted during the lead in to the introduction of biodiversity net gain. Whilst many gains for biodiversity are likely to provide or require wider environmental improvement biodiversity gain obligations should never be substituted with environmental gains that do not meet identified biodiversity obligations.

Additionally, we recognise that the Government is bringing forward many new proposals relating to the future of the environment. How we make use of it and how we undo past damage and protect it better in future, for its intrinsic value and the ecosystem services on which we all depend, whilst taking account of the implications of population growth and climate changes. It is crucial to ensure that these different initiatives, not least in relation to agriculture, biodiversity, natural capital and development are well integrated and that what will be delivered through biodiversity and environmental net gain approaches, and via new environmental stewardship schemes and payments for ecosystem services will realise the potential synergies as well as ushering in a truly sustainable way of doing business with the environment.

Making biodiversity net gain mandatory could help considerably towards nature's recovery across England. However, this will also depend on the introduction of statutory measures

- to ensure the effective mapping, planning, protection and improvement of the natural environment.
- to ensure the effective and efficient targeting of resources, application of regulation and investment of funds, and
- to underpin effective stakeholder engagement and the long-term monitoring and reporting that is needed as a foundation to good environmental governance.

A statutory system of spatial mapping and planning will need to be delivered locally, within a national framework to ensure linkage to national strategy and governance and to ensure quality and consistency, while also enabling local participation, ownership and tailored delivery. An effective system is very unlikely to emerge voluntarily or as a matter of short-term, changeable public policy. For net biodiversity gain and net environmental gain to be achieved from development, the development planning system will need to adopt local Nature Recovery Network Maps that identify the location and extent of areas where we must protect, enhance and restore habitats and ecological processes. They should be developed collaboratively and interlink with neighbouring maps, and should be used to guide the location and detail of development, and to target net gain payments for maximum collective benefit to nature's recovery within a local area.

The adoption of net gain – and Local Nature Recovery Networks provides the opportunity for a ‘eureka moment’ in relation to the government’s approach on the environment and natural capital – and to prepare the way for Nature’s Recovery

What development should be in scope of a net gain policy?

1. Should biodiversity net gain be mandated for all housing, commercial and other development within the scope of the Town and Country Planning Act?

A well-implemented biodiversity net gain approach within the planning system would help address the existing variation and weaknesses in

minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures,

providing encouragement to utilise

opportunities to incorporate biodiversity improvements in and around developments

in accordance with the National Planning Policy Framework. However, as the consultation impact assessment and the evidence of the past seven years clearly show this will only work if there is a mandatory approach to provide clarity, consistency and a level playing field.

We consider that the scope of any biodiversity net gain liability on development should be extended to all development so far as is **practicable** and **reasonable**.

Whatever decision is made in this respect will need to ensure that the resulting proposals will deliver a sufficient level of net gain within England and each county/district overall. What this annual total needs to be in relation to delivering 25 Year Environment Plan (25 YEP) goals and Local Nature Recovery Networks in particular should be regarded as the starting point for determining what developments might be excluded and what level(s) of uplift will be required of those which are liable. Whilst we would argue strongly for flexibility in how local authorities apply net gain, the decision as to what developments should be liable should be taken nationally.

Net gain obligations must apply fully to National or Regional Infrastructure projects. *These have a potentially major impact on biodiversity, given their scale and the far-reaching nature of their impacts and it is not understood why they appear to have been exempted from the proposals. The application of ‘wholly exceptional circumstances’ may be used to justify proposals which result in loss and harm that would otherwise not be permitted but should in no way evade the liability that applies to other development. This would not only be unfair and unreasonable but also offload the burden on those who are liable and undermine confidence in the Government’s approach to net gain and the 25 YEP.*

The National Infrastructure Commission’s own report on the Oxford-Cambridge Corridor has called on the government to achieve net gains for biodiversity and natural capital across the arc. Such major infrastructure projects should be used to provide examples of best practice and to trial new approaches for others to follow and should particularly seek to address the barriers that transport routes already represent to wildlife dispersal.

Any net gain system will need to be simple to administer and the suggestion is that it should be incorporated within the planning system such that all development where planning permission is required should be liable for net gain.

This would exclude permitted development (other than where a Section 4 notice has removed such rights). This could be extended to cover permitted development proposals where prior approval must be sought but this could be a decision for the local planning authority.

At the other end of the scale, for the purposes of practicality, some proportionate, simplified system for apportioning net gain liability should apply to minor developments that fall below a threshold where formal application of the biodiversity metric is appropriate. If some banding approach were to be taken proposals of different scale, below such a threshold, it would be possible to classify some initially as 'Band 0', i.e. technically liable but with no identified obligation rather than excluding them altogether. It would then be easier to revise banding at a later stage, particularly if biodiversity and environmental net gain are to be integrated.

It is possible to envisage a range of specific situations, e.g. extending over a prior permitted development extension which would not increase a building's footprint in itself, which would either need to be dealt with on an individual basis or, preferably, need to be ruled in or out of net gain liability. The example here could result in the loss of established urban swift nesting sites which might not be picked up or addressed under the present planning system. Capturing such proposals within net gain, with an appropriate level of obligation, as part of the planning application process rather than dealing with individual cases would provide a reasonable, balanced and practical approach.

We do not envisage this as a form of biodiversity tax but the means to a change in consciousness and approach which ensures that nearly all development provides some biodiversity enhancement rather than impact. Developers of all types should be encouraged to address this from the outset of their scheme whether that relates to enhancing 'wild' areas on site or off site, incorporating a green roof or natural sustainable drainage scheme or providing permanent nesting/roosting features in or on their building – proportionate to the development. It would be their choice as how best to address the obligation.

We also wish to avoid the creation of perverse disincentives against encouraging wildlife in the grounds of development sites or gardens on the grounds that this might have implications in relation to future development proposals.

There is a need to evaluate the likely net negative impact of permitted development and how this might be addressed in future. This is particularly the case where in modern development and regeneration schemes, communal green spaces and private gardens are already very small, often precluding the growth of all but the smallest trees.

2. *What other actions could government take to support the delivery of biodiversity net gain?* [BC4]

The wise stewardship of natural capital has often lost out to short-term economic interests in the past and it would be helpful if all government departments would actively and visibly embrace net gain as a means of facilitating more sustainable development.

Actions which government should take relate partly to legislation and partly to enabling local planning authorities which are likely to be responsible for administering and delivering or overseeing the delivery of net gain.

Legislation & Policy

- The new Environment Bill should provide a strong legal basis for implementing net gain for biodiversity and the wider environment. This should include:

- Replacement of the NERC Act Section 40 duty (<https://publications.parliament.uk/pa/ld201719/ldselect/ldnerc/99/9902.htm>, <https://publications.parliament.uk/pa/cm201213/cmselect/cmenvfru/492/492vw52.htm>) with a strong, overarching ‘**natural environment duty**’ on all public bodies to secure the maintenance, restoration, recovery and enhancement of natural environmental features and their functions so that our environment, natural capital and ecosystem services will be healthy, resilient and sustainable for the benefit of people and wildlife,
 - The new ‘natural environment duty’ should include annual reporting on how public bodies implement the duty – including net gain delivery,
 - In support of this duty every public body should be required to source and utilise up to date biodiversity information for their area(s) of interest from the relevant Local Environmental Records Centres and to share the findings of any surveys with the LERC.
 - This new duty needs to be enforced by the Office for Environmental Protection
- Duties on
 - (a) the secretary of state:-
 - to prepare and maintain national strategic guidance on the creation and implementation of **Local Nature Recovery Network (LNRN) Plans and Maps**, ensuring that the scope and purpose of the maps and plans includes air quality and water condition, climate change adaptation and delivery of other ecosystem services,
 - to report on progress made with Local Nature Recovery Networks, locally, regionally and nationally at 5 yearly intervals.
 - (b) local authorities, national park authorities and relevant authorities at sea:
 - to create for their area of responsibility **Local Nature Recovery Network Plans and Maps** that identify the location and extent of priority areas for the protection, enhancement and restoration of habitats and ecological processes and areas of deficiency in access to nature and actions to be taken in delivering a Local Nature Recovery Network. The maps should be included with the authorities’ spatial plans and used to coordinate the delivery of net gains not provided on site,
 - to establish, or work with an appropriate existing independent partnership of local stakeholders, e.g. a Local Nature Partnership, Biodiversity Partnership which shall have the responsibility for advising on/approving the Local Nature Recovery Plan and Map,
 - to report annually on the administration and implementation of net gain and the delivery of their Local Nature Recovery Networks.
- A duty on the UK government to co-operate with devolved administrations and other bodies on transboundary and international environmental matters – particularly in relation to the delivery of Nature Recovery Networks within the UK and how this is supported by net gain and other initiatives working in concert.
- Assigning responsibility for auditing net gain implementation should be lodged with the new Office for Environmental Protection.

- Ensure lessons are learned - beyond the percentage of failures - from related approaches adopted elsewhere in the world, particularly in relation to the creation of high quality habitat, and from previous attempts to introduce policy and practical initiatives relating to biodiversity within the UK.

Enabling actions

Local planning authorities

Ensuring the successful implementation of a mandatory net gain policy is likely to depend heavily on local (planning) authorities. In the absence of statutory obligations - such as apply to archaeology - there is currently considerable variation in their current handling of natural environmental matters, reflected in their policies, and the extent and capacity of ecological expertise available to them, as previously highlighted by the Association of Local Government Ecologists [https://www.cieem.net/data/files/Resource_Library/News/ALGE_Report_on_Ecological_Competece_and_Capacity.pdf]. Their degree of preparedness for net gain varies widely, as

We would suggest that

- Local planning authorities will need to allocate resources to ensure that they have access to a sufficient level of ecological expertise to meet their obligations under any new Natural Environment Duty and, in particular in relation to the planning and delivery of Local Nature Recovery Networks and assessment of net gain proposals.
- This will need to include
 - determining whether the mitigation hierarchy has been followed appropriately or the proposal should be rejected;
 - assessing whether net gain proposals are acceptable or what more may be required by condition or obligation;
 - refusal of applications which make inefficient use of land - with biodiversity net gain a central component of what efficient land use requires – in accordance with NPPF paragraph 123c.
 - having the capacity to follow up in checking and enforcing the discharge of planning conditions including the delivery and monitoring of net gain by whoever has assumed the legal responsibility for this;
 - necessary use of local environmental records centre services, to ensure access to and use of the biodiversity/environmental evidence which local authorities are required to take into account (together with that additionally provided by developers) in guiding
 - (a) the preparation of local plans including the allocation of sites for development, and their green infrastructure strategies and Local Nature Recovery Network plans and maps;
 - (b) their decision making; and
 - (c) their own operations

- as well as the positive influence they can have on other stakeholders.
- Local planning authorities will need to be able to cover ongoing net gain administration on a full cost recovery basis once the system is embedded but government will need to provide funding support to help local authorities or groups of authorities become 'net gain ready' and to sustain the new system for an initial acclimatisation period.

- There will be a need to communicate the benefits of an effective biodiversity net gain regime to Chief Planning Officers and Chief Executives, directly and via the Local Government Association.

Guidance

Existing guidance in relation to biodiversity and the natural environment will need to be brought together and updated with regard to the introduction of biodiversity net gain and other changes that may occur during any lead in period.

Ecological Assessments

Within the current planning system there are a considerable number of planning applications submitted without adequate evidence in support, which inevitably results in delays, refusals and schemes being accepted that have negative net outcomes for biodiversity and the environment. This needs to be addressed if a net gain regime is to succeed.

One option would be to require that where a set of trigger conditions are met a planning application must be supported by ecological surveys, assessments and reports – incorporating a biodiversity metric calculations in accordance with British Standard **BS42020:2013** (*Biodiversity – Code of Conduct for Planning and Development*) - updated to incorporate net gain obligations. For such applications the developer must be required to demonstrate how, in following the mitigation hierarchy, they have taken expert surveys and advice into account within their design process, minimising and mitigating impacts, and identifying net gain proposals. Provision of this supporting information should be required for validation of applications.

Where an applicant or their agent undertakes an ecological survey in support of a planning application or monitoring of net gain delivery, they should be required to provide all survey records in a standard format to the local environmental records centre (LERC).

Local Environmental Information

Where relevant trigger conditions apply a local data search should be mandated. This is important in highlighting potential off-site impacts and determining what surveys will be required.

Local Environmental Records Centres should be well-placed to provide LPAs, LNRN partnerships, developers and other with data services in support of biodiversity net gain implementation, LNRN planning, mapping and delivery, monitoring and reporting

[\[http://www.alerc.org.uk/uploads/7/6/3/3/7633190/local_environmental_records_centres_and_biodiversity_net_gain.pdf\]](http://www.alerc.org.uk/uploads/7/6/3/3/7633190/local_environmental_records_centres_and_biodiversity_net_gain.pdf).

A common current failing, even where an applicant employs an ecological consultant, is for no reference to be made to existing information about sites, species and habitats within the vicinity of a development site. Within London a GLA-Greenspace Information for Greater London assessment indicated that 80% of applications which required one to meet good practice standards were lacking a local biodiversity data search.

The present ‘payment per search’ funding model is a major obstacle to this. Consideration should be given to introduction of a system where +/- all planning applicants are required to contribute towards local environmental information provision when submitting their application, the funds being passed from the planning authority to the LERC. This would sustain a more accessible, more efficient environmental information system for all, with significant benefit for the delivery and monitoring of net gain and Local Nature Recovery Networks.

Addressing Obstacles/Gaining support

DEFRA needs to set out the broader framework in which net gain, and planning more generally, is required to support biodiversity conservation and where more could be done. This should help define the roles of different actors and the expectations of and limits from planning. In particular we would suggest that there is a need to

- (i) review the constraints of the various components in biodiversity conservation through the planning system; these are many and varied and include resourcing/ use of funds and the limits of duties and legislation. *How might these be addressed?*
- (ii) run a campaign to educate and to win ‘hearts and minds’. *People - those involved with planning and net gain and those affected by development - need to want this. This could help prepare the way for the adoption of environmental net gain.*

Supporting Environmental Protection

Whilst the protection and retention of features on the grounds of biodiversity importance and ecosystem function should be dealt with elsewhere in existing and future policy & legislation, (and public bodies required to adopt a holistic natural capital approach to their duties, operations and assets) a net gain approach should be extended to the loss or damage of features. This could be applied to e.g. pollution incidents, or the removal of trees from streets and green spaces.

Supporting Environmental Enhancement

There is a need for a favourable regulatory framework for promoting habitat creation, e.g. pond creation or other activities needed to create net gains and the licensing requirements for subsequent maintenance and monitoring. A ‘light touch’ approach may be appropriate – but should be considered against an assessment of its role in achieving strategic goals, e.g. LNRN delivery via net gains.

3. *Should there be any specific exemptions to any mandatory biodiversity net gain requirement (planning policies on net gain would still apply) for the following types of development? And why?*

Any system to be introduced should be equitable, proportionate, provide for flexibility of approach and designed so that development will contribute to the goals of the 25 YEP and the delivery of Local Nature Recovery Networks.

All development should be included other than where **permitted development** rights apply.

It is important to recognise that an effective net gain policy needs to address ‘death by 1000 cuts’ issues and not only address major impacts. However, any individual net gain obligation should be proportionate to the scale of development and its impact.

Still more importantly the policy should increasingly result in proposals which deliver gain in some form as part of the design, having considered biodiversity from the outset.

Exclusions would serve to reduce the proportion of development which delivers biodiversity or wider environmental benefit, placing a greater burden on those schemes are liable. This may also have consequences in relation to the quantity of development and proportion of development types associated with different districts, towns, cities or areas of the countryside or coast.

a) *House extensions*

Extensions that would be allowed under permitted development rights – where these have not been removed – should be excluded but extensions which require planning permission should be wholly subject to net gain obligations, with the proviso that this must be proportionate to the development and easily administered within the application process.

b) Small sites

All small sites should be included. If it is assumed that the local planning authority will be the body to administer net gain arrangements has flexibility in how it treats development within its area then there would be the option for the LPA to treat e.g. difficult small sites in a different way. The difference in circumstances from one authority area to another need to be recognised but there is no justification for exempting all small sites (regardless of their existing value). Net gain requirements should apply. They must be proportionate and an obligation could be reduced or waived by the LPA under certain circumstances – provided the LPA maintained an overall agreed level of gain from development within its area..

c) All brownfield sites

The government has clearly stated that net gain will deliver benefits for all development, including providing greater certainty and process cost savings. Accordingly, there would be no justification for excluding brownfield or other sites. Restoration of previously-lost habitats could be addressed via the creative development of brownfield sites, in support of Local Nature Recovery Network Plans. This will also avoid difficulties with sites that are a mix of greenfield and brownfield.

d) Some brownfield sites (e.g. those listed on brownfield, or other, land registers)

All should be included as above.

4. Are there any other sites that should be granted exemptions, and why? For example, commercial and industrial sites.

No all development including by government and other public bodies should be included.

5. As an alternative to an exemption, should any sites instead be subject to a simplified biodiversity assessment process? [BC8]

This will be vital in relation to smaller developments and there may be other instances, e.g. a new building on a tarmac carpark where a full biodiversity assessment would not be appropriate. In many cases this will be obvious. Elsewhere, pre-application planning advice should be sought and requirements set by an ecologist employed by the local planning authority in accordance with agreed practice.

A three-pronged approach is suggested:

1. Major development

A **threshold** needs to be set for developments (of whatever sort) above a certain scale/impact level to which a full Defra biodiversity metric-based assessment should apply. What the NPPF classifies as **major development** provides a likely dividing line.

2. Minor-Mini development

Whilst the mitigation hierarchy should be fully adhered to a simplified assessment process should apply to sites that are not classified as major development within the NPPF. Much of this would be classified as **minor development**. For housing this means sites where fewer than 10 homes will be built or the site is smaller than 0.5 hectares. For non-residential development this means additional floorspace of less than 1,000m² or smaller than 1 hectare.

3. Micro development

Below a certain threshold lie very **small-scale** developments: housing extensions etc. Where planning permission for these will be required, there should be a process appropriate to the

scale of such development. It should be simple for any applicant or planning officer to determine how net gain should apply to such a proposal.

The applicant could then either

- deliver some **biodiversity enhancement** as appropriate – e.g. bat and bird shelters built into their property, creation of a garden wildlife pond or provision of a green roof, as identified in local/Defra advice

or

- pay a tariff when submitting their planning application. This sum would then contribute towards strategic biodiversity gain delivery locally, whether contributing to LNRN delivery or addressing areas of deficiency in access to nature in accordance with the local plan.

This approach mirrors the policy in Lichfield which requires all development for which planning permission is required to deliver at least some gain in some form. This could encompass environmental net gain in future.

Within towns and cities, this is likely to offer an important contribution to urban greening, re-naturalisation and provision of green corridors, wildlife shelters etc. and help to restore strengthen links between people and nature.

Identified net gain obligations should be delivered on site, to the extent practicable. This should help to improve design quality and preclude over-development. The requirement on the applicant to demonstrate how they have followed the mitigation hierarchy should provide the means for assessing whether or what on-site delivery is feasible. A tariff payment should be applied where required gain contributions cannot be delivered (wholly or partially) on site.

We would stress that - as well as capturing the majority of development, and delivering mitigation and gains on site or locally as feasible – it will be vital that any net gain system will be fair, proportionate, consistent, transparent, easily understood, and quickly and easily administered as part of standard, existing processes.

Additionally, rather than introducing competing approaches, there is a need for a unified system which integrates biodiversity (and wider environmental enhancement) within all development proposals, whether these are subject to some formal metric assessments in relation to impacts on existing value or relate to large or small sites areas which presently have or convey little or no environmental or biodiversity benefit where the Defra Biodiversity Metric (DBM) approach would be inappropriate.

We have suggested that permitted development be excluded from net gain on grounds of practicability. However, in relation to the creation of a new housing estate, since householders could use PD rights (or securing planning permission) to extend their properties, erect sheds or add swimming pools, some or all garden land should be excluded from DBM gain calculations for such developments.

Biodiversity features in scope of net gain policy

6. Do you agree that the Defra Metric should allow for adjustments to reflect important local features such as local sites?

The Defra Biodiversity Metric (DBM) should be applied so that it provides a consistency of approach but also allows for flexibility in relation to local net gain appraisal and delivery.

Because it was developed to be more or less universally applicable across England, the standard DBM provides a necessarily broad brush, generic approach. This takes no account of local distinctiveness, the assemblages of species or communities characteristic of and now scarce within an area or always restricted to particular locations.

At the most fundamental level, application of the DBM should take into account the habitat(s) which would be lost or damaged and what this signifies for ecological functions in the context of a site's location; its carrying capacity in relation to supported species, their populations, assemblages and communities of which they are part and the implications for their future viability and value once avoidance, minimisation & mitigation of impacts have been evaluated and proposals for meeting gain obligations identified. Species and their functional requirements must also be taken into account to provide a sound **ecological basis** for assessment. This is something not addressed within the metric itself and the resulting loss/gain calculations at present and needs to be addressed as the system is refined.

The **conservation value** or status of habitats and species status is an important consideration within biodiversity conservation and the planning process. It should be taken into account within the metric but should ideally be kept separate from a strictly ecological assessment.

Additional to the ecological and conservation elements should be a layer relating to statutory national and international conservation **site designation**.

These three elements or layers should provide for a standardised approach across the country whilst allowing for modification, e.g. as conservation priorities change.

However, there should be a definite requirement - and active encouragement - *for the application of additional, high resolution local knowledge layers to ensure that net gain delivery will be tailored to agreed local priorities*. What these priorities are should be identified within the current **Local Nature Recovery Network Plan** (LNRNP) for an area by the responsible local partnership. The Plan should set out what principles are to be applied and a dynamic **Local Nature Recovery Network Map** (LNRNM) should identify where these apply.

For example, the partnership preparing the LNRNP might give greater than standard weight to the protection of sites where locally distinctive or locally scarce semi-natural communities, assemblages or habitat exist or to areas where these could be restored or enhanced. A **local significance multiplier** could be employed in such instances.

Proximity multipliers should also be available where net gain is not delivered on or locally to a site, nor within a target LNRNP recovery site.

Local multipliers might also be used to highlight the value of particular habitats, species and sites in the local context, something which is often missing from current ecological assessments. This will be important in residential and suburban settings, where many (though certainly not all) green features will be of relatively low value when compared to priority habitat areas elsewhere, they will be shown to be of extremely high value locally provided the context of their surroundings, connectivity and the need to maintain viable ecosystem services is taken into account.

Should the Defra Biodiversity Metric consider local designations in a different way?

Local designations, e.g. local wildlife site designations should be taken into account. However, they should be treated as additional to and separate from information about the biodiversity found

within an area such that, e.g. two areas of the same habitat in similar condition should score the same prior to the application of any designation multiplier.

There are two reasons for this.

- Firstly, support should be given to the retention and enhancement of locally designated sites as key elements within an LNRN, and they should be weighted accordingly within the DBM. Some similar approach should apply to selected LNRN delivery areas.
- Secondly, a site designated ten years previously, but which has had no favourable management nor appraisal since could well be of less value than one that has yet to be assessed.

A local planning authority will be able to give due material consideration to the status of a local site designated for its conservation interest, whether it is or was of high extant or potential value or because it provides the local community with access to nature. In some cases, a site may have been designated on the basis of the presence of a particular species or community; something the DBM would not pick up.

Sites at a local or regional scale may have important cultural or landscape value and being able to maintain the integrity of these elements should be an important consideration in planning decisions, even if it is not formally incorporated into the metric. Local sites may provide additional benefits over and above habitat quality. They may be important to a local community and provide part of a broader network enabling habitat connectivity or access routes. Importance should be accorded to habitat quality, connectivity and community value.

Additional

As an additional but critical point, we wish highlight the fact that where a development site is presently of little or no biodiversity value (e.g. industrial sites, city centres), application of the metric and its multipliers will be ineffectual and inappropriate. Where such conditions apply an alternative mechanism will be required to quantify and deliver measurable net gain, in a consistent and proportionate way.

The introduction of Mandatory Net Gain for Biodiversity cannot rely on the use of the Defra Biodiversity Metric alone and will need to address this.

Within heavily urbanised or industrialised area the application of some **Natural Greening Factor** (along the lines of the Urban Greening Factor adopted under the London Plan in Greater London, and now proposed for use in Greater Manchester) may be a more practicable approach - provided it also explicitly incorporates biodiversity gain. It should be noted that the Greater London Authority is also seeking to encourage the adoption of biodiversity net gain in London with this likely to apply best to the outer Boroughs or proposals affecting London's **Sites of Nature Conservation Importance**.

How are species treated within a net gain policy?

7. Should local authorities be required to adopt a robust district level licensing approach for great crested newts, where relevant, by 2020?

Firstly – it is important to note that district level licensing (DLL), while looking to achieve a net gain for great crested newts (GGNs), is a completely separate and distinct system to Net Biodiversity Gain based around the Defra Biodiversity Metric.

Whilst DLL is likely to play a role with GCN conservation in relation to development, and may have potential to achieve better outcomes for the biodiversity conservation of protected (and priority and locally notable) species than existing regimes, this will need to be evaluated on a case by case basis for such species.

With GCN, there has been considerable recent investment by Natural England (and others), in developing survey and predictive modelling which has massively enhanced understanding of the distribution of GCN within pilot DLL areas (and further afield). However, whilst there have been huge advances in understanding due to increased field survey and modelling work through the development of DLL, these cannot fully predict distribution nor quantify population status. Such limitations will need to be accounted for in the design of any scheme.

DLL offers potential for good conservation outcomes for great crested newts provided it is designed in a way that addresses key underlying principles (including meeting the licensing tests, supporting the mitigation hierarchy, having clear and transparent measures of current and Favourable Conservation Status) and is supported by adequate monitoring and by a 'business model' which provides confidence around its delivery. While these are currently being explored, we should allow the evaluation of the current and proposed pilots to influence the future design and direction of this work. Although placing this on a mandatory basis could facilitate the uptake and viability of DLL, it would be premature and unwise to aim for the implementation of a mandatory scheme across all LPAs by 2020: any such approach could bring unnecessary risks with it.

As for a later DLL roll-out, the opportunity should be taken to identify and address gaps in up to date survey and distribution data of adequate resolution.

8. For what species is it plausible to use district level or strategic approaches to improve conservation outcomes and streamline planning processes? Please provide evidence

Strategic, joined-up approaches should be applied widely to all species conservation. However, for protected species other than GCN., we should look beyond DLL for seeking net gain through appropriate licensing.

District level licencing may work well for great-crested newts (GCN) as they are a robust species in the right conditions, colonise new sites, breed quickly and can recover losses at a population level from. Overall, these species are slow breeders and additional habitat creation/improvement alone is not of proven benefit. Creating suitable new roosts is also difficult, often with a low degree of success (particularly compared to creating new ponds for GCN). [See Landscape Institute (2016) Connectivity and Ecological Networks. Technical Information Note 01/2016, April 2016 https://landscapewpstorage01.blob.core.windows.net/www-landscapeinstitute-org/2016/03/Connectivity-And-Ecological-Networks-TIN-1_16-20160425.pdf]

Additionally, suggestions in the Red Tape Initiative Report 2018 will not work for species, e.g. bats operating at the large to landscape scale.

Comment in relation to Q7 and Q8

Questions 7 and 8 don't actually address how species might be dealt with via Net Gain, leaving questions as to how support for species conservation is to be addressed under the 25 YEP.

Two benefits of adopting a mandatory biodiversity net gain approach will be that the baseline surveys and ongoing monitoring data required to underpin this should

- facilitate decision making as to whether or not particular locations/populations may be lost without affecting species conservation status within the wider locality;
- add important levels of detail to Local Nature Recovery Networks and Natural Capital/Green Infrastructure Strategies within local plans. This should identify:
 - prime sites and where there are opportunities to add to, extend, link, or enhance these,
 - which should receive greatest levels of protection

whilst taking account of future development, climate change, agriculture, transport, major obstacles to dispersal and (re-)colonisation etc. in support of major elements of the 25 Year Environment Plan.

Adoption of a net gain regime will therefore require identification of

- existing gaps in the information required
- the work needed to address these and then to maintain up to date maps and supporting datasets in support of net gain delivery
- the work needed to monitor net gain delivery and outcomes
 - utilising existing voluntary survey effort, or
 - *as part of gain delivery obligations*
- how this information will be collated, made available and securely archived
- how this will be resourced

This should cover species as well as habitats and sites initially but should also be extended to cover natural capital and ecosystem services more widely.

Ambitions for wider environmental net gain

9. Are there wider elements of environmental net gain that could be better incentivised? If so, please specify which, and any benefits that such incentives could provide.

Incentivisation should address both

1. the protection of existing and any future value
2. the provision of increased value

and target

3. relatively unspoilt/pristine areas
4. areas where the gap between need and provision is greatest

whilst taking account of

5. current, baseline conditions
6. target state for 2050

It is with major landowners that there are likely to be greatest opportunities, particularly with 1-3, for potential synergies with biodiversity net gain and Nature Recovery nationally. Enabling public enjoyment of and access to nature and green space (where appropriate) would be benefits welcomed by many.

Net gains in connection with development can only achieve so much, however and there needs to be thought as to how it might be combined with other mechanisms. For example, new environmental stewardship or payments for ecosystems services making feasible the desirable retention in perpetuity of key areas initially restored or enhanced via biodiversity net gain.

A similar situation will apply to environmental net gain enhancements if these are to have a real and lasting effect, particularly where housing targets have been set with inadequate regard to environmental constraints. There should be consideration as to how existing instruments such as Council Tax and Water Rates might encourage or reward positive action or reduced usage or impact, e.g. combined with satellite image analysis. A strategic approach to misconnections or reliance on a sewer system that discharges into the river network whenever it rains is just one example of something beyond the immediate scope of this consultation but has major implications for the achievement of the goals which it is intended to serve.

Measuring biodiversity

A biodiversity metric

10. ***Is the Defra biodiversity metric an appropriate practical tool for measuring changes to biodiversity as a result of development?***

Following its recent revision, the Defra Biodiversity Metric v2.0 does provide a valuable - but necessarily limited - tool for assessing current site state, impacts and gain obligations.

Its limitations must be recognised and taken into account. For example:

- One of the key deficiencies is an inadequate consideration of species. Habitats must not be considered the sole proxy for all biodiversity, especially if this is based on a simple Phase 1 habitat assessment. *Where this is inadequate there should be a proper assessment of species richness and abundance. This is particularly true where a site may have been designated because of the presence of a particular species.*
- The metric only accounts for onsite changes and does not consider off site impacts, for example if development caused biodiversity loss downstream.
- The metric bands distinctiveness in order to try to and account for the difficulty of recreating some habitats over others, yet it is unclear how this then relates to the actual compensatory habitat created. *For example, there could be two very different habitats within the same band of distinctiveness: one gets lost the other gets created. These habitats have very different species compositions and ecological functions, yet the metric treats one as adequate compensation for the other.*
- There is also a risk of the DBM being slavishly followed without additional interpretation – or consideration of important factors that it simply doesn't address.
- In particular, it is important to make sure that the DBM does not end up promoting any perverse incentives or give encouragement to those seeking a 'licence to trash'.
- The misuse of metric calculations to over-emphasise short term gain, or application to particularly rare/ sensitive habitats (or conversely NOT being applied to low value habitats) risk undermining in its application.

Although the changes to the DBM are a step in the right direction, a number of issues still remain and competent and responsible application of the DBM must include recognition that of when is not the only or correct tool for the job and what other tools are required and how these should be employed. Those who are responsible for submitting or assessing planning applications that rely on DBM assessments need to be aware of this and ready to ensure that the supporting information on which an application will be validated and assessed is fit for purpose.

For example, in an assessment of non-wildlife site meadow areas (LNRNP) to be built on the applicant would need to ensure that they have acquired and made use of the information to adequately guide their proposals with regard to the mitigation hierarchy. The DBM would not provide the means to achieve this.

In some recent instances where gains for biodiversity in connection with ‘damaging’ development have been, we have witnessed the promotion of damaging activities to encourage the release of further funding and resources. In resource-limited scenarios, it is simple to see how more lucrative impacts may be seen as desirable. Again, this highlights where the mitigation hierarchy is not being properly applied at present.

On a practical note, it is expected that, in the run-up to net gain becoming mandatory, an increasing number of developers will wish to trial net gain and more local authorities will require a net gain approach incorporating DBM calculations to be employed as an add-on to established ecological assessment protocols, ensuring that species and their functional uses of the landscape continue to be taken into account, at least where best practice is followed. This should provide a learning opportunity for all interested parties.

11. *What improvements, if any, could we most usefully make to the Defra Biodiversity Metric?*

The metric is designed to look at impact on the footprint of development and is unlikely to address consequential impacts that arise from development sufficiently, such as increased footfall on adjacent areas, impacts of pollution/ light or increase in traffic movements. Enabling such ‘zones of impact’ effects to be factored in would be helpful.

With regard to **habitat** it ought to favour provision of like for like habitat (as well as requiring like or better for like quality) where practicable. And in relation to this, there is a need to adjust weightings given to certain habitats within the metric.

Application of high-quality target habitat as a multiplier when assessing gain should only be available where a site will be retained and managed in perpetuity. At present there is a considerable risk of over valuing the gain to be delivered with the result that too small an amount of moderate habitat will be provided.

There is a definite need for consideration of **species** – including and extending beyond protected/priority species - as a central part the evaluation process. However, it might be more effective not to try to do everything in one place or through developing a single metric. There is some value in having a simple metric designed for application in the context of planned development– but forcing simplicity on complex systems is inherently risky.

A separate species metric could be developed, incorporating protected, priority and locally important species but it is likely to be preferable to give proper consideration to - sometimes competing – species needs outside of the DBM system.

Our key recommendation is for the metric is to provide guidance on when it does, and when it does not, apply.

Encouragement should be given to the application and further development of measures, indices or scores which can differentiate different areas of the same habitat based on species richness, diversity, condition or presence/absence of key indicators.

There is a need to develop broader measures for assessing biodiversity; including species metrics (as measures of impact [e.g. for strategic licensing], for assessing statuses/targets, monitoring progress and for policy evaluation with regard to the 25 YEP or reporting to the Office for Environmental Protection).

Rather than seeking to construct and rely on a single simplistic metric for both to assess 'net gain' in planning and to evaluate the effectiveness of the policy, it may well be preferable - and more effective - to create other metrics to use in tandem, or develop programmes that enable parallel assessments of biodiversity to better understanding aggregate changes in species' statuses locally to nationally. As well as encouraging their use by involvement of voluntary recording schemes and citizen scientists these could be employed in the monitoring of net gain/LNRN delivery sites as these develop.

These more complex metrics/ assessments may, in turn, need to guide the implementation of the net gain policy – e.g. by seeking bespoke species conservation measures where these are indicated.

How much 'gain'

12. Would a mandatory 10% increase in biodiversity units be the right level of gain to be required?

It is highly unlikely that a mandatory 10% increase in biodiversity units would be adequate. A detailed evaluation of what would constitute an effective approach is required as a matter of urgency.

Following discussion across Link organisations our shared views can be summarised as follows:

- A fixed gain approach is unlikely to fit all situations - and would potentially undermine approaches which presently secure greater net gains for biodiversity.
- A gain requirement of 10% will almost certainly fail to deliver net gain and may not even achieve no net loss
- A fixed gain requirement of 20% would be likely to succeed over all but might not be feasible in all cases
- A more flexible approach could be to place the onus on the local planning authority to ensure that its planning approvals secure the required level of gain overall but providing flexibility in relation to different areas or development types.
 - To support this they should publish a **map** showing where different base gain levels or approaches might apply where and a list of development types that would or (in identified circumstances) could be treated in a non-standard way.
 - All development should be covered other than where permitted development rights apply. *The alternative would load a greater burden on those liable.*

- A natural greening factor (NCF) or fixed tariff band/gain contribution would apply where a full or simplified metric was inappropriate.
- Offset trading (where a particular development over perform) would not be permitted.

This approach should neither set the bar out of reach nor run the risk of adopting a common denominator value at a level that would do little if anything to address biodiversity loss.

This could also provide a template for the proposed introduction of environmental net gain.

This is based on approaches adopted by individual local authorities and the gains delivered by a number of major developers.

In evaluating the approach which it will take we would encourage the Government to undertake an assessment of the resources which would be needed to deliver proposed Local Nature Recovery Networks (where these have been identified), allowing for monitoring, risks factors and administrative overheads in relation to likely levels of development in the area leading up to 2045.

From discussions with other organisations, we consider that there is a real need to provide developers of all types with how a biodiversity net gain approach will be implemented if it becomes mandatory with costed examples. This could also then inform decisions about setting different gain levels.

Background

The Consultation Impact Assessment report states that

“Evidence on success rates in literature suggest that a rate between 10% (making a conservative estimate that the 94-100% of schemes which might not be successful incur an average habitat loss of just 10%) and infinity would be appropriate to avoid net loss in biodiversity.”

This refers only to the avoidance of net loss. A rate of 10% would be extremely unlikely to avoid net loss from development let alone meet this government’s biodiversity commitments or deliver on the aspirations of the 25 YEP - even without taking account of other adverse impacts on biodiversity.

The unambitious figure is a surprise given the levels of gain which many individual development schemes have delivered and the success of the approach in Lichfield where the overall delivery rate is 59% compared to the 20% obligation. We are also aware that Barratt Homes are proposing that the rate be set at 20%, which surely reflects their experience in delivering biodiversity gain as part of their development projects.

The only ways to make 10% acceptable would be to require the DBM risk multiplier to be set so high as to preclude failure or to require promised gains to be delivered for considerably more than 30 years if not in perpetuity. Either approach would be likely to place a greater burden on a developer without necessarily providing the gains that could be achieved with a higher uplift obligation.

Setting a fixed figure also takes no account of the potential of a site. Considerably more may be entirely possibly in some locations.

What will this mean for Lichfield? Will the authority have to reduce what requirements? There is a very real risk in setting such a low figure the government might mandate the introduction of a system that is set to fail.

For areas that have already been heavily urbanised, gains would be generally need to be calculated differently, e.g. using a **natural greening factor** in addition to BNG. An example here would be the restoration of an existing city office building where biodiversity unit loss would be nil but installation of a green/blue roof would provide biodiversity and environmental gains.

A figure for uplift should take into account the following factors:

- Developers often underestimate the impact of the development on biodiversity loss
- It is likely that compensatory habitats will under-perform
- There are likely to be unknown biodiversity losses through an incomplete knowledge of biodiversity and ecosystem functions and services

Mitigation hierarchy

13. *In clearly defined circumstances, should developers be allowed to pay through the tariff mechanism without fully exhausting on-site and local compensation opportunities?*

There should be a general presumption against this, so that it is only considered, with caution, in exceptional and clearly defined circumstances when it is right to do so.

If net gain is to be more or less universally applied, it should be expected that there will be some circumstances where it might be better if the net gain obligation was delivered partially or even entirely at some local, strategic offsetting site previously identified within the local spatial plan or its supporting maps and documents (e.g. as part of the LNRN) rather than on site.

Whether or not this would be the best course would depend very largely on the particular circumstances. It should be an unusual occurrence across development as a whole. Decisions should be taken locally, based on what will provide the best outcome for biodiversity.

At present we lack confidence that

- the “checks and balances” needed to avoid misuse or undermining of the mitigation hierarchy would work or be understood and correctly implemented,
- the metric would be sensitive enough to fully appraise impacts or
- any conservation plans have sufficient spatial resolution to adequately mitigate for local losses (impacting both on biodiversity per se and people’s access to it).

Unless the ‘exceptions’ are well defined, there will always be the danger that this becomes accepted practice and leads to a simplified assessment and facilitates a ‘licence to trash’ and used in cases where other approaches are more appropriate. In turn, any consideration of this as an option will also be dependent on the effectiveness of the tariff system, how it operates and the outcomes it can be shown to deliver. These outcomes need to be demonstrably aligned to appropriate conservation plans/goals or to principles of achieving ‘favourable conservation status’. These should be seen as a precursor to support for the majority of scenarios where a developer seeks to pursue a tariff option.

Whether it would be appropriate for a particular development should be determined by

1. application of the mitigation hierarchy to a scheme from its outset, and, if that does not rule it out,
2. a decision tree weighted to on-site delivery wherever this would deliver best value for biodiversity.

Additional considerations, e.g. urban greening, role within a green corridor might further favour on-site delivery. Ordinarily a site will be 'greened' in pursuit of wider environmental and 'quality of life' obligations, e.g. trees being planted for shade, flood mitigation in accordance. There should be scope to ensure this will have value to wildlife in accordance with local policy requirements.

Ideally, the best outcome that may be achieved on or closest to the development site should be sought, regardless of which local authority area it is in. If there is no local option then gains may be directed further afield. A distance gain multiplier could be applied where delivery is not local to encourage a local solution.

There is some question as to what may be meant by 'local'. The categories below combine area and distance limits (and clearly overlap) but are provided to indicate

- 1. On site – Within the development site boundary itself (0 metres)
- 2. Near vicinity – Off site but as close to the site as possible, e.g., the street on which the site is located (possibly extending to the local ward) (<500 metres-1km)
- 3. Locally – Within the local planning authority at parish or district, borough or unitary authority level (and where a development is close to the authority boundary, the adjoining authorities (with which they have a duty to collaborate) (1-5km+),)
- 4. County/Metropolitan (Additionally the planning authority for minerals) (within 10-20km))
- 5. Regional (Based on UK Government regions) (within 50km)

Additionally, elsewhere in the same national character area or river catchment section might be ecologically closer than a site a mile away.

In general, we would expect LNRN delivery to make up the bulk of any non-site gain. To encourage this local planning authorities (or their agents) should publicise available gain delivery site opportunities and expectations in relation to their use.

Above all, there is a fundamental need to

- avoid enabling or encouraging the loss or overdevelopment development of a site by enabling the impacts – in so far as they are captured by the DBM - to be off-set elsewhere.
- Ensure that any tariff contribution will be translated into delivering like-for-like or better-quality habitats and, where practicable, like for like habitat.
<http://www.nzlii.org/nz/journals/CanterLawRw/2013/6.pdf>

Completely building out a field and offering mitigation elsewhere when biodiversity should be part of the development with fewer houses or failing to consider a green roof for a new garden land property should be unacceptable. However, a new warehouse building within an existing industrial site or the redevelopment of a commercial building that would not support a biodiverse roof might simply offer no scope for on-site gain.

The local planning authority for an area should be required to have in place a green infrastructure strategy/LNRN plan (approved by the local nature recovery partnership) to guide

where off-site gains are to be delivered off site. A locally-calculated tariff should direct funds to LNRN endeavours - including the provision of access to nature - where this would have clearly greater benefit than what might be delivered on site.

Areas provided as private gardens or offers to enhance private gardens as part of a development should be excluded as net gain contributions in order to ensure better on site-provision and/or an appropriate tariff contribution.

Additionally, whilst communal green spaces of high wildlife value are to be encouraged, where proposals are over-optimistic in terms of the biodiversity units they will deliver once people and their pets are in occupation they should be rejected.

A local planning authority will need to be certain that what is proposed will provide the best outcome in the circumstance before approving an application.

Spatial preference

14. *Would this be an appropriate approach to directing the location of new habitat?*

We support the concept being advocated and the ambition for encouraging localism – though the devil will be very much in the detail that is yet to come. Where gain is not to be delivered on site then there should be considerable encouragement for it to support strategic local gain in accordance with a plan agreed by interested local stakeholders.

What will be required, as a core part of every local authority's local plan is a **natural environment strategy** (covering green infrastructure, natural capital, ecosystem services, biodiversity and access to nature strategies strategy) which is informed by and incorporates the Local Nature Recovery Network Plan (**LNRNP**) and map (**LNRNM**) covering their area and takes account of the plans and maps for the areas with which they have a duty to co-operate.

The LNRP which may extend across the area of several authorities working in collaboration should be developed as a partnership effort between local authorities/national park authorities, conservation/environment agencies, wildlife NGOS, local environmental records centres and other interested local stakeholders.

The purpose of the LNRNP will be to

- identify areas of existing high value and strategic value which should be protected or where development is to be discouraged, taking account of such biodiversity data as are available
- identify and evaluate opportunity areas which provide scope for ecological enhancement, linkage and expansion, to
 - strengthen local ecological networks
 - address areas of deficiency in access to nature
 - target key species

whilst taking account of known and potential constraints and risks and (when/where possible) climate change impact projections and ecosystems service information

in order to

- provide a local strategy for targeting and using resource to deliver best outcomes for nature's recovery
- and, in particular
- guide where efforts in restoring or enhancing existing habitat areas, or extending or linking these or creating new habitat could or should be implemented to deliver the best and most

sustainable outcomes for wildlife, people and the environment, whilst taking account of expected drivers and constraints (climate, population, transport, water availability, water management needs etc.).

The LNRP should be formally adopted by local authorities once agreed by the LNRNP partnership.

With regard to local planning and biodiversity net gain, use of the LNRNP will

- underpin advice, evaluation and decision making in relation to individual applications
- identify where net gain obligations that cannot be implemented on site
 - should be delivered through bespoke schemes
 - contribute to enhancement of a strategic LNRN delivery site.

and support 25 YEP goals, complementing delivery of the nature recovery network strategy for England, which contributing to the overall delivery of the national nature and ecosystems plan referred to in our opening remarks.

Strong encouragement and support for LNRNP development should be provided in the lead-in to Biodiversity Net Gain becoming mandatory in order that they will be in place from the outset.

One risk to be avoided is the creation of perverse incentives. Net Gain funds must not be used as an alternative source of funding for existing biodiversity endeavours - particularly not for designated sites – which must continue to be supported, and better supported, by other means. LNRNPs and LNRNMs should help with this.

We agree that ‘pricing’ provides some incentivisation – but alone might not be sufficient proof nor deterrent against harmful decisions and activities. Outcomes must clearly be linked to additionality. From experience, where development offers a conservation funding source this can be diverted into merely maintaining the status quo rather than securing the bigger-better-more-joined aspirations that must underpin the widespread introduction of mandatory net gain for biodiversity in support of the 25 YEP.

Above all, it won’t be adequate to support the approach through guidance alone. It needs to be driven by sound policy and strategies, at local and national level, and supported via obligations under the Environment Bill.

Assessment of habitat type and condition

15. How could biodiversity assessments be made more robust without adding to burdens for developers or planning authorities?

There is no magic bullet, overnight solution to this issue but there is considerable potential for positive change that would not only benefit developers and local planning authorities - providing confidence in the application of net gain and the targeting and monitoring of its outcomes - but offer considerable support in relation to other aspects of the Twenty-five Year Plan.

The existing system of biodiversity assessment has been refined over 20+ years and where it follows best practice guidance it can provide an effective outcome but this is not always the case. In some cases, elements may be missed or not implemented as well as would reasonably be expected. In some cases, there appears to be an over adhesion to process rather than consideration of what useful information should be provided about the site, the relative importance of the recorded features and what this suggests about what else might be present on the site or how the site is

important within the ecological landscape or the relative value/scarcity of its features in the district or county.

Developers sometimes treat the provision of an ecological assessment as a box-ticking exercise without referring to its findings or any recommendations it might have yielded.

It would be possible to improve considerably on the existing scenario and the proposed introduction of biodiversity net gain provides an opportunity for government to work with key groups (CIEEM, IEMA, ALGE, ALERC, BES, BTO, RSPB, Wildlife Trusts, Woodland Trust, WWT, Butterfly Conservation, Plantlife, Bat Conservation Trust, MCS, UKGBC, UKELA etc.) to ensure that a net gain ready assessment system will be fit for purpose, proportionate to the development proposals and site, and implemented in a timely way, appropriate to a site's features, their condition and potential, the value of the site to local ecological networks, and its geographic context. We would strongly urge Defra to pursue this. This should represent an evolution of the existing system, one that encourages regulation and certification of ecologists to ensure that the profession is properly recognised and acknowledged, including within local planning authorities.

What ought to be in place is a system which evidences decision making in relation the proper application of the mitigation hierarchy. This should provide the applicant (and local planning authority) with a very clear understanding of (1) what value a development site has as a whole and within its component elements and (2) what this suggests might also be present on/supported by the site and (3) how these are important so that it can be determined whether a particular development might be feasible, how any harm might be avoided, minimised and mitigated and what this means in relation to (1-3) before use of the metric and net gain calculation is considered. An ecological consultant should ensure that their client follows this through and a local planning authority ecologist should be expecting such information to be provided in order to ensure that the authority is basing its decision making on all the evidence it requires to properly assess an application.

Under a net gain system, the applicant will need to provide not only any preliminary ecological assessment report and follow up surveys but clearly show how they have taken such findings into account in their submitted scheme proposal with an assessment of the impacts and mitigation proposals, prior to completion of the DBM assessment. All of this information should be provided with an application for it to be validated.

The assessment process should be proportionate to the site and the potential impacts of the proposals. For example, a preliminary bat roost assessment or a preliminary ecological assessment with supporting ecological data search may be sufficient to allow expert evaluation of the proposals and DBM assessment.

Simple metrics which provide simple assessments inevitably appeal to non-specialist audiences and to those paying for assessments. However, in many cases they simply will not provide sufficient detail or context to allow true impacts on biodiversity to be assessed. We have already cited the examples of species information and off-site impacts in relation to the DBM.

Assessments under the current system are often let down by a failure to follow recommended practice and access existing records from local environmental records centres. Unfortunately, in many areas there is a lack of investment in rolling survey information. Whether at district, borough or county level surveys are very largely limited to existing local wildlife sites and it may be 10 or 20 years before each is revisited at current rates. Moreover, survey methodology varies and may have particular flaws, e.g. the one-time rolling survey in Greater London identified what habitats were present in each land parcel but didn't map or quantify their share of these.

The rolling Phase 1 survey programme in Warwickshire, is very much the exception rather than the rule, despite the fact that it is self-funding and has enabled much positive work in support of biodiversity conservation and development thanks to the information it has provided.

Rather than examining the assessment process in isolation, the introduction of biodiversity net gain (and, potentially, environmental net gain and a large part of the rest of the 25 YEP) provides a strong argument in favour of reviewing the entire biodiversity recording, survey, monitoring and information handling process. Again, Defra should establish an expert review group with representatives of the above bodies, the National Biodiversity Network Trust, and additional members of the State of Nature partnership, JNCC and Natural England.

Amongst other possibilities such a group might identify and evaluate would be

- A requirement for each local authority to ensure that it has access to a rolling survey of all land in its area
- The extent to which Sentinel 1 and 2 satellite data (with ground truthing) might in future be used with image recognition software and learning algorithms to partially substitute for on the ground surveys
- What species sampling models could be employed to provide a statistically sound representation of the status of key species (groups)
- The cost of these different elements and the extent to which they are provided by existing monitoring or could be supported by new citizen science approaches
- Whether such costs which apply directly to the evaluation of development and the impacts on/opportunities for biodiversity and ecosystems could be supported via the planning system such that all developers would pay a proportionate charge as part of (an increased) planning application fee with the biodiversity information component being apportioned to those responsible for collecting, collating, validating, verifying and providing access to the resulting datasets in a sustainable way.

The last of these could potentially provide developers, local authorities, LNRN partnerships and government with the most cost-effective means to supporting robust biodiversity (and environmental) assessments for net gain purposes and track progress and success of net gain delivery sites/LNRN plans. It could also provide easier, wider access to biodiversity information for non-commercial users, educational purposes etc. This could lead to a considerable but very positive change over the status quo and one that would also help take forward many other 25 YEP aspirations in an integrated way at little additional cost. It should be given serious consideration as a positive way forward for the natural environment and development.

One key change it would provide, is identify sites in an area where detailed assessments would be certainly required and where they would be excessive. For example, if despite eDNA surveys, evidence of great crested newts has not been found within 5 miles of a development site, it is likely that a newt survey at the site would not serve any purpose unless it contains eminently suitable habitat that has never been surveyed. In general, it should be expected that a Preliminary Ecological Assessment will still be required (depending on when and how a site was last surveyed) but its findings could then be set against a relative wealth of up-to-date species and habitat data with which to put this into context. It is difficult to over-emphasise how positive a change this would be for ecological assessment - and for both development and biodiversity conservation.

It should be contrasted with the current scenario where more or less extensive assessments of a site and development impacts are nearly always required but fail to consider all important points largely because there has been no support for collection of information in the wider area. This throws local authorities' ability to make informed decisions into doubt. Within London a third of boroughs have no arrangement to make use of information help by the local environmental records centre. This is echoed around the country and should be a present cause of concern for the Planning Inspectorate and MHCLG as well as for the prospects of an effective and affordable biodiversity net gain regime.

Ensuring that standard biological survey and recording mechanisms are supported and feed validated and verified observations and derived geospatial data – including from development-led assessment - into the planning system would be a way of addressing this, e.g. reassessing habitats based in changes in their abundance and their connectivity as well as the quality/condition of existing patches. Such an approach will require a different funding mechanism, however. We recognise that there is a need for a high level of investment but it is one that is necessary if net gain approaches are to deliver the best outcomes for biodiversity and development at what would be a reduced cost overall. It should be emphasised that we envisage that this approach would be funded through changes in planning application charges rather than taking funds away from net gain delivery and that developers as a whole would benefit from this changed approach. The proposal would have merit even were net gain not to be adopted.

We would note that simple metrics do allow simple assessments and thus will appeal to non-specialist audiences. However, in many cases they simply will not provide sufficient detail or context to allow true impacts on biodiversity to be assessed. In contrast use of tools such as Pantheon (and ideally an equivalent for sharing and making use of National Vegetation Classification and plant attributes) can provide enormously useful assessment based on standard (and even casual) surveys. Further development and wider uptake should be strongly encouraged.

We support the potential adoption of satellite-based systems as part of a suite of measures and agree that this is an area where further research should be applied. Since up to date remote sensing products will be required by a wider range of end users the cost of acquiring these should be quite achievable and we would encourage support for JNCC's initiatives in this regard. It is however important to recognise that remote sensing techniques cannot replace the need for on-going programmes of field work and ground-truthing by appropriately qualified ecologists. Sadly, the history of lack of investment in local environmental records centres or support for local and national schemes and inventories has set back the potential for this considerably. We should be looking to align assessments made through planning with biodiversity status evaluations run (and funded?) through other mechanisms/ organisations. In some local authority areas the potential for this is further advanced than elsewhere; however generally any scope for seeing short term benefits to development will need considerable investment from that quarter. Local Nature Partnerships may be well placed to design schemes in different areas.

As previously highlighted by the Association of Local Government Ecologists [https://www.cieem.net/data/files/Resource_Library/News/ALGE_Report_on_Ecological_Compete_and_Capacity.pdf], many local authorities neither have in-house ecological expertise, nor make use of external consultants on a regular basis. Although such expertise is crucial to effective planning and decision making and all local bodies have a duty to have regard to biodiversity conservation, the situation is far from perfect in many areas. This has implications as to the extent to which some local authorities have the capacity to implement a net gain regime and support, coupled with strong encouragement will need to be provided. ALGE is probably best placed to advise in this regard.

We propose that guidance should be written to help ensure consistency of approach and provide confidence to planners and the various categories of developer.

Baseline

16. Should a baseline map of broad habitats be developed?

Yes - but this should be driven by a broader programme of biodiversity mapping and assessment, e.g. the creation of Local Nature Recovery Network Plans and Maps and not solely focused on

development. DEFRA/ Natural England should explore how to optimise the development of habitat, and similar, maps for a range of conservation and other land use applications. There is a danger in over-reliance on 'the planning system' for mapping and interpreting habitats.

A plan needs to be developed on how best such data are collected, managed, analysed and disseminated. This should seek to combine the **high resolution data** held by local environmental records centres and which will form the basis for creating and updating LNRN maps in some standardised, interoperable format enabling these to be combined regionally or nationally and used with the national inventories (managed by Natural England, Forestry Commission etc.).

It should be stressed that for local use within the planning system, implementing net gain or LNRN delivery, broad habitats will not suffice.

For net gain administration, a **baseline map** covering the entirety of a planning authority's area, and ideally including a buffer of 2-5 km beyond - further where there are sites/complexes which extend beyond this zone - will be vital. Such sites could be identified through Local Authorities' statements of common ground and in strategic plans.

Mapping of broad habitats will give an indication of how much of each of these is/was currently extant, and the size, distribution and degree of existing (and potential) connectivity within a local authority's area. This could provide a basic snapshot against which to map progress or possible deliberate efforts to degrade areas prior to development, as well as a basis for local planning and stakeholder engagement. It should be used to inform the allocation of sites in local plans.

However, to be useful in relation to net gain calculations, baselines should ideally be mapped at a priority habitat, UKHab and National Vegetation Communities resolution to provide the needed understanding and, a growing spatial database, of what is to be found within a local area currently and to help model change (related to population growth, climate change etc.) in the context of the goals and targets set within local **green infrastructure & open space strategies** and **local nature recovery networks**. This level of detail should also reflect the **distinctive features** (including biodiversity) which reflect the differences between **national character areas** or result from a particular site's origins, its past history of management of its particular mix of abiotic, biodiversity and human influences. Species data, and derived heatmapping e.g. for protected, priority, and invasive species occurrence or local 'biodiversity intactness' should also be included where this will add value.

Whilst it will be entirely acceptable to merge detailed/priority habitat information within broad habitats for summary purposes, whether at a local level or to provide a national 'big picture' overview – decisions need to be based on the highest resolution data that is available. Mapping, recording and monitoring should be at the highest practicable resolution and always at a level above that at which data is to be interrogated or presented to provide a clear understanding. (It is only necessary to look at the variation in distribution and fluctuating dispersion of flowering plants over time below a 10 km square level to understand why.) It will be entirely acceptable to merge detailed/priority habitat information within broad habitats for summary purposes, whether at a local level or to provide a national 'big picture' overview.

As a foundation for LNRN delivery, the local baseline map should be seen as a **fundamental part of making net gain a tool of strategic positive change** rather than what might become 'biodiversity unit bean counting' on a development by development basis were it to be implemented inappropriately. The baseline map should be used to record current status of different areas (ideally all areas) within a local authority's boundaries, and employed to highlight and prioritise opportunity areas in accordance with the 'Lawton Principles' of Bigger-Better, More and Joined. This should be seen as providing a solid foundation on which the strategic purpose of net gain may be based – and absolutely vital.

Whereas it would be grand to have a complete national map for 2020, and this might be possible with broad habitats, the level of information based on recent mapping and surveys is too patchy or very largely lacking in all but a tiny fraction of local authority areas. However, local authorities, local nature partnerships, public bodies et al should be encouraged to invest in rolling site surveys e.g. over a 3-10 year cycle as appropriate to the habitat type (and extending to marine areas). [The availability of satellite image processing to highlight radical change +/- as soon as it occurs or to assess change at a 1 metre resolution on an annual basis will have an increasingly important role in the future and increase the frequency but will continue to need to be supported by surveys of certain sites/habitats and wider ground truthing.] Species will generally continue to need to be surveyed by living volunteer recorders and professional ecologists.

Ensuring all local authorities have access to and that LERCs will be in a position to collate and provide access to such detailed local information should be seen as an ancillary goal of making biodiversity net gain mandatory (as proposed in our Q15 response). This should be made a priority with the goal of putting these changes in place in advance of wider net environmental gain becoming mandatory.

The use of satellite and aerial mapping (particularly JNCC's initiative to provide access to partially-digested satellite imagery for wider use), as well as drones, should simplify mapping and simulate the development and adoption of suitable open source spatial image recognition and analysis applications. Putting all LERCs and local authorities in the position from which partner organisations and environmental information users in Warwickshire enjoy would represent a major enabling step for the 25YEP, local authorities and environmental NGOs whilst also helping to encourage, stimulate and support sustainable development and place making as environmental pressures increase further.

Reference is made to NPPF para 174. At present, a survey of the extent to which local authorities ensure that they are/were in compliance with this in preparing their local plan and are now in putting such information to use would show considerable variation. If net gain implementation is to deliver the heralded benefits, baseline maps that at least meet a minimal agreed standard are required. This standard should be set nationally and each local baseline map and supporting information subject to approval by an independent, local sites or LNRN partnership.

17. *Should this be applied, as a minimum baseline, to:*

a. net gain calculations for all development?

It is important that the map used as a baseline is appropriate to the scale of the proposal and fit for purpose, e.g. even simple features such as hedgerows may be important for bats that use them as flightpaths. For major development, a broadscale map may support an initial assessment but is likely to be too crude to either include or provide adequate information about local habitats or biodiversity for a DBM calculation to be possible.

In contrast, broad habitat classification of garden land would apply to the side or rear of house but wouldn't necessarily require mapping. More important would be information about the adjoining local wildlife site and knowing what sort of woodland, grassland or wetland it might be.

Where a proposal is likely to have an impact on a site which - within the context of the locality - whether, e.g. in a city, at the edge of a village, along a river, up a hillside or offshore - is clearly of higher value, it should be assessed at a level of detail which a standard baseline map is highly unlikely to provide. It is recognised that with the introduction of net gain and the wider use of satellite imagery more detailed baseline maps are likely to be more available and affordable: the

result being a highly cost-effective, more detailed replacement to Phase 1 county/local authority mapping which has largely been abandoned on cost grounds (per our Q16 response).

Despite these cautionary points, a baseline map, used in tandem with a desk search of species records will be useful to ecological surveyors in planning detailed, site surveys. These will be essential to ensuring that a development proposal takes account of biodiversity from the outset. At present, this often happens at too late a stage in the process (if at all), with ecological expertise being sought only after an applicant has very largely finalised their design proposals – or even after an application has been submitted and attention drawn to the omissions. Additionally, where an applicant does commission surveys in support of their proposal, the results are rarely made available to the Local Environmental Records Centre unless there is an obligation, despite CIEEM guidelines. The result is that despite what must be an enormous resource invested by developers in biodiversity data each year none of this is being made available for wider future use. This has significant implications in relation to the information available to guide biodiversity net gain assessments. Government should make mandatory the supply of any natural environmental data collected or used in support of a planning application to the local environmental records centre as a condition of planning approval or application validation in order to address this.

The whole net gain process and the provision of appropriately detailed and accurate baseline maps should help change this.

b. net gain calculations in cases of suspected intentional habitat degradation?

There is a risk that some land-owners might take a scorched earth policy where land has no statutory protection, particularly in response to the introduction of net gain.

Basing assessments on baseline maps would be a valuable tool in helping to disincentivise habitat damage before planning actions are made or land is sold. 'Site clearance' is often done ahead of planning so it is not controlled through the planning process, even where sites are locally designated for their wildlife importance. Similarly, there will be benefit in using such mechanisms to advise of the likelihood of protected species – these too can often be 'ignored' and ignorance of possible presence given as a reason for not undertaken species surveys ahead of site clearance and in turn a weakness should any prosecution be attempted. It is useful that this issue is being identified here and consideration given to reducing its impacts. This is an important 'loophole' that needs closing.

The point should be not to penalise but to prevent. This will need to be further supported in other ways.

There will be a need for LPAs to adopt baseline maps for this purpose at the earliest opportunity, ideally from 2018 but making use of older aerial imagery where required.

Encouragement should be given to identifying ways in which current baseline maps at locally useful resolution might be created and updated

18. What other measures might reduce the risk of incentivising intentional habitat degradation?

There will be an important role for education and publicity, and liaison with major developer/ landowner representative groups, covering both what biodiversity net gain is for - and what the penalties might be for wilful habitat degradation.

It would be helpful to adopt a standard protocol to define how intentional degradation might be assessed and demonstrated to have occurred.

Reducing or preventing intentional habitat degradation will only happen when (a) developers recognise the importance of retaining habitat not only as part of social and environmental responsibility but also as good practice and (b) when the incentives to retain habitat outweigh the penalties. Incentives that have a gain for the developer could be attractive but this would need to be explored in depth.

There needs to be a systematic review of the types of land use where we should incentivise improved biodiversity status and disincentive its degradation. Where funding mechanisms, or other financial incentives can be applied these could encourage maintenance of high biodiversity areas until alternative land use is secured through planning. This is equally applicable in agriculture where conservation enhancements can actually adversely impact on Agri-Environment Scheme payments.

It will be difficult to address through incentives alone - a possible alternative route will be looking to control any significant land use change of habitats above a certain quality/not under agricultural production through planning control.

One disincentive would be the delayed granting of any planning application where the deliberate degradation of a site was suspected, including the removal of any validation of a submitted application).

Using the baseline map approach and taking the lost habitat to be of the highest possible value with some extra multiplier unless there is evidence to the contrary would be helpful – especially in combination with the above.

Having the means to extract a discouragingly large proportion of the value of the land sold for development where intentional degradation can be shown to have occurred would perhaps provide the greatest discouragement if a practical option.

Positive incentivisation in the longer term should come from the appropriate application of Environmental Land Management Systems and Payment for Ecosystem Services. Balanced with other economic benefit a landowner/tenant gets from their land, this should encourage positive management. Any such payments made over a 10+ year period would need to be repaid should a landowner decide to degrade areas in connection with development.

Whatever mix of stick and carrot approaches might be adopted, there will probably be greater success in deterring deliberate degradation more widely if actual instances of penalties being applied are widely publicised so that both LPAs and landowners are aware that deliberate degradation can be addressed in a way that makes it not worth attempting.

19. How can the risks of penalising landowners making legitimate land use change decisions before deciding to sell their land for development be mitigated? [BC27]

It is not clear what might be considered a 'legitimate' land use change that would be different for a landowner selling land ahead of development, relative to such change being made by a developer. The rules should be complementary.

In general, where a site is of less than SSSI status or only supports, unprotected habitats and species etc. it could be legally cleared or degraded at any time (subject to limits on tree-felling etc.)

Accordingly, it is likely that landowners will be penalised only where degradation is clearly deliberate and can't be defended, e.g. on the grounds of a change in farming practice, or attempted. However, it is not considered unreasonable to apply the baseline (albeit without any additional multiplier) regardless of whether the change was legitimate for a period dating back up to 3 years.

Delivering biodiversity outcomes

How should biodiversity priorities be identified?

20. The provision of compensatory habitats would need to be guided by habitat opportunity maps. At what scale should these maps be developed?

National, regional and local maps all have points in their favour. Marine areas will require a different approach.

A number of habitat opportunity maps already exist, having been created by Biodiversity Action Partnerships or Local Nature Partnerships at the county to regional level. This generally reflects the level at which actions are to be delivered on the ground, focussing on important biodiversity within the bounds of the partnerships area.

We consider that this is the right scale for developing maps which will allow appraisal of what are the best options locally and how these might be realised, as well as monitoring progress with delivery and engaging local stakeholders.

However, it is important for those involved with LNRN planning and delivery to be aware of

- how their initiatives might link with those beyond their borders
- how what they are pursuing contributes to what is happening across the country.

A consistent approach should be taken across the country with local maps being framed in relation to ecological networks within their area how these connect with an across neighbouring areas.

Regardless of the level at which LNRN delivery is administered, compensatory habitats should be guided by priorities for species' ecological and functional needs. This might be at local, regional or national scale and devolved authorities are likely to be involved in supporting LNRN plan delivery where ecological networks cross their boundaries.

We would emphasise that it will be vital for LNRN partnerships develop their plans to be climate proof, taking account of climate change and its knock-on implications for agriculture, flooding and climate mitigation efforts within their plans. Support from Defra bodies will be needed in this regard.

a. Locally (e.g. local authority or National Character Area)

Local maps offering adequate detail will be vital to effective delivery. They capture what is most important within or distinctive about an area and provide the means to identify priorities in relation to projected change.

Whilst they should take account of national character areas, and other designations/landscape features overlapping their boundaries - as well as what lies beyond-- Local Nature Recovery Networks align most logically with planning authority areas (local authorities and national parks), whether individually or in partnership. This should also mean that compensatory habitats will be close to the areas and communities impacted by the contributing developments.

b. Nationally (i.e. England) as a national framework to be refined, updated and amended locally

National maps will be useful for providing a general overview but are too broad to provide necessary detail for planning and delivery purposes.

21. *What other measures should be considered to identify biodiversity and natural capital priorities?*

In particular, information held by Local Environmental Records Centres should be utilised. Provision should be made to support the collection of data to fill identified gaps and to track progress with net gain delivery and monitoring. The new data will provide a more complete and up to date map.

Where available habitat information is lacking, this should be addressed via a combination of the use of on the ground surveys and, where practicable in future, via the additional use of satellite data.

This information should be used to inform biodiversity net gain policies in neighbourhood, local and strategic plans, including the allocation of sites for development and the identification of opportunities for habitat creation and enhancement.

There should be a well-developed, and complementary, series of national and local biodiversity plans that allow the integration and targeting of national priorities to the local areas in which they need to be delivered. These should be basis of the local decision making and logically could be guided by the Local Nature Partnerships or equivalent. These would also recognise 'species priorities'.

Unfortunately, this process has not been sufficiently supported, either via the England Biodiversity Strategy or through consistent guidance for the local level. The absence of these now means that there is a greater onus for the development of these through the planning system – which is not where this should sit.

Provision of compensatory habitats

22. *Would mandating net gain through the planning system be enough to stimulate the growth of a market for biodiversity units?* [BC30]

It is important that biodiversity is never reduced to a tradeable market commodity but it will be essential to support the provision of opportunities for delivering gain obligations that cannot be met on site.

An increasing number of planning authorities are already seeking ways to address existing National Planning Policy Framework requirements. More developers are also emulating pioneers such as Barratt Homes and Berkeley Homes in using the added value of a semi-natural setting to enhance unit sales value/rate of turnover etc. and there are already commercial offset providers. However, mandating net gain will encourage others to follow suit and this will give a necessary degree of support to what is still a nascent market.

23. *What further measures would help to ensure that the market provides:*

a. Sufficient biodiversity units for development?

Net Gain policies should generate the funding needed for their implementation – and thus achieve the creation of the 'Biodiversity Units' required to achieve Net Gain; however ultimately this would be driven by price and the strength of the planning policy/ enforcement and degree to which land can be identified for this purpose. Adherence to this principle may, in turn, define the limitations of the application of the policy and the degree to which other measures are required both through planning and through other biodiversity conservation mechanisms (e.g. Agri-environment Schemes).

Encouragement should be given to local planning authorities to estimate the likely demand for biodiversity units within their area (based on the projected scale of development annually over a 5-10 year period) and the likely extent to which biodiversity net gain and 'natural greening' should or could be delivered on site or within near vicinity. This should identify what the scale of extra provision would need to be. Some may also be encouraged to over-provide for their own needs where it is likely that neighbouring authorities lack opportunities for local gain delivery.

There is likely to be considerable variation from one area to another, so local flexibility is to be encouraged, with the proviso that the outcomes are aligned with strategic net gain goals, with particular regard to Local Nature Recovery Networks. This should apply to commercial offset/gain providers as well as local authorities and other landowners.

It is important to ensure that proposed mechanism (and pricing) are tested to provide the confidence that this will be the case. Key measures will include price, and other incentives. The provision of mitigation land brings with it financial consequences and restrictions on subsequent land use.

A combination of carrots and sticks may be needed to ensure this is attractive and is sufficient – notably money for land purchase or long-term agreements; funding for on-going management (and compensating potential lost income) and land-use policies that prevent alternative, more profitable land uses. There is a real risk that securing appropriate land in the right places will become increasingly expensive.

There is so much land that has some biodiversity value or potential which could be enhanced and which is or could be part of an effective LNRN that cost and future development prospects are the only obstacles. Local authority land is likely to be provide useful resource in some areas.

b. Cost-effective biodiversity units?

Provided there is an adequate supply of units within a local planning authority or its neighbours, the level of demand should ensure that unit costs will be reasonable in relation to the value gained from the development within the local area. The expansion in the number of gain/offset site providers that will result from net gain becoming mandatory should also help to ensure that costs are kept to a level sufficient to ensure gain delivery.

It is possible that the cost of strategically important sites within the LNRN could become inflated beyond the point where they are cost-effective. During the initial phase of the new approach however, it should be possible to select between a range of alternatives should a favoured site not be viable.

There should be an upper limit to the financial cost of a biodiversity unit, relative to the value of a development site with planning permission. This will vary locally but should be clear from the outset.

This may require a form of 'land designation' that effectively caps a land value as this will preclude alternative, more profitable land uses or planning policies that require a proportion of land to be set aside for biodiversity gain in areas designated for development.

It is unlikely that land will be put forward for biodiversity where the funding level is significantly lower than that which is likely to be achieved from other land uses. There may be scope to encourage uptake by looking favourably for agri-environment funding on farms that have also set areas aside for biodiversity net gain – thus adding value both to the Agri-Environment Schemes and to the mitigation land.

For those potentially providing biodiversity units on their land, the main considerations will relate to the income they can generate over the period in which their land is under a net gain agreement (and

therefore not entirely under their control), the length of the agreement and the implications if they should break a contract. Clarity around these points will be helpful for prospective gain providers, whereas gain sites provided by public bodies or in perpetuity agreement supported by covenant will perhaps offer more certainty to local planning authorities and developers.

Legacy

24. Should there be a minimum duration for the maintenance of created or enhanced habitats?

There definitely needs to be a minimum duration of adequate length. While biodiversity in landscapes can be dynamic, and the assessment of biodiversity gain should be addressed at landscape/district level (recognising that in some cases some individual areas may 'come and go') – there is unlikely to be much benefit from setting areas aside that are almost immediately destroyed or simply left unmanaged.

25. If so, what should the minimum duration be?

A key question is what happens to the compensatory site after the management period ends, by which time it should at least be of local wildlife site status. If it is part of a Local Nature Recovery Network it will also have strategic importance within an ecological network with development over the ensuing period having reduced the amount of wildlife space elsewhere.

There is a need to identify what will happen to such sites in legacy and the government needs to be clear about its expectations in this regard. Will environmental stewardship fund ongoing management? What are the alternatives other than uncertainty and possible destruction of the area, should the landowner decide to clear it 30 years hence?

How will matters be managed such that:

- (a) landowners are not put off making strategically important sites available for net gain purposes,
- (b) developers are willing to invest in longer term or in perpetuity agreements where appropriate and
- (c) the public can have faith in a net gain system.

Some habitats will take 20-30 years to mature and provide appropriate biodiversity gains. In the case of woodland this will be considerably longer. In such cases, a duration of 30 years will be insufficient. Should it be the case that development of a site which will involve the loss of such habitats is approved then any gain agreement must be of a duration appropriate to the habitat type. If it is not possible to secure that by condition then the application should be refused. The expectation should be that such proposals will be relatively rare.

Whilst we recognise that there is no guarantee that area(s) lost to development for which compensatory habitat will be created would survive or be managed, it should be apparent that whilst a new area of habitat might be very welcome for 30 years, in year 31 there is every possibility that it would have a value of 0 units.

We also realise that the question concerns the duration of the management (agreement) but in the way it has been presented, we consider that management duration should reflect the biodiversity priorities and should, given the options below normally be in perpetuity. Otherwise there will be a

rolling programme of losses of previously secured sites with a likelihood of ongoing net loss in the mid to long term.

Identification of areas which may be primarily allocated to nature conservation permanently, for more than 30 years, for more than 10 years and for periods of 5-10 years should be identified within the local nature recovery network strategy.

There will need to be a clear agreement between the developer and the gain provider (who will become legally responsible for delivering the promised gain) which will need to be approved by the planning authority. This should clearly set out what the providers' obligations are for gain delivery: preparation; creation; establishment; maintenance; monitoring and reporting schedules, etc.

It is the LNRNP as agreed by the LNRN Partnership which should provide the basis for suitable gain sites, target gains longevity, etc. (With different arrangements for a 'habitat bank' as opposed to a bespoke gain site and the nature of the agreement required to be secure this.

In some cases the longevity of the habitat management agreement should be tied to the expected lifespan of the development. For example, arrangements around maintenance periods for Suitable Alternative Natural Greenspace in south east Dorset has been based on a maintenance period of 85-100 years.

It will also be necessary to ensure that any agreement is clear about whether the duration refers to specific outcomes at one site (i.e. a particular habitat in one location needs to be sustained for N years), or whether the 'units' are maintained over time –and also being clear on the degree to which this relates to responsibility for funding (e.g. is funding required just for creation, or for maintenance – perhaps in perpetuity).

If we want UK to halt and reverse biodiversity loss, then there is a need to secure permanent gains not just shifting the problem to later stage at which point the NPPF could be a lot weaker/net gain no longer applies.

Additionally

The consultation proposals do not include any detail on how the maintenance funding would be generated and distributed or how the habitats would be assessed in the long term. The backstop of local authorities and charities maintaining habitats would not be sustainable unless there is funding ring-fenced for the monitoring and if needed for enforcement for non-compliant schemes.

It will also be necessary to ensure that any agreement is clear about whether the duration refers to specific outcomes at one site (i.e. a particular habitat in one location needs to be sustained for N years), or whether the 'units' are maintained over time –and also being clear on the degree to which this relates to responsibility for funding (e.g. is funding required just for creation, or for maintenance – perhaps in perpetuity).

a. Less than 25 years

No

b. 25 to 30 years

Too brief in most circumstances

c. Longer than 25-30 years

This should be seen as the minimum in relation to habitats that can reliably be created and enhanced to deliver full value within this time period. For many, the establishment phase will take up most of this brief period. Establishment should be additional to any maintenance period and not part of it.

d. Permanent

This is the preferred option from among those offered. This should be mandatory in certain cases, and will be desirable where, for example, an area is to be given over permanently to woodland within an otherwise shifting landscape of temporary copses, shelter belts, ponds and fields (and associated marginal habitats)

In any event a loss of biodiversity units in a compensatory area should be appropriately compensated (with necessary 'uplift' as appropriate).

26. Would conservation covenants be useful for securing long term benefits from biodiversity net gain or reducing process and legal costs?

We recognise that conservation covenants have the potential to play an important role in accordance with our response to the Law Commission Consultation

[\[https://www.wcl.org.uk/docs/Link_response_conservation_covenants_June13.pdf\]](https://www.wcl.org.uk/docs/Link_response_conservation_covenants_June13.pdf).

In the absence of other simple mechanisms that are binding on 3rd party landowners and successors in title Link believes that, if conservation covenants can ensure a site is protected in perpetuity, then they would provide be a useful addition to the tools available to deliver biodiversity offsetting/net gain. It would provide a legal mechanism that ensures a developer has to provide, and maintain, an agreed level of commitment. Offsetting must be managed long term to enable the new habitats to develop to a satisfactory level.

Covenants should work alongside existing mechanisms, such as agri-environment schemes, and would not replace the need for designation.

27. What safeguards might be needed in the implementation of conservation covenants?

Safeguards would need to include local or national registers of such agreements so that they can be 'policed' by any party with a relevant interest, as well as by the public authorities administering the net gain system their provisions continue to be observed.

Conservation covenants may need to be formally registered with Land Registry. There will also need to be full transparency and accountability so information will need to be made publicly available.

Conservation covenants will need to be accompanied by sufficient funds to deliver the intended aims. This money will need to be collected and held in manner that is fully transparent and accountable. This may require public annual reports as to monies received, how, where and when it was spent, and how those decisions were made

Enforcement is a potential issue but the suggestion of adapting the right to notify under the Environmental Damage (Prevention and Remediation) (England) Regulations 2015 – which enables anyone who has sufficient interest to notify the appropriate enforcing authority of any environmental damage – would be a possibility where a net gain covenant is not being observed.

Calculating and collecting the tariff

This does need more work and we agree that this will vary between areas and indeed habitats types created (which may complicate calculation of the tariff relative to the metric).

The tariff should reflect a **full cost recovery** model. The cost of finding land, negotiating, managing, etc., far outweighs the cost of getting a digger in or a hedge planted and a nominal bit of administrative time to arrange this. This also needs to consider inflation and address likely increases in prices for mitigation in future. Funding will need to be provided for management (and perhaps paying on-going 'rent' or profits forgone funding to landowners). Consideration also needs to be given to the way in which the scheme will be policed, managed and monitored and if costs will be applied by the regulatory bodies (noting that NE is charging for licensing it is reasonable to anticipate that those managing mitigation land will need to fund (directly or indirectly) the costs for ensuring compliance.)

There also needs to be a contingency fund when things go wrong. Importantly, consideration needs to be given to ensure that the tariffs allow for long term, ideally in perpetuity funding – perhaps even helping to establish an 'endowment' fund.

Experience through the South Midlands Great Crested Newt district licensing pilot has shown the value of supporting a team of ecologists who are able to manage the processes behind locating and negotiating sites and designing and delivering mitigation. It would be unwise to anticipate that this service will be available without funding; this should generally be funded by developer contributions as it seems unlikely that this should be expected to be funded as a public service or through charity funds. This needs long term funding in line with the required duration of any mitigation outcomes.

This also has implications in relation to the separate Defra consultation in relation to the resource implications of biodiversity net gain introduction for LPAs.

Any tariff should be consistent with the cost of purchasing biodiversity units locally and should additionally cover:

- Administrative overheads (which should be kept to a minimum)
- Risk factors (where not fully addressed in the DBM)

Together with the costs associated with:

- Purchase/lease/provision of land
- Restoration enhancement works
- Remedial works/contingency
- Ongoing management
- Ongoing monitoring
- Ongoing reporting
- Verification and assessment
- Scheme Governance & policing: covering costs of the regulatory agencies
- Long term management fund/ endowment, etc.

The consultation document appears to suggest that a net gain tariff would only apply where gain cannot be delivered on site and local offsetting is not possible – with the example dealing with a medium size proposal.

Since all +/-development should be captured by net gain, it is important to consider how small developments should be dealt with.

Tariff rate

28. Does this proposed range for tariff costs fit with the principles set out in this section?

Where developers propose to use a tariff, a clear summary should be given to explain how the hierarchy has been followed and why gain obligations cannot be (wholly) delivered on site.

Since planning authorities are required to identify land for development – e.g. housing supply, they should similarly identify key net gain sites within the LNRN.

A key principle is that wherever there is a net gain obligation it should, be delivered within the LNRN firstly, in the planning authority area or within an adjoining authority, unless there is over-riding reason not to do so.

The tariff range should incentivise development to follow the mitigation hierarchy. At present it appears to be too low to do this, and to meet the other proposed principles for setting the tariff rate, particularly taking into account the costs of net gain scheme administration.

Whilst there is considerable variation in the quoted range it is unlikely that it covers the full range, e.g. as represented by an area of low value arable land in Northumberland and a similar size plot in Westminster.

An attempt to set a standard tariff for the whole of England seems unrealistic. It would be better to set minima and maxima but leave the rate to be determined locally by the Local Nature Recovery Partnership.

Whilst the DBM does not properly address species, the tariff must reflect species as well as habitat implications of the development, the agreed timetable and costs for achieving NBG.

Accordingly, a tariff should be set locally to take account of local land values (and the points above).

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29. Would this proposed range for tariff costs provide opportunities for cost effective habitat banks and compensation providers to compete?

Any tariff will need to be at a level to more than cover costs and incorporate any additional risk factors and it is not possible to be confident with regard to long term involvement or sustainability. Tariffs need to be set against a full analysis of costs over the long term, including the management and governance of the process.

30. Do you agree with the proposed principles for setting the tariff rate, as set out in this section? Please suggest any other factors that should be taken in to account.

Further to responses to 28 & 29, the principles for setting the tariff are fine in general but there will be a need to set the tariff locally and for there to be much greater certainty about the tariff viability.

The tariff needs to cover the full cost of creating and maintaining the biodiversity gain. This will be highly variable and dependent on many factors including availability of land and the management activities needed to create habitat of a suitable quality. Importantly this is not a one-off exercise, but management (or in some cases further creation in cases where things might go wrong) will need to occur on an on-going basis during the life of the mitigation – which might be ‘in perpetuity’. This needs to be monitored and standards enforced.

Therefore in addition, there is the need to consider:

- Land purchase price, or cost of agreements with the land owner or gain provider (one-off or annual payments?)
- Professional costs of finding land and negotiating the agreement: this to be based on 'full cost recovery' rate (including overheads, office running costs etc.)
- Insurances: public liability and professional indemnity, etc.
- On-going land management costs, including professional costs for overseeing management operations and any renegotiation or acquiring additional funding if appropriate
- Long term funding – perhaps a funding or establishment of an endowment fund
- Costs for monitoring, reporting, etc. for compliance
- Regulatory and evaluation costs (if applicable) such as planning permissions (e.g. digging ponds), licensing for protected species/ waste management (moving and disposal of spoil), evaluation and enforcement
- Communication and public awareness; site signage/ interpretation
- Governance costs – these areas may be managed by organisations that need to undertake Governance and organisational management activities (e.g. Council/ Board meetings, reporting to Companies House) essential to the running of the organisation
- Contingency/ insurance: funds for remediation if needed

How a tariff could be collected and spent

31. How should the tariff revenue be collected?

a. Locally (e.g. through a local authority)

Any tariff revenue should be collected by the local planning authority (local authority or national park authority) as part of their existing administration of the planning system in order to avoid adding burdens.

All collected tariff moneys should be strictly ring-fenced and reported on. There needs to full transparency to give confidence in net gain system.

There may be some value in separating the regulatory roles from the handling of any tariff payments.

b. Nationally (e.g. through Natural England or another national body)

No

Since the great majority of development should not impact on what is nationally important, any tariff should be collected and administered locally in support of delivering Local Nature Recovery Networks.

c. Other, please specify

32. How should the tariff revenue be spent?

a. Locally (e.g. through a local authority)

This is the most appropriate option if the whole net gain approach is to receive the support it needs – particularly from stakeholders who aren't directly involved with it but whose communities and well-being may be affected by development.

The tariff must be ring-fenced for biodiversity net gain and - assuming robust and effective identification of Local Nature Recovery Networks - the tariff should be spent in accordance with delivering these networks in accordance with the implementation of the approved LNRN Plan (where this exists), how this connects with neighbouring networks at the regional level and how these combine to deliver targets nationally.

If enhancements are not possible on-site the tariff contribution for a particular development should where practicable be spent so as to ensure that biodiversity interest remains within and not distant from the community, for the benefit of the community. It should be spent on biodiversity priorities, directed by functional species and biodiversity needs, recovery network priorities, and/or to retrospectively green the built environment.

The tariff should never be used to deliver activities that are the legal obligations of the tariff fund holder or other members of the LNRN partnership.

The tariff fund could be used to lever other funding sources where this would directly benefit the LNRN plan objectives.

Spending (and ongoing monitoring) should be subject to approval by whatever group fills the role of a **Local Nature Recovery Partnership**.

Tariff income and spending must be reported annually by local authorities, in line with recent changes to Section 106. This is to ensure a transparent process.

There is considerable variation in arrangements in relation to local nature partnerships, biodiversity partnerships and local sites partnerships so local organisation with national guidance in relation to what is to be achieved (and what partners and evidence collection should be included) is likely to provide the most effective arrangement. A decision should be reached between the relevant partners as to who will hold and manage tariff funds on their behalf. In some cases, it may be an individual local authority or local partnership that takes on this role. In other areas, sub-regional LNPs may be better placed.

Additionally, private or dedicated non-Governmental bodies (e.g. Nature Space, Building Wildlife, Land Trust, Groundwork) could hold funds on a partnership's behalf. Funding from the tariffs should be secured against an appropriate business plan. There is potential value in this regard, and scope for increased transparency from a separation of roles between the regulator and the fund managing body.

b. Nationally (e.g. through Natural England or another national body) [BC43]

National agencies, notably Natural England, should certainly feed into Local Nature Recovery Network partnerships, providing the 'bigger picture' to shape local proposals. However, net gain should be administered locally.

A key principle of net gain is that it should deliver benefits locally to any development.

Administering funds nationally would also remove all incentive to achieve more and better locally. Locally administered net gain offers a chance to encourage community involvement and build links between people and nature.

National involvement would be helpful if, for some reason, a local/sub-regional authority/partnership were to be unable to produce an LNRN plan and/or administer net gain delivery.

c. Through a blended model, allowing spending at both levels

No. the National Nature Recovery Network should integrate well with LNRN delivery but net gain tariff funds should be controlled and spent so that benefits are local to the development area.

d. Other, please specify

An additional option would be to consider local fund administration, handled by a non-Governmental body, against a business plan agreed with the regulatory bodies.

33. If tariff revenue was collected and spent nationally, should spending prioritise areas which have contributed the most through biodiversity net gain tariff payments? [BC45]

If net gain (whether for biodiversity or the wider environment) and, perhaps even more importantly the developments which give rise to it are to be supported by local communities and local authorities – and if it is to be incorporated effectively within the planning system, gain – like the planning system itself should be administered locally. Any proposals for national collection/spending should be subject to detailed cost-benefit evaluation and consultation.

Were tariffs to be collected and spent nationally it would only be fair to allocate funds to the local authority areas from which it had been collected.

Whilst there might be very strong conservation arguments for targeting major landscape scale restoration in areas away from major development, these are the areas where other funding and development of payments for ecosystem services should be encouraged. In areas where considerable development is forecast, these are already more degraded and most in need of enhancement improvement if health and other issues are to be addressed.

Mandatory net gain offers the chance to move forward with a new and important role for development.

Delivering net gain in the planning system

Impact on Local Authorities

34. What further measures will help to prevent burdens on local authorities increasing? [BC46]

The main requirements are:

- (1) A simple system that can be easily integrated with how local planning authorities (including national park authorities) operates
- (2) A tariff system to be administered by local authorities that captures all development at minimal expense
- (3) A tariff which included provision for local authority administrative costs and expertise

- (4) Guidance (incorporating mandatory elements and best practice) to facilitate and build support for adoption of net gain, targeted at ecology officers, planners and senior managers. {This is a particular role for advisers from Natural England, the Environment Agency and Defra nationally).

These points should facilitate every effort to make (biodiversity) net gain administration as simple as possible, without slowing the application and approval process. However, it is necessary to highlight the fact that local authorities vary widely with regard to:

- (a) The extent and quality of evidence and advice they employ in connection with biodiversity issues
- (b) How they deal with biodiversity issues (regardless of any statutory duties), with regard to strategic planning, development control, land stewardship and public engagement.
- (c) Their capacity, resources and expertise to ensure compliance.

Accordingly, the extent to which particular local authorities will be equipped to handle biodiversity (and environmental) net gain will vary considerably. Some will be very quickly net gain ready. Others, particular those lacking ecological expertise will need to make considerable changes.

There is a risk of this being perceived as a local authority activity that is simply added to the full range of activities already being done. This will increase the burden.

It is important that parallel support mechanisms, such as Natural England's role in developing and setting standards; Local Environmental Records Centres' expertise in data management, analysis and mobilisation; Local Nature Partnerships experience with developing local biodiversity plans and targets etc. are developed and supported to provide the infrastructure needed for this to work.

In addition, there needs to be further direction and training for environmental consultants, so that they can provide the service needed by developers, and training for Environmental Planners in the use and interpretation of the metrics.

Supported by additional IT infrastructure this system could provide an increasingly streamlined mechanism.

The tariffs could help ensure that LPAs are appropriately resourced/ staffed to deliver this work. It is also important that all processes being considered are checked by lawyers to ensure that any proposed mechanisms will comply with appropriate planning legislation or are covered by other legally water-tight mechanisms.

Lastly, the process needs to be developed and promoted in a way that will be supported by Civil Society.

35. How could the proposals be refined to manage any negative impacts on the scale and delivery of other developer contributions (e.g. through Section 106 or Community Infrastructure Levy payments)?

S106/CIL contributions are essential in enabling a development to be acceptable in planning/environment/social terms and it is important that these aren't impacted by the

introduction of Biodiversity Net Gain such that it will simply take part of an existing pot of money, rather than providing an additional funding stream solely in respect of biodiversity impacts.

By making Net Gain mandatory rather than leaving it as a voluntary or locally mandated requirement land values, and developers' expectations and behaviours - not least in relation to minimising net gain obligations through better design should help to ensure that there is little or no impact on most developer contributions.

It is inevitable that there will be some acclimation period but a lead in period before net gain becomes mandatory and guidance/advice should address this.

Within Lichfield and Warwickshire there doesn't appear to have been any contributions clash so any impacts would seem likely to be minor and short-lived.

36. *Would you, as a planning authority stakeholder, prefer any net gain tariff revenue to be paid through:*

a. local authority administration?

b. a nationally managed funding scheme (which could then reinvest in local habitat schemes best aligned with national strategic environmental priorities)?

Impact on developers

37. *How could the proposed net gain process be improved for developers?* [BC47]

From an external viewpoint, one of the benefits of making net gain mandatory and operating in similar fashion in all locations will be to offer major developers a level playing field wherever they are operating - providing greater consistency, clarity, transparency and certainty for the developer.

For all applicants, and particularly in terms of reduced costs and faster turnaround for commercial developers the major benefit will lie in the reduction/removal of obstacles that presently slow or create bottlenecks in the assessment process on which approval relies – all of which depends on their opting for better, more ecologically responsible designs.

Developers should be able to celebrate the net gains that their contributions have made to biodiversity, environmental quality and liveability for new residents or transport and service users.

Arrangements that satisfy this, whilst contributing positively to local net gain delivery, and minimise administrative costs should be welcomed.

38. *What other steps, considerations or processes in environmental planning could be integrated within a net gain approach?*

Achieving environmental net gain (ENG) is an important goal and there is an opportunity for the manner in which BNG is planned and introduced to both prepare the way and for the two to be well integrated from the outset.

A 'Net Gain' approach should be used to encourage innovation, to look to provide a stronger and more resilient natural heritage, and also greater biodiversity opportunities in developed landscapes and in proximity to people.

Net Gain should not be a policy that either undermines or overplays enhancements such as biodiverse green roofs, biologically rich SUDS systems or multifunctional green space.

LPA 'biodiversity duties' should be expanded and mainstreamed – Net gain would therefore be seen as a tool for delivering on a key Local Authority function rather than a discrete, and possible rather intangible, obligation for developers.

Local Authority roles in delivering public health and community engagement could be strongly aligned to biodiversity net gain. The link that is increasingly being made between biodiversity and well-being would allow this planning policy to link with broader socio-economic goals.

Additionally, **Neighbourhood Planning Fora** could be encouraged to consider local opportunities for biodiversity enhancement as part of their plans. These should then hold weight when authorities take decisions on spending any monies received, and by developers undertaking offsite mitigation work.

39. *Would any particular types of development (e.g. commercial, industrial, public sector, local infrastructure) be disproportionately affected by a mandatory biodiversity net gain requirement?*

The most likely issue is with affordable housing where viability is already marginal. This is not a problem caused by the introduction of biodiversity net gain, and the suggested flexibility in BNG approach by LPAs would help avoid possible contention.

Implementation of mandatory biodiversity net gain

40. *Do you agree that the proposal for staggered transitional arrangements would help to ensure smooth implementation of biodiversity net gain policy?*

There will certainly need to be a lead in period and this time should be used to gather data, develop resources and train council officers and developers in delivering biodiversity net gain.

Many local authorities are far from being net-gain ready. However, some are already up and running or in process or have been preparing to introduce some system and have probably only postponed whilst awaiting the present consultation. The approach with local authorities should be to:

- Set a date by which net gain will become mandatory. This should be as soon as realistically practicable. The launch could be delayed by those authorities that are currently poorly set up to effectively deliver net gain.
- Potentially, encourage those local authorities which are keen to do so to introduce their own net gain and tariff system in the interim on the basis that any national standards will apply to all from the date on which biodiversity net gain becomes mandatory.

In preparation, every local authority should

- undertake a biodiversity opportunity mapping exercise
- develop a green infrastructure/net gain strategy
- develop a Local Nature Recovery Network plan,
- identify potential compensation sites and

- set up an arrangement with their local environmental records centre for the supply, storage and dissemination of information in support of their administration of net gain delivery on behalf of their local nature recovery network partnership
- Identify proposals to fill gaps in knowledge around biodiversity and ecological functioning and the development of an adequate baseline

Local Environmental Record Centres should seek to ensure that they are in a position to fully support the net (biodiversity) gain needs of LNRN partnerships in terms of biodiversity and environmental data and managing information about gain and development sites and net gain administration as net gain administrators and providers are likely to require.

Right of appeal

41. *Would the existing dispute resolution process provide the best way to overcome any disagreement over whether net gain is achieved?*

Net gain could be incorporated within the existing dispute process.

There are a range of scenarios where there might be disagreement. One of these would be where the metric calculations were in question. This should be relatively simply resolved.

More difficult would be the case where the locally special piece of habitat (e.g. one supporting an old meadow invertebrate assemblage) was not adequately represented by the DBM calculation.

A local authority should be expected to verify any net gain quantification – but there might be disagreement between the LPA and *a developer which might need to be addressed by other means.*

42. *Would an additional arbitration or approval process be necessary? If so, please specify why.*

The new Office for Environmental Protection could potentially have a role here.

Net gain calculations and negotiations should be conducted in the open and be fully transparent as part of the planning application process with third parties able to comment accordingly. The DBM calculation should be included in planning application documentation.

Where disputes arise over DBM calculations or the discharge of net gain obligations there should be a third party right of appeal and any dispute resolution process should allow for third party involvement.

There should also be a right of appeal (to the Planning Inspectorate/Secretary of State). This would be to enable a resolution to disputes that can't otherwise be resolved.

Monitoring and evaluation

Quality assurance

43. *Are there any issues or measures, other than those outlined, that we should take into account when considering how to monitor biodiversity net gain?*

Whilst useful for net gain purposes, the Defra Biodiversity Metric and biodiversity units are hugely simplified and generalised. Counting numbers of units lost and gained, even taking account of broad habitat types will provide a very low-resolution picture.

Whilst this will serve to track progress at national level, a greater level of detail will be required in planning, delivering and monitoring LNRNs.

Local authorities are not best placed to hold and supply data about biodiversity, nor to archive environmental data. Accordingly, such information will be best held on a local authority's behalf by the Local Environmental Records Centre for their area which will also have considerable amount of other data of value within the planning system. Many local authorities already have existing service level or other relationships with the relevant LERC. Ensuring that net gain data/mapping is held by a third party will add to transparency, but more importantly, it may be incorporated with other information for particular gain sites and utilised in connection with the implementation of local nature recovery networks.

Third party verification will be required in order to ensure the delivery of promised gains, and such monitoring information should also be held by *the relevant LERC*.

44. *Should local authorities be required to provide information about habitat losses and gains?*

There is a clear need to record the extent and quality of losses and promised gains, and to monitor progress with delivery and site condition to appraise the success of initial works and ongoing management - and to identify the need for further intervention.

This is important for national reporting and strategy revision but will also be vital locally for

- (1) Assessing how the mitigation hierarchy has been followed
- (2) The responsible body ensuring that all necessary actions are undertaken by or on behalf of developers on site or at offset locations
- (3) Assessing a local authority's handling of net gain (by itself or the responsible body acting on its behalf)
- (4) Tracking progress/outcomes against targets for individual net gain/offset sites
- (5) Tracking progress in relation to particular habitats/species
- (6) Tracking progress and planning next steps with the delivery of local nature recovery networks.

Reporting on existing indicators can be patchy (e.g. SDL160) and the reporting proposed here should be simple, mandatory, standardised and transparent, whilst permitting an audit trail for a particular development. Where a LERC manages the monitoring data on behalf of a LNRN partnership, it could be best placed to provide such a summary.

45. *What technological or other innovative mechanisms could facilitate the delivery and monitoring of biodiversity net gain?* [BC51]

Mapping (together with the underpinning data) is key. There are two main ideas.

- (1) JNCC has already developed the means to provide partially pre-digested Sentinel I and Sentinel II data that could be used to monitor habitat change. In the near future, use of image recognition technology could largely satellite data into Phase 1 or UKHab or Natural Capital maps. With limited ground-based (and drone) surveys to ground truth the resulting maps this will provide an excellent basis not only for planning local nature recovery networks (taking account of changing water levels

etc.) but of monitoring progress in their delivery. (Drones are likely to be more valuable for intertidal areas).

(2) If, as above, LERCs are to be the local net gain data custodians then there will be merit in developing a GIS-system in which development and net gain/offset sites (past, current, future, potential) may be mapped; information held about each site and its constituent parcels/habitats, the planned actions and when they are meant to occur, when they actually happened, the resulting outcomes etc.

At a site level this should help to ensure that all planned actions do occur – and that problems are flagged up if not,

At an authority/county level it will provide a clear picture of all net gain sites and their linked developments within an area

By developing a system that can be used with the requisite level of detail, and in combination with other data to meet local needs whilst adhering to a common set of standards and formats it will be possible to combine information with that from other centres at a national character area, regional or national level, providing a local-national map and database. It would make considerable sense to develop such a system once, for a particular LERC, and then to make this shared system available to all LERCs.

The following are requests for additional information to help inform decisions about the implementation of net gain rather than consultation questions.

Key evidence gaps

Benefits and costs of mandatory biodiversity net gain

Not addressed as yet.

A. *Transition and ongoing delivery costs to central (e.g. Defra, Natural England) and local government (e.g. LPAs).*

Evidence of how much a biodiversity net gain approach costs to implement. We are aware of evidence from the biodiversity offsetting pilots, but these costs included development of the approach and spatial strategies which are now better understood.

B. *Interactions with other contributions such as Section 106 and Community Infrastructure Levy. Evidence of whether a biodiversity net gain requirement would affect wider developer contributions. If so, how significant would this effect be?*

C. *Distributional impacts of net gain on viability.*

Will a mandatory biodiversity net gain requirement affect some types of development disproportionately?

D. *Recent trends in habitat loss and gain due to development, likely habitat under threat due to future development, and expected habitat delivery through net gain.*

What types of habitat are typically lost through development?

Is development typically achieving no net loss of biodiversity, and is performance improving?

E. *Further detail on costs to small and large developers and developments, including familiarisation costs and impact of tariff.*

Are there any further costs or benefits not identified in this document or the accompanying Impact Assessment?

Please provide evidence of these costs or benefits.

F. *The impact of biodiversity net gain delivery for*

- *commercial development;*
- *public sector development;*
- *industrial development; and*
- *local infrastructure development*

To what extent do these development types already achieve net gains, or no net loss of biodiversity, and is performance improving?

What is the typical habitat type and condition on these sites and how does this differ from other types of development (i.e. residential)?

Is there typically a greater net negative impact on habitats through development of these types, resulting in greater costs for net gain?

G. *Net gain interactions with on-site delivery of housing and other green infrastructure (e.g. parks, recreation)*

Will biodiversity net gain negatively or positively affect the quality of green space for recreation and enjoyment within new developments?

H. *Whether net gain approaches, where adopted, help to speed up and/or unlock development in previously borderline sites.*

Can you provide examples of where net gain has helped to expedite, or has delayed, planning processes?

Can you provide examples of where a net gain approach has unlocked development that would otherwise be unacceptable (e.g. by mitigating or compensating for otherwise unacceptable impacts, or by achieving local support), or prevented development that might otherwise have proceeded?

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