



5th April 2022

By email (only) to: netgainconsultation@defra.gov.uk

Dear Defra consultation team,

Consultation on Biodiversity Net Gain regulations and implementation: response from the Buckinghamshire and Milton Keynes Natural Environment Partnership (the “NEP”)

Introduction – the NEP and our BNG experience

The Buckinghamshire and Milton Keynes Natural Environment Partnership (the “NEP”) represents organisations from the conservation, local authority, business, health, education and community sectors across Buckinghamshire and Milton Keynes. As the area’s official Local Nature Partnership, we work collaboratively to improve the environment and ensure it is appropriately taken into account in local decision-making.

The NEP has been working for several years now, with support from Warwickshire County Council, to develop a system for implementing biodiversity net gain across our area. We have therefore worked extensively with our partners through the various issues and opportunities and have tracked closely national policy developments with a view to ensuring that we develop a system that provides net gains to strategically-important locations.

In particular, we have worked on a system whereby an LPA can offer an option to developers to provide the LPA with a financial contribution, via a s106 agreement, in cases where offsets are needed. The Council would then arrange to finance appropriate offset projects according to a range of criteria, assessed by an independent expert panel Chaired by the NEP, to ensure a process that is: simple and effective for developers; is offered as an option and not a requirement; avoids delays to planning (by not requiring an earmarked offset site prior to development); which is structured to ensure independence in site selection; and which meets local strategic biodiversity priorities.

We welcome the opportunity to respond to the proposals – but have key concerns

We welcome the opportunity to comment on the BNG proposals, and hope that our experience as a partnership provides helpful and practical input to the proposals.

However, having reviewed the consultation document, we have a number of concerns and to raise, including several that mean that the LPA-offered option to developers requiring offsets, as described above, is unlikely to be available if the current proposals are taken forward.

We would also point out the BNG Open letter recently put together by leading academics, which also raises concerns about the BNG system, many of which align to ours. We would therefore request that the issues raised there are also carefully taken into account in formulating the Government’s response: [BNG-Open-Letter_020322.pdf \(ox.ac.uk\)](#)

Our detailed response is in the Table that follows this letter (page 9+). We have also outlined below our key concerns.

1. There are aspects of the proposals that we are concerned could limit the benefit for biodiversity and/or cause delays in the planning system.

There are two key aspects to this concern:

i) Proposals to not allow LPAs to take a general tariff, and proposals that effectively favour habitat banking over such local systems:

Some of our partners are concerned that habitat banking will be favoured at expense of local contributions to individual offset projects, and at the expense of strategically-selected priority biodiversity needs.

This concern arises in particular due to the proposals relating to the i) 12 month time period within which to start offsite biodiversity net gain projects after the discharge of the mandatory pre-commencement BNG condition, pg 57); ii) the need for an offset site to be identified and registered prior to planning; iii) and local authorities to not be allowed to take a general tariff without earmarking a specific offset site first; and the statement that iv) “...Where possible, we will encourage habitat banking...” (pg 57).

We are particularly disappointed that the proposals would not allow for LPAs to take a general tariff to allow an option to developers that enables LPAs to implement independent selection of offset sites to strategically-important areas for biodiversity locally. Such proposals therefore effectively disincentivise an LPA-based option for developers.

Yet an LPA-system to take a general tariff, with appropriate checks on independence and fairness, such as the one we have been developing, would offer various significant benefits to biodiversity and local nature recovery:

- Simple process for the developer – where offsets are required, a payment in lieu of offsets is provided on a cost-recovery basis to the LPA so the LPA must then secure the offset;

- Reduces delays to the planning system (offsite sites would not need to be earmarked prior to planning)
- The system and the panel would ensure that Local strategic priorities are met; these may not be if just relying on habitat banking sites alone;
- BNG funds from different developments can be used strategically to fund local biodiversity priorities;
- An independent panel oversees selection of sites using a transparent set of criteria – avoiding any bias in the system;
- Habitat needs to be strategically-placed to ensure green corridors and appropriate linkage. With the habitat banking and developer-led offset site selection method, there is a risk that linkage to neighbouring sites is not incentivised.

The current system proposed in the Consultation Document (ConDoc), and specifically excluding LPAs taking a general fee, would not allow such a locally- led LPA system to operate to focus offsets in areas of strategic need. Favouring habitat banking could also risk connectivity and local offsetting in areas of need being overlooked. In addition, there would not be any possible centralised oversight by an LPA (perhaps with engagement with a local nature partnership) of offsetting in this way in line with LNRS or other local nature strategic priorities. We would welcome further information about how favouring habitat banking would address these concerns.

We have several other concerns with the proposals:

- The current proposals would favour habitat banks that are already set up and for sale – but many areas not yet in that position;
- This means market leaders would be favoured, instead of strategic funding directed towards locally-identified biodiversity priorities;
- It is unclear what the proposals could mean in terms of how developers with very small offset amounts will be handled; some of our partners suggest a small-sites tariff based on offset units required could assist with being a cost-effective method to secure net gains, but this would again require LPA-oversight of spending.

Overall, the proposals to not allow LPAs to take a general tariff, is disappointing and potentially short-sight in the development of this policy area, particularly in its early stages when the offset supply market is untested on a major scale and landowners should be encouraged to offer up potential offset opportunities; and particularly when other LPAs in the country have successfully operated schemes overseen by the LPA as a broker – notably, Warwickshire Council.

This new proposal will effectively undo the extensive work we have done over the last 3 years with Buckinghamshire Council in setting up a similar BNG scheme as an option in Buckinghamshire.

Ultimately, we strongly believe that LPAs should be able to offer a general tariff system as an option to a developer, for the reasons outlined above, provided there are sufficient checks and balances around any potential conflict of interest so that developers are not directed or favoured to provide a contribution to them or are seeming to favour the LPA scheme above other options.

Indeed, we also note that it may be simpler and more efficient to allow the agreement of a fixed BNG tariff in certain circumstances and for certain types of development (such as small sites, temporary permissions, some self builds, etc), with planners and ecologists within LPAs able to exercise their professional judgement to determine when further more detailed BNG baseline work is required, as the requirements can vary considerably on a site-by-site basis.

ii) Need for the correct interpretation of the requirements to ensure BNG happens as intended through clear guidance. In particular:

- **10% and 30 years - must not be viewed as caps**

This must be made very clear in any finalised guidance. Related to these points, clear guidance is also needed on:

- how to best to provide a fall-back arrangement for if offset providers / management companies cease to operate during a 30 year / longer period;
 - safeguarding of BNG sites into the future beyond 30 years (we have remaining concerns that there could still be a risk of development on them after 30 years);
 - What happens on the 30th anniversary of an offset site – for example, is the expectation that the site would become a LNR or LWS; or that other protections could begin e.g. priority habitat site, high quality woodland, etc.; could the landowner be given support to access appropriate funding at that point (ELM equivalent?)
- **On-site gain is as important to delivering BNG policy and legal requirements as off-site gain**

Ensuring that on-site gains are provided and delivered, managed and reported on, are key to the entire BNG system working. Without the onsite gains secured, monitored and reported, it would not be possible to know whether the policy is contributing to an overall BNG.

All on-site habitat delivery that forms any aspect of the application’s biodiversity net gain allocation therefore *must* be adequately secured, with developers required to demonstrate which body or entity will be responsible for on-site delivery, including how the body or entity will be funded to deliver the habitat work, and with a mechanism in place to ensure robust regulation, monitoring, reporting and enforcement. Clear guidance is required on this aspect and should be consulted on.

We are also concerned about how the ‘significance’ (target note 37, on page 53 in the consultation) of the proposed increase in biodiversity value of on-site habitat will be defined. The Environment Act states that “significant” increases from the on-site pre-development biodiversity value should be secured for at least 30 years. We are keen that “significant” in this context is clearly defined in future guidance, so that this does not open a potential loophole for a developer to push back on long-term management requirements by arguing that the increase in biodiversity value on-site is not “significant”.

Finally, onsite, we would want to see requirements for delivery, management, monitoring and reporting over 30 years (beyond where possible), picked up through planning and enforcement channels. Guidance on what is recommended practice could help raise the

standard of delivery of BNG on-site.

▪ **Importance of the Mitigation Hierarchy**

This must be reiterated in the final scheme requirements. Guidance is needed as to how developers should evidence the steps taken – e.g. avoidance in the first instance; and how to review that evidence to determine if the hierarchy has been sufficiently followed, and the consequences if the hierarchy is not followed.

2. LPA capacity – resources, training and funding for BNG monitoring, reporting and enforcement.

There are several aspects involved in operating the BNG proposals that could require LPA / LA involvement. However, **there is already a shortage of planning enforcement officers and ecology expertise at local authority level.**

We would therefore welcome clear guidance to set out which organisation is expected to carry out at least the following functions, and the resources available to support doing so - for example:

- 1) Quality assuring developer-submitted metrics (a potentially large burden);
- 2) Assessing the baseline (30th January 2020) – role of LAs in this process;
- 3) Monitoring and reporting of on-site and off-site gains; including whether LPAs can be accredited;
- 4) Enforcement action (on-site as well as off-site gains); including, who to enforce against in cases where a developer has left the site; or if measures are outside the LPA area;
- 5) National net gain offset site register – the interlinkage between local / national roles;
- 6) Working to secure potential offset providers in locations of local biodiversity priority – which could be a significant role.

If the expectation is for LAs / LPAs to undertake these and other roles, then there must be, at least:

- 1) Clear processes set out and guidance as to how this will be resourced sufficiently, including with support and appropriate training and expertise;
- 2) Burdens funding to cover the costs, including to recognise those LPAs already trying to meet requirements of BNG. We note from the ConDoc that “...*The “UK Govt has committed to fully fund new burdens placed upon planning authorities arising from the new mandatory BNG requirement”* (pg 17). We hope this means that all LAs, whether acting after that funding is available or before, will indeed benefit so that costs are covered. We also note that the Impact Assessment published with the Environment Bill stated that LPAs would need 1-4 additional officers (primarily Ecologists) to implement BNG on an ongoing basis;

- 3) Guidance on appropriate preparation and support for local authorities – e.g. we note some national examples of assessing the baseline condition of potential offset sites; and/or assessing the likely habitat offset need according to known areas earmarked for development; and
- 4) Clear guidance on the respective roles of NE, Defra and LPAs in the various processes - we would welcome more detailed guidance clearly setting out the roles of each stakeholder in the process: e.g. who will set the rules and guidance, provide support and oversight, and intervene to correct any conflicts of interest or market failure.

3. Need for further guidance

Throughout our detailed response below, we on many occasions state where further clear **guidance would be helpful. Proper training on these aspects must be in place** so the guidance can be appropriately and accurately followed.

Whilst the details follow in the Table below, our detailed responses to the consultation questions, areas of guidance noted include:

- 1) **Role of local biodiversity strategies / approved LNRs** – in demonstrating how developers have avoided negative impacts from poorly-located development; as well as for the locations for targeting offsite gains. It will be important for guidance to recognise the need to take into account other existing spatial strategies in cases where an LNR is not finalised and in use. This is important so that offset sites are not selected purely on economic grounds – e.g. on the cheapest land / easiest / cheapest habitats to create and manage. (NB any LNR guidance must also be integrated with BNG policy ambitions.)
- 2) **Right habitat right place** – there should be clear requirements in place to ensure the biodiversity net gains are secured in the right place for nature, with clear criteria, guards against any local political needs taking priority and with the need to look outwards across local authority borders at building strategic gains for nature. (Guidance for the LNRs will also be instrumental in helping to achieve this).
- 3) **Standardised best practice to work to** regarding completion of metric and presentation of BNG data within planning reports.
- 4) **Ecological expertise and support** – the guidance should make it clear that such expertise should be involved with certain stages of the process (and possibly with approved local supplier lists provided):
 - selecting and registering offset sites
 - monitoring and reporting on offset site progress towards promised net gains
- 5) **Definitions** – e.g. of
 - a. A temporary development
 - b. Irreplaceable habitat
 - c. Additionality and its applications in different circumstances

- 6) **Baseline condition assessments** – should be conducted on sites that are likely to be used for offsetting. Guidance is needed on the minimum / possible data to use to prove the biodiversity value of the 30th January 2020 baseline date.
(e.g. location of a site in relation to an approved / finalised LNRS or other biodiversity strategy such as a Biodiversity Action Plan, where an LNRS is not yet in place.
- 7) **Monitoring and enforcement** - to ensure that the target habitat and condition are met. There needs to be a mechanism in place that directly links to the management plan to ensure regular and appropriate monitoring of the habitat creation / enhancement takes place and that appropriate remediation works are undertaken if required.
- 8) **Type of offsite habitat provision likely to be needed locally** – should be assessed by the LPA according to likely development sites v habitat losses – and advised in guidance to developers.
- 9) **How the concept of additionality could be applied to NSIPs.** Associated NSIP guidance must, importantly, encourage offsite compensation for at least 30 years.

10) Separate guidance for minerals applications

- 11) **For small sites** - guidance to set out for developers, consultants etc what's required, when, by whom, etc; and
- 12) **When to use s106 and when to use Conservation Covenant** (e.g. whether LPAs could be a responsible body for the latter)
- 13) **Strategic significance** – LNRSs may eventually set this out, but the expected timing mismatch between NRs and BNG system means other strategic biodiversity documents are important from now - e.g. Biodiversity Action Plans
- 14) **What happens if a scheme doesn't get registered before the 12 month deadline from approval?** Does the developer then have to provide funds into a habitat bank for example?
- 15) **Management continuity over 30 years or more:** guidance should state how the BNG Plan should identify how management of a site will be secured over the period of gain (e.g. what happens if a management company folds during the management contract, etc).
- 16) **Requirements for monitoring and reporting** of offsets and how the LPA intends to oversee this process. Sufficient funding, support and expertise must be provided to the LPA to carry out this function.
 - a. Competence of offset providers to provide the gain – guidance should state how to ensure that habitat providers are credible and will provide the gain promised competently.
 - b. Legal agreements – guidance could also be provided regarding the minimum requirements between developers and offset providers.
 - c. We would welcome clearer guidance on the safeguarding of BNG sites into the future beyond 30 years and are concerned there could still be a risk of development on them after 30 years.

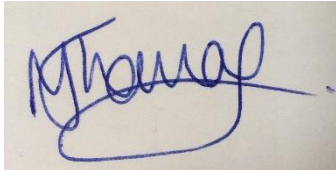
- 17) **Habitat banking guidance:** particularly to:
- Ensure habitats are created and managed into the long-term, and externally monitored and reported on, by accredited individuals with suitable ecological experience.
 - Outline minimum requirements for habitat bank site baseline assessments – including photographic assessment – to prove the current and predicted biodiversity value of a habitat bank.
 - Highlight the priorities for habitat banking locations – taking into practical considerations and ecological considerations – so that habitat banks are created in locations with ecological need and have connection to areas of loss.
 - How the system would encourage habitat banks to be strategically placed and enhance green corridors and connectivity to improve biodiversity resilience. This should be outlined in any further guidance.
 - Full details of how the target habitats and their condition will be reached, monitoring frequency and the protocol in place for restoring habitats should habitat creation or restoration have a set-back and need to be remediated in order to achieve the target habitat and condition for which the biodiversity units are being sold.
 - How any mistakes are rectified and the monitoring & reporting requirements
 - How this will be reported and regulated with a clear procedure / policy to ensure habitat banks are consistently providing the habitats they advertise.
- 18) **BNG register** – guidance should outline how LPAs, private companies, landowners, developers etc must work together to make efficient use of / interact with the national register. Responsibilities and transparency for all concerned with any development must be made clear.
- 19) **Stacking of payments and Ecosystem Services** - guidance is needed on, for example:
- How BNG funds could be combined with others and meet additionality criteria - e.g. how BNG funds can be combined with others on the same land, to produce additional outcomes above those already in place and which do not conflict with them (e.g. on a SANG, for example), to ensure there is a fair approach applied consistently for all landowners nationally, and a back-up solution for circumstances where BNG fails to deliver but the other schemes on a site do.
 - How to distinguish between the BNG and other environmental benefits being provided for an area of land. Needed to ensure transparency, accountability and additionality.
 - What can and can't be stacked with each other to meet the additionality criteria. Guidance must ensure payments are not doubled up for the same service.
 - The use of BNG funds being match-funded or combined with other funds to e.g. procure and manage schemes into the long-term. (e.g. to set out clearly when the BNG funding would be considered additional)
- 20) **The need for independent auditing and accreditation.** e.g. as set out by CIEEM here: <https://cieem.net/resource/biodiversity-net-gain-report-and-audit-templates>

Buckinghamshire and Milton Keynes Natural Environment Partnership (the “NEP”)

Once again, thank you for the opportunity to comment, and we look forward to hearing more as the proposals develop. We would of course be happy to discuss any of the aspects raised.

Best wishes.

Your sincerely,

A handwritten signature in blue ink, appearing to read 'N Thomas', with a stylized flourish at the end.

Nicola Thomas, Partnership Manager

On behalf of The Buckinghamshire and Milton Keynes Natural Environment Partnership

Table 2: NEP’s detailed responses: BNG Consultation response Consultation document [Consultation on biodiversity net gain regulations and implementation](#)

Page	Question	NEP response
	PART ONE: DEFINING THE SCOPE OF THE BNG REQUIREMENT FOR TCPA 1990 DEVELOPMENT	
	Exemptions	
22	<p>Q1 Do you agree with our proposal to exempt development which falls below a de minimis threshold from the biodiversity net gain requirement?</p> <p>a) for area-based habitat: [Yes (which of the following thresholds do you think is most appropriate: 2m², 5m², 10m², 20m², 50m², other threshold – please specify) / No (please explain why not) / Do not know]</p> <p>b) for linear habitat (hedgerows, lines of trees, and watercourses): [Yes (which of the following thresholds you think is most appropriate: 2m, 5m, 10m, 20m, 50m, other threshold – please specify) / No (please explain why not) / Do not know]</p>	<p><u>Yes, but...</u></p> <p>a) <u>Area-based habitats</u></p> <p>We agree <u>some development proposals</u> (such as street furniture and boundary walls – less than on residential unit) result in negligible impacts or minimal impacts to low or medium distinctiveness habitats and should be exempted. However - as our NEP 2019 feasibility assessment concluded, generally a loss in biodiversity could occur as a result of different types of development, dependent on context rather than size. The system must, therefore, ensure that high value biodiversity sites of any size are covered by the requirement, and not exempted.</p> <p><u>However the exemption limit should be kept to a minimum</u> (2m²) to i) avoid incentivising habitat degradation on sites around the threshold to bring that habitat area below the threshold; also ii) to capture small areas, which can have a disproportionate negative biodiversity impact, for example if connectivity is being interrupted. Even a small site can have important habitat that should be protected and improved.</p> <p><u>Defra should also rule-out the de minimis exemption of non-statutory wildlife sites (e.g. local wildlife sites) as well as statutory ones, and not just priority habitats. A de minimis limit could threaten such sites and the system must not exempt top quality habitat. (Some LWSs are selected for species reasons, so wouldn’t be picked up if just reviewed the quality of habitats.)</u></p> <p>b) <u>Linear habitat</u></p> <p>Water courses, hedgerows & lines of trees should be considered separately. E.g. 2m could include a fairly good-sized tree; but a small hedgerow. We suggest separate de minimis / or no de minimis should be considered for e.g.:</p> <ul style="list-style-type: none"> • Water courses – no exemption • Hedgerows – kept to a minimum c. 5m (although hedgerows should be kept and not levelled during development) • Line of trees – no exemption

Page	Question	NEP response
		<p><u>For any habitats....</u></p> <p>It may be helpful to:</p> <ul style="list-style-type: none"> • Exempt the <u>types</u> of development as well as the example threshold (e.g. 2m2 and/or including reasonably-sized street furniture including advertising hoardings, also boundary walls). • Require a financial contribution from developments below any de minimis limit, so that all developments contribute to BNG delivery. • Identify clearly the threshold for application of the small sites metric / simplified process. • If a de minimis limit is introduced, however, the system must ensure that multiple lots are captured, even if they are cumulative • Allow for flexibility so that high value habitats are not exempted, no matter what the size. <p>Such measures still do not allow for the multiple pressures that may arise on onsite gains resulting from residential development- such as use as amenity and resulting pressure from recreation, dog fouling, eutrophication, etc. Onsite gains must be subject to sufficient scrutiny in terms of its planning, transparency over the measures put in place, management and monitoring plans, and reporting over 30 years to guard against these threats.</p> <p>Finally, we note that some of our partners suggest that given that whether BNG is required is often based on the context of a specific planning app, not the area or size of a habitat, and <u>that instead of a threshold, an LPA might require a standardised tariff</u> where the context of the application, key to the impact, is taken into account, including cumulative impacts such as planning app amendments for 1 or more dwellings.</p>
23	<p>Q2 Do you agree with our proposal to exempt householder applications from the biodiversity net gain requirement? [Yes / No (please explain why not) / Other (please tell us more) / Do not know</p>	<p><u>Other</u></p> <p>Given the potential for impacts from, e.g. large gardens with wildlife areas being cleared for outbuildings; some gardens contain valuable biodiversity, it is difficult to agree that all such areas should be exempt as a blanket rule.</p> <p><u>However – given the possible enforcement issues associated with implementing such a requirement for each household application (how could the LPA secure BNG over 30 years in a domestic garden?) could householder works be required to pay a contribution towards strategic habitat creation locally instead of an exemption?</u> At the very least, they should be considered on a case by case basis by local authority ecologists dependent on context.</p>
24	<p>Q3 Do you agree with our proposal to exempt change of use applications from the biodiversity net gain requirement?</p>	<p><u>Other – depends on context....</u></p> <p>In general yes. Where a change of use applications does <u>not</u> propose physical changes that would result in habitat losses, it seems proportionate to exclude it.</p>

Page	Question	NEP response
	[Yes / No (please explain why not) / Other (please tell us more) / Do not know]	<p><i>However - where a change of use application affects the habitats on-site, (some change of uses can have significant impacts – e.g. on larger land holdings) the other exemption rules should apply. Elsewhere, proposals for a change of use could deprive the new site of enhancing existing biodiversity assets unless the requirement remains where planning permission is needed – e.g. residential conversion of farm buildings in open countryside, or conversion of employment buildings to residential use.</i></p> <p><i>As a solution, it would be helpful to allow the LPA to determine when the BNG requirement should apply in respect of change of use sites.</i></p>
24	Q4. Do you think developments which are undertaken exclusively for mandatory biodiversity gains should be exempt from the mandatory net gain requirement? [Yes, only for biodiversity net gain (please explain why) / Yes, also for some other environmental mitigation purposes (please explain why) / No (please explain why not) / Other (please tell us more) / Do not know]	<p><u>Other</u></p> <p><i>This broadly seems to make sense. We are keen to ensure that the creation of BNG sites is not disincentivised by the mandatory BNG gain requirement. A site used exclusively for offsets should be subject to a strict management and monitoring planning regime.</i></p> <p><i>We are, however, concerned that if all developments that are exclusively for BNG require mandatory BNG, certain habitat creation / enhancement schemes that will require planning permission (e.g., pond creation) would be subject to the BNG requirement, whereas other habitat creation / enhancement that do not require planning permission to proceed would not be subject to the BNG requirement. It could potentially disincentivise the creation / enhancement of certain habitats over others.</i></p> <p><i>There is a need to ensure a parity for habitat creation / restoration in line with the rules of the Defra Metric and Local Conservation Priorities within an LPA / LNRS / NCA area. There is a need to acknowledge the baseline of a proposed BNG site is of value in its own right, and there will still be a need to ensure that any impacts to, or loss of habitats on the proposed BNG site are compensated for. It may be an appropriate compromise to ensure as a minimum, a national policy of ‘No Net Loss’ for developments that are exclusively for BNG to avoid this.</i></p>
25	Q5 Do you think self-builds and custom housebuilding developments should be exempt from the mandatory net gain requirement?	<p><u>No.</u></p> <p><i>All new housebuilding, including self / custom-builds should be subject to the net gain requirements for the following reasons:</i></p> <ul style="list-style-type: none"> <i>To be consistent with BNG requirements for new housing, whether self-built or otherwise.</i> <i>Small sites could be equally as important as large or other-scale sites for specific biodiversity or connectivity.</i> <i>Exempting small sites risks cumulative impacts on biodiversity not being recognised.</i>

Page	Question	NEP response
	<i>[Yes (please explain why) / No (please explain why not) / Other (please tell us more) / Do not know]</i>	<i>Excluding these sites would therefore undermine the overall BNG goals. The small sites metric could be applied if applicable to make the process simpler.</i>
26	Q6 Do you agree with our proposal not to exempt brownfield sites, based on the rationale set out above? <i>[Yes / No (please explain why not) / Other (please tell us more) / Do not know]</i>	<u>Yes.</u> <i>Exempting brownfield sites presumes that all brownfield site have no biodiversity value. This is not correct – such sites could have some biodiversity of importance, e.g. priority habitats; or have some biodiversity on-site, and there is no reason to exclude that from the overall BNG system. Brownfield sites should be included.</i>
27	Q7 Do you agree with our proposal not to exempt temporary applications from the biodiversity net gain requirement? <i>[Yes / No (please explain why not) / Other (please tell us more) / Do not know]</i>	<i>Other</i> <i>In many ways, we agree with this proposal. Even so, restoration post-use would take time to implement compared with the loss, which is at odds with the e.g. 12 month rule elsewhere in the proposals to minimise the time between loss and gain.</i> <i>Furthermore, if temporary applications are exempted, it could present a loophole in requirements for net gain - e.g. where temporary permissions are extended and later become permanent, which could lead to cumulative habitat loss, particularly if BNG is not required so that the original BNG baseline calculation prior to the first temporary permission is not available at a later stage – unless planning conditions are powerful enough to prevent this.</i> <i>We would suggest that if BNG is to be exempted from such temporary permissions, there is still a requirement to submit a baseline biodiversity metric for the first permission to ensure an audit trail is kept of habitat loss in the event the applicant decides to pursue a permanent application at a later date. The use of bonds or an insurance payment / deposit for such temporary permissions should be considered to ensure that the value of on-site habitats for temporary permissions is considered.</i> <i>Guidance on what is temporary could be helpful; also on the time period over which any losses should be implemented.</i>
28	Q8 Do you agree with our proposal not to exempt developments which would be permitted development but are not on account of their location in conservation areas, such as in areas of outstanding natural beauty or national parks? <i>[Yes / No (please</i>	<u>Yes</u>

Page	Question	NEP response
	<i>explain why not) / Other (please tell us more) / Do not know]</i>	
28	Q9 Are there any further development types which have not been considered above or in the previous net gain consultation, but which should be exempt from the biodiversity net gain requirement or be subject to a modified requirement? <i>[Yes, exempt (please explain which development types and why they should be exempt) / Yes, a modified requirement (please explain which development types and why they should face a modified requirement) / No / Other (please tell us more) / Do not know]</i>	<p>No – all other sites should be included as part of the requirements - for example, including road building schemes under the Transport and Works Act.</p> <p>We would request further details on how developments that come through other legislation (such as Development Consent Orders DCOs) will deliver BNG as it is important that BNG delivery is a fair and uniform process for all proposed developments.</p>
	Development within statutory designated sites for nature conservation	
30	Q 10 Do you agree with our proposal not to exempt development within statutory designated sites for nature conservation from the biodiversity gain requirement? <i>[Yes / No (please explain why not) / Other (please tell us more) / Do not know]</i>	<p>Yes – BNG is in addition to existing policy and legal requirements.</p> <p>Alongside this, we would urge reiteration of protection against development within such sites, not least taking into account the strict application of the mitigation hierarchy and not including irreplaceable habitats in these sites in BNG assessments.</p>
	Irreplaceable habitats	
32	<p>Q 11 Do you agree with the stated proposals for development (or component parts of a development) on irreplaceable habitats, specifically:</p> <p>a) The exclusion of such development from the quantitative mandatory biodiversity gain objective? <i>[Yes /</i></p>	<p>a) Yes – although any losses to irreplaceable habitat must be quantified and recorded.</p> <p>The NPPF requires that development resulting in the loss or deterioration of irreplaceable habitats should be</p>

Page	Question	NEP response
	<i>No (please explain why not) / Do not know]</i>	<i>refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists. This should be applied and enforced robustly.</i>
	b) The inclusion of a requirement to submit a version of a biodiversity gain plan for development (or component parts of a development) on irreplaceable habitats to increase proposal transparency? <i>[Yes / No (please explain why not) / Do not know]</i>	<i>b) <u>Yes</u>- as a statement / record of biodiversity net loss. However, as noted in a, above, per the NPPF, such applications should be refused unless there are wholly exceptional circumstances.</i>
	c) Where there are no negative impacts to irreplaceable habitat, to allow use of the biodiversity metric to calculate the value of enhancements of irreplaceable habitat? <i>[Yes / No (please explain why not) / Do not know]</i>	<i><u>c) Yes</u> – although such enhancement must be developed carefully and works planned for in conjunction with relevant ecological expertise / authorities and be additional to enhancement elsewhere on the site.</i> <i>We assume the metric in this instance, where there are no negative impacts on irreplaceable habitat, could be used to calculate the value of enhancements of irreplaceable habitat, but remain outside any formal required net gain calculations and the BNG objective.</i>
	d) To use the powers in biodiversity net gain legislation to set out a definition of irreplaceable habitat, which would be supported by guidance on interpretation? <i>[Yes / No (please explain why not) / Do not know]</i>	<i><u>d) Yes</u> – this guidance should be subject to consultation before being finalised.</i>
	e) The provision of guidance on what constitutes irreplaceable habitat to support the formation of bespoke compensation agreements? <i>[Yes / No (please explain why not) / Do not know]</i>	<i><u>e) Yes</u> – this guidance should be subject to consultation before being finalised. The application should be refused unless exceptional circumstances however – per the NPPF.</i>

Page	Question	NEP response
	PART 2: APPLYING THE BIODIVERSITY GAIN OBJECTIVES TO DIFFERENT TYPES OF DEVELOPMENT	
	Phased development and development subject to subsequent applications	
35	Q12 Do you agree with our proposed approach that applications for outline planning permission or permissions which have the effect of permitting development in phases should be subject to a condition which requires approval of a biodiversity gain plan prior to commencement of each phase? [Yes / No (please explain why not) / Do not know]	<p><u>Yes</u> – this is in line with current good practice where BNG is already in place. Strategic / outline masterplans must also include BNG. The BNG Plan must be clearly set out and require that each developer knows their role and contribution to achieve the overall BNG plan; compliance must also subject to monitoring.</p> <p>For phased development, there must be in place the following elements:</p> <ul style="list-style-type: none"> • Clear understanding on how BNG delivery will be tracked • Procedure and consequences for what happens if subsequent phases don't deliver • BNG should be frontloaded onto early phases of development where possible • Planning approval for subsequent phases conditional on full implementation of the BNG Plan for the early phases. • Pre-determined value agreed for subsequent applications • Framework plan linked to the baseline • Provision of conditions on the original planning to continue to apply to subsequent phases
35	Q13 Do you agree with the proposals for how phased development, variation applications and minerals permissions would be treated? [Yes / No (please suggest alternative approaches) / Do not know]	<p>Phased development: <u>Yes</u> (See response to Q12. Also - Key will be to ensure that there is an overarching BNG agreement / masterplan for the entire site at the outline application stage, that remains flexible so that changes can be made at each reserved matters stage. BNG should be integral to the design process for each phase of the development ensuring the overarching principles in the overall BNG plan are considered.)</p> <p>Variation applications: <u>Yes</u></p> <p>Minerals permissions: ROMPs should have biodiversity gain requirements. NB Minerals sites often end in substantial BNG at the end under remediation</p> <p>Minerals applications <u>should have separate guidance</u> given they are such long-running processes. For example, the following could be clarified:</p> <ul style="list-style-type: none"> • Could there be a requirement for a net gain through its lifetime? • Historic consents may not have modern BNG requirements; yet being able to review the conditions may offer opportunity to pursue BNG improvements.

Page	Question	NEP response
		<i>We would also suggest there needs to be an approach / mechanism to agree when the 30-year point will start for each phase (we would suggest on the commencement of each stage) and some guidance on how to ensure the most up to date metric is used for long running applications such as phased developments and minerals applications.</i>
	Small sites	
37	Q14 Do you agree that a small sites metric might help to reduce any time and cost burdens introduced by the biodiversity gain condition? <i>[Yes / No (please explain why not) / Other (please tell us more) / Do not know]</i>	<p><u>Other – broadly yes, but</u></p> <ul style="list-style-type: none"> • <i>There should be a sufficient safeguards against developers sub-dividing development plots or building consecutive developments on small neighbouring plots, to benefit from the easier option.</i> • <i>If small sites require ecological expertise for every metric completed, there must be enough resource available to allow appropriate expertise to do this.</i> • <i>Competency - Appropriate experts / ecologists completing any SSM should be accredited.</i> • <i>Results of the small sites metric consultation will need to be accounted for before being able to comment further – including, how much time the SSM would save, and its workability practically given expertise and review requirements.</i> • <i>Proportionality - An alternative, simpler and possibly less-burdensome system would require <u>a tariff to be paid towards biodiversity net gain submitted up-front for certain small site sizes, as sites of all sizes can result in a loss.</u> This must be ring-fenced for biodiversity and applied to be effective according to local strategic priorities, and support for ecologist connectivity as well as pure habitat creation / enhancement.</i> •
38	Q15 Do you think a slightly extended transition period for small sites beyond the general 2- year period would be appropriate and helpful? <i>[Yes, a 12-month extension (please explain why) / Yes, a 6-month extension (please explain why) / No (please explain why not) / Other (please tell us more) / Do not know]</i>	<p><u>Other</u></p> <p><i>From the information available, there appears to be no reason to delay the implementation of the scheme for all development beyond November 2023 as a mandatory date, including smaller sites, and the same start date would keep the system streamlined and consistent. Already there is a small sites metric available for use to assist with smaller developments.</i></p> <p><i>Provided adequate resourcing is provided to LPAs through the anticipated burdens payments then in theory it should be possible to have a single transition period for all development.</i></p> <p><i>However - should the SSM consultation result in new proposals very significantly different to those expected there may be an argument for a small extension, although we consider this would unlikely to be necessary.</i></p>
38	Q16 Are there any additional process simplifications (beyond a small sites metric and a slightly extended	<i>Yes: Guidance – to set out for developers, consultants etc what’s required, when, by whom, etc; and proper training on these aspects so the guidance can be appropriately and accurately followed.</i>

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	transition period) that you feel would be helpful in reducing the burden for developers of small sites? [Yes (please outline your suggestion and explain how it would help) / No / Do not know]	<p><i>In respect of small sites – there may be efficiency, proportionality and competency availability reasons to review the possibility of a small sites up-front fixed tariff for securing monies in relation to offsetting. However – developers should still be required to show proof in their planning applications of adherence to the mitigation hierarchy (notably, avoidance first and on-site mitigation and compensation next) before paying for any offset monies.</i></p> <p><i>We would also welcome a simplified process for securing monies towards Section 106 legal agreements which add time and money to the process. This could be for example a fixed tariff for small sites which could be paid upfront on the submission of a planning application</i></p>
	Nationally Significant Infrastructure Projects	
41	Q17 Are any targeted exemptions (other than that for irreplaceable habitat), reduced biodiversity net gain objectives, or other modified requirements necessary for the application of the biodiversity net gain requirement to NSIPs? [Yes, exemption (please define your proposed exemption) / Yes, percentage reduction (please define your proposed reduction) / Yes, other modified requirement (please define your proposed modified requirement) / No / Do not know]	<p><i>No - all NSIPs should be able to deliver at least 10% BNG; they can have significant biodiversity and habitat connectivity impacts, whether linear or non-linear in nature.</i></p> <p><i>Also - given that NSIPs can be particularly damaging, the minimum 10% BNG must be reviewed with the potential to INCREASE IT, not decrease it, in the future.</i></p> <p><i>We do not consider it is appropriate for NSIPs to have any targeted exemptions for BNG. Given their extensive land take they can have significant environmental impacts and we do not see why there should be any modification of requirements for BNG for NSIPs</i></p> <p><i>The register of offset sites should be as consistent as possible between the NSIPs and TCPA developments.</i></p> <p><i>Finally, monitoring proposals should be built into any enhancement proposals when submitted.</i></p>
43	Q18 Do you agree that the above approach is appropriate for setting out the biodiversity net gain requirement for NSIPs? [Yes (please explain why) / No (please explain why not) / Other (please tell us more) / Do not know]	<p>No</p> <p><i>Please see our answer to Q17. NSIPs should be an exemplar in respect of the implementation and delivery of BNG; and by their scale and nature cause biodiversity loss and involve ecological and environmental technical input. Baseline ecological surveys may be undertaken long before submission; so in practice, delivery could be quick. We therefore see no reason why they cannot achieve at least 10% BNG and principles remain as for TCPA development.</i></p> <p><i>We would welcome the opportunity to comment on the proposed “biodiversity gain statement” during consultation.</i></p>

Page	Question	NEP response
43	Q19 Do you consider that the November 2025 is an appropriate date from which NSIPs accepted for examination will be subject to the biodiversity net gain requirement? <i>[Yes (please, provide any supporting evidence or justification) / No, it should be later (please provide any supporting evidence or justification) / No, it should be sooner (please provide any supporting evidence or justification) / Do not know]</i>	<u>No.</u> <i>For consistency with all other developments, to minimise the time between loss and net gain, and to achieve the aims of the Environment Act and 25 Year Environment Plan, there appears to be no justifiable reason for delaying the start of NSIPs being required to implement BNG beyond the same date for TCPA developments.</i>
43	Q20 Do you agree that a project's acceptance for examination is a suitable threshold upon which to set transition arrangements? <i>[Yes (please explain why) / No (please explain why not) / Do not know]</i>	<u>Yes</u> <i>This seems like a suitable threshold, considering that a lot of ecological and environmental technical baseline assessment would have already been undertaken in the years running up to acceptance for examination, hence there is plenty of time for BNG to be considered by the technical consultants for the scheme well ahead of this proposed threshold.</i>
44	Q21 Would you be supportive of an approach which facilitates delivery of biodiversity net gain using existing landholdings by requiring a lighter-touch registration process, whilst maintaining transparency? <i>[Yes (please explain why) / No (please explain why not) / Do not know]</i>	<u>No</u> – <i>We do not agree that NSIPs should be subject to a 'lighter-touch' registration process. The process should be consistent and transparent for everyone, and the data requirements and registration process the same for everyone. This could raise the question of fairness for all landowners within the Biodiversity Unit market. It will be important to ensure that all net gains are transparent.</i> <i>There are risks associated with a lighter-touch process:</i> <ul style="list-style-type: none">- <i>Additionality – any lighter touch process must adhere to checks on additionality</i>- <i>Those with largest landholdings and impact are held to a lower standard</i>- <i>Conflicts of interest</i> <i>If there is a lighter-touch process, which is devised to guard against the risks, ensure transparency and high standards, then the same process should be available for all (not just NSIPs).</i>
46	Q22 Do you consider that this broad 'biodiversity gain plan' approach	<u>Yes, broadly.</u> <i>Some areas may need modifying due to the size of some NSIPs. Monitoring proposals should be built into any enhancement proposals when submitted. The approach should mirror that for other types of development –</i>

Page	Question	NEP response
	would work in relation to NSIPs? [Yes / No (please explain why not) / Do not know]	<i>e.g. clear baseline provided, follow the mitigation hierarchy, clear expectations, monitoring, reporting, resourcing and enforcement of on-site and off-site BNG. We would like to see more detail on what would be included before being able to comment further.</i>
46	Q23 Should there be a distinction made for NSIPs between on-site habitats (which are subject to the biodiversity net gain percentage) and those habitats within the development boundary which are included solely for environmental mitigation (which could be treated as off-site enhancement areas without their own gain objective)? [Yes (please explain why) / No (please explain why not) / Do not know]	<p><u>Yes</u> – this distinction would be helpful. We would welcome guidance on how the concept of additionality could be applied to NSIPs.</p> <p>Key would be to ensure that compensation sites on-site (which under the TCPA regime would be considered ‘off-site’) are treated in a similar way to the environmental mitigation areas. There needs to be policy consistency between the NSIPs and TCPA and ensure that there is no disincentive for these areas to be used for BNG if appropriate.</p> <p>BNG must be in the appropriate place and in line with LNRS / strategic biodiversity strategy.</p>
47	Q24 Is there any NSIP-specific information that the Examining Authority, or the relevant Secretary of State, would need to see in a biodiversity gain plan to determine the adequacy of an applicant’s plans to deliver net gain (beyond that sought in the draft biodiversity gain plan template at Annex B)? [Yes (please state what information) / No / Do not know]	<p><u>No</u></p> <p>The document outlined in Annex B is quite broad. Key information must be that:</p> <ul style="list-style-type: none"> • Baseline information is robust and technically sound • All results and proposed plans are clearly illustrated • There is a commitment to, and resources available for, management and monitoring of any proposed BNG; and • A mechanism for delivery and enforcement action if necessary.
48	Q25 Do you think that 30 years is an appropriate minimum duration for securing off-site biodiversity gains allocated to NSIPs? [Yes / Yes, but it should be reviewed after practice and biodiversity gain markets are evaluated]	<p><u>No - it should be longer</u></p> <p>It is important that the 30 years is a minimum period and not seen as a cap; BNG should be secured and managed for the whole life of the development that has been consented. NSIPs by their very nature are long-term permanent changes to the landscape and hence off-site biodiversity gains should ideally be longer than 30 years and extend for the length of the proposed NSIP. 30 Years should be seen as an absolute minimum.</p>

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	/ No, it should be longer / No, it should be shorter / Do not know]	<p><u>Any future review should not look to reduce the period of offset.</u> If anything, it should look at increasing the number of years; for several reasons:</p> <ul style="list-style-type: none"> • The habitat providing the biodiversity net gain must be in place AT LEAST as long as the development they relate to; otherwise there would, in effect, be an overall net loss in biodiversity. • Some habitats take more than 30 years to establish. • There is a risk that land used for offsite habitat compensation could, after 30 years, become available for development, if not sufficiently protected. Offsite land should be recognised through the planning system. <p>The importance of land purchase as part of offsite compensation, and conservation covenants to protect net gains through changes in ownership must also be recognised. Associated guidance must, importantly, encourage offsite compensation for at least 30 years.</p>
48	Q 26 Are further powers or other measures needed to enable, or manage the impacts of, compulsory acquisition for net gain? [Yes, to enable compulsory acquisition (please explain what is needed) / Yes, to manage impacts of compulsory acquisition (please explain what is needed) / Yes, both (please explain what is needed) / No / Do not know]	<p><u>Yes, both...</u></p> <p>The increase in compulsory acquisition powers would give greater flexibility of off-site requirements. However, compulsory acquisition for BNG must be directed to land that is already identified as of strategic value and a priority area for nature conservation per the relevant local policies. This could include the LNRS and other strategic policies on nature conservation such as those that adhere to the Lawton Principles of Bigger, Better More Joined.</p> <p><u>NB - HOWEVER - the use of such powers should only be taken after other steps have been exhausted</u> – e.g.</p> <ul style="list-style-type: none"> • application of the mitigation hierarchy (avoiding development on high value sites in the first place) • ensuring sufficient emphasis on habitat improvement or enhancement (not just creation) • sufficient liaison and discussion with landowners willing to engage with developers regarding managing their land or securing new land for nature’s recovery.
49	Q27 Is any guidance or other support required to ensure that schemes which straddle onshore and offshore regimes are able to deliver biodiversity net gain effectively? [Yes (please explain what is needed) / No / Do not know]	<p><u>Do not know</u></p> <p>(Not an area of our expertise)</p>

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	PART 3: HOW THE MANDATORY BNG REQUIREMENT WILL WORK FOR TCPA 1990 DEVELOPMENT	
	Biodiversity net gain plan	
55	Q28 a) Do you agree with the proposed content of the biodiversity gain information and biodiversity gain plan? <i>[Yes / No (please explain why not) / Other (please tell us more) Do not know</i>	<p><u>Other</u></p> <p>a) <i>We support that every BNG Plan follows a familiar and consistent format. However, the Plan should also contain the following as a minimum legal requirements:</i></p> <ol style="list-style-type: none"> 1) <i>Evidence that the mitigation hierarchy has been followed – i.e. steps taken to i) avoid, ii) mitigate and iii) compensate for impacts on biodiversity (not just to “minimise” the impacts);</i> 2) <i>Pre- and post- development biodiversity value; using the latest Defra metric to support calculations.</i> 3) <i>Other elements in line with CIEEM’s recommendations (Biodiversity Net Gain Report and Audit Template, July 2021); including that a full biodiversity net gain plan is required prior to planning, per CIEEM recommendations. There must be adequate detail on biodiversity enhancements / creation both on-site and off-site at the planning application stage as opposed to the condition discharge stage. NB – currently there is no clear distinction between BNG information and a BNG plan. As the latter includes and builds on the former, it seems reasonable to require developers to submit a BNG plan with their planning application. The application should not be consented until the plan has been submitted and seen to be of an acceptable standard.</i> 4) <i>The plan should be clear about when and how its actions will be delivered, monitoring and reporting process to the LPA, etc. The LPA should set out what enforcement action will be taken in the event that the BNG plan is not implemented in full.</i> <p><u><i>We also have some comments and concerns about what has been proposed:</i></u></p> <ul style="list-style-type: none"> • <i>How DEFRA / NE will define ‘proportionate information on habitats and monitoring for retained, enhanced or newly created habitats’. There needs to some element of site by site consideration depending on the nature of the habitats to be created / enhanced on or off-site.</i> • <i>how an applicant will define if the biodiversity value being ‘significant in relation to the pre-development value of the on-site habitat’.</i>

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		<ul style="list-style-type: none"> • <i>We would also like to ensure there is adequate detail on biodiversity enhancements / creation both on-site and off-site at the planning application stage as opposed to just at the condition discharge stage.</i> • <i>It is our opinion that all on-site habitat delivery that forms any aspect of the applications biodiversity net gain allocation MUST be adequately secured and a mechanism in place to ensure robust regulation, monitoring and enforcement. Clear guidance is required on this aspect and consulted on.</i> • <i>More information is needed on how on-site habitat gains will be monitored, how this will be resourced (particularly if responsibilities are assumed to fall to LPAs, already stretched with capacity, resources and expertise) and how any breaches of on-site habitat enhancement / agreements in terms of habitat delivery and condition achieved will be dealt with.</i> <p><i>Finally, we agree that LPAs should be able to set their own relevant percentage targets for their LPA area, and that 10% is not a cap but a minimum requirement.</i></p> <p><u><i>On-site gains:</i></u></p> <ul style="list-style-type: none"> • <i>We are supportive that the principle that a delay in habitat enhancement / creation on-site should be reflected in the Biodiversity Metric and potentially reduce the number of units delivered. However we are unclear how any change in units could be agreed once the mandatory condition for BNG has been discharged?</i> • <i>12 month timetable for habitat creation / enhancement on-site: for small sites 12 months if feasible. For larger sites and phased developments, 12 month is very short. (For on-site landscaping, this must often be done during the 1st planting season following occupation; it may be sensible to opt for the same timeframe for on-site BNG).</i> • <i>We are supportive in principle of a more digital approach to planning applications but would require more information & details on how ‘machine-readable’ formats would be used in the BNG and planning process as a whole.</i>
55	Q28 b) Do you agree with the proposed procedure for the submission and approval of biodiversity gain information and the biodiversity gain plan? [Yes / No (please explain why not) / Other (please tell us more) Do not know]	<p>b) <u>Other</u></p> <p><i>We would support the CIEEM recommendations for the BG Plan and process. This includes the need for a full biodiversity net gain plan required <u>prior</u> to planning permission being granted, rather than being submitted afterwards.</i></p> <p><i>The Plan must provide the full required evidence base needed to make an informed planning decision, for example regarding any residual impacts of development. The Plan should provide evidence that the BNG commitment in local</i></p>

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		<p><i>policy will be achieved for the development to be approved; also that ongoing management and monitoring is sufficient to deliver the gain long-term.</i></p> <p><i>Outline planning applications may need a different template – but should also follow relevant CIEEM recommendations.</i></p> <p><i>Further, there should be an element of professional discretion on a site-by-site basis to request additional information</i></p>
55	<p>Q29 We will continue to work with external stakeholders and industry on the form and content of the template. Do you agree with the proposed information to be included in a biodiversity gain plan as shown in the draft template? [Yes / No (If not, is there anything in particular that ought to be removed, added, or changed to make the biodiversity gain plan fit for purpose?) / Other (please tell us more) / Do not know]</p>	<p><u>Other</u></p> <p><i>While we broadly agree that the proposed information in the draft BNG Plan template should be included, more details are needed on specific actions to protect, enhance and/or create habitats and the timescales for these. We also support the following emphasis and additions:</i></p> <ul style="list-style-type: none"> - <i><u>Spatial nature strategies</u> – we agree these, e.g. LNRSs, should play a role in the targeting of BNG, both in terms of where best to target BNG and which habitats may best belong where; and, broadly, locations for development / to avoid development. The LNRS guidelines due out in Spring should support any BNG requirements. However- the <u>guidance must also require other existing spatial biodiversity strategies to be taken into account where, for example, and LNRS is not yet approved.</u></i> - <i><u>Mitigation hierarchy</u> – the guidance must reiterate the need to comply with the hierarchy, including avoiding impacts in the first instance. <u>How to evidence</u> that the hierarchy steps have been followed, including avoidance, should also be outlined in the guidance.</i> - <i><u>12 month time-limit for start of off-site works:</u></i> <p><i>Within the NEP partnership we have mixed opinions on whether this time period is supported. Some partners say this is too short to be able to find and locate suitable offset sites and build relations with possible landowners to best match the losses; others support providing gains as soon as possible after the loss.</i></p> <p><i>For example:</i></p> <p><i><u>12 months is too short:</u></i></p>

Page	Question	NEP response
		<ul style="list-style-type: none"> - <u>More time is needed to identify the best local offset scheme to support local strategic priorities:</u> Experience from other local authorities is that it can take several years to set up an off-site BNG site to include, baseline assessment, drawing up costing and agreeing a management plan with a landowner as well as the time taken to arrange all the legal costs associated with such an agreement. A longer lead in time is needed in practice. Buckinghamshire Council has been looking at the possibility of offering to developers and option to provide a financial contribution to the Council to discharge their responsibilities for providing an offset where this is required, so the Council is able to take on the responsibility for finding and providing the offsets, on the basis of a call for sites and a selection process based on various criteria by an independent panel. Such an option to developers would i) help to avoid any undue delays in planning with the developer needing to locate a suitable offset site prior to planning; and ii) allow offsets to be located according to local strategic priorities, such as those set out in any LNRS. The 12-month time-limit would severely limit the possibility of such schemes. - There are also concerns with the proposed system to require offset sites to be registered prior to development receiving planning permission and the <u>possibility this could lead to delays and piecemeal agreements</u> to secure offsets that are not necessarily supportive of strategic nature recovery goals. - If a developer cannot easily find an offset site within 12 month, it may drive developers towards the national credit scheme rather than exhaust local possibilities first. - We note the proposals to set this 12 month period as a requirement of ‘off-site eligibility criteria’ or as a consideration of biodiversity gain approval. Whilst we would welcome a timescale being included we feel that 12 months is too short and <u>flexibility will be needed especially in the first few years of the scheme to ensure as many sites as possible are put forward</u> and all landowners have a fair opportunity to put forward their land for BNG. <p><u>12 months about right</u></p> <ul style="list-style-type: none"> - Other partners are strongly supportive of the 12-month stipulation for the start of off-site works as this means that the time period of loss is minimised; - The 12 month time-limit also favours habitat banking; some of our partners are looking to become providers. <p>We ask that consideration of all concerns around the time limit are noted in taking forward any such proposals.</p>

Page	Question	NEP response
		<p><i>In addition, our partners suggest that guidance should also be provided in the following areas:</i></p> <ul style="list-style-type: none"> - <i><u>What happens if a scheme doesn't get registered before the 12 month deadline from approval?</u> Does the developer then have to provide funds into a habitat bank for example?</i> - <i><u>Management continuity over 30 years or more:</u> guidance should state how the Plan should identify how management of a site will be secured over the period of gain (e.g. a management company folding during the management contract, etc).</i> - <i><u>Right habitat right place</u> – there should be requirements in place to ensure the gains are secured in the right place for nature, with clear criteria, guards against local political needs taking priority and with the need to look outwards across local authority borders at building strategic gains for nature. Guidance for the LNRs will be instrumental in helping to achieve this.</i> - <i><u>Baseline condition assessments</u> – should be conducted on sites that are likely to be used for offsetting.</i> - <i><u>Type of offsite habitat</u> provision likely to be needed locally – should be assessed by the LPA according to likely development sites v habitat losses – and advised in guidance to developers.</i> - <i><u>Ecological expertise and support</u> – the guidance should make it clear that such expertise should be involved with:</i> <ul style="list-style-type: none"> - <i>selecting and registering offset sites</i> - <i>monitoring and reporting on offset site progress towards promised net gains</i> <i>A list of approved suppliers would be helpful.</i> - <i>Guidance should state <u>requirements for monitoring and reporting</u> of offsets and how the LPA intends to oversee this process. Sufficient funding, support and expertise must be provided to the LPA to carry out this function.</i> - <i><u>Competence of offset providers</u> to provide the gain – guidance should state how to ensure that habitat providers are credible and will provide the gain promised competently.</i> - <i><u>Legal agreements</u> – guidance could also be provided regarding the minimum requirements between developers and offset providers.</i>

Page	Question	NEP response
58	<p>Q30 Do you agree that further guidance is needed to support decision-making about what constitutes appropriate off-site biodiversity gains for a given development?</p> <p><i>[Yes (please state what in particular would help most) / No / Do not know]</i></p>	<p><u>Yes</u>, this would help avoid differences in opinions between developers and LPAs. Such guidance much reiterate the importance of:</p> <ul style="list-style-type: none"> - <i>Adherence to (and evidence of this) the <u>mitigation hierarchy</u> – particularly i) avoidance first, before onsite ii) mitigation and iii) compensation and then (and only then) iv) off-site compensation</i> - <i><u>Spatial hierarchy</u> - how developers demonstrate they have adequately considered the on-site and local off-site options before looking further afield. Guidance should give a clear structure for demonstrating whether local options have been exhausted first.</i> - <i><u>Selecting an appropriate offset site</u> – on the basis of local strategies and also” right habitat right place” to ensure new habitats are ecologically sound for their locality. This may mean local authorities needing to work across borders.</i> - <i><u>Role of local biodiversity strategies / approved LNRSs</u> – in e.g. demonstrating how developers have avoided negative impacts from poorly-located development; as well as for the locations for targeting offsite gains. NB - It will be important for guidance to recognise the need to take into account other existing spatial strategies in cases where a LNRS is not complete and in use. This is important so that offset sites are not selected purely on economic grounds – e.g. on the cheapest land / easiest / cheapest habitats to create and manage. NB any LNRS guidance must also be integrated with BNG policy ambitions.</i> - <i><u>How to best guard against offset providers / management companies ceasing to operate</u> during a 30 year / longer period.</i> - <i><u>Preparation for local authorities</u> – e.g. we note some national examples of assessing the baseline condition of potential offset sites; and/or assessing the likely habitat offset need according to known areas earmarked for development.</i> - <i><u>Roles of qualified ecologists</u> – in the BNG process – e.g. involvement in selecting / registering sites for offsets; interaction with the role of the LPAs; habitat creation and management; reporting outcomes to LPAs for oversight.</i> - <i><u>Ensuring competent, credible offset providers</u> – a vetting process is likely to be needed.</i> - <i><u>Examples of what ‘good looks like’ and case studies would be useful.</u></i>

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		<ul style="list-style-type: none"> - <u>That local schemes must be sought above the national statutory credits.</u> The system for obtaining credits must clearly be a last-resort, not to “easy”, not be possible if local credits are available and ensure that local schemes cannot be bypassed on the grounds of unit costs, provided they are competently devised. - <u>Legal agreements between offset supplier and developers</u> - minimum requirements <p><u>Guidance should also clarify:</u></p> <ul style="list-style-type: none"> - <u>How the local authority can act as a ‘broker’ to facilitate the transactions of landowners or managers; and the interaction of roles:</u> e.g. how this links to NE’s proposed register; and how Natural England advise that LPAs manage the Conflicts of Interest with offering their own land for BNG; - <u>If there should be an ambition for a % gain on-site.</u> Our experience suggests some developers struggle to achieve any net gain let alone 10%, or above on-site. More important is following the hierarchy and demonstrating that in providing on-site v off-site gains. - <u>Whether LPAs will be able to use Conservation Covenants,</u> and guidance on how and when this will be possible (or otherwise how LPAs can) to secure long-term gains regardless of changes in ownership, alongside existing WCA Section 39 agreements with landowners to deliver BNG offsets. <p>We are supportive of the proposals to reduce the number of biodiversity units if there is a delay in enhancement / creation of proposed habitat banks.</p>
58	Q31 How should the UK Government encourage or enable developers and landowners to secure biodiversity gain sites for longer than the minimum 30-year period?	<p>The NEP’s partners have highlighted the following suggestions to incentivise longer-term net gains:</p> <ul style="list-style-type: none"> - <u>Payment to landowners to include a profit element:</u> The NEP’s recent Agricultural Roundtable event with partners involved in working closely with landowners, land management and the agriculture sector, suggested that payment to manage land in a certain way for 30 years + would be more attractive is a profit element could be guaranteed, rather than just cost-recovery. - <u>Future legislative requirements</u> could extend the 30 years to a longer time-period; the market would follow.

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		<ul style="list-style-type: none"> - <u>Conservation covenants</u> - should help to secure longer-term BNG without a change in land ownership breaking the cycle. <u>However, for these to work, there is a need for:</u> <ul style="list-style-type: none"> - more certainty over how they will work and for consistency in their application - how to ensure CCs are adhered to for their full length – e.g. we understand that CCs, being a voluntary arrangement, could be terminated where the parties agree to, which could be for various reasons and so risking the longer-term net gain for biodiversity - greater transparency, as CCs are private agreements, yet there is a need for transparent accountability in monitoring net gains. - Recognition of land attached to CCs as protected within the planning system. - <u>Some of our partners favour a new land designation</u> for land being used as a biodiversity offset and meeting the requirements of its management plan, that would be recognised in the planning system and would highlight publicly why the land is designated as such. Such land could then become a Local Wildlife Site or SSSI to end its designation. This may be beyond a minimum of 30 years. - <u>Land purchase</u> – securing management beyond the 30 years will be important; so including land purchase within the unit price for BNG would help to secure the gains into the longer term. This could be used for land purchase in line with any current strategic BAP, or future LNRS, biodiversity objectives. <p>We note that footnote 46 of the consultation document makes reference to an amendment to the Environment Act which will allow the UK Government to review and if appropriate increase the minimum duration for agreements securing biodiversity gain sites. It also goes on to highlight that ‘<u>After this period, the enhanced habitats are likely to be subject to a range of wider protections in policy or legislation which will incentivise their retention. In the unlikely event that biodiversity gain sites are subsequently developed, the Environment Act requires that a higher of the actual habitat value or the target value of the enhancement is to be taken as the baseline for this development. This will ensure that net gain can still be reached, even in this unlikely scenario</u>’.</p> <ul style="list-style-type: none"> - We would <u>welcome</u> clearer guidance on the <u>safeguarding of BNG sites into the future beyond 30 years</u> and are concerned there could still be a risk of development on them after 30 years.
	The market for biodiversity units	
60	Q32 Do you agree with our proposals for who can supply biodiversity units and the circumstances in which they may do so? [Yes / No (please explain	<p><u>Other</u></p> <p>We agree in principle that any landowner / manager should be able to create or enhance habitat for selling biodiversity units, to ensure the greatest possible provision of BNG units across an area.</p>

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	<p>why not) / Other (please tell us more) / Do not know]</p>	<p><i>The market should be regulated in a way that incentivises suppliers to sell their units as locally as possible, so that it is cheaper for local development site to buy the units and the cost for other developers increases with distance.</i></p> <p><i>However, there should be a requirement for landowners to ensure they are supported with appropriate expertise to advise on habitat restoration or creation (e.g. baseline assessment, management and monitoring plan), also with long-term monitoring and reporting and ongoing advice. There should also a system to ensure landowners are able to deliver as promised.</i></p> <p><i>In addition – LPAs should be able to act as a broker, provided there are sufficient checks and balances around any potential conflict of interest and not directing developers to purchased units from them, or seeming to favour the LPA scheme above other options.</i></p> <p><u><i>Buckinghamshire Council has been setting up a process to provide an option to developers to enable the LPA to take a financial contribution from the developer via a s106 agreement for Bucks C to provide BNG funding to sites identified as being located in areas of strategic conservation importance in the area. Each offset site would be considered against a range of criteria by an expert panel, including the best fit against strategic biodiversity priorities. This system has several advantages:</i></u></p> <ul style="list-style-type: none"> - <i>Simple process for the developer – where offsets are required, a payment in lieu of offsets is provided on a cost-recovery basis to the LPA so the LPA must then secure the offset;</i> - <i>Not requiring pre-registering of offset sites ensures no delay to the planning system which these are found;</i> - <i>An independent panel oversees selection of sites – avoiding any bias in the system</i> - <i>The system and the panel ensure that Local strategic priorities are met; these may not be if just relying on habitat banking sites alone.</i> <p><u><i>The current system proposed, and specifically excluding LPAs taking a fee / acting as a broker, would not allow such a system to operate to focus offsets in areas of strategic need. Favouring habitat banking, notably with the need for pre-registering offset land, and the 12 month time-limit from planning to needing to start offsets, would also not be conducive to meeting strategic local biodiversity priorities, including connectivity, local offsetting in areas of need, or any possible centralised oversight by an LPA of offsetting in this way in line with LNRS or other local nature strategic priorities.</i></u></p> <p><i>This is a disappointing proposal in the development of this policy area, and is potentially short-sighted, particularly in its early stages when the offset supply market is untested on a major scale and landowners should be encouraged to offer up potential offset opportunities; and particularly when other LPAs in the country have successfully operated schemes</i></p>

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		<p>overseen by the LPA as a broker – notably, Warwickshire County Council. <u>This new proposal will undo the work we have done over the last 3 years with Buckinghamshire Council in setting up a similar BNG scheme in Buckinghamshire.</u></p> <p>We would request that more guidance is provided as to how and in what circumstances tariffs can be applied by LPAs and in the absence of a tariff, how and where resources for ensuring that offset schemes deliver the target habitat and condition specified in the management plans on sites will be funded and to whom the key responsibility for this will fall?</p>
61	<p>Q 33 Do you agree that developers which are able to exceed the biodiversity gain objective for a given development should be allowed to use or sell the excess biodiversity units as off-site gains for another development, provided there is genuine additionality? [Yes / No (please explain why not) / Other (please tell us more) / Do not know]</p>	<p><u>Other</u></p> <p>While there is logic in the ConDoc about this, we are concerned that such an approach would effectively create a ceiling on delivery of 10%, because anything above this would be seen as “excess”. However, the 10% is supposed to be a minimum target, not a ceiling.</p> <p>In addition, we want to see avoidance of a situation where the availability of excess units in the market means less effort is made to provide on-site delivery for each development. We understand this could particularly apply to minerals applications, which often achieve much more than 10% net gain with restoration.</p> <p>NB – it remains important that offsite provision should be provided by an accredited or approved supplier.</p>
61	<p>Q34 Do you agree with the proposed scope of the UK Government’s role in facilitating the market, as set out above? [Yes / No (please explain why not) / Other (please tell us more) / Do not know]</p>	<p><u>Other</u></p> <p>We are not experts in facilitating markets, but the partnership would urge transparency in terms of unit prices to ensure the system can be tracked and sufficiently held to account. We would also suggest some national checks of off-site biodiversity net gains are made to regulate delivery of the promised units.</p> <p>Finally, we are unclear on the details of how the UK Government will be facilitating / regulating the market and what Natural England's role is versus the local authority and other stakeholders such as eNGOs and landowners / land agents and would welcome more detailed guidance clearly setting out the roles of each stakeholder in the process: e.g. who will set the rules and guidance, provide support and oversight, and intervene to correct any conflicts of interest or market failure, etc.</p>
	Habitat Banking	
62	<p>Q 35 Are the proposals outlined here sufficient to enable and encourage habitat banking? [Yes / No (please</p>	<p><u>Other</u></p>

Page	Question	NEP response
	specify what else could be done and why it is needed) / Do not know]	<p>Overall, we agree with the proposals for the habitat banking and that the minimum requirements should be stated in guidance.</p> <p>However, we would also emphasise the importance of the following to ensure habitat banks deliver for biodiversity:</p> <p><u>Guidance</u> – particularly to:</p> <ul style="list-style-type: none"> - <u>Ensure habitats are created and managed into the long-term, and externally monitored and reported on, by accredited individuals with suitable ecological experience.</u> - Outline minimum requirements for habitat bank site <u>baseline assessments</u> – including photographic assessment – to prove the current and predicted biodiversity value of a habitat bank. - Highlight the <u>priorities for habitat banking locations</u> – taking into practical considerations and ecological considerations – so that habitat banks are created in locations with ecological need and have connection to areas of loss -e.g. There should be a requirement for habitats to be protected and improved in line with priorities set out in finalised Local Nature Recovery Strategies (or existing biodiversity strategies where a finalised LNRS is not yet available). A simple before and after metric is not sufficient here as sites will vary in importance for nature recovery and improved biodiversity - In particular, it is unclear <u>how the system would encourage habitat banks to be strategically placed and enhance green corridors and connectivity to improve biodiversity resilience. This should be outlined in any further guidance.</u> - <u>full details of how the target habitats and their condition will be reached, monitoring frequency and the protocol in place for restoring habitats should habitat creation or restoration have a set-back and need to be remediated in order to achieve the target habitat and condition for which the biodiversity units are being sold.</u> - <u>how any mistakes are rectified</u> - <u>monitoring & reporting requirements</u> - <u>how this will be reported and regulated with a clear procedure / policy to ensure habitat banks are consistently providing the habitats they advertise.</u> - <u>Linkage between a habitat bank and an LNRS / equivalent</u> <p><u>Call for sites by the LPA</u></p> <p>As is traditional for other purposes, the LPA could call for suitable biodiversity offset sites to come forward. Ideally this would be informed by published maps or strategies to identify biodiversity and habitat priorities (e.g. BAPs; or finalised and adopted LNRSs), including those suitable for habitat banking.</p>

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		<p><u>Monitoring and Enforcement</u></p> <p><i>There must be a clear system of monitoring and enforcement, funded and resourced adequately, along with penalties for non-delivery from habitat banks.</i></p> <p><i>Together the system must be robust with biodiversity gain at the heart, to avoid habitat banking becoming driven by profit rather than biodiversity needs. The baseline assessment, monitoring and enforcement and location of habitat banking will become particularly important – e.g. to avoid locating habitat banks in low land value areas rather than where biodiversity gain potential may be highest.</i></p>
63	<p>Q 36 Do you agree with our proposal that to be eligible to supply biodiversity units for mandatory biodiversity net gain, habitat must be created or enhanced on or after a specified date, proposed to be 30 January 2020? [Yes / Yes, but not this specific date (please suggest an alternative date and explain your choice) / No (please explain why not) / Do not know]</p>	<p><u>Yes</u></p> <p><i>We agree there should be a baseline date. Without a baseline date there is a risk of existing habitat being wrongfully counted as contributing to net gain.</i></p> <p><i>However - the system is based on proof of the baseline assessment being sufficient and there should be an agreed and recognised methodology for determining and establishing this baseline for sites on the baseline date. .</i></p> <ul style="list-style-type: none"> - <i>Detailed evidence of pre-existing condition and distinctiveness of habitat on the site should be provided and proven (e.g. date stamp on photographic evidence etc) that is was taken on the date it had been – to avoid the risk of existing habitat being wrongly counted as contributing to net gain and undermining the system.</i> - <i>Guidance is needed on the minimum / possible data to use to prove the biodiversity value of the 30th January 2020 baseline date.</i> - <i>For the eligible units, there should also be clear evidence that the habitat creation/restoration has been undertaken solely for the purpose of biodiversity net gain and not funded by other mechanisms, otherwise additionality cannot be assumed.</i> <p><i>A baseline date should be selected where sufficient evidence will be available to prove condition of habitats at that date.</i></p>

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63	Q 37 Should there be a time limit on how long biodiversity units can be banked before they are allocated to a development? What would you consider to be an appropriate time limit? [Yes (please specify what this limit should be) / No / Do not know]	<p><u>Do not know: There are pros and cons of establishing a time-limit.</u></p> <p><i>We ask that account is taken of the following potential issues related to setting any time limit:</i></p> <ul style="list-style-type: none"> - Presence of any time-limit could put off potential habitat bank providers by creating another risk - With a time-limit: would need to be careful that restoration is actually taking place - A long time-limit would allow high distinctiveness habitats in habitat banks - Absence of a time limit could attract developers to land-bank possible gain sites and encourage speculative planning applications <p><i>The system could employ either a simple cut-off date or a sliding scale so that the value starts to decrease over time.</i></p>
	The biodiversity gain site register	
66	Q38 Do you agree that the eligibility criteria for adding sites to the biodiversity gain site register are sufficient? [Yes / No (please explain which additional criteria should be included or which existing criteria should be excluded, and your reasons for this) / Do not know]	<p><u>Yes and No:</u></p> <p><i>Broadly Yes – but provided the following are also addressed:</i></p> <ul style="list-style-type: none"> - Enhancement must be undertaken by appropriately-qualified / accredited person or organisation (Q32) - Additionality concerns are addressed (Q44-47) - Need greater understanding of how the BNG Site Register will interact with the planning system – and the role of Planners and Ecologists within LAs with this register and local schemes already in development or functioning. We are also keen to see the detail of any on-line form for the proposed register. <p><i>We particularly welcome plans for onsite gains to be included and linked to the register.</i></p> <p><i><u>However, we do not support the proposal for a “light touch” mechanism for road and rail operators registering BNG on their own estates. There still must be clear baseline data, additionality requirements met and the need for delivery in strategic locations – see response to Q21.</u></i></p> <p><i>In addition – guidance should outline how LPAs, private companies, landowners, developers etc must work together to make efficient use of / interact with the national register. Responsibilities and transparency for all concerned with any development must be made clear.</i></p>
66	Q39 Do you agree that the register operator should determine an application within a maximum of 28 days unless otherwise agreed	<p><u>Yes</u> – although in reality some simpler sites should be completed much more quickly.</p>

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	between both parties? <i>[Yes / No (please explain why not) / Do not know]</i>	
68	Q 40 Do you agree that this list of information requirements will be sufficient to demonstrate that a biodiversity gain site is legitimate and meets the eligibility criteria? <i>[Yes / No (please explain which additional information should be included or which existing information should be excluded, and your reasons for this) / Other (please tell us more) / Do not know]</i>	<p>No - this looks reasonable as a starting point, but would need some improvements. For example:</p> <p><u>Baseline habitat</u> – it is insufficient that the applicant themselves should provide a “statement that the applicant has checked whether the baseline habitat has deteriorated significantly since 30 January 2020”. There should be a second check by a third party (e.g. by local authorities) based on available data and/or google Earth for the site to support the conclusion of the applicant (although this would only provide evidence of habitat type; condition would require a survey). Measures must be put in place to prevent damage of land to reduce a developer’s baseline on-site. We would hope that <u>further guidance</u> will be provided on the specific evidence required, which must include:</p> <ul style="list-style-type: none"> - More information about the <u>baseline date habitat</u>, including where the applicant signs off and is accountable, whether this relates to on-site as well as off-site gains; - <u>existing habitat and planned future habitats</u> - <u>the location of a site in relation to an approved / finalised LNRS</u> or other biodiversity strategy such as a Biodiversity Action Plan, where an LNRS is not yet in place. - <u>Monitoring and enforcement</u> - to ensure that the target habitat and condition are met. There needs to be a mechanism in place that directly links to the management plan to ensure regular and appropriate monitoring of the habitat creation / enhancement takes place and that appropriate remediation works are undertaken if required. <p>We look forward to commenting on the more extensive guidance that will be published during the transition period.</p>
69	Q 41 Do you agree that the UK Government should require a habitat management plan, or outline plan, for habitat enhancement to be included on the register? <i>[Yes / No / Other (please tell us more) / Do not know]</i>	<p>Yes – this is essential to ensure transparency and accountability. The same should be the case for onsite gains, not just offsite gains.</p> <p>All net gains on the national register should demonstrate management and monitoring expertise.</p> <p>We would welcome clear guidance setting out which organisation is expected to carry out monitoring and enforcement action; if LPAs, then how this will be resourced sufficiently when there is already a shortage of planning enforcement officers and ecology expertise.</p>
70	Q42a Do you agree that the UK Government should allow the register operator to set a fee for registration	<p>a) Yes – to ensure the register and its function is properly funded and resourced.</p>

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	in line with the principle of cost recovery? [Yes / No (please explain why not) / Other (please tell us more) / Do not know]	<p>However - it is unclear whether the statutory register will be in addition to a local register of offset sites. A locally-accessed, up-to-date and transparent GIS-based system could be used to track the location of offset sites so that local decision-making is appropriately informed and avoid double-counting sites, and allow the planning system and decision-making to take into account offset sites.</p> <p>In addition – we would welcome more information to understand how the planning system within the local authority will interact with this newly proposed register as well as existing and newly created local biodiversity net gain schemes which are being set up by local authorities and other organisations. It will be important to ensure that resources and charging schemes are proportionate and fair to planning applicants and not to undermine local biodiversity net schemes that are in development.</p> <p>The system must be resourced properly and enforced.</p>
70	Q 42b Do you agree that the UK Government should allow the register operator to: impose financial penalties for provision of false or misleading information? [Yes / No (please explain why not) / Other (please tell us more) / Do not know]	<p>b) <u>Yes</u> – to ensure the register is credible and seen to be credible, and act against submitting false information.</p> <p>Financial penalties must be significant enough to have the desired impact and deter fraudulent activity within the market.</p>
71	Q 43 Do you agree with our proposal to allow applicants to appeal a decision by the register operator where the applicant believes that the registration criteria have not been appropriately applied? [Yes / No (please explain why not) / Other (please tell us more) / Do not know]	<p><u>Other</u> –</p> <p>We would welcome further information on who would determine the appeal and how the process would be fair and independent.</p> <p>We have some concerns that an appeal approach might lead to significant delays and cost to the register operator and undermine the judgement of the panel.</p> <p>Perhaps instead, there should be checks and balances in place with respect to applicants to ensure any dispute is understood and resolved to avoid the need for appeal. e.g. in discussion with Natural England followed by an amended submission.</p>

Page	Question	NEP response
	Additionality	
73	Q44a) Do you agree with our proposals for additionality with respect to: a) measures delivered within development sites? [Yes / No (please explain why not) / Other (please tell us more) / Do not know]	<p>a) <u>Other</u></p> <p><i>While on one level we support the view of partners that on-site delivery of net gains in biodiversity should be additional to existing legal and policy requirements for GI, sustainable drainage, open space requirements, etc. to contribute to nature’s recovery (i.e. go beyond what would happen anyway), we would welcome more information on this complex area to be able to comment further. Detailed guidance will be crucial to ensure it does not compromise the effective delivery of quality BNG.</i></p> <p><i>On-site monitoring must be rigorous to ensure biodiversity net gain is taking place and there must be provision of onsite and appropriate management, protection and reporting into the into the long-term. The monitoring regime should be agreed on and be a condition of planning permission.</i></p> <p><i>NB - rapid condition assessments may not suffice – onsite measures are often under more pressure than off-site gains from amenity use from nearby residents; as such it is important to ensure that monitoring properly assess condition – e.g. extent to which use by people and pets affects condition, for example, or the presence of litter or light and noise pollution.</i></p> <p><i>Care and professional judgement will be required to ensure additionality is approached in a reasonable way.</i></p>
73	Q44b) Do you agree with our proposals for additionality with respect to: b) protected species and off-site impacts to protected sites? [Yes / No (please explain why not) / Other (please tell us more) / Do not know]	<p>b) <u>Other</u> – yes provided that the protected species and off-site impacts could be included in the calculations - but these measures would need to be in addition to the 10% minimum statutory requirement in terms of the development’s net gain delivery. There is likely to be a need for professional judgement on a case by case basis. The metric may need to reflect this type of BNG to track it (not with the 10% target).</p> <p><i>We would welcome more information on this complex area to be able to comment further. Detailed guidance will be crucial to ensure it does not compromise the effective delivery of quality BNG.</i></p>
73	Q44c) Do you agree with our proposals for additionality with respect to: c) on-site impacts on protected sites, and any associated mitigation and compensation? [Yes / No (please explain why not) / Other (please tell us more) / Do not know]	<p>c) <u>Other</u></p> <p><i>We would welcome more information on this complex area to be able to comment further. Detailed guidance will be crucial to ensure it does not compromise the effective delivery of quality BNG.</i></p> <p><i>However, on the basis of what is so far known we would suggest that:</i></p> <p><i>A scheme that negatively affects a protected site should not be considered to have achieved BNG (as for irreplaceable habitats).</i></p>

Page	Question	NEP response
		<p><i>Where a scheme does impact a protected site (directly or indirectly) – the impact should be measured but compensation required anyway, and NOT count towards the 10% target</i></p> <p><i>The decision-maker (both the LPA and Natural England) should be involved directly in any decisions regarding direct or indirect impact to protected sites.</i></p>
73	<p>Q44 Do you agree with our proposals for additionality with respect to: d) achievement of River Basin Management Plan Objectives? [Yes / No (please explain why not) / Other (please tell us more) / Do not know]</p>	<p>d) <u>Other</u>- Broadly, no, except in exceptional circumstances – due to additionality concerns:</p> <p><i>The delivery of RBMPs should be happening anyway, as they are statutory plans with statutory targets; BNG should not be used to actions to deliver them.</i></p> <p><i>That said, where BNG funds could deliver a better outcome than the original RBMP planned for, then this would be additional and suggest a proper use of the BNG funds for additional benefit.</i></p> <p><i>We would welcome more information on this complex area to be able to comment further. Detailed guidance will be crucial to ensure it does not compromise the effective delivery of quality BNG.</i></p>
73	<p>Q44 Do you agree with our proposals for additionality with respect to: e) the strengthened NERC Act duty on public authorities? [Yes / No (please explain why not) / Other (please tell us more) / Do not know]</p>	<p>e) <u>Other</u> – Broadly, no, but we would welcome more information on this complex area to be able to comment further. Detailed guidance will be crucial to ensure it does not compromise the effective delivery of quality BNG.</p> <p><i>While there is no reason to exclude these organisations from the additionality principle, BNG should not be relied on to secure the NERC duty outcomes; accessible greenspace or s106 agreements should also be used. In line with additionality arguments, BNG should only be used to secure biodiversity where the action would not happen anyway.</i></p> <p><i>e.g. on a public-authority-owned site, <u>new habitat creation</u> could be funded through BNG; careful scrutiny, thought and guidance is needed as to whether BNG funding should then be used for its ongoing habitat maintenance – as that is a public authority responsibility and arguably not, therefore, additional – and would mean that BNG funds are being used for ongoing site maintenance.</i></p> <p><i><u>Habitat restoration on an existing site</u> – if this is funded through BNG, then again, it should be made clear how ongoing site maintenance, if funded by BNG, is additional rather than subsidising or replacing local authority funding for maintenance.</i></p>

Page	Question	NEP response
74	<p>Q45 Do you think that A) the non-designated features or areas of statutory protected sites and/or B) local wildlife sites and local nature reserves, should be eligible for enhancement through biodiversity net gain?</p> <p><i>[Yes, both A and B should be eligible / No, only A (non-designated features or areas of statutory protected sites) should be eligible / No, only B (local wildlife sites and local nature reserves) should be eligible / No, neither should be eligible / Other (please tell us more) / Do not know]</i></p>	<p>Other</p> <p><i>In principle, BNG funding should not be used on these sites where there is already a process or funding available for their ongoing restoration or enhancement, or management for high value sites.</i></p> <p><u><i>There may be circumstances where BNG funding could provide real ecological enhancement and restoration benefits to existing statutory and non-statutory sites. However – it will be critical to ensure that this funding is to provide additional purposes or habitat creation, and does not undermine the existing purposes or features in place that secured designation or recognition of the site, or lead to other existing funding sources or duties for these sites being diluted or removed.</i></u></p> <p><i>Such work must be clearly additional and in accordance with the Biodiversity Net Gain Good Practice Principles for Development in the guide developed by CIEEM, IEMA and CIRIA. (esp pg 92)</i></p>
75	<p>Q46 Do you agree that the enhancement of habitats, including designated features, within statutory protected sites should be allowed in the coastal, intertidal and marine environment as defined above? <i>[Yes / Yes, in some circumstances (please specify which circumstances) / Yes, but within a different range of the high water mark (please specify) / No (please explain why not) / Other (please tell us more) / Do not know]</i></p>	<p><u>Do not know</u> - (Coastal / marine / intertidal - not an area of our expertise.)</p>
76	<p>Q47 Do you agree with our proposed approach to combining payments for biodiversity units with other payments for environmental services from the same parcel of land? <i>[Yes / No (please explain why not) / Other (please tell us more) / Do not know]</i></p>	<p><u>Yes</u> - <i>the approach could help to deliver multiple gains and provide more of a financial incentive to landowners to deliver the right habitat in the right place – e.g. income from BNG benefits, ELM and carbon benefits could help with the habitat creation / restoration and ongoing costs. However, the BNG payments must be for distinct and additional elements.</i></p> <p><u><i>Clear guidance could be helpful on how BNG funds could be combined with others and meet additionality criteria- e.g. how BNG funds can be combined with others on the same land, to produce additional outcomes above those already</i></u></p>

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		<p><i>in place and which do not conflict with them (e.g. on a SANG, for example), to ensure there is a fair approach applied consistently for all landowners nationally, and a back-up solution for circumstances where BNG fails to deliver but the other schemes on a site do.</i></p> <p><i>We would welcome more information on this complex area to be able to comment further. Detailed guidance will be crucial to ensure it does not compromise the effective delivery of quality BNG.</i></p> <p><u><i>There need to be some checks in place for stacking to work, e.g.</i></u></p> <ul style="list-style-type: none"> - <i>Guidelines needed as to how to distinguish between the BNG and other environmental benefits being provided for an area of land. Needed to ensure transparency, accountability and additionality.</i> - <i>Similar guidance on what can and can't be stacked with each other to meet the additionality criteria. e.g. there may be very similar funding for e.g. one of more forms of carbon benefits; or one or more forms of biodiversity benefits (e.g. via net gain or uplift credits as suggested by Task Force on Nature Disclosure). Guidance must ensure payments are not doubled up for the same service.</i> - <i>Further guidance is needed on the use of BNG funds being match-funded or combined with other funds to e.g. procure and manage schemes into the long-term. (e.g. to set out clearly when the BNG funding would be considered additional)</i> - <i>Recognition that any biodiversity lost to development would have also been providing wider services; and the need for these to be both replaced and enhanced – working towards wider environmental net gain.</i> - <i>Clear records / maps kept both locally and nationally to record all funding of environmental services for clarity, transparency and to check on overlaps and conflicts.</i> <p><i>We therefore agree the approach should be reviewed after 3 years.</i></p>
	Statutory biodiversity credits	
78	<p>Q 48 Are these proposals for statutory biodiversity credits sufficient to:</p> <p>a) Ensure, when supported by suitable guidance, that they are only used by developers as a last resort? [Yes / No (please explain why not) / Other (please tell us more) / Do not know]</p> <p>b) Mitigate the market risk associated with the sale of statutory biodiversity</p>	<p>a) Ensure, when supported by suitable guidance, that they are only used by developers as a last resort?</p> <p>No – not yet.</p> <p><i>We have concerns that, as the system is currently set up,, it could be an easy option for developers that will just pay the cost of statutory biodiversity credits and potentially not sufficiently consider using local developing biodiversity markets and or schemes. (Although where neither an onsite nor offsite gain can be achieved, some partners argue a site should not be developed at all).</i></p>

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	<p>credits by the UK Government? [Yes / No (please explain why not) / Other (please tell us more) / Do not know]</p>	<p><i>The anticipated further guidance will be important for the in ensuring the system is credible. We agree with the logic for statutory credits, but there are risks to the system for it to work as intended and safeguards must be determined and applied, not least in the following areas:</i></p> <ul style="list-style-type: none"> - <u>Costs</u> – statutory unit costs should be priced significantly above local market value to ensure they are uncompetitive and remain a last resort option for developers. There is an inherent risk in underestimating the cost of habitat creation and maintenance over a minimum of 30 years, so the statutory price must be significant and include an effective “insurance” cost to ensure failures to deliver can be rectified (as is the case with the Warwickshire CC BNG scheme that has been running successfully since 2012). - <u>Ensuring last resort use of credits</u> Availability of local credits: Guidance must state how the availability of local credits is determined – so it is clear when they are not “available” for a developer to use, and so developers can sufficiently demonstrate they have exhausted local options. - <u>Administration involved:</u> with local v national system: The local system should be less onerous than any national system. The administrative requirements for obtaining statutory biodiversity credits should not be a simpler and faster track process than that for registering offsite gains, as this might also undermine local markets. - <u>Link between statutory credits and developments</u> For transparency and public confidence in the system, statutory credits should be linked to specific developments. This would also provide information on how far away from an area of biodiversity loss a particular gain may be. - <u>Monitoring and enforcement</u> Credit sales should be monitored to ensure delivery, and a system of enforcement and redress in place, with poor delivery of biodiversity net gain paid for by biodiversity credits. <p>b) Mitigate the market risk associated with the sale of statutory biodiversity credits by the UK Government?</p> <p><u>Other</u> – not yet - as the unit prices have not yet been published it is difficult to make an assessment at this stage.</p> <p>Locally, Buckinghamshire Council has developed unit own costs based on cost recovery of running a local scheme as well as the actual cost of enhancement / or creation of various habitats. It will be crucial for the statutory credit cost to</p>

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		<i>be considerably higher than these carefully considered costs to make sure they are ‘uncompetitive’ as a precautionary approach to both ensuring they are a last resort and mitigate the risk to the market.</i>
79	Q 49 Do you think there are any alternatives to our preferred approach to credit sales, such as those outlined above, which could be more effective at supporting the market while also providing a last resort option for developers? <i>[Yes (please explain the alternatives and your reasoning) / No (please explain why not) / Other (please tell us more) / Do not know]</i>	<u>Do not know</u> - <i>This is not an area of our expertise</i>
79	Q 50 Do the principles for how we will set, and review credit price cover the relevant considerations? <i>[Yes / No (if not, what further considerations should be included?) / Other (please tell us more) / Do not know]</i>	<p><u>Other</u> <i>There is a clear logic to the idea that the market risk would be mitigated by the setting of an “uncompetitive” credit price, the minimisation of credit use and the early phasing out of credits. See our response to Q48a regarding the risks around price setting.</i></p> <p><i>We would welcome further detail on how the statutory credit system will work in practice to ensure it does not undermine the local market and local BNG schemes.</i></p> <p><i>We are concerned that the current proposals outlined for statutory credits appear too attractive to developers and may not be seen as a last resort over developing local schemes as intended.</i></p> <p><i>We require further information on optional refunds, deferred payments etc before we can provide further comments.</i></p>
79-80	Q 51 Do you agree with the proposed principles for credit investment? <i>[Yes / No (please explain why not) / Other (please tell us more) / Do not know]</i>	<p><u>Other</u></p> <p><i>We agree that national credits should be invested in strategic habitat creation and enhancement according to LNRs (or equivalent strategic biodiversity priorities where LNRs are not yet finalised).</i></p> <p><i>However – <u>compensation nationally must be subject to the same rigorous processes as are being proposed locally.</u> Otherwise it appear that transparency required at the local level and through the national register is not required for statutory credits. In particular, this is in respect of:</i></p>

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		<p>1) <i>Metric principle 7 – that “<u>compensation habitat should seek, where practical, to be local to the impact</u>”; and</i></p> <p>2) <i><u>There should be a direct, traceable link between an individual development that has purchased credits and specific sites for which they have received investment, to bring in line with local requirements.</u></i></p> <p>3) <i>Similar requirements re <u>additionality</u> and the need for transparent <u>reporting and enforcement</u> over a minimum of 30 years must be required nationally as they are locally.</i></p> <p><i>Other concerns include:</i></p> <p>4) <i><u>Impact on deliverability of BNG across England due to differential land values:</u> It will be important for the credits system to ensure that higher land value and management costs in the south do not lead to delivery of less biodiversity gain there.</i></p> <p>5) <i><u>Link between habitat lost and replaced.</u></i> <i>There must be transparency as to the type of habitat lost and that which it is being used to replace.</i></p> <p>6) <i><u>Additionality</u></i> <i>Guidance must ensure that credits are not used to fund projects that would / should be delivered anyway outside of the biodiversity net gain system, through other schemes, policies and statutory duties.</i></p> <p>7) <i><u>Surveys to support strategic habitat creation</u></i> <i>More comprehensive and publicly-funded baseline surveys will be needed to identify potential corridors and strategic areas to target offsets. Not all priority or high distinctiveness habitats have yet been identified.</i></p>
	Reporting, evaluation and monitoring	
83	<p>Q 52 Do the above project-level management, monitoring, enforcement, and reporting proposals seem sufficient, achievable, and not overly burdensome on practitioners, developers, or planning authorities?</p> <p><i>[Yes / No, not sufficient / No, overly burdensome or not achievable / No (please explain why not and suggest</i></p>	<p><u>No</u></p> <p><i>The following are critical:</i></p> <p><i><u>Independent review of BNG calculations submitted</u> as part of the planning consent, rather than self-monitoring by developers and landowners. If monitoring is to be done by the LPA / register operator, the specific roles should be clearly set out; such checking could be charged for on a cost recovery basis, or delegated to an approved assessor.</i></p>

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	how could they be improved) / Do not know]	<p><u>Project-level management, monitoring, reporting and enforcement</u> are critical both on and off-site to ensure that the long-term goals of biodiversity net gain are effectively delivered:</p> <ul style="list-style-type: none"> - <u>Regular monitoring is required to ensure delivery</u> and/or timely adaptive measures are taken to achieve target gains over 30 years, both for on-site and off-site gain; <u>monitoring arrangements</u> should be set out in any management and monitoring plan approved for the specific conditions of the offset site. - <u>Enforcement of either on-site or off-site gains will be needed</u> where timely remediation is not undertaken where proposed gains are not being delivered. This must be a transparent process for accountability purposes. Equally, sufficient powers (e.g. to impose penalties where BNG is not being met per conditions), policy and guidance will be needed for successful enforcement. - Similarly, the ConDoc suggests that LPAs must set any specific and proportionate monitoring requirements as part of planning conditions and obligations for on- or off-site habitat enhancements. <u>Sufficient ecologist expertise and training will be required within LPAs</u> to provide this. Similarly, expertise on BNG will be required among planners, ecologists, developers and the Planning Inspectorate to ensure that BNG considerations are taken appropriately into account in planning issues and appeal situations. - <u>Sufficient resourcing (people and expertise) MUST be in place for LPAs to carry out an effective monitoring / enforcement role.</u> This is not currently the case and should be addressed in the promised new burdens funding. - <u>Effective, consistent and accurate reporting at project level and nationally</u> will be needed to determine the success of BNG policy. - <u>The success or failure of BNG will to a great extent rest with the effectiveness of monitoring, reporting and enforcement.</u> Reliance on existing monitoring and enforcement measures will not be sufficient to effectively enforce biodiversity net gain implementation. <p>The contents and nature of the forthcoming guidance on monitoring will have a significant bearing on the effectiveness of that monitoring and on enforcement of the net gain, particularly in respect of:</p> <ul style="list-style-type: none"> - <u>The “effort and frequency” of monitoring:</u> annual reporting in the first 5 years should help to assess the trajectory of meeting expected condition and whether any remedial action is needed. Thereafter, the “typical

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		<p><i>schedule” mentioned on page 81 of the consultation document (10, 20 and 30 years) would seem appropriate, depending on habitat type. This is consistent with existing schemes already in practice.</i></p> <p>- <i><u>How monitoring should be undertaken</u> to ensure consistently measurable outcomes (any discretion allowed on the format, as suggested, must be carefully guided). Monitoring must be thorough, frequent and expert enough to meaningfully determine whether developers’ net gain obligations are being fulfilled and, if not, set out what adaptive management, ongoing maintenance and/or remedial intervention is required.</i></p> <p><i>We also support the position of CIEEM which provides <u>guidance on independent auditing</u>. This is needed in addition to any self-reporting monitoring results. https://cieem.net/resource/biodiversity-net-gain-report-and-audit-templates/</i></p>
82	<p>Q 53 Do you think earned recognition has potential to help focus enforcement and scrutiny of biodiversity net gain assessments, reporting and monitoring? [Yes (please explain why this would help) / No (please explain why this would not help) / Do not know]</p>	<p><u>Yes, but....</u></p> <p><i>We are concerned that self-reporting by a developer / offset provider would not provide enough transparency or scrutiny. On balance, we believe this should be audited and reported on independently, as is the position taken by CIEEM.</i></p> <p><i>https://cieem.net/resource/biodiversity-net-gain-report-and-audit-templates/. The system must also ensure it is achievable for practitioners to qualify so that this does not hold up the planning process.</i></p> <p><i>It may be that earned recognition could be used for the assessment / reporting / monitoring body, however, provided it has appropriate recognised expertise.</i></p> <p><i>Further details are needed to conclude on this. Measures must be adequately robust to ensure the delivery of high-quality Biodiversity Net Gain both on-site and off site as well as ensuring it is achievable for practitioners to qualify so that this does not hold up the planning process.</i></p> <p><i>Earned recognition must not be used as a substitute for adequate funding of LPAs to deliver BNG.</i></p>
85	<p>Q 54 Do the above proposals for policy-level reporting, evaluation and enforcement seem sufficient and achievable? [Yes / Yes, but not sufficient / Yes, but not achievable / No (if not, how could they be improved?) / Do not know]</p>	<p><u>Yes, but perhaps currently not achievable</u> unless this came with further support for LPAs to be able to undertake this work. There is a lot of information being sought that would have additional resource implications beyond determination of applications.</p> <p><i>NB – we await further details; although we suggest that the register should contain on-site as well as off-site assessments, as they are all contributing to the statutory percentage of 10% Biodiversity Net Gain.</i></p>

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		<p><u>We welcome the Environment Act requirement for local authorities, local planning authorities and other designated authorities to publish Biodiversity Reports every five years.</u> We also believe it would be sensible to align these reports with the review and revision of Local Nature Recovery Strategies. However, <u>there may need to be some local flexibility</u> in timings to ensure coherence with locally led decision making processes (e.g., the Local Nature Recovery Strategies should inform strategic planning and Local Plans).</p> <p><u>In addition, at the national level, there should be independent scrutiny of the degree of success of the BNG policy, law and implementation, based on local and national data.</u> This could be a role for the Office Of Environmental Protection / NAO in assessing the effectiveness of the regulation in achieving the objectives and advising on how to strengthen it where necessary. At the policy level, it is essential that net gain delivers outcomes that are additional – i.e., it generates conservation gains that would not have happened anyway in the absence of net gain. The Government must not be able to use offsetting funds to meet biodiversity targets that they would be legally obliged to deliver anyway. BNG funding must be additional. Separately tracking the BNG funding would assist with this: i.e. spending on nature conservation as compensation for a loss elsewhere (BNG) and, separately, core nature conservation funding.</p> <p>We support the intention to have “clearer, more standardised, reporting of habitat losses and gains in biodiversity gain plans”. We also welcome the reporting requirements to set out failures of BNG delivery as well as successes. Where reported, failure to deliver habitats and monitoring must be acted upon.</p> <p>We also support the Condoc’s suggestion for coordinated local data surveys to support monitoring of net gain outcomes “...enhancement monitoring and habitat survey data, coordinated by planning authorities, responsible bodies, and local environmental records centres, which can provide data that will indicate the extent of success or failure of particular habitat enhancements”</p> <p>However – such a mechanism will need sufficient funding for resourcing, as well as coordination, between the organisations involved.</p> <p><u>Statutory credits investment report – little information is given on likely content.</u> This should include details of where, what (in terms of habitat type and area has/is being restored or created) and how, along with progress monitoring and remedial actions/adaptive measures. It should also include clear financial records with clear links between the credit investment and the development (s) obligated, along with the type of habitats lost and gained through development and the statutory credits.</p>
86	Q 55 Considering the data requirements set out above and in greater detail in Annex C:	<p><u>Yes</u></p> <p>LPA should explain how BNG enhancements across their area have contributed to the delivery of the LNRS (once approved). This could include, for example:</p>

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	<p>a) is there any additional data that you think should be included in the Biodiversity Reports? <i>[Yes (please describe the data and explain the reasons for your view) / No / Do not know]</i></p>	<ul style="list-style-type: none"> - <i>Number of units lost and delivered within a specific time-frame;</i> - <i>Actions taken / planned by the LPA to i) correct for under-provision of units; and to ii) monitor the delivery of expected habitats.</i> - <i>Any national credits used to compensate local developments (and how / where to find further details)</i> <p><i>There is a need to provide further details of how this data will be linked to the proposed National Sites Register.</i></p> <p><i>Project monitoring and biodiversity reports should also be used to inform the public about the success or otherwise of BNG enhancements by significant landowners and developers that play a key role in enhancing biodiversity across the local area, and this information should be used as a relevant matter in determining future applications (for example, where a developer has consistently failed to deliver BNG enhancements to agreed standards and timescales, this should be take into account when determining any future applications by that developer).</i></p>
86	<p>b) Is there any data included here that should not be required as part of the Biodiversity Reports? <i>[Yes (please describe the data and explain the reasons for your view) / No / Do not know]</i></p>	<p><u>No</u></p>