







# Biodiversity Net Gain: A Roadmap for Action

Green Finance  
Institute



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# 1. Introduction

**The introduction of Biodiversity Net Gain (BNG) marks a seminal shift in how nature is factored into local planning and development. By ensuring that developers contribute positively to biodiversity, BNG can transform the way the natural environment is perceived from a passive responsibility to an active investment. BNG has the potential to be a powerful tool in fostering sustainable development and reversing the historic loss of nature that has left England one of the most nature depleted countries in the world.**

BNG can offer benefits not only for the environment, but also for communities, local government, and the wider economy. Defra's central scenario of the annual social benefits to people and local communities was estimated at £1.4bn per annum (in 2017 prices). Over 10 years, this figure grows to £9.6bn. BNG offers possibilities for green job creation, further public access to nature, and climate resilience<sup>1</sup>.

More than five months have passed since BNG became mandatory for major developers on 12 February 2024, with small site developers following on 04 April 2024. However, feedback from the market has suggested that significant barriers are preventing BNG policy from realising its full potential.

On the supply side, the biodiversity gain sites register lists nine sites, totalling under 300 hectares<sup>2</sup>, which contrasts starkly with the government's central market analysis of 6,700 hectares of off-site habitat being created each year<sup>3</sup>. On the demand side, feedback from the market suggests that very little demand is coming in due to exemptions and other routes being relied on to circumvent BNG obligations. Early market research from BDP Pitmans suggests that around 0.5% of total planning applications submitted since 12 February 2024 have been subject to BNG. Even fewer of these have been approved, reflecting critical gaps in the capacity and resources of Local Planning Authorities (LPAs).

Despite this slower start, this Roadmap is aligned with the belief that the launch of mandatory BNG marks a major milestone in this policy’s development and not its conclusion. Any policy undertaking of this scale is sure to face nascent stage challenges, and many of the stakeholders engaged in its development have drawn parallels with growing pains faced by other ambitious market-led policies, including those of the renewable energy sector. As the climate and nature crisis is the greatest long-term global challenge that we face, BNG policy will surely be iterated upon to ensure its full effectiveness.

## Purpose of the Roadmap

Following our initial [briefing note published on 12 February](#), the GFI Hive team has undertaken further workshops and 1:1 conversations with over 100 market stakeholders – including those representing land management, property development, environmental NGOs, local government, ecology, academia, legal, consultancy, technology and finance sectors.

Their feedback has been used as the basis of this Roadmap, which is designed to:

- a. Provide government (primarily Defra) with an overview of the challenges faced by market stakeholders and suggest which solutions government can prioritize, especially those that can be actioned before and after the BNG policy review in the next three to five years.
- b. Help market stakeholders develop a common understanding of the major challenges facing the space and what solutions may be possible – including those that can be delivered with further effort and input from the market.

The GFI Hive fully supports the concept of BNG as a model for helping to deliver nature recovery across England. Compliance-based nature markets offer one route to drive the private sector to invest in the UK’s natural capital. BNG represents a small but historic step in transitioning to an economy that values and invests in nature, and if these challenges are addressed, BNG could serve as a highly useful blueprint for other nature markets – both domestic and international – where such compensatory action is required.

## Structure and Scope of the Roadmap

This Roadmap is structured over four pillars that represent key components of BNG’s design. These are:



Each pillar contains c.10 challenges, and these challenges are prioritized to reflect where attention is most needed. The challenges also contain potential solutions for government to consider. Finally, for a select number of challenges, we have included case studies to show where market actors have experienced these and are working through potential solutions.

This challenge-first approach has been taken to ensure that the major challenges within the BNG space are captured and clearly articulated in a central document. While the Roadmap offers potential solutions that have been proposed within workshops and discussions, it is important to emphasise that as the BNG space is still nascent, many solutions are yet to be fully developed. We therefore hope this Roadmap will serve as a useful basis for those undertaking such work.

In reading this Roadmap, we hope due consideration will be also given to where:

- government must act versus where the market can take a larger role in solving challenges.
- relatively quick solutions can be delivered versus where longer-term action need to be taken – particularly where aspects of BNG are dependent on the underlying legislation,
- efforts have already been made to address challenges or foster collaboration between key stakeholders – both by government and market stakeholders.

This Roadmap has been designed to be comprehensive of the common issues faced by market stakeholders included within BNG's core design. More niche challenges – though significant – have been left out of scope for the sake of brevity. These challenges include those relating to specific habitat types (such as urban trees or intertidal habitats), the reliability of third-party services, the role of the insurance and finance sectors, the participation of tenant landholders as off-site providers, community engagement, and the intersection between BNG and voluntary biodiversity credit markets. While omitted, we hope this work will be useful to those stakeholders and initiatives that are aiming to address these topics.

We have also refrained from commenting directly on Defra and Natural England's monitoring and evaluation strategy of BNG policy itself, which we understand is currently under development. However, the resolution of many of these challenges – such as consistent reporting standards and data collection through national registries – will be highly relevant to the strategy.

Finally, there is an underlying need across many of these challenges to expand and upskill the ecology sector for all aspects of BNG, from site surveys and metric calculations to the design of long-term management plans. Many actors within the BNG space – including Local Planning Authorities, Responsible Bodies, developers and off-site providers - will be dependent on ecologists of different specialties and backgrounds. Expanding and diversifying the ecology sector to meet the needs of the BNG space will be a key task that industry will play a dominant role in delivering.

While omitted, we hope this work will be useful to those stakeholders and initiatives that are aiming to address these topics.

## Next Steps

Successful outcomes will only be possible through collaboration across the many different stakeholders and industries that contribute towards BNG's delivery. We would like to express our thanks to the many individuals that have contributed towards this Roadmap and the pre-existing groups that have allowed us to draw upon their work, including conversations led by the Planning Advisory Service, the Future Homes Hub, and the government's Market Advisory Group. We look forward to continuing discussions and are confident that further communities of practice will be developed and expanded to accelerate this collaboration.

If you have any questions or comments on this work, or would like to be involved in further discussions, please contact us at [hive@gfi.green](mailto:hive@gfi.green).



## 2. Summary of Actions Identified and Roadmap



### Summary of Actions

The below table shows the 40 challenges analysed within this Roadmap. To promote thinking around solutions, these have been reframed as high-level actions that can address the challenges, which are set out in more detail within the body of this Roadmap.

Though they have been structured using the four pillars set out below, it should be noted that the impacts of these challenges are felt by multiple stakeholder groups within the BNG space, and that some of the challenges here have significant impacts or intensifying effects on others.

We therefore encourage readers to consider how these challenges, their impacts and the corresponding actions may be interlinked.

## Summary of Actions

 <p>Metric</p>	 <p>Central Governance</p>	 <p>Supply Side</p>	 <p>Demand Side</p>
Explore how urban impact on sites can be factored into the metric on a more systemic basis.	Equip LPAs with sufficient resources and capacity to deliver their BNG obligations.	Provide clarity on appropriate tax and accounting treatments for off-site providers.	Support increased availability and ready supply of off-site units.
Strengthen the use of habitat as proxy for delivering real biodiversity gains, using other ecological factors.	Provide guidance to LPAs and Responsible Bodies (RBs) on appropriate monitoring activities and requirements.	Assist the creation and standardisation of legal agreements – particularly S106 agreements and conservation covenants.	Review the exemptions criteria and process for BNG.
Evaluate the risk of overall habitat cover loss - as larger, lower-quality habitats can be traded for smaller, higher-quality habitats.	Provide guidance on the separation of LPAs' roles as approver of off-site BNG habitats, and the participation of LAs as off-site providers.	Provide further guidance on appropriate financial modelling and governance of lifetime BNG agreements.	Address difficulty in matching supply and demand volumes – including the purchase of small or fractional biodiversity units.
Ensure that baseline habitats within LNRS boundaries are correctly valued.	Incentivise the 'front-loading' of BNG information in the planning process, including details about on-site habitat plans.	Provide further clarity over liability and enforcement measures in worst-case-scenario planning of habitat failure.	Support the standardisation of planning document templates and processes with LPAs.
Support the provision of higher distinctiveness habitats within the metric's unit generation, where the plans are ecological feasible.	Streamline the process of Responsible Body (RB) designation and increase public visibility over their operations.	Improve visibility over the local pipeline of developers' demand for off-site units.	Clarify the reporting requirements for on-site habitats over the 30-year period.
Assess the extent to which very high distinctiveness habitats may be replaced with high distinctiveness habitats.	Increase the provision of public data on the biodiversity gain sites register.	Provide greater clarity on the statutory biodiversity credit scheme and its use of funds.	Review the policy of excess unit sales – e.g. those from solar sites.
Support greater consistency in the condition assessments delivered by different ecologists and other site surveyors.	Create a central register for on-site gains or incorporate these into the existing biodiversity gain sites register.	Assess and support the 'bespoke habitat creation' process with off-site providers, LPAs, and developers.	Provide guidance on appropriate management techniques of on-site habitats.
Address the user experience issues within the Excel version of the metric.	Establish a 'regulator of regulators' to evaluate how LPAs are meeting their statutory BNG responsibilities.	Align BNG with government environment and agri-environment schemes.	Help address expected skills shortages with management companies and other on-site habitat caretakers.
Improve the market's understanding of the spatial risk multiplier.	Review the enforceability for on-site habitats that do not reach target state.	Provide clarity over the effect of BNG agreements on land values.	Provide greater clarity regarding the allowance of cross-boundary sales.
	Encourage LPAs to take >10% BNG ambitions, where they deem it viable.		Provide greater clarity over the requirements for large, multi-phased projects.
	Provide guidance on how BNG should be delivered alongside other local policies.		
	Align BNG with the broader Environmental Net Gain (ENG) concept and its adaptations as these develop.		

## Roadmap of BNG Actions

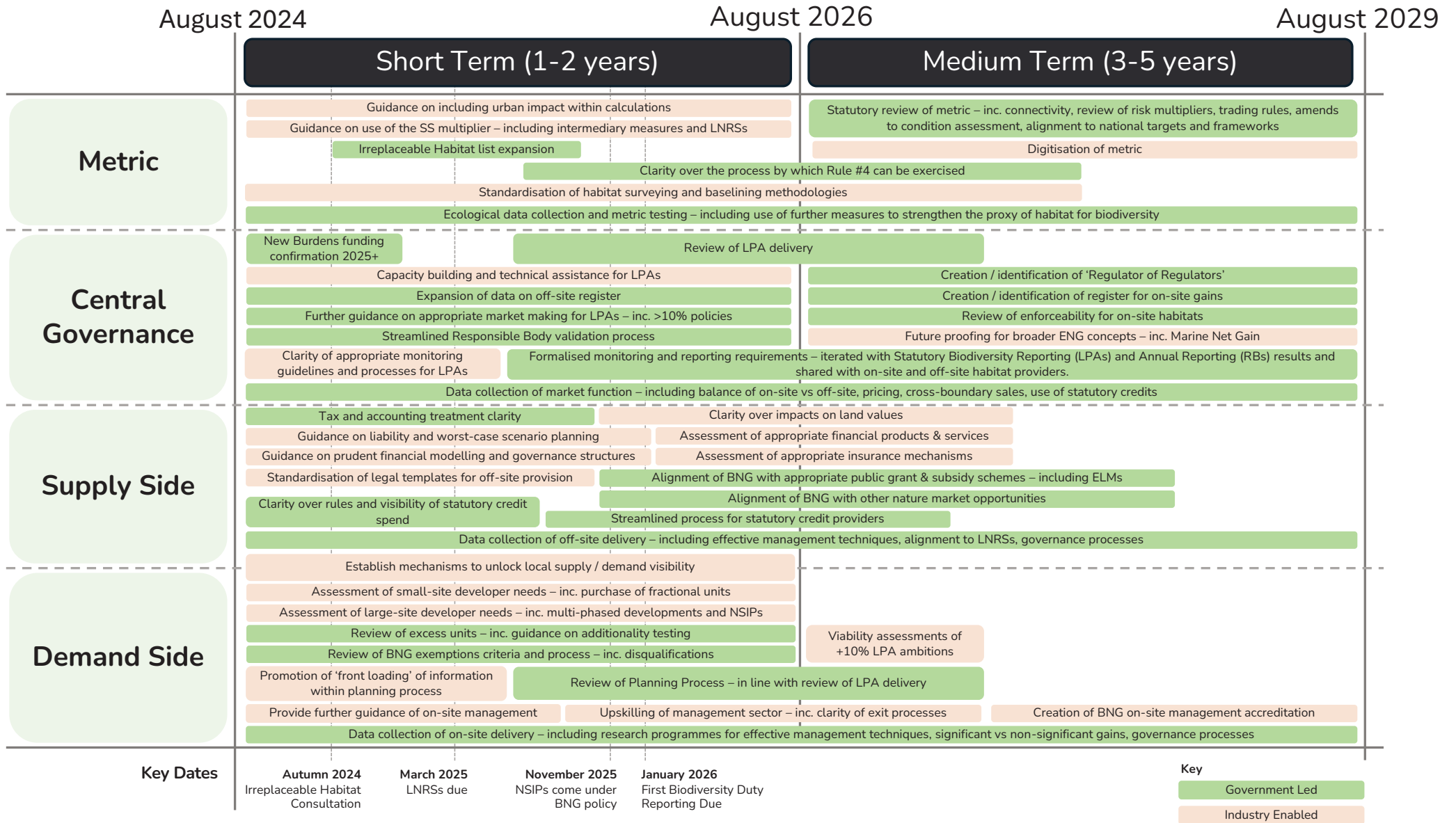
The below Roadmap is a high-level visualisation of how the challenges and target actions may be tackled in sequence. The underlying activities that are set out in this Roadmap have been sorted into short term (one to two years) and medium term (three to five years) phases, in order to emphasise where changes may be dependent on other activities first taking place, or the statutory review period of BNG – which is set to take place in the next three to five years.

These activities have also been categorised as either ‘government led’ or ‘industry enabled’. While government can play a role in solving all of the challenges set out, it is important to note where government action will carry the majority of the resource – such as through core policy changes- versus where relevant industry bodies and market stakeholders can play a larger role – such as capacity building and the creation of ecological guidance. We emphasise here that the inclusion of industry resource does not remove government’s own role in supporting or delivering these actions.





# Roadmap





# 3. Assessment of Challenges

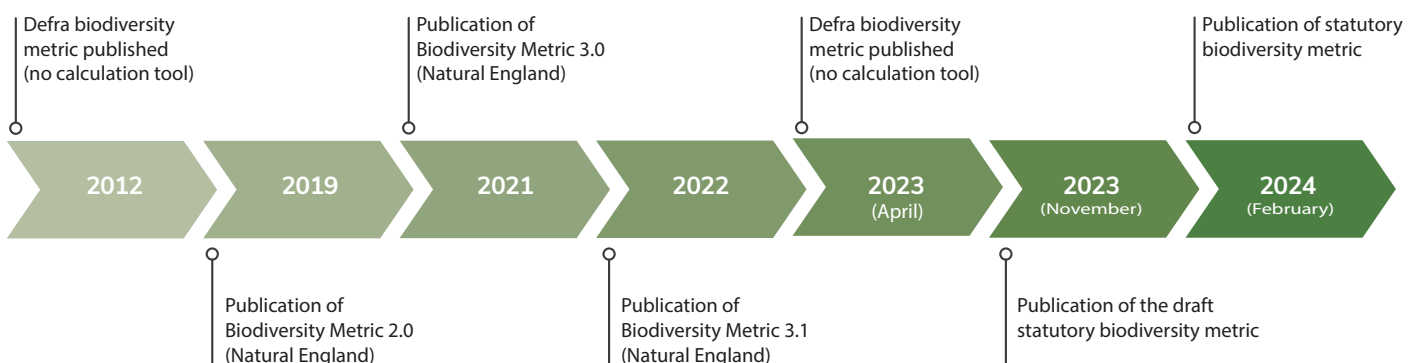
## Metric

The statutory biodiversity metric<sup>4</sup> ('the metric') is the central component of England's Biodiversity Net Gain policy.

It provides a consistent way of measuring both the losses and gains to biodiversity, allowing for compensatory action to be built into the decision-making process of those with influence over land use – developers on-site and land managers off-site. By providing this single measurement and quantifying the need for such compensatory action, markets and transactions can take shape to channel private finance into nature at scale.

Many consider the development of the metric to be a monumental feat. It was developed over 10 years by Natural England, with input from environmental experts, government stakeholders, data scientists, land managers and developers. The metric was trialled through five major versions, and was accompanied by several practical pilots and research programmes that collected the missing environmental and market data that was needed to make the metric functional.

## Metric development timeline





## What makes a good biodiversity metric?

In reviewing and testing this metric throughout this 10-year period, many market and government stakeholders – including those within this Roadmap's Working Group – have commented on the fundamental principles that make a successful biodiversity metric. These can be surmised as:

1. **Measurable** – and therefore verifiable.
2. **Useable** – by the metric's target user group.
3. **Scientifically robust** – based on relevant ecological data and research.
4. **Responsive to changes** – including those made towards future habitat predictions.
5. **Repeatable** – allowing for standardisation and scale.
6. **Consistent** – and therefore predictable for users.
7. **Combinable** – with other ecological tools, frameworks and resources.
8. **Impactful** – aligned to its overall purpose and mission.

While these principles are all important for a robust and reliable biodiversity metric, there will always be natural trade-offs between them for any metric that aims to measure overall levels of biodiversity in a given area. This is especially true for the statutory biodiversity metric, which can be used for over 116 different habitat types across England. Examples of these trade-offs include:

- Being easy to use (useability) vs capturing the complexity of different local ecologies (scientifically robust).
- Delivering robust outcomes through its own outputs (impactful) vs operating alongside other metrics, tools and local priorities (combinable).
- Incentivizing rare habitat creation (impactful) vs capturing the higher risk of establishing these over the 30-year period (scientifically robust).

Many stakeholders with ideas of how to improve the metric will often find themselves in discussions about such trade-offs. The GFI's Working Group, convened in early 2024, had such discussions around the metric, and the below recommendations to central government have been put forward while bearing these trade-offs in mind.

## Requests to improve the statutory biodiversity metric

In March 2024, members of the Working Group gathered to discuss ideas for improving the metric, based on the official version launched on the 12th of February 2024. These ideas are put forward here for the benefit of Defra, which now manages the metric, and Natural England, which is conducting ongoing research and design testing for monitoring purposes and for future iterations of the metric.

It is important to note that, as the statutory biodiversity metric is underpinned by legislation, many aspects of the metric cannot be altered until BNG's statutory review, which is set to take place in the next three to five years.



### Short term (1-2 years)

- Work with relevant industry to provide further guidance on:
  - Factoring impacts of anthropogenic pressure (such as neighbouring land use) into the metric.
  - The use of the strategic significance (SS) multiplier, including appropriate ecological datasets and tools for the '1.1' SS multiplier, and appropriate application of the '1.15' SS multiplier as more Local Nature Recovery Strategies (LNRSs) are published.
- Expand the list of irreplaceable habitats – in line with the public consultation to take place in the second half of 2024.
- Work with relevant industry to standardise the way habitats are baselined and surveyed in the condition assessment process.

### Medium Term (3-5 years)

- As part of the statutory review of BNG:
  - Explore further measures to strength the relationship between habitat and biodiversity levels – including soil type and connectivity.
  - Review the trading rules using market data – including vulnerable habitat types, hectare requirements when 'trading up' in habitat quality.
  - Review how on-site habitats can be valued at baseline when located within LNRS boundaries, such as through connectivity measures.
- Explore the digitisation of the metric, including through an assessment of digital providers operating in the market.
- Clarify the process by which Rule #4 can be exercised through Local Planning Authorities (LPAs) and Responsible Bodies (RBs).

## 1. Explore how urban impact on sites can be factored into the metric on a more systemic basis

**Priority: High**

### Summary:

Habitats that are susceptible to anthropogenic pressures are more likely to face damages and not reach their target conditions, therefore increasing the risk of non-delivery of biodiversity. Examples of such anthropogenic pressures include pedestrian footfall, use of pesticides, or even the impact of construction on adjacent habitats that are deemed 'non-impacted' in site surveying. These pressures can be more pronounced with smaller, less protected on-site habitats that are near dwellings or other population-linked developments.

This impact should be captured as part of the condition assessment, and considerations of risk and important ecological factors are reflected by the principles in the User Guide. However, such considerations may not always be factored in during the habitat planning stage and it can lead to less realistic metric calculations being proposed about the future habitat's condition.



It is worth noting that the target off-site and significant on-site habitats need to be legally secured through local land charges, including detailed information on planned enhancements and specific actions to ensure habitats meet target condition. However, in the case of habitat failure, the extent of liability and enforcement measures is not clear to all in practice (see Action #4 in Supply Side). Moreover, non-significant on-site habitats do not need to be secured through local land changes and face even weaker enforcement measures (see Action #9 in Central Governance).

### Potential Solutions for Central Government:

- Provide or support the provision of more specific guidance on how to factor in expected urban impact on habitats within the BNG calculations, working with relevant industry bodies to align with existing work on this topic.
  - Building on the above, include a section within the condition assessment where the surveyor can demonstrate where this thinking has been applied, including where impacts on the wider site are expected from the construction phase.
- Expand the guidance on pesticide use in on-site habitat management.
- Review on-site risk multipliers (including the difficulty multiplier) to assess whether the risk of urban impact can be factored into the metric calculations more directly.
  - Building on the above, allow an option for fenced-off on-site habitats to face the risk multipliers of off-site habitat – incentivising on-site but protected habitat delivery.

## 2. Strengthen the use of habitat as proxy for delivering real biodiversity gains, using other ecological factors.

**Priority: High**

### Summary:

The biodiversity metric uses habitat as a proxy for biodiversity – with a key assumption being if the habitat is created or enhanced then more biodiversity (e.g. species presence and abundance) will occupy that habitat. There have been some studies<sup>5,6</sup> that show there is not always an uplift in biodiversity with such habitat delivery, and that there can be significant variability of biodiversity levels within habitats – including grasslands – that is not always captured through the quality-based multipliers of the metric.

A number of factors, including site age and connectivity, can strengthen the link between this proxy and the desired outcome, but are not currently factored in due to the complexity of doing so and the reduction of useability and measurability that the metric offers. For example, connectivity was factored into Version 2.0 of the metric that included GIS integration. However, this was removed due to technical challenges that caused the metric Excel to stop working for many users.



### Potential Solutions for Central Government:

- Review how connectivity can be added back into the metric in a sustainable manner – for example within the condition assessment scoring sheets.
  - The contributors of this Roadmap express their support of Government’s intention to review how connectivity can be added into the metric ahead of the next consultation and legislative update (within the next three to five years), and wish to highlight the importance of this work.
  - Explore the use of current datasets, such as the Network Enhancement Zones within the Habitats Network dataset<sup>8</sup>, which some suggest could be factored into the ‘1.1’ strategic significance multiplier by LPAs ahead of the metric’s next update.
- Work with relevant industry to expand current research into how effective the distinctiveness and condition scoring system is as a proxy for biodiversity, and the ecological factors that strengthen the links between different habitats and biodiversity – such as site age and soil type – so that the proxy of habitat in the metric can be improved over time.

### 3. Evaluate the risk of overall habitat cover loss - as larger, lower-quality habitats can be traded for smaller, higher-quality habitats.

**Priority: High**

#### Summary:

To an extent, the trading rules of the metric allow for larger, lower quality (in condition and distinctiveness) habitats that are built upon to be mitigated with smaller, higher quality habitats off-site. Though this is considered by many to be ‘trading up’ in terms of value for biodiversity, some studies have shown the overall loss of greenspace could be up to 34%<sup>8</sup>.

There is an impact trade-off here in that the metric is designed to encourage the creation of higher-quality habitat that is better for biodiversity, and an argument that some area loss of lower-quality habitat is acceptable for this outcome. For this same reason, the trading rules do not generally allow higher quality habitats to be compensated or ‘traded down’ for larger but lower quality habitats.

When habitats are ‘traded up’, it was also noted that the effect of the ‘difficulty’ and ‘time to target condition’ multipliers can also mitigate the extent to which area cover is lost when using smaller but more complex and distinct habitats to compensate for larger and less distinct habitats.

Market stakeholders with experience in the statutory metric voiced these thoughts and flagged that the metric’s Principle #9 focuses on maintaining habitat extent and ensuring that habitat is of sufficient size for ecological function. This is reliant on best practice, resources and capacity within the assessment phase. Some have suggested that, in select cases, the metric could be tested to see which habitats may be particularly vulnerable to loss of area cover under the trading rules, and to what extent.



### Potential Solutions for Central Government:

- Test how the metric supports hectare requirements of certain habitats and which are vulnerable to loss of area cover when ‘traded up’ for other habitats.
  - Building on the above, review the trading rules in such cases where important habitats may be vulnerable - for example, to what extent high distinctiveness habitats can be traded for smaller but very-high distinctiveness habitats.
- Explore the potential to add in targets of maintaining land cover of certain habitats – similar to how woodland cover targets are included in the guidance.
- Incorporate this challenge into the habitat review work being undertaken by Natural England in the near future.

## 4. Ensure that baseline habitats within LNRS boundaries are correctly valued, such as through the strategic significance multiplier.

**Priority: High**

### Summary:

Local Nature Recovery Strategies (LNRSs<sup>10</sup>) are required by the Environment Act and will be delivered by 48 Responsible Authorities<sup>11</sup> across England, showing where and how nature restoration may be delivered to generate the most benefit. LNRSs are built into the metric through the strategic significance (SS) multiplier, which aims to reward BNG activity aligned with these areas through the generation of more units. LNRSs are considered an important resource by many market stakeholders, such as small site developers, who may struggle to navigate various other indicators of strategic significance to find the best areas to support nature restoration or enhancement.

For units generated from habitats located in LNRS boundaries (once in place), these will score ‘1’ under the SS multiplier in the baseline (thus having no uplift in the baseline) rather than the ‘1.15’ score it applied under Version 4.0 of the metric. As a result, the metric will now inadvertently weight the creation of new habitat over recognising existing habitat. This also means that if the pre-development value of existing on-site habitat is valued lower, the overall number of units required to meet the gain will be lower. This may inadvertently incentivise developments in LNRS areas.

A counter argument for this change is that this application of the SS multiplier would further incentivise appropriate habitat delivery in locations identified for nature recovery, where off-site creation or restoration is taking place.

This challenge is somewhat exacerbated by the fact that, as of 30 July 2024, very few LNRSs have been published, and so there is limited understanding of how the SS multiplier will deliver targeted biodiversity outcomes.



### Potential Solutions for Central Government:

- Review how on-site habitats at baseline can be valued within the metric when located within LNRS areas, for example:
  - Through connectivity measures being explored by Defra.
  - By allowing a difference in how risk multipliers are applied to on-site/off-site delivery within LNRS boundaries.
- Once further LRNSs are published, provide further guidance and detailed examples in the User Guide of how the SS multiplier will be applied in practice and how this supports the targeted outcomes of the SS multiplier.
- Ensure that there are methods and measures to value on-site habitats that are accessible to small site developers.

## 5. Support the provision of higher distinctiveness habitats within the metric's unit generation, where the plans are ecological feasible.

**Priority: Medium / High**

### Summary:

The difficulty multiplier within the metric ensures that proposed habitats that are more difficult to establish (as an example – lowland calcareous grassland), do not generate as many units because it is less likely that they will be delivered over the 30-year period. Market stakeholders acknowledge this as an important feature of the metric, because it results in a more robust approach to habitat delivery and disincentivises the removal of higher-distinctiveness (and often rarer) habitats.

However, users of the metric also reported on instances where higher-distinctiveness habitats were reasonably achievable in the local ecological context but not as rewarded with units in the metric calculations, compared to lower-distinctiveness and less ecologically beneficial habitats. Examples of this were given, such as the condition enhancement of existing high-distinctiveness habitats, instances where the habitat was on favourable soil type, or where the proposed habitat site was surrounded by high-distinctiveness habitats of the same type.

The metric has a rule (Rule #4) that allows the relevant LPA to approve a reduction in the time to target for a habitat in exceptional ecological circumstances. For example, where the site has optimal conditions (such as soil condition, hydrology, nutrient status) for restoration of a wildlife-rich or historic natural habitat, and where the project team has the expertise and resource to deliver the habitat with negligible risk of failure. However, as of yet there are no known examples where this Rule has been exercised, and market stakeholders suspect that the criteria for permitting the use of this rule may be overly restrictive, and specific to cases where large or landscape-scale change is taking place.





### Potential Solutions for Central Government:

- Include other ecological factors in the metric – such as connectivity and soil type – to better incentivise higher-distinctiveness habitats where the local ecology means this is a lower-risk activity.
  - Those who contributed to this Roadmap are aware that the inclusion of connectivity measures is being explored by Defra as part of the three- to five-year statutory review and wish to highlight the importance of this work.
- Explore how public funding and BNG can intersect in a way that derisks challenging habitat establishment – “temporally stacking” public payments in the initial few years, followed by BNG payments from an improved baseline (see Action #8 in Supply Side for more detail).
- Review how the metric – including the ‘difficulty to establish’ multiplier – treats creation versus enhancement of existing high or very high distinctiveness habitats.
- Clarify the process by which off-site proposals for high or very high distinctiveness habitats under exceptional circumstances can be reviewed (under Rule #4) for the potential of reduced risk multipliers, providing guidance for LPAs and RBs to exercise this rule.

## 6. Assess the extent to which very high distinctiveness habitats may be replaced with high distinctiveness habitats.

**Priority: Medium**

### Summary:

Current guidance states that if very high distinctiveness habitat (VHDH) is being built upon, the LPA has three options to consider:

1. priority should be given to replacing losses with units of the same habitat type
2. if this is not possible, losses should be replaced by appropriate units of the same distinctiveness
3. if this is not possible, losses should be replaced by appropriate area units of a high habitat distinctiveness

The outcome between these three options must be agreed in consultation with the LPA. Previously there was no guidance on how bespoke compensation could be reached in regards to the loss of VHDH, which led to some stakeholders feeding back that clearer guidance was needed.

However, some market stakeholders fear this now risks Option #3 being relied upon in excess and a systemic loss of very high distinctiveness habitats – rather than bespoke compensation ratios being agreed with Natural England or the LPA refusing the development.



It could be argued that the extent of the pressure on very high distinctiveness habitat from development is unknown and that pressures on these habitats may be coming from elsewhere. Market stakeholders also expect some difficulty in providing enough supply of very high distinctiveness habitats to meet the potential demand, due to the high-risk multipliers associated with very high distinctiveness habitats.

However, these stakeholders maintain that many very high distinctiveness habitats are ecologically important and should be protected from development, and not be allowed to be compensated for lower-distinctiveness habitats. The role of Irreplaceable Habitats (excluded from the metric) has been discussed as a way of giving additional protection to certain VHDHs.

### Potential Solutions for Central Government:

- Review the ability for very-high distinctiveness habitat to be traded for high-distinctiveness habitat within the guidance and trading rules.
- Expand the list of Irreplaceable Habitats and ensure findings from the upcoming consultation (Autumn 2024) are built in, along with current ecological research that is creating definitions for key habitats – e.g. ancient lowland grasslands.
- Conduct a root-cause analysis of the historic destruction of very-high distinctiveness habitat, so that the extent of pressures from development can be confirmed, and if so whether the metric is the most appropriate method of protection.
- Review how the metric – including the ‘difficulty to establish’ multiplier - treats creation versus enhancement of existing high or very high distinctiveness habitats.

## 7. Support greater consistency in the condition assessments delivered by different ecologists and other site surveyors.

**Priority: Medium**

### Summary:

Surveyors undertaking baseline assessments of a habitat can have different observations and enter in different calculations on the metric. Though government has competency requirements for the metric (making clear that competency is obtained through training, qualifications and experience), there is still margin for error<sup>12</sup> and the potential for diverging opinions, even between trained and experienced ecologists.

In particular, it was noted by some users of the metric that surveying a site at different times of year can change the perceived type, condition and distinctiveness of the habitat. Comparisons have been made on the level of standardisation and resources in surveying methods across different habitats, such as grasslands (less standardisation) and woodlands (more standardisation).



This inconsistency could mean unsuitable applications of the metric in delivering biodiversity uplift – for example by underestimating the condition of the baseline site. It can also undermine the consistency of the metric in verifying the delivery of BNG gains over the habitat's lifetime.

#### Potential Solutions for Central Government:

- Work with relevant industry to create standardised methods, tools, and processes for surveying different habitats (similar to the level of clarity around woodland assessment). This should also include optimal timings of year for surveyance and additional guidance where habitats are commonly misidentified, such as modified grassland versus ONG.
  - Ensure that UKHab is also included in this work as the provider of the uniform habitat classification system that the metric is based upon.
  - Ensure that there is guidance and standardised methods are accessible to small site developers.
- Set out space in the conditions assessment that makes clear where there is uncertainty from the assessor and where this could lead to inconsistent assessments further down the line.

## 8. Address the user experience issues within the Excel version of the metric.

**Priority: Low**

#### Summary:

Some more technical issues with the Excel version of the metric has been noted. For example, issues with including arable margins in BNG calculations when moving arable land to grassland, or submitting calculations for larger and more complex habitats. This creates a higher risk of technical error.

#### Potential Solutions for Central Government:

- Provide further visibility on how issues with the Excel are being taken forward.
- Provide more visibility on the plans to convert the metric from Excel to a digitised tool with improved functionality.
  - The contributors of this Roadmap are aware that Government is exploring the digitisation of the metric and wish to acknowledge the importance of these efforts. A key point was raised that replacing the Excel sheet will be highly disruptive and should only be done at the end of the three-to-five year review period, when all persistent issues have been identified.



## 9. Increase the market's understanding of the spatial risk multiplier – namely the number of units exchanged when selling / buying beyond LPA or NCA (National Character Area) boundaries.

**Priority:** Low

### **Summary:**

There can be some confusion amongst developers and off-site providers around the implications of the spatial risk multiplier that changes the number of units that an off-site habitat offers in relation to its distance from the development in question.

This is not a challenge with the metric itself but rather a misunderstanding that can occur at the point of marketing / sale of units with off-site providers and developers beyond the respective LPA and NCA boundaries. However, this issue may be mitigated in part by clearer signalling in the metric.

### **Potential Solutions for Central Government:**

- Include a small note on the off-site provider tab to explain the function of the spatial risk factor and to consider its implication if speaking with a developer beyond the site's LPA or NCA boundary.
- Work with relevant industry to:
  - Provide further guidance for landowners and developers on the spatial risk multiplier, as part of wider market guidance.
  - Provide guidance on basing off-site BNG unit sale agreements on hectareage (a fixed input) to prevent misunderstanding and adverse consequences of developers and off-site providers in legal agreements.



## Central Governance

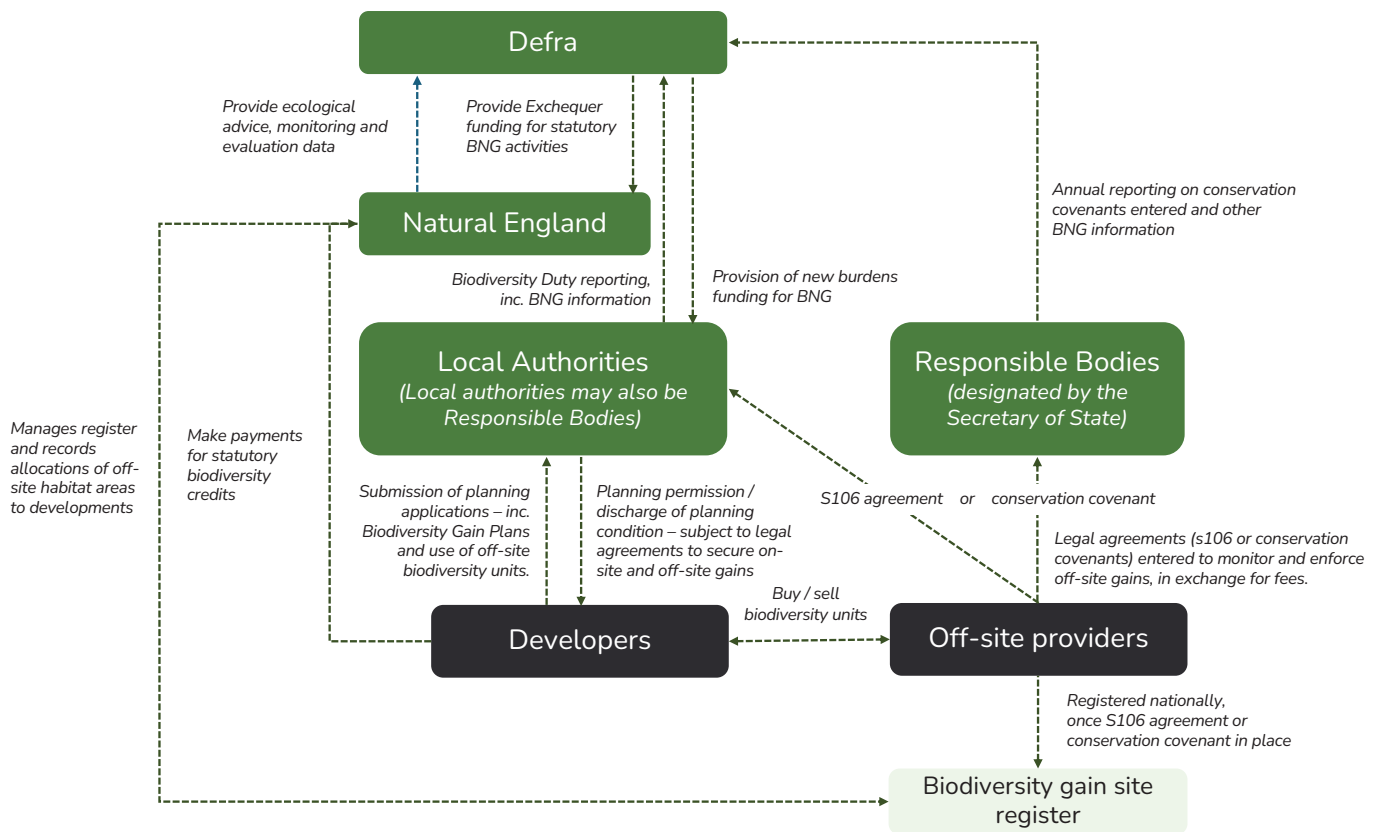
Central governance is crucial to the success of BNG policy and its environmental outcomes, which must be delivered over 30 years for both on-site and off-site habitats. For developers and off-site providers that make claims of delivering these BNG outcomes, central governance means that independent third parties:

1. set the rules for how the exact claims are made – such as the use of the statutory biodiversity metric,
2. assess individual proposals for how BNG outcomes will be delivered – including through Habitat Management and Monitoring Plans & Biodiversity Gain Plans.
3. monitor these outcomes over the 30-year period, and
4. take enforcement action if these outcomes are not delivered.

Central governance is also required for the off-site market component of BNG, such as the prevention of double counting when units are sold or exchanged.

Within the context of BNG, organisations that are delivering these functions include Local Planning Authorities (LPAs), Responsible Bodies (RBs – who may also be LPAs), Defra, and Natural England. This pillar therefore focuses on the challenges faced by these organisations in fulfilling their defined roles.

## Central Governance Structure



(Note: see Glossary for short definitions of S106 agreements, conservation covenants and other governance-related terms)

## What do market stakeholders think about the state of central governance in BNG?

As BNG is a legal requirement that is designed to deliver on the government’s environmental goals – including those within the 25 Year Environment Plan<sup>12</sup> – it is generally supported that England’s government should take an active role in how the policy and the off-site market is governed. A non-governmental organisation – such as charities and private companies with a focus on ecological conservation – may become Responsible Bodies<sup>13</sup> (RBs) and provide central governance on a local level for off-site providers through the provision of conservation covenants. However, RBs are also designated by the Secretary of State, with assistance from Natural England in the process.

Several lessons on effective governance have been taken from other environmental compensation schemes around the world. Many of these lessons – such as the use of municipalities to govern and prioritise local compensation – were incorporated into the design of BNG’s central governance, which was developed over 10 years before the policy’s launch.

However, the first five months of mandatory BNG have highlighted some key challenges that central governance actors face, which has had a significant impact on the wider market. Common themes include:

- Resource and capacity constraints.
- Balancing BNG with other local priorities and internal processes.
- Uncertainty over data requirements – both up-front and over the 30-year period.



Some of these challenges can be solved by market innovation and industry-led support. For example, the Planning Advisory Service (PAS)<sup>15</sup> has provided resources to help LPAs prepare for and meet their BNG responsibilities – including minimum requirements and good practices.

However, due to the inherent nature of central governance in the BNG system, many market stakeholders argue that most of these challenges may only met by action from central government.

### What needs to be addressed?

In April 2024, members of the Working Group convened to discuss the way the BNG market is governed centrally by these various actors and the solutions that may help unlock the challenges that they are experiencing. These ideas are put forward here primarily for the benefit of Defra, which manages BNG policy.

#### Short term (1-2 years)

- Confirm the new burdens funding for LPAs beyond March 2025, ideally giving multi-year funding visibility to help with LPAs' longer resource planning.
- Work with relevant industry to offer further training, technical assistance and capacity building to LPAs – and to a lesser extent RBs - in regard to BNG delivery.
- Offer further guidance on appropriate 'market making' for LPAs to adhere to – including ambitions of >10% BNG requirements, permission of cross-boundary sales, wider LA participation as sellers or brokers, and balancing of BNG with other planning priorities.
- Streamline the validation process for RBs – including refined processes for LAs and eNGOs, and public visibility over application responses.
- Upgrade the off-site register to incorporate more detailed geo-spatial data and further market data.
- Commit to a review of LPAs' delivery within the next two to three years, including resource and capacity, workforce planning and an assessment of the planning application process in relation to BNG.
- Work with relevant industry to create or clarify appropriate monitoring guidelines for LPAs to adhere to in their statutory biodiversity reporting – including for on-site and off-site gains.



### Medium Term (3-5 years)

- Create a new body or clarify which body is responsible for the oversight of LPAs' delivery over their statutory BNG responsibilities, publishing information on how potential breaches may be reported accordingly.
- Iterate the monitoring and reporting requirements that LPAs and RBs must adhere to, using results from the statutory biodiversity reporting of LPAs and annual reporting of RBs.
- Create a register for tracking on-site gains or incorporate this data into an existing register.
- Review the enforceability of on-site gains, specifically the provisions that LPAs are given in the case of habitat failure or breaches.
- As further Environmental Net Gain (ENG) concepts are developed, work with relevant industry to provide further indication on how the two concepts will intersect versus where they will be kept separate to prevent double counting.

## 1. Equip LPAs with sufficient resources and capacity to deliver their BNG obligations – including, but not limited to, in-house ecologists.

**Priority: High**

### Summary:

Many LPAs are facing a critical shortage<sup>15</sup> of in-house ecologists or those with ecological expertise, along with other important staff versed in BNG – for example, legal teams and financial planners that could also be located within wider LA teams. Funding is lacking and, at times, there can be an unrealistic expectation for the few experienced individuals to upskill other teams within LAs, which exacerbates their limited capacity.

The government has provided the statutory new burdens funding up of £10.6m until March 2025 – between £26,807-£43,467 per LPA depending on the average number of planning applications received<sup>16</sup>. Some argue that this is insufficient for LPAs to meet their BNG responsibilities. New burdens funding has also not been confirmed beyond March 2025. Both of these factors present challenges for LPAs in financially planning for longer-term staffing and other BNG-related costs. This in turn creates further uncertainty and limits the ability for LPAs and LAs to plan their longer-term strategies for supporting BNG delivery.





### Potential Solutions for Central Government:

- Increase funding for LPAs that is geared towards building internal capacity and offered with a degree of flexibility, particularly with visibility over the longer term (post-March 2025) new burdens funding schedule.
- Continue to work with existing training providers and industry experts to offer core BNG training designed for teams across LPAs and wider Local Authorities.
- Create a capacity-building facility to offer technical assistance to Local Authorities on more specific issues, working with organisations such as the Agricultural Law Association, which offers training courses to LPAs on legal issues relating to BNG.
- Commit to a review of Local Authorities' delivery of BNG within the next three years, including funding provided to LPAs, workforce planning and an assessment of the application process (see Action #4).
- Work with industry to provide relevant legal templates for LPA use in BNG delivery, including through PAS (see Action #4 in Demand Side).

### Buckinghamshire Council

Buckinghamshire Council has developed a Habitat Bank Criteria that any off-site provider is required to meet if they wish to enter into an S106 agreement with the Council. This criteria has been designed to help streamline the Council's internal processes and speed up development of the local off-site BNG market and associated ready supply of off-site BNG units that are available to local developers. It sets out up to 24 items of information that the off-site provider needs to prepare either before first meeting with the Council, or before signing the S106 agreement. These items include the proof of legal control over the land, full details of the habitat proposal – including a 30-year cash flow, and proof of alignment to the Council's interim strategic significance guidance, ahead of its full LNRS publication to ensure that the best outcomes are being delivered for Buckinghamshire biodiversity.

Separate to the monitoring fee that is based on the habitat proposal's size and technical difficulties, which can be paid in instalments for the duration of the S106 agreement, Buckinghamshire Council also charges off-site providers a one off set-up fee of £9,000 – £15,000 (as of July 2024). This is to cover the time and internal resource required to comprehensively review the proposal and associated documentation submitted by the offsite provider, to enable completion of the S106 agreement (which is prepared by the Council instead of the off-site provider).



## 2. Provide guidance to LPAs and Responsible Bodies (RBs) on appropriate monitoring activities and requirements for different off-site habitats over the 30-year period.

**Priority:** High

### **Summary:**

There is a lack of consensus on what monitoring for different habitats is appropriate for LPAs and RBs to undertake over the 30-year period, which in turn affects the fees that are charged to off-site providers through S106 agreements and conservation covenants. Anecdotally, there have been fees quoted that market stakeholders consider both too low and too high, which is casting further doubt over the robustness of the monitoring and auditing function that LPAs and RBs are tasked with. This issue also links with the challenge of drafting S106 agreements, as these fees and requirements must be included within such agreements (see Action #2 in Supply Side).

In some cases, LPAs have pre-existing relationships with experienced partners, such as local eNGOs, that they have relied on for guidance. However, in many cases LPAs do not have a clear pathway for clarifying their monitoring requirements. Once the activities and processes are made clear, it is considered relatively easy to cost these out.

The situation is further complicated depending on the structure of the underlying Local Authority, for example, with two-tier systems (districts and boroughs) and different divisions of responsibilities between these tiers. This means there will not be a single uniform monitoring fee across different LPAs, even when the monitoring activities are similar.

### **Potential Solutions for Central Government:**

- Work with industry to create guidance on appropriate monitoring guidelines for LPAs and RBs – and by extension on-site and off-site habitat providers - to adhere to, drawing from expertise offered by eNGOs and other experienced environmental organisations for different habitat types.
  - For example, as grasslands appear to be the most common habitat type put forward, efforts could first focus on a ‘UK Grassland Standard’ that includes both maintenance and monitoring practices.
  - Iterate and formalise this guidance in line with findings from RBs’ annual reporting and LPAs’ statutory biodiversity duty reporting, which must first be published in January 2026 and occurring every five years thereafter.
- Work with industry to run financial workshops with a range of Local Authorities (of different structures) that have taken different approaches to structuring their monitoring fees and identify best practices/minimum requirements to be adopted across both LPAs and Responsible Bodies.



## Verna Monitoring Calculator

Verna provides software that supports LPAs, habitat banks and developers with their various BNG responsibilities. It has released a free [monitoring fee calculator](#) for LPAs to use in setting fees within their S106 agreements for both on-site and off-site monitoring over 30 years. The calculator allows LPAs to input a range of assumptions based on their local contexts, including salaries, consultant fees, monitoring years, inflation rate and the costs of assessing the initial management plan. The calculator is provided with a step-by-step guide and a webinar.

### 3. Provide guidance on the separation of LPAs' roles as approver/regulator of off-site BNG habitats, and the participation of LAs in the provision of off-site BNG.

**Priority: High**

#### Summary:

Some market stakeholders have perceived conflicts of interest between the LPA's role of approving off-site proposals and other ways that the wider LA can participate in the off-site market. For example, where LAs are using their own land for off-site BNG habitats (thereby becoming BNG unit sellers themselves) or where partnerships have been formed with habitat bank operators. Some have suggested there is the possibility of anti-competitive pressure for LPAs to favour certain proposals, such as directing buyers to LA-owned sites or refusing to sign S106 agreements with other suppliers, due to the general lack of guidance on how these roles should be kept separate.

There can be various reasons why LPAs might use their limited capacity to take forward LA-owned sites or sites with a limited number of suppliers. For example, there have been a few cases noted where LPAs have declared that – on a short-term basis - they are only proceeding with LA-owned land for off-site BNG delivery, due to the lack of certainty around their own commitment risk with signing S106 agreements, and the need to test new BNG-related processes. In other instances, LPAs have expressed concerns that there may be a risk of excessive over-supply in the market and that by enabling BNG sales with fewer suppliers that have larger land portfolios – more robust BNG outcomes can be delivered and monitored more efficiently over the 30-year period.

Other market stakeholders counter-argue that market forces should be allowed to settle BNG without as much direct influence from LPAs, including how LA-owned land is favoured. It was also suggested that LPAs concentrating their efforts on enabling only LA-owned land to enter the market run the risk of stymied supply in the longer-run.



Overall, there is a need for clearer guidance on the role of an LPA as a market maker/regulator and – separately – how the wider Local Authorities can act as sellers, brokers or other intermediaries in BNG transactions.

#### Potential Solutions for Central Government:

- Assess where further guidance on LPAs' roles as market makers/regulators is needed and outline where measures should be standardised to ensure a consistent approach across LPA processes (see Action #11 in this pillar and Action #9 in Demand Side for further examples of this).
  - Utilise the support of relevant industry bodies to disseminate this guidance, such as PAS and the Royal Town and Planning Institute (RTPI).
- Work with governance experts to provide guidance on the creation of arms' length processes/bodies for LA participation in BNG delivery as landholders, including information on processes (both pre-existing and BNG-specific) on how conflicts of interest are addressed and avoided.

#### 4. Incentivise the 'front-loading' of BNG information in the planning process, including details about on-site habitat plans.

**Priority: High**

##### Summary:

The national validation list sets out what developers must provide when submitting a planning application. Some market stakeholders consider the national validation list requirements for BNG to be minimal, as details about the post-development state of the on-site habitats and any use of off-site units are not required until after planning permission has been granted. After this, the full Biodiversity Gain Plan<sup>17</sup> is submitted to discharge the biodiversity gain planning condition (a pre-commencement condition) that developers must meet before they can start development works.

The rationale for this sequencing of information is due to concerns that developers would be materially disadvantaged or held legally liable to the details of the Biodiversity Gain Plan that they could not guarantee over the entire planning process – which could last for several years. For example, developers required to purchase or partially pay for off-site biodiversity units may see the use of those units, or the entire planning application, denied by the LPA. Likewise, larger planning applications may be staged in terms of their development – such as through outline applications – in which case the full post-development state of the habitats would not be confirmed until much later on.

However, some LPAs have reported that the minimal validation requirements disadvantage both LPAs and developers as it can cause delays to the discharge of the condition regardless, for example, where developers have not met the mitigation hierarchy through their on-site habitat plans. Some market stakeholders argue that providing more information up-front (called 'front-loading') would allow LPAs a much clearer assessment of development plans and not cause pressured decision-making towards the end of the planning process.



This challenge is intensified by the fact that LPAs are under-resourced (see Action #1) and have an eight-week window and a fixed fee structure through which to discharge planning conditions, which presents a tension for LPAs that wish to properly assess the Biodiversity Gain Plans but run the risk of refunding the fee and facing special measures from central government.

Many LPAs are allowed to update their local validation lists to expand the up-front BNG requirements, which central government has signalled it is broadly supportive of. However, this involves a formal consultation run by each LPA, which requires time and resources. Front-loading is encouraged as a best practice within the industry, but it is not always adopted by developers for various reasons.

#### Potential Solutions for Central Government:

- Work with industry to find incentives for front-loading information within the planning application process, such as further information within the national planning practice guidance on the submission of draft on-site habitat plans.
- As part of a formal review of LPAs' delivery of BNG obligations in the next 2 years (see Action #1), review the application process to assess its efficacy in delivering BNG outcomes, including a review of:
  - The national validation list, including where information about the proposed interventions for on-site habitats (including BNG metric calculation) can be included.
  - The fee structure for processing applications – for example:
    - fixed fees based on size of land areas,
    - a process by which costs can be fairly awarded by an impartial third party, if the determination/discharge of condition becomes unduly protracted.

### 5. Streamline the process of Responsible Body (RB) designation, including the application process of becoming an RB and the public visibility over RB operations.

**Priority: High**

#### Summary:

Central government is currently assessing several applications for organisations to become RBs. However, as of 30 July, there are five designated RBs<sup>18</sup>. This figure excludes Natural England, which is not providing conservation covenants on a commercial basis but intends to act as an RB on a select number of strategic pilots and projects. In the absence of further RBs, LPAs are under considerable pressure to enter S106 agreements with off-site providers and therefore enable local supply.

Anecdotally, the process to become an RB can vary significantly in length of time and resource required, even for Local Authorities that had previously enabled voluntary BNG markets within their boundaries and therefore had developed processes.



Government has provided visibility over its criteria<sup>19</sup> of RBs, which are also required to submit information via their annual return<sup>20</sup>. However, some market stakeholders are asking for further scrutiny of RB operations, such as visibility over the application responses and the proposed monitoring activities and processes.

#### Potential Solutions for Central Government:

- Standardise the template, process and guidance by which certain types of organisations – such as Local Authorities and eNGOs - can apply to create their own Responsible Body arm, helping to accelerate the process and increase the number of RBs.
- Increase the public visibility of information relating to RBs, including findings from the application process, clarity over how fees are initially calculated, and details of the RBs' monitoring activities and processes.
  - Building on the above, include clarity around the responsibilities that remain with LPAs when there is an RB engaged as the regulator of off-site BNG habitats – e.g. where data must be shared with LPAs to report on their statutory Biodiversity Duty.

## 6. Increase the provision of public data on the biodiversity gain sites register.

**Priority: High**

### Summary:

The biodiversity gain sites register<sup>2</sup> ('the register') has been launched and is intended to act as a source of transparency regarding off-site gains and their allocations to developments across England. It is a requirement of the Environment Act (2021) under Schedule 100<sup>21</sup>.

The register currently provides a PDF of the habitat's red-line boundary and separate lists of the baseline and planned habitat improvement areas. It also includes details on what developments the site's habitats have been allocated to.

While the register offers a degree of visibility, some consider this data as insufficient for the purpose of the register set out in the Environment Act, including provisions within Section 6. Market stakeholders propose that further data is needed to fulfil its intended purpose. For example, it is argued that:

- The PDF should show a geographic breakdown of where the parcels of habitat (both baseline and planned) are located within the boundary. This is so that the spatial configuration of habitats and the feasibility of habitat transformation can be assessed.
- The condition assessment should be included, likewise, to assess the feasibility of how habitats can be improved from their baseline.



- Once purchased, spatial detail should be provided to show which habitats have been assigned and what impact on-site is being met. This is particularly important to prevent any double-counting of units, which is handled by Natural England privately through the register, but details are not posted publicly.
- The number of upfront units generated from the site should be included, potentially by providing the metric calculation spreadsheet. This would support assessment of the overall outcomes for BNG, including how many units are being delivered through the off-site market compared to on-site (see Action #5 in Demand Side for further detail on this).
  - It is important to acknowledge that there are potential complications with unit disclosures that need to be carefully managed, due to the multipliers within the metric. For example, due to the 'time to condition' multiplier, it would not be possible to display the number of unallocated units automatically, as these increase over time. Likewise with the spatial multiplier, developers located further away may report fewer units purchased than what the BNG site has allocated to them (see Action #9 in Metric for further detail on this).

Some of this information becomes available on the Planning Portal when developers submit requests to discharge their biodiversity gain conditions – as these details of off-site provision will be included in their full Biodiversity Gain Plans. However, this information is highly fragmented and difficult to access, to the point where an interested party may spend days or weeks trying to access, match and aggregate data across different sites. It is therefore argued by market stakeholders that the lack of this information on the register defeats its purpose of transparency.

It has also been highlighted that central government – including Defra and Natural England – will need streamlined access to this same data as part of their monitoring and evaluation strategy of BNG policy itself. Therefore, some argue it is of mutual benefit to both central government and the market to expand the data requirements of the register.

#### Potential Solutions for Central Government:

- Review the information that is asked of off-site habitat providers and the developers that purchase their units, incorporating the above data inputs into the off-site register.



## 7. Create a central register for on-site gains or incorporate these into the existing biodiversity gain sites register.

**Priority: High**

### Summary:

Developers are not required to register their on-site biodiversity units on the biodiversity gain sites register or any equivalent register for transparency and monitoring purposes. Though information about on-site gains can be found on individual applications in the Planning Portal, this information is not easily accessed or scrutinised by market stakeholders, preventing an equal assessment with off-site units.

Additionally, it is presumed that central government will require data and oversight of on-site gains for its ongoing monitoring and evaluation of BNG policy. Advocates of an on-site register therefore highlight that it would provide a comprehensive and up-to-date source of information for central government as well as the market.

### Potential Solutions for Central Government:

- Create a register for on-site BNG units with clear governance and monitoring mechanisms or require on-site providers to register with the existing biodiversity gain sites register.
  - As part of this more extensive work, provide updates to the market on its progression.

### Kent County Council

In 2022, Kent County Council engaged SQW and Temple Group to undertake a viability assessment of BNG across Kent, with a focus on assessing the high-level viability of a range of development types at 10%, 15% and 20% BNG targets. The purpose of the report was to provide an initial viability assessment to inform the 13 LPAs in Kent that may be considering a higher BNG target.

The key findings were that a shift from 10% to 15% or 20% BNG would not materially affect viability in the majority of instances when delivered onsite or offsite. The biggest cost in most cases is to get to mandatory, minimum 10% BNG. The increase to 15% or 20% BNG in most cases costs much less and is generally negligible. Because the BNG costs are low when compared to other policy costs, they are highly unlikely to be what renders development unviable. While the study caveats that its findings are strategic in nature and that it does not remove the need for BNG to be tested at the local level, it highlights the value that such viability assessments could bring to LPAs that are considering a BNG target of more than 10%.





## 8. Establish a ‘regulator of regulators’ to evaluate how LPAs are meeting their statutory BNG responsibilities.

**Priority:** High

### **Summary:**

Some market stakeholders have called for a ‘regulator of regulators’ to evaluate LPAs’ delivery of their statutory BNG responsibilities - including the BNG assessment of planning applications.

If someone suspects these activities are not being carried out correctly, it is unclear to many what recourse they would have to report this. Possibilities discussed include the intervention of existing regulators, government bodies, or investigation through court proceedings. LPAs are required to submit statutory Biodiversity Duty reports every five years. However, there is concern that such reports will not be detailed or timely enough to identify and respond to any issues with effect.

Some aspects of this risk will be addressed through adequate resourcing, guidance and technical assistance for LPAs (see Action #1). However, many market stakeholders have said that without a central and well-resourced regulator to oversee this component of BNG policy, there will be incidents of BNG obligations not discharged to the required standard.

### **Potential Solutions for Central Government:**

- Create a new body or clarify which body is responsible for this oversight, publishing information on how such breaches may be reported accordingly.
  - Clarify what monitoring and enforcement mechanisms are/will be made available to such a regulator when breaches are found, potentially through legislative amendments to the Environment Act (2021).
  - Central government may wish to tie this work in with other forms of environmental regulation, such as other environmental protections within the planning system or wider nature markets operations.

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## 9. Review the enforceability for on-site habitats that do not reach target state.

**Priority:** High

### **Summary:**

Many market stakeholders have voiced the critical importance of enforceability to ensure BNG’s success, but LPAs – and to a lesser extent RBs – have voiced their concerns over the lack of clarity and ability to deliver on this core function. One study showed that 95% of LPA respondents believed that the Government had not provided the guidance and detail to support effective delivery of the enforcement of BNG, specifically with regards to enforcement and enforcement service implications<sup>22</sup>.



For non-significant on-site enhancements<sup>23</sup>, enforcement will be delivered via the planning system, secured through planning conditions or obligations. However, LPAs have limited funds for enforcing planning conditions with 80% of enforcement officers already reporting a lack of officers in their team to carry out the existing workload<sup>24</sup>. Additional funding for BNG enforcement of on-site habitats has not been provided to LPAs.

In addition, current guidance advises LPAs to only take action against violations of planning conditions where the violation represents a 'serious harm to a local public amenity.' This is a high bar that is unlikely to capture violations of BNG over 30 years.

There are virtually no examples of planning conditions that stretch over a 30-year period, and therefore it is likely that a more bespoke approach needs to be developed for BNG on-site enforcement. International experience of biodiversity delivery shows that lack of capacity in and enforcement by local councils is a key reason why on-site (and off-site) targets fail to deliver<sup>9</sup>.

For significant on-site enhancements, developers are required to use S106 agreements to secure these in the same way as off-site gains<sup>23</sup>, which can help to address lack of resources as monitoring fees and remediation clauses can be built in. However, to a lesser extent there are concerns with exactly how these are structured and delivered in practice, such as the correct fee to charge to cover activities over the 30-year period (see Action #2).

Moreover, this option is not offered for non-significant on-site enhancements, which do not require a Habitat Management and Monitoring Plan, a legal agreement or a commitment to maintain them for 30 years. It is also unclear how much non-significant gains will contribute to the overall BNG obligation across England, and how this figure compared to significant on-site enhancements will be tracked as part of LPA reporting (see Action #5 in Demand Side).

### Potential Solutions for Central Government:

- Provide more enforcement specific guidance for LPAs, including materials and templates, as part of their statutory responsibilities.
- Formally review the enforcement mechanisms and resources that are used by LPAs for on-site habitats (including planning conditions and S106 agreements) and strengthen accordingly so that LPAs can update their enforcement plans.



## 10. Encourage LPAs to take >10% BNG ambitions, where they deem it viable.

**Priority: Medium/High**

### Summary:

Guidance from central government has stated that plan-makers should not seek a higher percentage than the statutory objective of 10% Biodiversity Net Gain, either on an area-wide basis or for specific allocations for development unless justified. This contrasts with their previous position where it was at LPAs' discretion to set higher targets (e.g. 15%, 20%)<sup>25</sup>.

To justify such policies now, LPAs will be required to provide evidence of the local need and opportunity for a higher percentage, and any impacts on viability for development. This is considered a high bar that will disincentivise LPAs from setting higher BNG targets, and potentially expose those who do to punitive measures.

The perceived rationale for restricting >10% ambitions of LPAs is to avoid a more onerous burden that could cause developments to be:

- a. delayed where developers need to seek additional off-site units and there is no ready supply, and/or
- b. economically unviable with the developers' need to purchase more off-site units.

However, it is countered by market stakeholders that LPAs are generally highly sensitive to their development needs and targets, and that those that have taken a >10% approach have a more prepared and deliberate approach to BNG, including the identification of off-site supply. Some early viability assessments of shifting from 10% to 15% or 20% have also suggested that the additional cost on development would be negligible, and unlikely to render developments unviable<sup>26</sup>.

### Potential Solutions for Central Government:

- Update the BNG Planning Policy Guidance and re-iterate the importance of 10% being a minimum requirement, allowing LPAs to adopt >10% ambitions where they deem it viable.
- Work with industry to explore further studies of the impact of >10% BNG requirements, including their impact on local developments, in order to support future policy making and planning.



## 11. Provide guidance on how BNG should be delivered alongside other local policies, including but not limited to Local Nature Recovery Strategies (LNRSs).

**Priority: Medium**

**Summary:**

As BNG is embedded within the planning system, LPAs and Local Authorities consider it their responsibility to align their local BNG processes with other local policy and spatial planning priorities, particularly in relation to Local Nature Recovery Strategies (LNRSs). In some cases, these policies could conflict with the off-site BNG market or delay proposals due to uncertainties in how they interact.

For example, some LPAs are unsure as to how to enable an off-site BNG market in line with local policies relating to improved infrastructure, housing, agriculture and wider natural capital plans. An example is Greater Manchester Combined Authority's BNG Guidance, 2021 (Appendix A) that sets out how BNG directly intersects with up to 10 key local policies<sup>27</sup>.

There is also the question of what measures are used to enforce these strategies versus where market forces are allowed to settle off-site BNG allocations. Anecdotally, different LPAs have taken approaches and requirements with varying degrees of stringency and intervention to align off-site BNG sales to areas they believe would be most sensible for habitat creation to take place. However, market stakeholders view some of these approaches as overly disruptive and slowing the establishment of local BNG markets.

The majority of market stakeholders acknowledge that LNRSs will be a key piece of policy, but as most have not been released and have a deadline of March 2025, there is a risk of limiting supply creation in areas that might otherwise be incentivised by LNRSs. However, it was stressed by certain members that LPAs cannot wait until LNRSs are finalised to take action on BNG delivery and stimulate supply, and that anything aligned with the Lawton Principle or previous ecological strategies (e.g. Local Biodiversity Action Plans) will generally be the most effective places to deliver off-site BNG proposals.

### Potential Solutions for Central Government:

- Work with relevant industry bodies – such as the RTPI – to provide guidance on how BNG should be considered amidst other local policies in the spatial planning system, such as where development conflicts with nature restoration.



## 12. Align BNG with the broader Environmental Net Gain (ENG) concept and its adaptations (e.g. Marine Net Gain) as these develop.

**Priority:** Low

### **Summary:**

Some market stakeholders have expressed concern around sufficient planning when Environmental Net Gain<sup>28</sup> (ENG) becomes more developed as a tool, as there is a fear of double-counting with land/geospatial areas that have been allocated to BNG, which is a regulatory requirement.

Discussions highlighted that implementation of ENG (or any sub-type of this concept – such as Marine Net Gain) needs to be consistent with the government’s own Nature Markets Framework, which states that “schemes should ensure they do not issue credits or services where the activity providing ecosystem services is being carried out to meet an existing regulatory obligation on the part of the landowner or manager.”

### **Potential Solutions for Central Government:**

- Work with industry to provide further indication, as other ENG concepts are developed, on how the two concepts will intersect versus where they will be kept separate to prevent double counting.



## Supply Side

A cornerstone of BNG policy is that it allows for local landholders to offer off-site BNG units to developers that cannot meet their 10% BNG obligations on-site. This is not only a practical necessity for developers that face spatial constraints, but also a significant opportunity for landholders to access a new source of funding for environmental uplift and long-term conservation.

Landholders such as farmers, rural estates, eNGOs and Local Authorities can participate as suppliers of biodiversity units. Intermediaries without underlying land ownership, such as habitat bank operators and land agents, can also sell units under appropriate agreements with these landholders. The collective term of 'off-site provider' is therefore used throughout this roadmap to capture the broader supply side of the BNG market.

Generally speaking, there are two ways<sup>39</sup> that off-site providers can offer units:

- **Habitat banking** – creating a BNG proposal and legally securing the land ahead of any unit sales to developers. This means there is more scope to establish habitat uplift ahead of the corresponding impact from development, which also is incentivised through the metric (with more units generated when the planned habitats are more established at the point of sale).
- **Bespoke habitat creation** – first agreeing the (prospective) up-front sale of biodiversity units before legally securing the land and then starting habitat works once funds have been received. These units represent future habitat gains and are less incentivised in the metric, but present a solution to landholders without enough funds for upfront habitat works.



Both of these options are important to offer off-site providers. Indeed, they may choose to combine up-front and future sales of different units to maximise both the ecological and commercial viability of their BNG proposals, which must be maintained for 30 years.

### How do off-site providers view BNG?

Many prospective off-site providers have expressed interest in BNG and its potential to help fill a much needed funding gap for nature. However, the strength of the business case for off-site providers varies depending on a myriad of factors – explored in this pillar – and it is largely up to the off-site provider to assess these under their specific circumstances.

Central government has deliberated on this and backed the development of the overall business case with funding and pilots, among other things. For example:

- Biodiversity offsetting pilots<sup>30</sup> were run in six regions from 2012-2014 to evaluate the effectiveness of off-site provision in delivering environmental gains.
- Natural England ran a pilot scheme<sup>31</sup> from 2020-2023 that explored in detail how five different estates and landholdings would create and launch their BNG proposals.
- Defra and the Environment Agency have delivered the Natural Environment Investment Readiness Fund (NEIRF) over two rounds and c.85 projects – of which the majority of these chose to incorporate BNG into their business model exploration. The funding for a third round specifically aimed at farmers is to be announced this year and it is expected that many successful projects will be focusing on BNG as well.

While there is a lot of interest in BNG as a possibility for off-site providers, some are now speculating what the national off-site market will look like in terms of a) what habitats will be most required – for example, a prevalence of grasslands – and b) what type of off-site providers will find it most commercially viable to participate – for example, those with beneficial tax treatments and larger amounts of land to use in BNG.

It is also important to set BNG within the wider context of nature recovery and its overall funding requirements, being clear that the revenue from off-site BNG alone will not meet the financing gap across England. For instance, Oxfordshire's Local Nature Partnership estimates that the BNG off-site market could finance a maximum of 10-13% of the costs<sup>32</sup> of creating additional habitats to meet the 30x30 target within the county. It is therefore important for off-site providers, and those working towards nature's recovery more widely, to consider possible BNG revenues alongside other funding sources.



## What needs to be addressed?

In April 2024, members of the Working Group met to discuss the supply-side of the off-site BNG market and the challenges faced by off-site providers. Many of these relate various market, operational and regulatory factors that influence individual business cases. Some of these may be solved with the assistance of relevant industry.

### Short term (1-2 years)

- Provide clarity over the appropriate tax and accounting rules that off-site providers adhere to in structuring their BNG transactions and underlying land treatments, delivered through the Working Group established with HMRC and HM Treasury in early 2024.
- Clarify the spending rules for the statutory biodiversity credit scheme, establish and streamline the process for off-site providers to register as statutory credit providers.
- Work with relevant industry to:
  - Provide templates and guidance on important legal contracts related to off-site unit provision, such as conservation covenants, S106, unit sale and lease-back agreements
  - Create further guidance on financial governance, including robust financial modelling and longer-term financial management structures.
  - Establish clarity of where liability sits in light of force majeure and third party acts – clarifying where different market actors are liable and for what.
- Explore mechanisms to unlock visibility over local demand, including where LPA data can be utilised.

### Medium Term (3-5 years)

- Align or provide further clarity on where BNG opportunities can be combined with:
  - Public grant and subsidy schemes, including ELMs.
  - Nature market opportunities – including those within scope of the Nature Investments Standards Programme<sup>33</sup>.
- Work with industry to clarify the impacts of the off-site BNG market and its transactions on off-site providers' land values.
- Work with the insurance and financial sectors to increase the provision of appropriate insurance and financial services to off-site providers.





## 1. Provide clarity on appropriate tax and accounting treatments for off-site providers.

**Priority: High**

**Summary:**

BNG has introduced new types of transactions for which pre-existing tax codes and accounting standards either do not provide sufficient clarity or are not considered suitable for BNG. Landholders, accounting firms, tax advisors and other supply-side stakeholders have highlighted the need for such clarity, which can only be provided through new rules and guidance set by HM Treasury and HMRC.

For example, landholders generally wish to know that any potential BNG sites on their land will not affect their overall tax position on Agricultural or Business Property Relief under Inheritance Tax. Other examples include the treatment of income, how costs are deducted against this income, how VAT is charged on services relating to the habitats' management, and any tax implications of land value changes. These points can be interlinked, adding further complexity to landholders' decisions and transaction structuring.

The government provided some clarity of its intention through its consultation response<sup>34</sup> and the Spring Budget 2024<sup>35</sup>, but the changes proposed were not included within the subsequent Finance Act<sup>36</sup>.

**Potential Solutions for Central Government:**

- Provide clarity over the above issues, drawing in expertise from wider market stakeholders to ensure new rules and guidance are appropriate for the various scenarios and transactions that the BNG market may present.
  - As part of the consultation response, a joint HM Treasury and HMRC working group with industry representatives has been announced to tackle this challenge. Those who contributed to this Roadmap wish to highlight the importance of this work proceeding at pace.

## 2. Assist creation and standardisation of legal agreements – particularly S106 agreements and conservation covenants.

**Priority: High**

**Summary:**

Off-site providers often shoulder the legal costs of an off-site BNG transaction. The most often cited example of this is the creation of an S106 agreement, which is a local land charge signed with the relevant LPA. Legal negotiations can take between two to 18 months to finalise, which can drain the resources of both the LPA and the off-site provider.



Many attribute this particular challenge to the overall lack of resources given to LPAs (see Action #1 in Central Governance), which prevents them from investing time and building expertise in processes that can streamline and bolster future supply of biodiversity units. Another linked challenge is the lack of Responsible Bodies (RBs), which are intended to offer conservation covenants to off-site providers, as an alternative to S106 agreements (see Action #5 in Central Governance).

There are a handful of publicly available legal agreement templates, such as those on the Planning Advisory Service website<sup>37</sup>, but market stakeholders highlight that more effort is needed to tailor these as required. The content of these legal agreements can vary significantly depending on what habitat is being proposed, the land ownership, the requirements and processes of the LPA and the inclusion of any third parties, such as habitat bank operators.

Central government has clarified that, due to such variability, it would not be appropriate to provide set legal templates to work from but is encouraging further templates and best practices to be shared within the market – such as between legal firms, LPAs and off-site providers. However, many market stakeholders are requesting government to help increase such collaboration through other measures and resources.

#### Potential Solutions for Central Government:

- Work with relevant industry to provide templates and guidance on important legal contracts related to off-site unit provision, such as conservation covenants, S106, unit sale and lease-back agreements.
  - On 5 July 2024, the Planning Advisory Service (PAS) published a set of legal templates<sup>38</sup> that includes an S106 agreement for off-site provision – labelled as a Habitat Bank Agreement. Contributors of this Roadmap wish to congratulate PAS and those involved for this important contribution to the BNG space.
- Make S106 agreements attached to off-site delivery publicly available (with commercially sensitive information redacted), in the same way that S106 agreements are available that are attached to on-site planning permissions.
  - This should be coupled with an encouragement for LPAs to explore others' S106 agreements, to spread best practice and share solutions to common problems.
- Create a central team staffed with legal, ecological and accountancy expertise from appropriate industry bodies that can respond to short queries from LPA legal teams on S106 agreements – providing consistent answers in line with the latest government guidance.
  - Taking learnings from the above service, support the legal industry in drafting specific clauses that can create a 'clause library' for both S106 agreements and conservation covenants. This should be made publicly available on the gov.uk website.



### 3. Provide further guidance on appropriate financial modelling and governance of lifetime BNG agreements.

**Priority: High**

#### **Summary:**

Off-site providers face challenges in costing the lifetime activities needed to maintain and manage their habitats over 30 years. Uncertainty persists over what expenses to include and how to price them – including what inflationary measures to use – so that these are reflected in the unit prices.

Market stakeholders with experience in modelling the lifetime costs of different BNG proposals agree that lifetime costs can vary hugely depending on several factors. Therefore, any general guidance provided should focus on the types of costs themselves rather than quantified estimates or cost ranges, which could lead to significant inaccuracies. For example, guidance on upland peat restoration may detail activities like reprofiling and re-vegetating, but not the exact costs these activities would pose over 30-years as these can vary significantly from site to site.

Guidance is also required on appropriate financial governance of the revenues from unit sales. Stakeholders – such as LPAs and developers – generally want assurance that funds acquired are not being mismanaged, but off-site providers also need to have access to these funds for the viability of the habitats themselves – such as unexpected remedial works.

This uncertainty extends to the LPA / RB's auditing role. Many LPAs and RBs are unsure as to what appropriate lifetime costs look like for certain schemes and whether they could be approving schemes that are not fit for purpose. This can lead them to increasing not only their ecological monitoring but also their financial reporting requirements, which subsequently presents further costs to the off-site provider. In practice, this is an example of a cost item that is often not fully confirmed to the off-site provider until late into the planning / negotiation phase of the BNG proposal.

#### **Potential Solutions for Central Government:**

- Work with relevant industry to provide:
  - Resources around prudent financial modelling – including draft financial models to use and checklists of costs to consider across different habitat types.
  - Guidance on appropriate financial governance options – including further visibility of governance structures and mechanisms used in the market to date, such as S106 clauses and centralised endowment funds.



#### 4. Provide further clarity over liability and enforcement measures in worst-case-scenario planning of habitat failure, including force majeure events.

Priority: Medium / High

##### Summary:

There is a lack of detailed understanding in the market around appropriate actions to take in the event of off-site habitat loss, including scenarios involving force majeure and acts of third parties (such as ecological changes made upstream). The extent to which liability lies with the off-site provider will depend on the exact drafting of:

- The Habitat Management and Monitoring Plan (HMMP) – which sets out exactly what actions are meant to be taken to achieve the target uplift.
  - HMMPs should include a risk register that sets out key risks and what steps or remedial actions must be taken in the event the habitat's target uplift is not delivered – such as adaptive management measures against rising temperatures.
- The local land charge (the S106 agreement or conservation covenant) – which mandates that the HMMP is followed but does not penalise the off-site provider if the actions set out in the HMMP do not deliver the target uplift.
  - Factors like force majeure should be included here, but in some cases these provisions are drafted with loose definitions, or omitted entirely.

It is up to the LPA or Responsible Body to determine whether best endeavours have been taken by the off-site provider, including how the HMMP has been followed.

More often, there is a lack of agreement over what happens when force majeure events occur. Depending on the wording of the local land charge, it may be that off-site providers are not liable for any further action (as long they've followed the HMMP), that they are liable for replacing the habitat or repaying some of the original unit sales, or on top of this they may be responsible for cumulative losses – such as administrative fees and inflationary pressures – all of which may not be made clear from the outset.

Some market stakeholders have explored the use of insurance and had early discussions with insurance providers, but due to the unquantified risks, liabilities and enforcement mechanisms, insurers are still determining feasible products and their limitations. Other insurance-based mechanisms, such as regional unit buffers managed by nature-based partnerships or LPAs, are being explored.

##### Potential Solutions for Central Government:

- Work with the relevant industry to provide further guidance on where liability sits in light of force majeure and third party acts – clarifying where different market actors are liable and for what.



- Provide further guidance on appropriate insurance mechanisms for supply-side actors, working with off-site suppliers, Local Authorities, Responsible Bodies to clarify existing best practices.
- Work with the insurance sector to clarify liabilities and processes, so that standardised insurance / risk management products can be deployed to support BNG delivery.

### Wendling Beck Exemplar Project

The Wendling Beck Exemplar Project (WBEP) was an early adopter of BNG and has created an environmental ‘masterplan’ across 2,000 acres that involves over 700 hectares of BNG habitat creation and restoration, of which 350 acres have already been delivered. Having created a large area of BNG habitat in advance of mandatory net gain coming into force, the project has encountered difficulties in long-term governance and management planning.

One of the issues experienced was how to mitigate habitat failure within a large habitat bank. Specific guidance around force majeure would help overcome the need for expensive insurance, or other ways to mitigate against not attaining the required habitat condition, as set out within the Habitat Management and Monitoring Plan (HMMP). Another area of concern is how major infrastructure projects – such as power lines – can be delivered on land that has been committed to BNG, either by working to minimize disruption on BNG habitat through project design, or through compensation. While an acceptable resolution was found, further guidance as to what happens in these circumstances would have made negotiations less complex for the WBEP and its project partners – and saved many hours of additional legal and consultancy work.

## 5. Improve visibility over the local pipeline of developers’ demand for off-site units.

**Priority: Medium/High**

### Summary:

Off-site providers often lack visibility over the demand for biodiversity units within their LPAs. This demand is systemically localised within the LPA boundary due to the spatial risk multiplier<sup>39</sup>, which increases the number of units developers need to buy when purchasing beyond the LPA/NCA boundary of their site. This discourages compensatory action from taking place further away from the source of impact – in line with the mitigation hierarchy<sup>40</sup>.

However, without visibility over the likely local demand, off-site providers may be reluctant to create a speculative BNG delivery site and the costs associated – including baselining, financial modelling, site registration and drafting legal agreements. Instead, they may only invest such resources when they are approached directly by a developer or an intermediary, limiting the potential to create robust BNG sites ahead of the point of sale (known as habitat banking).



There are several marketplace platforms that are offering to connect developers and off-site providers at an early stage. However, these are typically focused on offering visibility over potential supply and then matching developers to off-site providers that have registered an early interest.

Repayable finance (debt and equity towards establishing BNG sites) may also be used to transfer this market risk away from off-site providers. However, lenders themselves generally seek evidence over the likelihood of revenue stream (sale of units), and so this lack of visibility may also lead to fewer lenders willing to provide such finance at more affordable rates.

Many off-site suppliers and their intermediaries are therefore asking LPAs to disclose information from their planning pipelines and give an indication of potential demand – particularly in regards to their Local Plans<sup>41</sup>. This can be difficult for LPAs to do as:

- LPAs currently lack resources to develop their own methodologies and undertake more detailed demand assessments (see Action #1 in Central Governance).
- levels of demand are difficult to forecast accurately as developers themselves do not know the exact number and nature of units they need until late into the planning stage.
- higher level demand assessments depend on several assumptions that LPAs may not be comfortable making for the sake of accuracy – for example with using historic levels of development, or estimating the proportion of on-site BNG delivery for future developments.

#### Potential Solutions for Central Government:

- Work with relevant industry to:
  - Provide guidance to LPAs on appropriate methodologies for assessing both demand and supply, particularly in regard to Local Plans and Local Nature Recovery Strategies.
  - Offer off-site providers clearer ways of ‘unwinding’ delivery sites from BNG commitments – e.g. sunset clauses within S106 agreements and conservation covenants.
- Support the provision of access to historic information on LPA planning applications to provide context that can supplement any forecasts made by market stakeholders.



## Greater Manchester Combined Authority

In January 2024, GMCA published its findings from an '[Assessment offsite need for and supply of biodiversity units](#)', which showed the potential levels of supply and demand of off-site units over the next 15 years across the GMCA's 10 LPAs. The assessment showed that developers could require 4,427 off-site biodiversity units, equating to £132.8 million or £8.8 million per annum – based on a £30,000 unit price. On the supply side, it was estimated that there could be between 4,427-4,485 units feasibly available, resulting in either a slight deficit or surplus. The assessment was funded by Natural Course, as part of the EU Life Integrated Project.

Though this assessment relied on a number of assumptions, it has been useful for GMCA to get a high-level understanding of the size of the market, roughly what units could be required and where, and bringing senior stakeholders into discussions around the role that GMCA and its LPAs can take in the off-site BNG market. GMCA is now considering a number of further actions off the back of this report, including a central platform that encourages suppliers and developers to publicise opportunities in a reliable and efficient manner.

## 6. Provide greater clarity on the statutory biodiversity credit scheme and its use of funds.

**Priority: Medium**

### Summary:

Sale income from the statutory credit scheme must be used to improve biodiversity but does not need to be spent on the same type of habitat that was impacted by the development or be located nearby as with market off-site units. Because of this, developers need to purchase twice as many statutory credits as (local) biodiversity units purchased from the market, in line with the spatial risk multiplier.

Defra and Natural England have been developing their approach to spending income from the sales of statutory biodiversity credits since 2020 but have not yet been able to identify a mechanism that is legal and consistent with, for example, the rules of HM Treasury that manages the funds as public money until they are spent.

Defra is legally required to report on income from the sale of statutory biodiversity credits, and how this income has been spent, with the first report due in February 2025. However, there is no provision within the Environment Act that compels Government to reinvest the money within a particular timeframe.



Market stakeholders have flagged the need for further visibility on how funds from the statutory credit scheme will be spent, once this is clarified by Central Government. Some have also highlighted the opportunity for learnings to be shared between the statutory credit scheme and the private off-site BNG market.

### Potential Solutions for Central Government:

- In its annual report of the statutory credit scheme (first due February 2025), include visibility of what nature-based schemes have benefitted from funding, with details of:
  - How many credits within these schemes have been generated
  - Where these schemes align with general ecological guidance, such as Local Nature Recovery Strategies (LNRSs) and the Lawton Principle.
  - How the schemes' outcomes are expected to contribute to national biodiversity targets, and how they will measure progress towards these targets.
  - The speed at which income has been deployed compared to when it was received, paired with a commitment from Central Government to reinvest the income within a set timeframe.
- Share relevant findings from the deployment of Statutory Credit funds with off-site providers and supply-side actors, in order to support best practices and consistency with the supply-side of BNG.
- Provide clarity over the process by which off-site providers can apply to become statutory credit providers.

## 7. Assess and support the 'bespoke habitat creation' process with off-site providers, LPAs, developers.

**Priority: Medium**

### Summary:

Central government has outlined a process<sup>29</sup> for entering land into the BNG market called 'bespoke habitat creation', which allows landholders to first agree to a (prospective) sale of units to one or more developer and then secure the land with the local land charge (S106 agreement or conservation covenant) that meets their unit requirements. This is in contrast to habitat banking, where the land and habitat plan is secured ahead of unit sales being agreed.

This bespoke habitat creation process is sometimes referred to as a 'real-time' unit sale, due to the fact that the unit sale(s), local land charge, and discharging of the developer's planning condition all happen simultaneously. This can help reduce the market risk to the landholder as the funds from the unit sales are secured in tandem with the local land charge (and its obligations over 30 years).

Anecdotally, some LPAs and Responsible Bodies have shown a strong preference for habitat banking proposals and a reluctance to grant planning permissions where real-time unit sales are involved. This may be due to a number of reasons, such as concerns with the robustness of this process, or a general preference to see compensatory habitats established before the environmental impact from development takes place.





Likewise, some developers have voiced concerns that this process may leave them committed to paying off-site providers for units that are then rejected by LPAs at the point where they apply to discharge their planning condition (links to Action #1 in Demand Side), with uncertainty expressed over how such ‘real-time’ approval can be delivered in practice.

However, some market stakeholders have speculated that failure to make this option work in practice may lead to:

- an exclusion of certain landholders – particularly landholders that do not have the resources or risk appetite to enter into habitat banking proposals – or:
- an over-reliance on third party habitat banking operators that can help meet these resource and risk constraints, but typically in exchange for possession of the land (through leasing) and a high percentage of the profits from unit sales.

Proponents of real-time unit sales argue that this process should be made more accessible for landholders in order to reduce barriers to entry and unlock further supply.

#### Potential Solutions for Central Government:

- Work with relevant industry to:
  - Provide LPAs, developers and off-site providers with further guidance on ‘real-time’ unit sales and explore any concerns over their acceptability.
  - Promote the use of unit sale agreements tailored to the ‘real-time’ unit sale process that minimise developer liability.
  - Promote the use of exit clauses or ‘sunset clauses’ in local land charges – both S106 agreements and conservation covenants - that allow landholders to nullify the land charge if the required unit sales are not achieved by a certain time.

## 8. Align BNG with government environment and agri-environment schemes.

**Priority: Medium / Low**

### Summary:

Many landowners and supply-side actors are questioning how BNG could be paired with public funding schemes – including environmental and agri-environment programmes where the target outcomes align. The purpose of this aim is generally to reduce pressure on public spending but also deliver the best outcomes that may not be feasible with either funding stream in isolation.

For example, farmers that are considering becoming off-site providers for BNG also often consider Environmental Land Management schemes (ELMs) – particularly Countryside Stewardship and Sustainable Farming Incentive – as a competing choice for the land in question.



Depending on the types of interventions being proposed for the land, farmers may recognize BNG as the more profitable option. However, ELMs are often perceived as the safer and more familiar choice, mainly due to the shorter timeframes of the agreements and the guaranteed income from government funding. Market stakeholders have noted that there may be a risk that ELMs crowd out viable BNG supply.

The government has provided guidance<sup>43</sup> on where BNG and payments from these other schemes may both be eligible on the same landholding, but many landholders are requesting further and more detailed guidance on the logistics of how this can be achieved. The same is also requested for 'stacking' BNG and nutrient neutrality payments – another compliance-based revenue stream from developers that is possible in certain areas of England.

Where actions and payments cannot be stacked, some market stakeholders have called for de-risking processes for landholders that have decided to enter into a habitat banking BNG agreement – where they've committed their land through a local land charge and face obligations to deliver the target habitat(s) but have not yet secured income through unit sales. This is a market risk that can often deter farmers, exacerbated by the lack of visibility over local demand (see Action #5).

It has been suggested that if farmers could pivot from unsuccessful habitat banking proposals (where unit sales have not been achieved) to the aligned ELMs payments for the habitat(s) in question, they could recuperate some of their losses. This would address some of the market risk that farmers face.

#### Potential Solutions for Central Government:

- Consider the creation of an ELMs 'backstop' facility for farmers to exit their BNG commitments (where unit sales have not been achieved) and retrospectively enter into the aligned ELMs agreements. If created, such a facility would need:
  - clear and specific requirements for farmers to be able to exit their BNG commitments, such as the provision of future habitat management plans.
  - to be time-limited, for example with a two- or three- year retrospective period, to avoid the government holding large liabilities. This could also be a paid-for service that farmers contribute to upfront, to improve the value-for-money of the facility for government.
- Provide further, more detailed guidance on where BNG can be used in tandem with other government grant schemes on the same landholding – including practical case studies of landholders that achieve this.



## England's Community Forest Network

England's Community Forests Network (ECFN) is made up of fifteen organisations across England that provide free advice and support to landholders in each forest area to plan, fund, and plant new woodland. Recently, it has explored the possibility of using BNG revenues, alongside other funding schemes such as Trees for Climate (TfC), which offers funding over 15 years. Its findings show that, while BNG is not typically cost-effective for planting new woodlands due to the risk multipliers, BNG may be useful in enhancing recently planted woodlands that are established but have a 'poor' baseline condition. The ECF Network is currently exploring how funding from the government's TfC scheme may be blended with BNG revenues, so that costs of the first 1-3 years are covered by TfC and then the option is offered for landholders to enter these sites into BNG agreements – with the subsequent TfC maintenance payments reduced or redirected towards new planting schemes. If this use is approved by government, this could reduce pressure on government funding and de-risk the woodland habitats for the BNG market at the same time.

## 9. Provide clarity over the effect of BNG agreements on land values.

**Priority:** Low

**Summary:**

Some landholders have expressed concerns about the impact of BNG agreements on land values and options in terms of land resale, which may impact their perception of income foregone to factor into unit prices.

Because of the restrictions that conservation covenants and S106 agreements place on the land for 30 years, it is anticipated by some market stakeholders that (all else held equal) the land itself will decrease in value, as is the usual impact of withdrawing options by long-term agreements.

This can also present a barrier to entry for landholders that want to use land that is already secured (e.g. against a commercial loan), as lenders are highly reluctant to change title deeds when the effect on the value of the land - and therefore their security - is unknown. It may also reduce the future borrowing capacity of landholders that are securing general funding across their land portfolios – should a BNG agreement devalue part of their overall landholding.

However, property and agricultural valuers have flagged that land value can be seen as an outcome of many other factors, and the general effects of BNG agreements on land value cannot be determined until:



- a. further clarity is given on other important factors – such as tax and accounting treatments (see Action #1), or the extent of liability for the landholder in the case of habitat failure (see Action #4).
- b. further transactions take place that demonstrate the nature and diversity of:
  - a. the transaction structures – such as those involving habitat bank operators or certain landholder types,
  - b. the sites that are chosen for BNG agreements – such as agricultural land.

Depending on this clarity and how varied the market transactions become, general trends may emerge but with cases that go against these trends due to individual circumstances. Comparisons have been drawn between this challenge and the impact of SSSI status on land values within England, which was clarified by valuers and the industry as more information became available – but to this day it is found the impact can be negative, neutral or positive depending on key factors<sup>43</sup>.

#### Potential Solutions for Central Government:

- Maintain lines of communication with valuers – such as CAAV and RICS – so that general guidance can be established for the wider market as transaction volumes develop.
  - Including through the Tax and Accounting Working Group that was announced in the Spring 2024 Budget (see Action #1).
  - Ensure that rules and enforcement decisions are consistent and are accessible for review, including to valuers.

#### Triodos Bank, Avon Needs Trees

In May 2024, Avon Needs Trees, a tree-planting charity based in Bristol, purchased 422 acres of land to create the Lower Chew Forest. The plans include establishing a new forest of 100,000 trees and shrubs and the creation of complementary habitats, including wetlands, miles of hedgerow and species-rich grassland, partly funded through the sale of BNG units. Triodos Bank provided a £3.85m loan for the acquisition and its Corporate Finance team advised the charity on sourcing repayable capital. While it's generally expected that Section 106 agreements, conservation covenants and the sale of BNG units will have a downward impact on land valuation due to the 30-year land use restriction, valuers often face challenges at this stage in quantifying the land value impact due to the many variables, including the stage of the BNG project delivery at the given point time. Consequently, Triodos Bank needed to navigate these uncertainties by structuring the lending in a manner that takes into account the uncertainties of the BNG market, such as linking the capital repayment of the loan to the sale of BNG units.



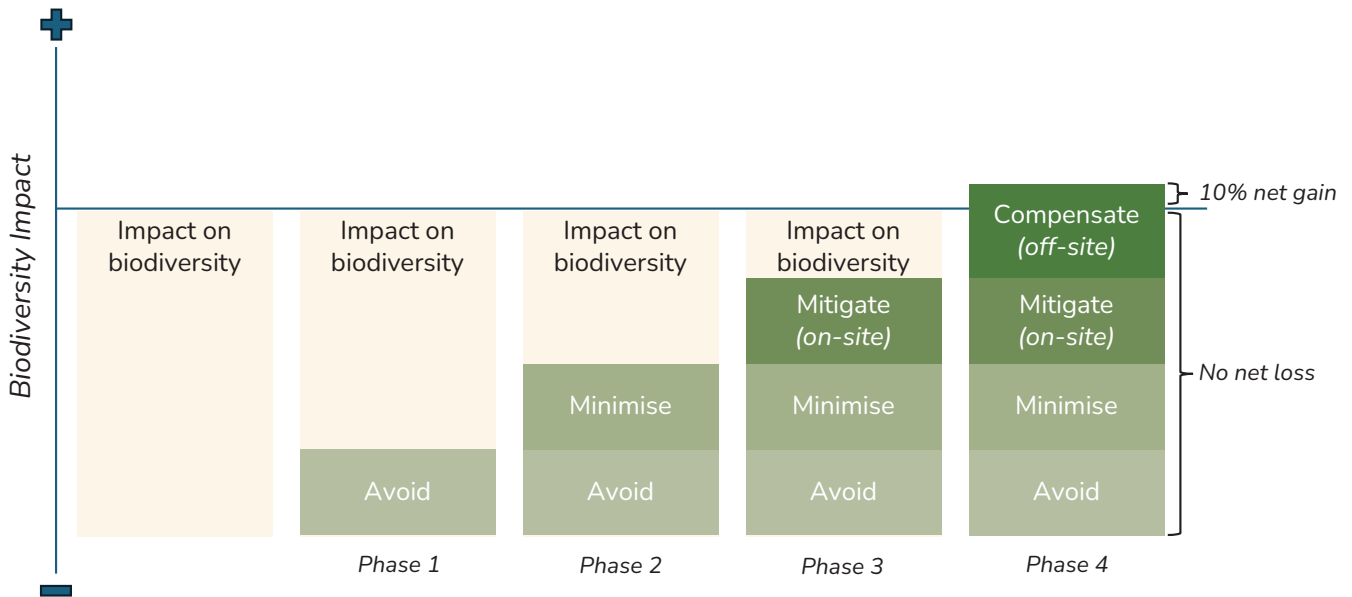
## Demand Side

For the first time, developers across England are required to quantify the ecological impact of their development plans on a site and its habitats, using the statutory biodiversity metric. This impact must not only be met with actions from the developer that result in no net loss to biodiversity, but also deliver an additional 10% gain.

Options for developers to meet their BNG requirement are outlined in the mitigation hierarchy<sup>44</sup>, which sets out the order in which action must be taken, first:

- avoiding and minimising ecological harm to existing on-site habitats,
- compensating any harm with new or enhanced on-site habitats,
- offsetting harm by purchasing off-site biodiversity units provided by landholders nearby,
- using the statutory biodiversity credit scheme, which is run by Natural England and acts as a ‘seller of last resort’ and delivers funds into BNG projects nationally.

## Mitigation hierarchy of developers



All of this is underpinned by the planning system, within which developers must submit information to their LPA on how they will deliver their BNG requirement before development can commence. Though there are exemptions, this requirement applies to most major and small site developers submitting planning applications from the 12th of February 2024.

While developers must meet this requirement in the planning system, BNG should also be understood by other ‘demand-side’ actors, including planning consultants, land promoters, management companies and landscape architects – whose services may relate to the delivery of BNG.

### What do developers think about BNG?

Research has shown that developers are broadly supportive of BNG and want to see it work well – one survey<sup>45</sup> showed that 95% of surveyed developers and land promoters are in support of BNG, with only 5% opposed, despite the fact that BNG presents new requirements and processes to follow.

For many developers, BNG presents a large and tangible step in solving the perceived trade-off between England’s need for further development – including the government’s target of 1.5m new homes over the next five years – and a thriving natural environment.

However, as with any new policy of this scale, there are challenges to work through before this burden can be delivered with the required ease and consistency that developers need.

The off-site option for developers is crucial – with the lack of land onsite to deliver BNG listed as the most common concern (88%) by developers and land promoters within the same survey<sup>45</sup>. Currently, the lack of LPA resourcing and a ready supply of off-site units are two barriers that are often cited by developers as the underlying reasons why they are struggling with accessing BNG off-site solutions. In turn, this may lead developers to maximise their on-site gains – sometimes in ways that are not ecologically or commercially efficient – delaying their development plans, or changing design plans to qualify for exemptions to BNG.



Some market stakeholders have also highlighted the fact that these barriers are not felt evenly across the development sector. Small-site developers, for example, are most likely to require off-site units as they do not have as much land within their boundary to use, often at small or fractional volumes that are more difficult for off-site providers to sell<sup>11</sup>.

Conversely, market stakeholders are already discussing how BNG will work for Nationally Significant Infrastructure Projects (NSIPs), which are planned to come under mandatory BNG policy in November 2025. These are expected to require larger volumes of units, and some market stakeholders are exploring how units may be aggregated, sold, and aligned with local planning systems with ease.

Much work is being undertaken in the industry to explore BNG and develop common best practices in meeting the BNG requirement. This includes the work of the Future Homes Hub, which was established to facilitate the collaboration needed within and beyond the new homes sector to help meet the climate and environmental challenges ahead. In early 2023, it established a working group on BNG and in April 2024, it launched BNG Online<sup>46</sup> in partnership with the Planning Advisory Service (PAS), to help both developers and LPAs adopt best practices for BNG delivery.

### What needs to be addressed?

From May 2024, the GFI Hive had several one-to-one discussions with representatives from the development sector and other demand-side stakeholders. Many of the challenges discussed were related to the off-site market component of BNG and shared amongst other stakeholders – including the lack of ready off-site units and the different approaches taken by LPAs. Others were centred on developers' own requirements – those within the planning process, and the long-term obligations thereafter.

### Short term (1-2 years)

- Explore mechanisms to unlock visibility over viable local supply, including actions to increase the ready supply of off-site units.
- Work with industry to further assess small site and large-site developer needs – including the purchase of fractional units and the needs of Nationally Significant Infrastructure Projects (NSIPs).
- Within the planning system:
  - Promote the 'front-loading' of BNG information at validation stage, particularly relating to post-development on-site habitats.
  - Support the standardisation of BNG-related planning documents and processes, in line with LPA best practices.
  - Review the criteria for developer exemptions from BNG, providing clarity over the process to follow when BNG must be applied retrospectively.
  - Conduct a wider review of the planning process with respect to BNG, in line with the review of LPAs' delivery of BNG, within the next two to three years.



- Provide further guidance to LPAs on the permission.
- Work with relevant industry to provide further guidance of on-site habitat management, including the use of protective fencing, preventative management practices, and pesticides.
- Review the process of excess unit sales from developers, providing guidance to LPAs on testing for additionality.

### Medium term (3-5 years)

- Work with relevant industry to:
  - Upskill the building management sector and others to be tasked with on-site habitat management over the 30 year period.
  - Support the creation of an accreditation process for on-site habitat management providers to follow, demonstrating the required skills and capacity – in line with sound ecological guidance developed for on-site habitats.
- Iterate the reporting requirements for on-site habitats over the 30-year period, in line with findings from LPAs' Biodiversity Duty reporting.
- Work with industry to conduct viability assessments of +10% ambitions of LPAs – in order to better inform future policy-making.

## 1. Support increased availability and ready supply of off-site units.

### Priority: High

#### Summary:

While there has been much interest on the supply-side, many developers and other demand-side actors are concerned about the ready supply of biodiversity units where the underlying site:

- has a local land charge, such as an S106 agreement or conservation covenant,
- is registered on the biodiversity gain sites register.

Both are requirements before the developer can apply to the LPA to discharge the BNG pre-commencement condition, allowing them to start development.

Several prospective sites have come forward with biodiversity units to offer, and various marketplaces – both local and national in scope - have been created that shows the extent of this potential supply. For example, Gaia is an online marketplace that currently lists over 25,000 units in England available for sale, listing at an average price of £30k per unit<sup>47</sup>.





However, these prospective sites are at various stages of market readiness – often ranging from initial baselining conducted to having fully developed BNG plans and signed local land charges. As such, developers have expressed concerns that there is not enough ready supply to rely on offsite BNG within their planning applications, without risking serious delays to their development plans.

As a result, developers may feel they need to maximise their on-site BNG, modify their development plans to qualify for exemptions, purchase land to supply their own off-site units internally, or postpone their development plans altogether. In turn, this may lead to a perceived lack of demand for off-site biodiversity units, which would further deter the supply-side.

Overwhelming feedback from the market has suggested that a major bottleneck to such supply is the lack of signed conservation covenants and S106 agreements – for which LPAs and Responsible Bodies are under considerable pressure to provide, but do not have fully developed processes or resource to do so at scale (see Central Governance for more detail).

### Potential Solutions for Central Government:

- Analyse the levels of prospective supply across England, harvesting data from BNG-linked platforms and marketplaces, to determine where and what bottlenecks may be present.
  - Explore the automation of data flows between aggregation services (including marketplaces) and central government’s monitoring and evaluation strategy, including in off-site applications to the biodiversity gain sites register.
- Building on the above, review recommendations to unlock supply – including those relating to:
  - the use of S106 agreements (Action #2 in Supply Side) and
  - the provision of further funding and support to LPAs (Action #1 in Central Governance).
  - The designation of further Responsible Bodies (Action #5 in Central Governance).

### Future Homes Hub

In June 2024, the Future Homes Hub (FHH) published a Biodiversity Offsets Checklist for developers to use for the assessment of off-site BNG proposals, in the absence of a S106 agreement, conservation covenant and Biodiversity Gain Site registration. The Checklist contains 24 items for developers to check with an off-site provider that gauge their level of preparedness and due diligence, asking for evidence around the proposal’s ecological data and metric calculations, Habitat Management and Monitoring Plan, general governance planning, and other important aspects. The Checklist is offered as general guidance, not aligned with any specific LPA but designed with insight from Natural England, PAS, Verna, CIEEM, consultants, several developers and other market stakeholders. The Checklist is also aligned with the BBOP Biodiversity Offset principles, which were published in 2018.



## 2. Review the exemptions criteria and process for BNG.

**Priority: High**

### Summary:

Some developments are exempt<sup>48</sup> from the BNG requirement – including householder applications, urgent crown developments and biodiversity gain sites themselves. While most of these exemptions are consistently interpreted, developers and LPAs have reported some difficulty in the consistent application of the below exemptions:

- **De minimis threshold** – “A development that does not impact a priority habitat and impacts less than 25m<sup>2</sup> of on-site habitat or 5 metres of on-site linear habitats, such as hedgerows.”

Feedback from market stakeholders has reflected that the definition of ‘impact’ is widely interpreted, despite the clarity provided in the regulations itself and the planning framework. For example, some developers have counted the area of their redline boundary as impacted (as was the rule before December 2023), while others have counted only the footprint of their buildings as impacted – despite concerns that habitats around this area would highly likely be impacted during construction and/or occupation. This results in additional pressure being placed on the LPA at the point of application validation and a risk of small parcels of habitats being fragmented and excluded from wider ecological planning.

- **Self build and custom build applications** – “A development that consists of no more than 9 dwellings, on a site that has an area no larger than 0.5 hectares, and consists exclusively of dwellings that are self-build or custom housebuilding as defined by Section 1(A1) of the Self-build and Custom Housebuilding Act 2015,” (SCHA)<sup>49</sup>.

Anecdotally, LPAs have received significantly more self-build and custom build applications since 12 February 2024. Some market stakeholders have highlighted that the definitions under Section 1(A1) of the SCHA are open to wide interpretation and are difficult to verify in practice, leading to a significant risk of misuse in the context of BNG exemptions.

Building on the above, there has also been debate in the market over how these exemptions will be verified beyond developer disclosure and, if found disqualified once construction has started (such as through retrospective applications), what recourse can be taken to ensure that the BNG obligation is fully met.

Potential Solutions for Central Government:

- Review the definitions used within the de minimis threshold and self-build and custom build application exemptions – reviewing planning applications made after 12 February 2024 to explore how these could be made more specific.



- Collect and publish data on the number of applications that apply under BNG exemptions and what proportion this amounts to of all applications, to help clarify how these are being used, as part of the wider monitoring and evaluation strategy of BNG policy.
- Clarify the process that LPAs must take where developments are found to be disqualified from exemptions - including how their BNG obligation can be met retrospectively.
  - For example, require certain permitted developments – such as temporary structures - to submit a BNG baseline assessment under the (more easily used) small sites metric, so that BNG baseline data can be relied on to calculate the BNG obligation, if required.

### 3. Address difficulty in matching supply and demand volumes – including the purchase of small or fractional biodiversity units.

**Priority: High**

#### Summary:

Developers may require the purchase of small or fractional biodiversity units – for example 0.1 biodiversity units – to meet their full BNG obligations. This need has become more prevalent as the mandatory BNG duty came into effect for small developments, typically of one hectare or less, on 2 April 2024<sup>50</sup>.

However, developers and market intermediaries - such as brokers and LPAs interested in matching local supply and demand – are reporting some difficulty with securing agreements for these smaller unit offerings from landholders with ready supply. This is believed to be because landholders are reluctant or deterred in signing multiple unit sale agreements and local land charges (sometimes required by LPAs) on a single piece of land that require more resource to execute and administer over the 30 years. Dividing up units in this way can also drive more complex processes for remaining biodiversity unit calculation, management and trade.

Note: though the above reflects the difficulties faced in purchasing few or fractional biodiversity units, many market stakeholders also draw parallels with larger purchases of biodiversity units and the difficulties in aggregating unit volumes across multiple sites. This issue is expected to become more prevalent as the market develops, such as with the inclusion of Nationally Significant Infrastructure Projects (NSIPs)<sup>51</sup> under mandatory BNG policy, expected to come into force from November 2025. Some have voiced concern that without appropriate planning, NSIPs may not be able to access enough off-site units or monopolise the available supply to the point where other developers are cut off from off-site solutions.



### Potential Solutions for Central Government:

- Work with relevant industry to explore where the process of purchasing and selling fractional biodiversity units can be de-risked and made more efficient. For example:
  - Independently assess the needs of small-site developers to better understand their access to the BNG off-site market.
  - Promote the use of ‘umbrella’ S106 agreements that allow for single local land charges to be signed for sites that can then conduct multiple unit sales with more efficiency.
  - Assess current technology services in the market that automatically (dis)aggregate and match supply and demand, such as exchange platforms catering specifically to smaller scale developers and off-site providers.

## 4. Support the standardisation of planning document templates and processes with LPAs.

**Priority: High**

### Summary:

Developers are reporting discrepancies across different LPAs that make it more difficult to navigate the new BNG requirements within the planning system in a consistent and efficient manner. Equally, LPAs are experiencing different levels of preparedness and awareness among developers when providing information within their planning applications.

For example, LPAs require several legal documents in the delivery of BNG. Some LPAs have shared examples and templates<sup>38</sup> of these documents, but drafting these without a central template has been resource intensive and can often reflect the bespoke approach of the LPA in question, which is permitted by central government. However, without a set of central templates there are concerns of both a duplication of effort across LPAs and a risk of minimum standards not being built into these documents, overall causing a delay in the discharge of the biodiversity gain condition.

Another issue is the legislative basis for including the biodiversity gain condition on the decision notice. Some market stakeholders have raised concerns that because the BNG requirement has its own separate statutory basis under a different part of the Town and Country Planning Act, the decision notice is not the appropriate place for the condition. As a counter argument, developers and LPAs have expressed confusion over how to apply for or grant a discharge of this condition if it is not attached to the decision notice, including through the Planning Portal – which only offers the option of discharging a condition attached to the decision notice. In its Planning Practice Guidance<sup>52</sup>, DLUHC has offered text for including the biodiversity gain condition on the decision notice. However, some market stakeholders maintain that a legislative review is needed to fully address the issue.



Note: other examples of where standardisation is sought include the validation lists that each LPA holds (see Action #4 in Central Governance), and with off-site S106 agreement templates (see Action #2 in Supply Side).

### Potential Solutions for Central Government:

- Work with industry to provide standardised templates and guidance to LPAs in relation to developers, including:
  - The biodiversity gain (pre-commencement) condition.
  - A template condition discharge letter that sets out how to discharge the biodiversity gain condition when it is not included on a decision notice.
  - An S106 agreement template for securing on-site gains.
  - A certificate of purchase for off-site units.
  - A unit sale agreement for off-site units (links to Action #2 in Supply Side).

Note: on 05 July, the Planning Advisory Service (PAS) published a set of legal agreements<sup>38</sup> and documents for LPAs to use and adapt from, including the biodiversity gain condition and three S106 agreements under different use cases (including on-site and off-site provision). Following from this, this Roadmap recommends that central government continue their support of PAS and its work in keeping these documents up-to-date and creating further legal templates of relevance to LPAs and developers.

- If deemed necessary, include a review of the biodiversity gain planning condition and its correct discharge process within the statutory BNG review in the next three-to-five years.
- In the shorter-term, work with the Planning Portal to address points of friction within its user journey relating to BNG, including the discharge of the planning condition when not included on the decision notice.

### Warwickshire County Council

With the establishment of Habitats Banks that wished to sell biodiversity units directly to applicants, Warwickshire County Council wanted to put in place a system to track unit sales or transfers within the emerging market. It did this through the Wildlife & Countryside Act Section 39 Agreements, where a Habitat Bank was required to inform the County on any unit sale or transfer. On receipt of this information the County verifies the sale against the development it was compensating for, to included trading rules. Each sale is given a unique identifier code as part of a Certificate of Sale.

This sale is returned to the Habitat Bank owner to pass onto the Purchaser (developer) who then submits the certificate as proof of compensation to the LPA. The LPA, be that anywhere in the country, can contact the County to confirm the certificate. The developer now owns these biodiversity units and is obliged to tell the County should they wish to sell or transfer them to another. They are also able to ask the County to 'split' the certificate into two or more certificates should they only use a proportion of the biodiversity units originally purchased from the original Habitat Bank. This approach enables developers to 'pre-purchase' units should they wish to 'invest' in a habitat bank.



## 5. Clarify reporting requirements for on-site habitats over the 30-year period.

**Priority: High**

### Summary:

Some developers have expressed the need for further clarity over lifetime reporting requirements for their on-site habitats – both through significant and non-significant enhancements<sup>23</sup>. This need relates to the use of management companies and other third parties, to whom the developer may transfer management and monitoring responsibilities (see Action #8). Developers have stated that this information is important to have up-front, so that any contracts or agreements signed with these third parties reflect such requirements.

LPA's have the discretion to set their own definitions for significant and non-significant gains, the latter of which tends to be very small in biodiversity value. While significant on-site gains are secured with an S106 agreement and a Habitat Management and Monitoring Plan (HMMP), non-significant enhancements do not require an HMMP, a legal agreement or a commitment to maintaining them for 30 years.

LPA's can also set their own reporting requirements for on-site gains overall and it's generally assumed that they will align these with their Biodiversity Duty<sup>53</sup> reporting requirements under the Natural Environment and Rural Communities (NERC) Act, which was enhanced by the Environment Act (2021) for BNG. This reporting is required at least every five years. LPA's may also ask for additional information for their own nature-based targets, including those within their Local Nature Recovery Strategies.

However, from a national perspective, the details of what LPA's need to report is not yet fully defined, which is causing uncertainty for developers (and to a lesser extent off-site providers). Since the launch of mandatory BNG, Defra has produced a draft spreadsheet on the BNG aspects of the Biodiversity Duty reporting and are currently consulting LPA's on this. Market stakeholders expect at least some information from the state of on-site habitats, e.g. where habitats are not on track to being delivered.

### Potential Solutions for Central Government:

- Once the BNG requirements of Biodiversity Reporting are clarified with LPA's, work with relevant industry to create guidance on governance and reporting requirements for developers and management companies for on-site BNG delivery:
  - Include appropriate guidance for both significant and non-significant enhancements, for which data should be collected on the proportion by which these are used to meet developers' BNG obligations.
  - Ensure there is appropriate guidance for small-site developers.
  - Align with existing reporting requirements from the BS8683 specification<sup>54</sup>.
  - Ensure that reporting requirements are aligned with the needs of a future on-site habitat registry (see Action #7 in Central Governance).



- Provide further clarity over appropriate habitats that qualify for non-significant enhancements, excluding those that caretakers have no legal control over.

## 6. Review the policy of excess unit sales – e.g. those from solar sites.

**Priority: Medium/High**

### Summary:

Current government policy allows developers to sell any excess units delivered above the required 10% to other developers in England, provided this excess gain is registered (as with off-site units) and that there is genuine additionality for the excess units sold. This policy was brought forward in 2023 after a consultation was launched in 2022<sup>55</sup>, however further guidance has not yet been published in either the planning practice guidance or guidance to LPAs.

There is significant concern amongst market stakeholders that this will result in few additional gains for nature compared to pre-BNG policy requirements. For example, development on former mineral sites has shown that there can be a substantial uplift in biodiversity gains under the business-as-usual planning requirements, due to the fact that these are starting from very low ecological baselines. Likewise, solar sites can have significant uplift if built on grasslands that are then allowed to grow alongside or under solar panels, but some argue that such gains would have taken place regardless of the presence of BNG policy.

Some market stakeholders argue that the process and associated risk of selling excess units will deter most developers from doing so, while in a select few cases (such as where the impacted area of a site is small), the allowance of excess unit sales will prompt developers to enhance further habitats on-site than otherwise. Counters to this have highlighted the need to build in the impact of anthropogenic pressures (such as neighbouring land use) into any metric calculations, as with general on-site and off-site BNG proposals (see Action #1 in Metric).

Overall, market stakeholders agree that clearer controls and guidance are needed. Otherwise, it is possible that many excess biodiversity units sold will not be additional. In this case, there is a significant risk of flooding local markets with a supply of cheaper units and stifling local ambition from off-site providers in delivering units with stronger additionality.

### Potential Solutions for Central Government:

- Provide clear and rigorous guidance to LPAs on how to test for additionality and put restrictions in place where additional gains from on-site habitats are unlikely.
  - Draw on learnings on testing for additionality from other nature markets, such as voluntary carbon markets.



## The Conservation Volunteers

The Conservation Volunteers (TCV) was established in 1959 as an environmental charity focused on volunteer contributions that can bring environmental and social benefits. It manages land primarily located in urban areas. Recently, TCV has been approached by developers with an interest in contracting TCV to manage and maintain their BNG habitats (on-site and off-site) over the required 30 years. TCV is exploring the particulars of these contracts, including the appropriate payments, liability management, along with value-add activities it can bring to these sites, such as engaging and connecting community volunteers to maintain these sites.

## 7. Provide guidance on appropriate management techniques of on-site habitats.

**Priority: Medium**

### Summary:

Market stakeholders have expressed a need for more formal ecological guidance in managing on-site habitats over 30 years. Anecdotally, there has been some debate over the correct habitat management techniques to use for the purposes of BNG versus where on-site habitats may be managed more for amenity value. This is particularly called into question with land management activities that could be construed as ecologically destructive – such as routine grass cutting, or ash die back management.

Guidance over appropriate management techniques would aid developers in the design of their Biodiversity Gain Plans, and the LPA's due diligence in reviewing this document, ultimately leading to more robust BNG outcomes on-site. Developers have also highlighted the need for any guidance to be developed in partnership with landscape architects, management companies and other service providers that are heavily involved in the design and management of on-site habitats.

This request aligns with calls for more bespoke guidance that factors in the impact of anthropogenic pressures, such as guidance on pesticide use and the requirements for protective fencing (see Action #1 in Metric).

### Potential Solutions for Central Government:

- Work with relevant industry to expand the guidance for on-site habitat management – including with ecologists, LPAs, developers, landscape architects and management companies to identify current gaps.
  - Ensure that appropriate guidance is made available to small site developers as part of this work.
  - Create long-term research programmes that can track the effectiveness of habitat management practices, to iteratively feed back into such guidance.





## 8. Help address expected skills shortages with management companies that have typically focused on the management of the built environment and amenity habitats.

**Priority: Medium**

### Summary:

While developers are tasked with meeting the 10% BNG requirements in planning, it's generally expected that they will transfer the liability of managing the on-site habitats over 30 years to another organisation. One study<sup>45</sup> that surveyed land promoters and developers indicated:

- 56% said they planned to transfer the land onto a third-party management company that funds the on-site BNG by service charges paid for by the development's residents.
- 10% of respondents said their organisation would transfer the land to a charitable trust that funds the on-site BNG by capital payments paid by the developer.
- 5% said their organisation would transfer the land to the Local Authority/Town Council/Parish Council that funds the on-site BNG by capital payment paid by the developer.

Though the vast majority of responses indicate the intention to transfer this responsibility, the availability of appropriately skilled management companies was also listed as a major concern by 43% of respondents.

Although developers typically have longstanding relationships with management companies experienced in landscaping and managing habitats for social or amenity value, it is felt by the sector that managing sites for the purpose of BNG delivery will require more specialist skillsets and capacity. Some market stakeholders are also concerned that there is not a clear process should these management companies default on these responsibilities or cease operations entirely.

### Potential Solutions for Central Government:

- Work with relevant industry to upskill those charged with on-site management, aligning with habitat management guidance (see Action #7).
- Over the longer term, support a government endorsed certification programme for companies and organisations charged with or assisting in on-site BNG habitat management.
  - Work with relevant industry to establish this - including ecologists, LPAs, developers, landscape architects, management companies and management agents.



- Clarify the process by which management companies or other on-site habitat managers default or exit on BNG management agreements – such as LPA step-in rights and the use of sink funds (linked to Action #9 in Central Governance).
- Ensure that private homeowners are protected from liability in this case.

## 9. Provide greater clarity regarding the allowance of cross-boundary sales.

**Priority: Medium**

### Summary:

Anecdotally, some LPAs have shown reluctance to grant planning permission for developments that are purchasing units from outside of their boundaries. This may be for a number of reasons, for example due to other policy pressures (e.g. meeting nature restoration targets), or because of a perceived difference in approach to monitoring and auditing off-site BNG proposals.

However, some market stakeholders (including developers and off-site providers) consider this an unnecessary restriction given the way in which the BNG market is set up. In practice, the appeal for developers purchasing units beyond LPA/NCA boundaries is reduced by the spatial risk multiplier of the metric<sup>39</sup> – with a reduction of 25% in units bought from a neighbouring LPA/NCA and 50% if beyond the neighbouring LPA/NCA. It is argued by some that this should be a sufficient deterrent that will allow the market to settle without further restrictions from LPAs.

Further complexity is introduced when considering sites that are outside of LPA boundaries but within NCAs – and therefore without the penalty of the spatial risk multiplier. Anecdotally, some offsite providers have encountered a reluctance of LPAs to grant planning permission with units sold outside of their boundaries but inside NCAs, which are generally expected to generate stronger biodiversity gains due to the natural characteristics of NCAs.

### Potential Solutions for Central Government:

- Provide more explicit guidance on cross-boundary sales, including through government circulars and DLUHC's PPG, which would set out where LPAs are justified in refusing cross-boundary sales.



## Partnership for South Hampshire (PfSH)

Partnership for South Hampshire (PfSH) is a partnership of 11 LPAs covering 300,000 hectares that are focused on improving the environmental, cultural and economic health of the Solent area in South West England. PfSH has previously helped unlock local barriers under its nutrient neutrality regulation, and has now broadened its scope to include the BNG market within its boundary, noting several similarities between these two compliance markets. PfSH is working on a unified BNG strategy, including a metric analysis of the area and common processes to share. Cross boundary sales are also part of this work, ensuring that local authority boundaries do not impede the delivery of BNG schemes across National Character Areas.

## 10. Provide greater clarity over the requirements for large, multi-phased projects.

**Priority: Medium**

### Summary:

Developers leading large and multi-phased development projects, which can take place over several years, have expressed some confusion over the particulars for how their BNG requirements should be carried out. For example, it is not clear on:

- how the baseline assessment is worked out over phases of development,
- what is acceptable for ongoing maintenance after the baseline assessment – so that the developer does not unwittingly falls foul of the ‘anti-trash’ clause on their own development sites,
- when the 30 year requirement starts when separate phases of development are completed.

### Potential Solutions for Central Government:

- Work with industry to develop further guidance on the above points, including case studies of practical examples where such developments have been carried out to standard.



## 4. Conclusion and Acknowledgements

### Conclusion

In conclusion, the first five months of mandatory BNG have revealed significant challenges in its implementation, where developers, LPAs and off-site providers are struggling with key bottlenecks. Reforms in key areas are needed, and while there are undoubtedly actions that only government can take, some of these challenges may also be met with the help of market and industry collaboration. In the many workshops and one-to-one conversations through the development of this Roadmap, market stakeholders have shown innovation and a strong willingness to work through these issues. Government can harness these efforts and work together with the market to unlock BNG's full potential.

This work has explored where and how BNG could be improved to fully capture its economic and ecological potential, serving as a valuable tool for reconciling the perceived trade-off between sustainable development and ecological conservation.

Other countries and governments faced with this same challenge have expressed great interest in the concept of BNG and are now hoping to learn from England. Consequently, the GFI Hive team is now creating a 'BNG Guidebook' that sets out how England's government created and implemented BNG.

If you have any questions or comments on either this Roadmap or the upcoming Guidebook, or would like to be involved in further discussions, please contact us at [hive@gfi.green](mailto:hive@gfi.green) or [phoebe.tucker@gfi.green](mailto:phoebe.tucker@gfi.green).

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- Archie Ruggles-Brise, Partner and Estate Owner, Spains Hall Estate
- Sarah-Jane Chimbwandira, Chief Executive Officer, Surrey Wildlife Trust
- Katharine Paulson, Specialist Agricultural & Rural Land Lawyer (non practising)
- Tom Dyke, Senior Corporate Finance Manager, Triodos Bank UK
- Whitney Thomas, Head of Corporate Finance, Triodos Bank UK
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# 6. Appendix

## Key Terms

The below is a set of key terms that are often used within this Roadmap. These are high level definitions that readers can learn more about using the links provided.

### S106 agreements

In the context of BNG, a Section 106 (S106) agreement is signed with the Local Planning Authority (LPA) to secure a site's habitat works and maintenance over 30 years. It is a local land charge that means the obligation remains on the site even when there is a change in ownership. LPAs can sign S106s to secure BNG units both on-site (for significant enhancements) and off-site. Through the provisions set out in the S106 agreement, an LPA can provide the monitoring, reporting and enforcement functions over the 30-year period and can charge fees to cover the costs of these activities.

S106 agreements are a pre-existing tool used by Local Planning Authorities as a planning obligation to mitigate the impact of a development on local communities and infrastructure.

Note: S106 agreements are not strictly necessary for securing habitat gain. Conservation covenants (below) are offered as an alternative route.

### Conservation Covenants

Conservation covenants are a new type of legal agreement that was created through the Environment Act (2021), along with Responsible Bodies. They are offered as an alternative local land charge to S106 agreements and are seen by many as a key tool in relieving pressure on LPAs to sign such agreements. A conservation covenant is an agreement to conserve the natural or heritage features of some land. They are voluntary, private and legally binding. The agreement is made between a landholder and designated Responsible Body. Like S106 agreements, they secure the land for the required 30 years (in the context of BNG) and allow RBs to provide monitoring, reporting and enforcement functions in exchange for fees charged to the landholder.

Conservation covenants are intended to be used in the BNG space but can be used more widely for nature conservation purposes.

### Responsible Body

Responsible Bodies (RBs) are a new type of organisation introduced by the Environment Act (2021), that can be local authorities, charities or private companies, where their activities relate to conservation. As an alternative to S106 agreements, RBs can offer conservation covenants to commit the land over 30 years, and act as the monitoring and enforcement body for off-site BNG delivery.

Prospective organisations must first apply to become a designated RB. As of July 2024, there are six RBs that have been validated by the Secretary of State. Note: some Local Planning Authorities are also applying to be Responsible Bodies, due to the advantages offered through conservation covenants.

## Local Nature Recovery Strategies

Local Nature Recovery Strategies (LNRS) are a flagship measure in the Environment Act (2021). They are a new system of spatial strategies for nature which will plan, map, and help drive more coordinated, practical, focussed action and investment in nature's recovery to build the national Nature Recovery Network.

There are **48 responsible authorities** required to develop and implement an LNRS by March 2025, as set out in the Environment Act. Every strategy must contain a) local habitat map and b) a written statement of biodiversity priorities. The LNRSs are to be used as guidance but government is also putting in place a package of measures to encourage people to follow and carry out measures aligned with LNRSs.

In the context of BNG, habitats located within LNRS marked areas will receive a 15% uplift in their post-intervention habitat plans. As many LNRSs have not yet been published, there is a degree of uncertainty as to what this application will look like in practice.

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## Acronyms

For clarity, the below are frequently used acronyms within this Roadmap:

- **BNG** = Biodiversity Net Gain
- **LNRS** = Local Nature Recovery Strategies
- **LPA** = Local Planning Authority
- **NCA** = National Character Areas
- **LA** = Local Authority
- **SS** = Strategic Significance
- **ENG** = Environmental Net Gain
- **RB** = Responsible Body
- **Defra** = Department of Environment, Farming and Rural Affairs
- **DLUHC** = Department for Levelling Up, Housing and Communities

Note: On 09 July 2024, DLUHC was renamed to the Ministry of Housing, Communities and Local Government.

- **HMMP** = Habitat Management and Monitoring Plan.

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