

DEFRA Biodiversity Net Gain Response

April 2022

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Context

Biodiversity Net Gain (BNG) is an approach to development that requires habitats for wildlife to be left in a measurably better state than they were in before the development. Achieving biodiversity net gain means that natural habitats will be extended or improved as part of a development or project. Development will be designed in a way that provides benefits to people and nature and reduces its impacts on the wider environment.

The mandatory requirement proposed in the environment bill is to achieve at least a 10% biodiversity net gain increase from the pre-development biodiversity value. The requirement is framed as a pre-commencement condition, meaning that the biodiversity gain condition must be discharged before development can begin. To discharge the condition, the planning authority must approve the development's biodiversity gain plan. This biodiversity gain plan approval must take place before development starts. However, DEFRA propose to require applicants for planning permission to include biodiversity gain information with their application. This core information will include:

- the pre-development biodiversity value;
- the proposed approach to enhancing biodiversity on-site;
- any proposed off-site biodiversity enhancements (including the use of statutory credits) that have been planned or arranged for the development

Southwark Council will have a statutory duty to discharge this biodiversity net gain requirement as it is outlined in the recently passed Environment Act (2021). The proposals outlined by DEFRA in this consultation allow a two-year transition period to allow local authorities time to implement the processes required. However, if adopted, the requirements outlined in this guidance represent a more substantial requirement from Local Authorities to achieve biodiversity net gain for all development than those outlined in Local Plans and planning policy.

The following table provides Southwark Council's proposed response to the DEFRA Biodiversity Net Gain (BNG) consultation. The consultation questions are generally closed format yes/no questions however where appropriate the question will ask for reasoning.

DEFRA response

Question No.	Question and Response	DEFRA Proposal
1	<p>Do you agree with our proposal to exempt development, which falls below a de minimis threshold from the biodiversity net gain requirement?</p> <p>a) <i>for area-based habitat:</i></p> <p>[Yes (which of the following thresholds do you think is most appropriate: 2m² , 5m² , 10m² , 20m² , 50m² , other threshold – please specify) / No (please explain why not) / Do not know]</p> <p>a) Yes – 50m²</p> <p>b) <i>for linear habitat</i> (hedgerows, lines of trees, and watercourses):</p> <p>[Yes (which of the following thresholds you think is most appropriate: 2m, 5m, 10m, 20m, 50m, other threshold – please specify) / No (please explain why not) / Do not know]</p> <p>b) Yes – 10m</p>	<p>Exempt development proposals, which result in negligible impacts or minimal impacts to low or medium distinctiveness habitats</p>
2	<p>Do you agree with our proposal to exempt householder applications from the biodiversity net gain requirement?</p> <p>[Yes / No (please explain why not) / Other (please tell us more) / Do not know]</p> <p>Yes</p>	<p>Exempt householder applications from the mandatory biodiversity net gain requirement.</p>
3	<p>Do you agree with our proposal to exempt change of use applications from the biodiversity net gain requirement?</p> <p>[Yes / No (please explain why not) / Other (please tell us more) / Do not know]</p> <p>Yes</p>	<p>Exempt change of use applications from the mandatory biodiversity net gain requirement.</p> <p>A typical change of use application would not propose physical changes that would result in habitat losses. It therefore seems appropriate to exempt these types of permissions.</p>
4	<p>Do you think developments that are undertaken exclusively for mandatory biodiversity gains should be exempt from the mandatory net gain requirement?</p> <p>[Yes, only for biodiversity net gain (please explain why) / Yes, also for some other environmental mitigation purposes (please</p>	<p>Where an off-site biodiversity gain proposal itself requires planning permission, the enhancement (such as wetland or pond creation) may require its own planning</p>

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	<p>explain why) / No (please explain why not) / Other (please tell us more) / Do not know]</p> <p>Yes, only for biodiversity net gain</p>	<p>permission and 10% net gain. This would effectively decrease the biodiversity gains created and may make such projects less attractive. This could be prevented by exempting these projects or applying a 0% biodiversity net gain (no net loss) requirement to them.</p> <p>To avoid creating a loophole that could be exploited by general development delivering biodiversity net gains, we propose that the exemption would apply to projects, which only enhance biodiversity for the purpose of net gain. We are considering the option of extending this for a small range of other environmental impact mitigation purposes.</p>
5	<p>Do you think self-builds and custom housebuilding developments should be exempt from the mandatory net gain requirement?</p> <p>[Yes (please explain why) / No (please explain why not) / Other (please tell us more) / Do not know]</p> <p>No</p> <p>Reason: other exemptions will apply if the proposed works would not have a significant impact (e.g. de minimis exemption)</p>	<p>We are considering whether or not to make an exemption for self-builds and custom housebuilding.</p> <p>The UK Government does not see a clear need for an exemption for self-builds and custom housebuilding because these developments are often particularly ambitious in wider sustainability terms (such as climate change mitigation), and many of these developments will be small in scale so may be subject to other exemptions and process easements.</p>
6	<p>Do you agree with our proposal not to exempt brownfield sites, based on the rationale set out above?</p> <p>[Yes / No (please explain why not) / Other (please tell us more) / Do not know]</p> <p>Yes</p>	<p>Not to exempt brownfield sites from the mandatory biodiversity net gain requirement.</p>
7	<p>Do you agree with our proposal not to exempt temporary applications from the biodiversity net gain requirement?</p>	<p>Not to exempt development granted a temporary planning permission for a limited</p>

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	<p>[Yes / No (please explain why not) / Other (please tell us more) / Do not know]</p> <p>Yes</p>	<p>period. It would be disproportionate to mandate biodiversity gains for short-term impacts to habitats which may be restored quickly.</p>
8	<p>Do you agree with our proposal not to exempt developments that would be permitted development but are not on account of their location in conservation areas, such as in areas of outstanding natural beauty or national parks?</p> <p>[Yes / No (please explain why not) / Other (please tell us more) / Do not know]</p> <p>Yes</p>	<p>Not exempt from the mandatory biodiversity net gain requirement.</p> <p>It is likely that such developments will be small scale and so may usually take advantage of other exemptions and process easements, such as the small sites metric. We therefore consider it unnecessary to make a specific exemption for such development. This will also help to maintain high standards for protection of biodiversity in national parks and conservation areas.</p>
9	<p>Are there any further development types which have not been considered above or in the previous net gain consultation, but which should be exempt from the biodiversity net gain requirement or be subject to a modified requirement?</p> <p>[Yes, exempt (please explain which development types and why they should be exempt) / Yes, a modified requirement (please explain which development types and why they should face a modified requirement) / No / Other (please tell us more) / Do not know]</p> <p>No</p>	<p>N/A</p>
10	<p>Do you agree with our proposal not to exempt development within statutory designated sites for nature conservation from the biodiversity gain requirement?</p> <p>[Yes / No (please explain why not) / Other (please tell us more) / Do not know]</p> <p>Yes</p>	<p>We do not intend to exempt development within statutory designated sites for nature conservation from the mandatory biodiversity net gain requirement. The biodiversity net gain requirement will be separate and additional to any existing legal or policy requirements.</p> <p>This means it will be important to make a distinction between any biodiversity gain objectives and separate statutory</p>

Question No.	Question and Response	DEFRA Proposal
		designated site obligations in law and policy to ensure development is legally sound.
11	<p>Do you agree with the stated proposals for development (or component parts of a development) on irreplaceable habitats, specifically:</p> <p><i>a) The exclusion of such development from the quantitative mandatory biodiversity gain objective?</i></p> <p>[Yes / No (please explain why not) / Do not know]</p> <p>Yes</p> <p><i>b) The inclusion of a requirement to submit a version of a biodiversity gain plan for development (or component parts of a development) on irreplaceable habitats to increase proposal transparency?</i></p> <p>[Yes / No (please explain why not) / Do not know]</p> <p>Yes</p> <p><i>c) Where there are no negative impacts to irreplaceable habitat, to allow use of the biodiversity metric to calculate the value of enhancements of irreplaceable habitat?</i></p> <p>[Yes / No (please explain why not) / Do not know]</p> <p>Yes</p> <p><i>d) To use the powers in biodiversity net gain legislation to set out a definition of irreplaceable habitat, which would be supported by guidance on interpretation?</i></p> <p>[Yes / No (please explain why not) / Do not know]</p> <p>Yes</p> <p><i>e) The provision of guidance on what constitutes irreplaceable habitat to support the formation of bespoke compensation agreements?</i></p> <p>[Yes / No (please explain why not) / Do not know]</p> <p>Yes</p>	<p>The UK Government intends to use secondary legislation to remove development, or component parts of development, on irreplaceable habitats from the scope of the requirement for 10% biodiversity net gain.</p> <p>We propose that any developer proposing development on irreplaceable habitat would still be required to submit, for the planning authority's information, a version of a biodiversity gain plan providing information about irreplaceable habitats present before and after development (which may be recorded using the biodiversity metric) and the steps taken to minimise adverse effects on these habitats. This information will be helpful in assessing impacts on irreplaceable habitats, informing decision making and may contribute in part (alongside professional advice) to designing any appropriate compensation.</p>

Question No.	Question and Response	DEFRA Proposal
12	<p>Do you agree with our proposed approach that applications for outline planning permission or permissions that have the effect of permitting development in phases should be subject to a condition that requires approval of a biodiversity gain plan prior to commencement of each phase?</p> <p>[Yes / No (please explain why not) / Do not know]</p> <p>Yes</p>	<p>For applications for outline planning permission and permission that have the effect of permitting development in phases, there will be additional requirements for the biodiversity gain information to be submitted with the application. These will be set out in secondary legislation.</p> <p>We propose that for outline and phased permissions we will ask the applicant to explain the strategy to achieve the biodiversity gain objective across the whole site and to demonstrate how this could be delivered on a phase-by-phase basis</p>
13	<p>Do you agree with the proposals for how phased development, variation applications and minerals permissions would be treated?</p> <p>[Yes / No (please suggest alternative approaches) / Do not know]</p> <p>Yes</p>	<p>The mandatory net gain condition imposed on the original permission will continue to apply (rather than on the s.73 or 96a), and the outcome of the application cannot result in the disapplication or variation of the net gain condition.</p>
14	<p>Do you agree that a small site metric might help to reduce any time and cost burdens introduced by the biodiversity gain condition?</p> <p>[Yes / No (please explain why not) / Other (please tell us more) / Do not know]</p> <p>Yes</p>	<p>We intend to take forward the option of a simplified biodiversity metric for developments on small sites. We do not consider that a lower percentage gain would be appropriate for small development, as all sites should make a proportionate contribution to biodiversity net gain.</p>
15	<p>Do you think a slightly extended transition period for small sites beyond the general 2- year period would be appropriate and helpful?</p> <p>[Yes, a 12-month extension (please explain why) / Yes, a 6-month extension (please explain why) / No (please explain why not) / Other (please tell us more) / Do not know]</p> <p>No</p>	<p>The UK Government is not currently looking to amend the 2-year transition period. We would, however, welcome feedback on whether a longer transition period (up to 12 months longer) for minor development would be of practical benefit to planning authorities and developers</p>

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	Reason: for clarity for all users.	and specific reasons as to why it might be necessary.
16	<p>Are there any additional process simplifications (beyond a small sites metric and a slightly extended transition period) that you feel would be helpful in reducing the burden for developers of small sites?</p> <p>[Yes (please outline your suggestion and explain how it would help) / No / Do not know]</p> <p>No</p>	
17	<p>Are any targeted exemptions (other than that for irreplaceable habitat), reduced biodiversity net gain objectives, or other modified requirements necessary for the application of the biodiversity net gain requirement to NSIPs?</p> <p>[Yes, exemption (please define your proposed exemption) / Yes, percentage reduction (please define your proposed reduction) / Yes, other modified requirement (please define your proposed modified requirement) / No / Do not know]</p> <p>No</p>	<p>There may be a case for narrow targeted exemptions where particular types of project, or individual projects, are unable to deliver biodiversity net gain or for which the requirement would be disproportionate.</p> <p>As well as any necessary exemptions, we may need to make provision in the exemptions or transition arrangements for projects which are not expected to be caught by the requirement, but which might be caught at a later project stage. For example, this could be because they are planned to be completed before the requirement takes effect but are delayed unexpectedly or need to amend the permission.</p> <p>It may be the case that some types of NSIP are unable to deliver a 10% biodiversity net gain but may be able to deliver a lower percentage target. We intend to apply the 10% as a minimum requirement broadly but, if modifications prove to be necessary, we would prefer to apply a different percentage requirement rather than to apply an exemption.</p>
18	<p>Do you agree that the above approach is appropriate for setting out the biodiversity net gain requirement for NSIPs?</p> <p>[Yes (please explain why) / No (please explain why not) / Other (please tell us more) / Do not know]</p>	<p>The biodiversity net gain requirement for NSIPs will be brought forward through a 'biodiversity gain statement' or statements. We want to</p>

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	<p>Yes – allows for sufficient flexibility for a broad range of NSIP types</p>	<p>maintain consistency across different types of projects to reduce the scope for confusion and the need to define requirements in environmental reporting. We therefore propose to design a single ‘core’ statement that we will consult on for the range of relevant types of NSIP.</p> <p>These biodiversity gain statements will set out the biodiversity net gain requirement for all types of NSIPs, including the date from which the objective is expected to be achieved, and the stage of project design to which commencement threshold applies.</p>
<p>19</p>	<p>Do you consider that the November 2025 is an appropriate date from which NSIPs accepted for examination will be subject to the biodiversity net gain requirement?</p> <p>[Yes (please, provide any supporting evidence or justification) / No, it should be later (please provide any supporting evidence or justification) / No, it should be sooner (please provide any supporting evidence or justification) / Do not know]</p> <p>No comment.</p>	<p>We will give developers, planners, and ecologists sufficient time to plan to deliver biodiversity net gain on these projects. We will therefore publish biodiversity gain statements at least 2 years before the requirement takes effect in November 2025 for the relevant projects (so no later than November 2023).</p> <p>If earlier commencement than November 2025 is considered achievable and is specified for certain projects, the relevant biodiversity gain statement will be published at least 2 years before that date.</p>
<p>20</p>	<p>Do you agree that a project’s acceptance for examination is a suitable threshold upon which to set transition arrangements?</p> <p>[Yes (please explain why) / No (please explain why not) / Do not know]</p> <p>No comment</p>	<p>Projects which have been accepted for examination by the Planning Inspectorate before the specified commencement date would not be required to deliver mandatory biodiversity net gain (though might be delivering it in response to policy or voluntary commitments)</p>

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21	<p>Would you be supportive of an approach, which facilitates delivery of biodiversity net gain using existing landholdings by requiring a lighter-touch registration process, whilst maintaining transparency?</p> <p>[Yes (please explain why) / No (please explain why not) / Do not know]</p> <p>No – there is a need for consistency of reporting biodiversity across all types of projects (NSIPs or otherwise)</p>	<p>The mitigation hierarchy would continue to apply for NSIPs as it would for development consented under the Town and Country Planning Act 1990. Negative impacts on biodiversity should be avoided, with mitigation and compensation used where this is not possible or appropriate. Off-site enhancement would need to be registered in some way to maintain transparency and facilitate monitoring. For mandatory biodiversity net gain under the Town and Country Planning Act 1990, this registration will take place in the biodiversity gain site register. We intend to use the same register for NSIPs, subject to further consultation, but are also considering the need for additional or alternative mechanisms which might encourage biodiversity enhancements of the developer’s wider estate.</p>
22	<p>Do you consider that this broad ‘biodiversity gain plan’ approach would work in relation to NSIPs?</p> <p>[Yes / No (please explain why not) / Do not know]</p> <p>Yes</p>	<p>We propose applying an approach for NSIPs that would be broadly comparable to that for development granted permission under the Town and Country Planning Act 1990. This would mean developers submitting a development consent application for a NSIP must prepare a biodiversity gain plan and a completed biodiversity metric. The developer would provide this plan to the Planning Inspectorate along with other documents for examination by the Examining Authority and subsequent determination.</p>
23	<p>Should there be a distinction made for NSIPs between on-site habitats (which are subject to the biodiversity net gain percentage) and those habitats within the development</p>	<p>We have heard from stakeholders that NSIPs often need to incorporate</p>

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	<p>boundary which are included solely for environmental mitigation (which could be treated as off-site enhancement areas without their own gain objective)?</p> <p>[Yes (please explain why) / No (please explain why not) / Do not know]</p> <p>Yes – off site enhancements intended purely to meet BNG requirements should have less stringent BNG requirements, as is proposed for TCPA 1990 development</p>	<p>significant areas for environmental mitigation or compensation within their development site boundaries. This may have the effect of making biodiversity net gain relatively more challenging than for development consented under the Town and Country Planning Act 1990. This is because the percentage gain would also apply to these mitigation areas and other development types may be able to exclude such areas from their development boundary and treat them as off-site enhancements (so that the percentage gain target does not apply). We are therefore considering whether a distinction should be made for NSIPs between onsite habitats in the development area and any dedicated mitigation areas.</p>
24	<p>Is there any NSIP-specific information that the Examining Authority, or the relevant Secretary of State, would need to see in a biodiversity gain plan to determine the adequacy of an applicant’s plans to deliver net gain (beyond that sought in the draft biodiversity gain plan template at Annex B)?</p> <p>[Yes (please state what information) / No / Do not know]</p> <p>No</p>	
25	<p>Do you think that 30 years is an appropriate minimum duration for securing off-site biodiversity gains allocated to NSIPs?</p> <p>[Yes / Yes, but it should be reviewed after practice and biodiversity gain markets are evaluated / No, it should be longer / No, it should be shorter / Do not know]</p> <p>No, it should be longer – some tree planting can take up to 30 years to establish</p>	<p>Under the approach specified for Town and Country Planning Act 1990 development, biodiversity gain sites must be maintained for a minimum period of 30 years from the time of habitat creation 35 . The minimum duration for secured off-site biodiversity gains allocated to NSIPs will be specified in biodiversity gain statements. The UK Government does not intend to set a minimum period for NSIPs that is shorter than the 30-year</p>

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		period specified for other kinds of development.
26	<p>Are further powers or other measures needed to enable, or manage the impacts of, compulsory acquisition for net gain?</p> <p>[Yes, to enable compulsory acquisition (please explain what is needed) / Yes, to manage impacts of compulsory acquisition (please explain what is needed) / Yes, both (please explain what is needed) / No / Do not know]</p> <p>No</p>	<p>There may be instances where NSIPs need to deliver gains close to their site but do not have the flexibility to do this. NSIP providers might, in such circumstances, want to use compulsory acquisition powers to extend the boundary to deliver on-site biodiversity gains. However, we expect that it would generally be preferable for developers to deliver further gains within the existing project boundary or through the purchase of market off-site biodiversity gains without resorting to additional compulsory acquisition of land.</p>
27	<p>Is any guidance or other support required to ensure that schemes which straddle onshore and offshore regimes are able to deliver biodiversity net gain effectively?</p> <p>[Yes (please explain what is needed) / No / Do not know]</p> <p>Do not know</p>	<p>When proposals for marine net gain are clear, we will consider options to improve interactions between the intertidal approach of the biodiversity metric with marine net gain</p>
28	<p>a) Do you agree with the proposed content of the biodiversity gain information and biodiversity gain plan?</p> <p>[Yes / No (please explain why not) / Other (please tell us more) Do not know]</p> <p>A) Yes - but would need to see how the baseline and proposed in improvement were calculated including a full breakdown of sources</p> <p>b) Do you agree with the proposed procedure for the submission and approval of biodiversity gain information and the biodiversity gain plan?</p> <p>[Yes / No (please explain why not) / Other (please tell us more) Do not know]</p> <p>B) Yes –The burden lies with the planning authority to not only ensure that what is being proposed meets the BNG requirement but also that it would be realistic and feasible to do so as it would be difficult to secure changes as a pre-commencement condition. It would be better to secure the documents in the s.106 agreement.</p>	<p>We recognise that it is important for planning authorities and communities to know what is being proposed in terms of biodiversity net gain early in the planning process. We will therefore mandate through secondary legislation that certain core biodiversity gain information must be provided with the application for planning permission.</p> <p>The core biodiversity gain information will include:</p> <ul style="list-style-type: none"> • the pre-development biodiversity value, • steps taken to minimise adverse biodiversity impacts, • the proposed approach to enhancing biodiversity on-site, and

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		<ul style="list-style-type: none"> • any proposed off-site biodiversity enhancements (including the use of credits) that have been planned or arranged for the development <p>In all cases, we are proposing you will need to submit the core biodiversity gain information with your planning application, and to have finalised and approved a complete biodiversity net gain plan before commencement. The biodiversity gain information would usually form part of a biodiversity gain plan. Any off-site biodiversity gains, the use of credits, and significant on-site enhancements (such as a park or meadow area managed for biodiversity) will be part of the biodiversity gain information and will need to be formally secured³⁷. We will work with the sector to develop model planning conditions, planning obligations and template conservation covenants to achieve this.</p>
29	<p>We will continue to work with external stakeholders and industry on the form and content of the template. Do you agree with the proposed information to be included in a biodiversity gain plan as shown in the draft template?</p> <p>[Yes / No (If not, is there anything in particular that ought to be removed, added, or changed to make the biodiversity gain plan fit for purpose?) / Other (please tell us more) / Do not know]</p> <p>No – guidance suggests that applicants provide information in Section F of the BNG plan, however providing this information is optional. Section F should be mandatory and situated at the beginning of the document.</p>	<p>We intend to publish a biodiversity gain plan template³⁸ in order to set out requirements and to standardise recording of information. A draft is contained in Annex B. This is a working draft and will be updated based on responses to this consultation and extensive testing with stakeholders. We aim to produce a more concise version of the biodiversity gain plan template for developments using the small sites metric and a different template for outline development applications.</p>

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30	<p>Do you agree that further guidance is needed to support decision-making about what constitutes appropriate off-site biodiversity gains for a given development?</p> <p>[Yes (please state what in particular would help most) / No / Do not know]</p> <p>Yes – further guidance including training for officers and resourcing support.</p>	
31	<p>How should the UK Government encourage or enable developers and landowners to secure biodiversity gain sites for longer than the minimum 30-year period?</p> <p>Gains should be secured as locally as possible.</p> <p>This should include the option to purchase credit from local authorities in addition to other market suppliers.</p> <p>Woodland will take much longer than 30 years to reach maturity.</p> <p>– p.59 <i>“Biodiversity net gain will not enable planning authorities to direct developers to purchase biodiversity units from them in preference to other market suppliers that are able to deliver equivalent or better outcomes in relation to the requirements of the policy.”</i></p> <p>The metric includes scoring for how local the gains are and if contributing to strategic plan.</p> <p>We will need to have strong policies to ensure locally delivery.</p>	<p>The UK Government has amended the Environment Act to enable future increases to the 30-year minimum period (for on-site and off-site gains). The UK Government will consider increasing this minimum for new developments and registrations after evaluating mandatory biodiversity net gain practice.</p> <p>Any increase in the minimum duration would be made after consideration of the impacts on the supply of potential gain sites and, to avoid disrupting establishment of the market, would not take place in the first 3 years after commencement of mandatory biodiversity net gain. Any increase would not retrospectively change pre-existing agreements at that time.</p>
32	<p>Do you agree with our proposals for who can supply biodiversity units and the circumstances in which they may do so?</p> <p>[Yes / No (please explain why not) / Other (please tell us more) / Do not know]</p> <p>Yes</p>	<p>Any landowners or managers will be able to create or enhance habitat for the purpose of selling biodiversity units, provided that they are able to meet the requirements of the policy, including additionality and register eligibility requirements, and demonstrate no significant adverse impacts on protected and priority habitats. Suppliers of biodiversity units will be able to sell to developers anywhere in England, provided that the</p>

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		<p>use of those units is appropriate for the development in question and the distance between the development and the off-site habitat is properly accounted for in the biodiversity metric. Planning authorities will be able to sell biodiversity units from their own land or act as a broker for third party units. Where planning authorities choose to participate in the market, they will be expected to manage any associated conflicts of interest and will need to comply with the same rules and requirements that apply to other biodiversity unit suppliers.</p>
33	<p>Do you agree that developers which are able to exceed the biodiversity gain objective for a given development should be allowed to use or sell the excess biodiversity units as off-site gains for another development, provided there is genuine additionality?</p> <p>[Yes / No (please explain why not) / Other (please tell us more) / Do not know]</p> <p>Yes</p> <p>Third paragraph – Q33</p> <p><i>“If a developer is able to exceed the statutory requirements for biodiversity net gain on a given development site, and any relevant targets for biodiversity net gain or green infrastructure required by local planning policy, we are minded to allow them to use or sell the excess biodiversity units as off-site gains for another development. The area of land on which the excess biodiversity units are to be delivered would need to be clearly identified in the biodiversity gain plan for the original development. To ensure additionality, the excess gains should be distinct from those necessary to meet the biodiversity net gain requirements for the original development or to make the original planning application acceptable in planning terms. To be used as off-site gains for another development, they would need to be registered on the biodiversity gain site register.”</i></p> <p>No issue if a developer has spare land and wants to create habitat and sell it for biodiversity units – if the development is otherwise acceptable.</p>	<p>If a developer is able to exceed the statutory requirements for biodiversity net gain on a given development site, and any relevant targets for biodiversity net gain or green infrastructure required by local planning policy, we are minded to allow them to use or sell the excess biodiversity units as off-site gains for another development. The area of land on which the excess biodiversity units are to be delivered would need to be clearly identified in the biodiversity gain plan for the original development. To ensure additionality, the excess gains should be distinct from those necessary to meet the biodiversity net gain requirements for the original development or to make the original planning application acceptable in planning terms. To be used as off-site gains for another development, they would need to be registered on the biodiversity gain site register.</p>

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	But probably this is a rare case in London. LAs should make it clear it is in addition to other policy requirements.	
34	<p>Do you agree with the proposed scope of the UK Government’s role in facilitating the market, as set out above?</p> <p>[Yes / No (please explain why not) / Other (please tell us more) / Do not know]</p> <p>Yes</p>	<p>To facilitate the operation of the biodiversity unit market, our priorities include:</p> <ul style="list-style-type: none"> • setting clear regulations and providing guidance • arranging oversight functions to ensure consistent implementation across England • creating supporting systems if needed, such as the biodiversity gain site register • upholding probity rules and avoiding conflicts of interest in relation to the role of the UK Government and other public sector bodies • establishing an approach to statutory biodiversity credit pricing, sales, and investment which supports, and does not conflict with, the market We do not currently propose to establish a centralised trading platform for biodiversity units or for the UK Government to take on other roles which could be performed by the private sector or other third parties, such as brokering.
35	<p>Are the proposals outlined here sufficient to enable and encourage habitat banking?</p> <p>[Yes / No (please specify what else could be done and why it is needed) / Do not know]</p> <p>Yes</p>	<p>A habitat bank would need to be able to record and provide suitable monitoring information to demonstrate that the initial works to create or enhance the habitat had been completed by a given date if they wish to take advantage of the ‘advanced creation’ function in the biodiversity metric (see metric guidance and Part 3 ‘reporting, evaluation and monitoring’). We would not require the whole land area within a habitat bank to be secured by a legal agreement for the minimum 30-year period prior to the first sale of units to a developer, although</p>

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		we would not prevent a landowner or manager from doing this if they chose to.
36	<p>Do you agree with our proposal that to be eligible to supply biodiversity units for mandatory biodiversity net gain, habitat must be created or enhanced on or after a specified date, proposed to be 30 January 2020?</p> <p>[Yes / Yes, but not this specific date (please suggest an alternative date and explain your choice) / No (please explain why not) / Do not know]</p> <p>Yes</p>	<p>Habitat created or enhanced after 30 January 2020 will be eligible for registration and sale of the associated biodiversity gains, provided it meets the other criteria (see Part 3 ‘the biodiversity gain site register’). Habitat created or enhanced before this date will not be eligible. This date has been selected to ensure the outcomes from the policy are additional, while avoiding penalising landowners and managers that have taken the initiative since our intention to mandate biodiversity net gain was confirmed in 2019</p>
37	<p>Should there be a time limit on how long biodiversity units can be banked before they are allocated to a development? What would you consider to be an appropriate time limit?</p> <p>[Yes (please specify what this limit should be) / No / Do not know]</p> <p>Do not know</p>	
38	<p>Do you agree that the eligibility criteria for adding sites to the biodiversity gain site register are sufficient?</p> <p>[Yes / No (please explain which additional criteria should be included or which existing criteria should be excluded, and your reasons for this) / Do not know]</p> <p>Yes</p>	<p>Registration will involve an online application to the register operator⁴⁵ who will assess whether the application (and its proposed enhancements) meets a set of eligibility criteria. In general, we expect units will be registered as required for each development.</p> <p>For a site to be considered eligible for inclusion on the register it must meet the following proposed criteria:</p> <ul style="list-style-type: none"> • it is subject to a conservation covenant or a planning obligation that will require habitat enhancement: <ul style="list-style-type: none"> o on land made available by a site provider with sufficient rights to the land o by a specified person or body that

Question No.	Question and Response	DEFRA Proposal
		<p>is considered fit and proper to undertake the enhancement works</p> <ul style="list-style-type: none"> o to be suitably managed to meet the required enhancement o to have commenced by a specified date (30 January 2020 or later) o to be maintained for at least 30 years after the completion of those enhancement works <p>the enhancement:</p> <ul style="list-style-type: none"> o is measured using the biodiversity metric against a baseline metric assessment (the baseline being its pre-enhancement state unless activities on the land have reduced its biodiversity value since 30 January 2020, in which case it becomes the pre-reduction biodiversity value) o may be allocated to development in accordance with the terms of the conservation covenant or planning obligation o complies with rules on additionality and stacking including on protected sites (see Part 3 ‘additionality’) o is in England
39	<p>Do you agree that the register operator should determine an application within a maximum of 28 days unless otherwise agreed between both parties?</p> <p>[Yes / No (please explain why not) / Do not know]</p>	<p>The time taken to determine an application will vary based on the size and complexity of the site. To provide certainty for developers and landowners, we intend to set</p>

Question No.	Question and Response	DEFRA Proposal
	Yes but register operator also needs suitable accreditation	out in regulation a maximum determination period, unless otherwise agreed between both parties. Our assumption at this stage is that this period should be 28 days. We would welcome views on whether this strikes the right balance between speed and allowing the register operator sufficient time to review an application at a reasonable cost.
40	<p>Do you agree that this list of information requirements will be sufficient to demonstrate that a biodiversity gain site is legitimate and meets the eligibility criteria?</p> <p>[Yes / No (please explain which additional information should be included or which existing information should be excluded, and your reasons for this) / Other (please tell us more) / Do not know]</p> <p>Yes</p>	<p>The register operator will, in confirming that the application complies with the criteria, ask for the following information to be provided:</p> <p>a) when the habitat enhancement works have already commenced:</p> <ul style="list-style-type: none"> o a statement that the enhancement is already under way or complete with supporting evidence o a proportionate description of how habitat enhancements will be managed and monitored using a Habitat Management and Monitoring Plan o a declaration that this management is considered by a competent person (to be defined in guidance) to be likely to result in the habitat enhancement specified <p>b) when the habitat enhancement works commence after registration:</p> <ul style="list-style-type: none"> o a proportionate Habitat Management and Monitoring Plan describing how habitat enhancements will be achieved,

Question No.	Question and Response	DEFRA Proposal
		<p>managed, and monitored</p> <ul style="list-style-type: none"> o a declaration that this management is considered by a competent person (to be defined in guidance) to be likely to result in the habitat enhancement specified o evidence that there is a legal obligation to carry out the necessary works upon allocation of the units to a development <p>c) for all sites:</p> <ul style="list-style-type: none"> o details of the conservation covenant agreement or planning obligation the site is subject to o details of the persons or body required under a conservation covenant agreement or planning obligation to carry out works for the purpose of habitat enhancement o details of the person or body required or contracted to maintain the enhancement for at least 30 years after completion of those enhancement works⁴⁷ o a statement that the applicant has checked whether the baseline habitat has deteriorated significantly since 30 January 2020, and how the baseline date has been

Question No.	Question and Response	DEFRA Proposal
		<p>appropriately adjusted to reflect (such as to disregard) any deterioration</p> <ul style="list-style-type: none"> o details of any required consents or permits in place o evidence and a declaration that the applicant has sufficient rights to the land o summary evidence and a declaration that the person carrying out the enhancement works is fit and proper o a biodiversity metric calculation o the location of the gain site in England, supplied in a Geographic Information System (GIS) format where possible o the size and type of habitats created or enhanced o the number of biodiversity units resulting from the biodiversity gain as determined by the biodiversity metric o the planning reference of the development to which any of the units are allocated
41	<p>Do you agree that the UK Government should require a habitat management plan, or outline plan, for habitat enhancement to be included on the register?</p> <p>[Yes / No / Other (please tell us more) / Do not know]</p> <p>Yes</p>	<p>It is intended that Habitat Management and Monitoring Plans for sites are included and published on the register. The UK Government is keen to avoid unnecessary duplication of information and will explore how best to manage this to prevent unnecessary burdens.</p>
42	<p>Do you agree that the UK Government should allow the register operator to:</p>	<p>To cover the costs of administering the register, the UK Government intends to</p>

Question No.	Question and Response	DEFRA Proposal
	<p><i>a) set a fee for registration in line with the principle of cost recovery?</i></p> <p>[Yes / No (please explain why not) / Other (please tell us more) / Do not know]</p> <p>A) Yes – include in biodiversity unit costs</p> <p><i>b) impose financial penalties for provision of false or misleading information?</i></p> <p>[Yes / No (please explain why not) / Other (please tell us more) / Do not know]</p> <p>B) Yes</p>	<p>charge a fee to process register applications, in consultation with the register operator. The fee will be proportionate and will be set out during the transition period of the policy. We intend to set the fee based on full cost recovery, including operation of the appeals process, where this is possible. This will make sure that the costs of operation will fall to those using and benefitting from the registration service</p> <p>The provision of false or misleading information to the register has the potential to undermine environmental benefits and confidence that promised gains will be delivered. To disincentivise the provision of false information, the UK Government intends to make secondary legislation that allows the register operator to issue a financial penalty. The penalty would be issued to anyone providing information to the register where they are found to have deliberately or recklessly provided false or misleading information as part of the registration application or determination process. Further details of this will be set out during the 2-year transition period.</p>
43	<p>Do you agree with our proposal to allow applicants to appeal a decision by the register operator where the applicant believes that the registration criteria have not been appropriately applied?</p> <p>[Yes / No (please explain why not) / Other (please tell us more) / Do not know]</p> <p>Yes</p>	<p>The UK Government intends to allow habitat providers to appeal a decision to reject a biodiversity gain site application where the applicant can provide evidence that that the registration criteria have not been appropriately applied. Successful appeals would result in the application being approved and the habitat</p>

Question No.	Question and Response	DEFRA Proposal
		enhancement being included on the register. We therefore intend to set out in regulation a maximum determination period for an appeal. Our assumption at this stage is that this should be within 28 days.
44	<p>Do you agree with our proposals for additionality with respect to:</p> <p><i>a) measures delivered within development sites?</i></p> <p>[Yes / No (please explain why not) / Other (please tell us more) / Do not know]</p> <p>A) Yes</p> <p><i>b) protected species and off-site impacts to protected sites?</i></p> <p>[Yes / No (please explain why not) / Other (please tell us more) / Do not know]</p> <p>B) No – if mitigation it shouldn't be included as this is not providing net gain. Protected species and sites should be covered by the mitigation hierarchy</p> <p><i>c) on-site impacts on protected sites, and any associated mitigation and compensation?</i></p> <p>[Yes / No (please explain why not) / Other (please tell us more) / Do not know]</p> <p>C) No - if mitigation it shouldn't be included as this is not providing net gain. Protected species and sites should be covered by the mitigation hierarchy</p> <p><i>d) achievement of River Basin Management Plan Objectives?</i></p> <p>[Yes / No (please explain why not) / Other (please tell us more) / Do not know]</p> <p>D) Yes</p> <p><i>e) the strengthened NERC Act duty on public authorities?</i></p> <p>[Yes / No (please explain why not) / Other (please tell us more) / Do not know]</p> <p>E) Yes</p>	<p>We want to make sure that our regulations, policy, and guidance set out a robust but fair interpretation of additionality principles. Provided that the enhancements in question meet all other requirements for biodiversity gain, we propose that:</p> <ul style="list-style-type: none"> • any measure delivered as part of a development⁵² and within a development site boundary may be counted towards biodiversity net gain provided that the biodiversity metric recognises the uplift in biodiversity value. This includes on-site measures delivered to comply with a statutory obligation or policy (such as green infrastructure, sustainable drainage, or nutrient mitigation) • mitigation and compensation measures for protected species may be counted towards a biodiversity net gain calculation but should not make up all of a development's biodiversity net gain. At least 10% of the gain should be delivered through separate activities which are not required to mitigate and compensate for protected species impacts. This principle will also apply to mitigation measures proposed to address off-site impacts on protected sites (for example, Suitable Alternative Natural Greenspaces, habitat creation

Question No.	Question and Response	DEFRA Proposal
		<p>to reduce nutrient pollution, or a line of trees to prevent light pollution into a protected site)</p> <ul style="list-style-type: none"> • adequate mitigation and compensation measures for any on-site and indirect impacts on statutory protected sites must be agreed with the decision maker. Once agreed these measures should be included in biodiversity metric calculations along with any loss of protected habitats caused by the development • River Basin Management Plans set statutory objectives for the water environment, including ecological status objectives for waterbodies, as required by the Water Framework Directive Regulations 2017. Actions and measures within River Basin Management Plans can be used to achieve biodiversity net gain • organisations that are subject to the Natural Environment and Rural Communities (NERC) Act 2006 duty on public authorities, which is being strengthened through the Environment Act, may generate and sell biodiversity units
45	<p>Do you think that :</p> <p>A) the non-designated features or areas of statutory protected sites and/or</p> <p>B) local wildlife sites and local nature reserves, should be eligible for enhancement through biodiversity net gain?</p> <p>[Yes, both A and B should be eligible / No, only A (non-designated features or areas of statutory protected sites) should be eligible / No, only B (local wildlife sites and local nature reserves) should be eligible / No, neither should be eligible / Other (please tell us more) / Do not know]</p> <p>Yes both A and B should be eligible</p>	<p>We are therefore considering whether to allow enhancement of the non-designated features of statutory protected sites (provided that doing so is not to the detriment of the interest feature) but are conscious that such a nuanced approach might introduce additional complexity or be difficult to deliver, monitor and enforce in practice</p>

Question No.	Question and Response	DEFRA Proposal
		<p>We therefore propose that all habitats, including designated features of protected sites, in the intertidal zone (between the mean high and low water marks) or less than 2 km above the mean high water mark would be eligible for enhancement through biodiversity net gain. This would be subject to agreement from any relevant consultee body (such as consultees on an associated marine licence application) and provided that the proposal does not risk harming designated species or features.</p>
46	<p>Do you agree that the enhancement of habitats, including designated features, within statutory protected sites should be allowed in the coastal, intertidal and marine environment as defined above?</p> <p>[Yes / Yes, in some circumstances (please specify which circumstances) / Yes, but within a different range of the high-water mark (please specify) / No (please explain why not) / Other (please tell us more) / Do not know]</p> <p>Yes</p>	<p>A much greater proportion of the coastal, intertidal, and estuarine environment is subject to statutory protections for a range of species and habitats. Limiting ecological enhancements to the remaining undesignated area might result in missed opportunities for restoration projects. We therefore propose that all habitats, including designated features of protected sites, in the intertidal zone (between the mean high and low water marks) or less than 2 km above the mean high water mark would be eligible for enhancement through biodiversity net gain. This would be subject to agreement from any relevant consultee body (such as consultees on an associated marine licence application) and provided that the proposal does not risk harming designated species or features.</p>
47	<p>Do you agree with our proposed approach to combining payments for biodiversity units with other payments for environmental services from the same parcel of land?</p>	<p>The market for biodiversity units will need to work alongside other environmental markets, such</p>

Question No.	Question and Response	DEFRA Proposal
	<p>[Yes / No (please explain why not) / Other (please tell us more) / Do not know]</p> <p>No, rules out additional habitats from being created)</p>	<p>as nature-based carbon and nutrient trading and established markets for provisioning services, such as agricultural and forestry products, as well as UK Government-funded programmes such as the new schemes to reward environmental land management. We recognise that one of the key uncertainties for landowners and managers is whether they will be able to combine multiple payments for different services or products provided from the same parcel of land. We are minded to allow landowners and managers to combine payments for biodiversity units with other payments for environmental services⁵³ from the same parcel of land, provided they are paying for distinct, additional outcomes (for example, carbon sequestration and biodiversity benefits).</p>
48	<p>Are these proposals for statutory biodiversity credits sufficient to:</p> <p><i>a) Ensure, when supported by suitable guidance, that they are only used by developers as a last resort?</i></p> <p>[Yes / No (please explain why not) / Other (please tell us more) / Do not know]</p> <p>A) Yes</p> <p><i>b) Mitigate the market risk associated with the sale of statutory biodiversity credits by the UK Government?</i></p> <p>[Yes / No (please explain why not) / Other (please tell us more) / Do not know]</p> <p>B) Yes</p>	<p>The UK Government will undertake a credit price review to confirm how the price for statutory biodiversity credits will be set, and an initial credit price will be published in advance of biodiversity net gain becoming mandatory.</p> <p>Developers will be able to purchase credits at a set price without significant delay and discharge the corresponding biodiversity net gain liability on purchase. Credit sales will be facilitated by an accessible and user-friendly digital sales platform. Our intention is for the sales platform to be simple and cost-effective to administer, designed to avoid and manage the risk of fraud, and able to capture the data</p>

Question No.	Question and Response	DEFRA Proposal
		required to discharge reporting obligations on the Secretary of State under the Environment Act.
49	<p>Do you think there are any alternatives to our preferred approach to credit sales, such as those outlined above, which could be more effective at supporting the market while also providing a last resort option for developers?</p> <p>[Yes (please explain the alternatives and your reasoning) / No (please explain why not) / Other (please tell us more) / Do not know]</p> <p>Do not know</p>	<p>We have considered several alternative approaches to credit sales, including payment for credits upfront, payment upfront with an optional refund in the event that the developer can secure additional on-site or off-site units, or deferred payment to allow developers more time to secure off-site units on the market. Allowing optional refunds or deferred payments may provide more time for the market to scale up to meet demand and reduce the need for the UK Government to act as a seller of last resort. However, these benefits could be outweighed by the risks of delayed delivery of the compensatory habitat, increased difficulty of enforcement in the case of deferred payments, and the additional administrative burden associated with processing refunds or managing contracts for deferred payments. For these reasons, our current preferred approach is for developers to purchase credits prior to final approval of the biodiversity gain plan and discharge of the precommencement condition. Nevertheless, we welcome views from stakeholders on our preferred approach and any suitable alternatives.</p>
50	<p>Do the principles for how we will set, and review credit price cover the relevant considerations?</p> <p>[Yes / No (if not, what further considerations should be included?) / Other (please tell us more) / Do not know]</p> <p>Yes</p>	<p>We will undertake future reviews of the credit mechanism and credit price, to ensure that it remains appropriate. We will be intentionally uncompetitive with the biodiversity unit</p>

Question No.	Question and Response	DEFRA Proposal
		<p>market, and we aim to minimise the use of statutory biodiversity credits and phase them out at the earliest opportunity, once the biodiversity unit market has matured and we are confident that there is no longer a need for them. Developers will be able to purchase credits at a set price without significant delay and discharge the corresponding biodiversity net gain liability on purchase. Credit sales will be facilitated by an accessible and user-friendly digital sales platform. Our intention is for the sales platform to be simple and cost-effective to administer, designed to avoid and manage the risk of fraud, and able to capture the data required to discharge reporting obligations on the Secretary of State under the Environment Act.</p>
51	<p>Do you agree with the proposed principles for credit investment?</p> <p>[Yes / No (please explain why not) / Other (please tell us more) / Do not know]</p> <p>Do not know</p>	<p>Revenue from credit sales will be invested in strategic habitat creation and enhancement which delivers long-term environmental benefits and is aligned with Local Nature Recovery Strategy priorities</p> <p>For practical reasons, we do not propose to make a direct, traceable link between an individual development that has purchased credits and specific sites that have received that investment.</p>
52	<p>Do the above project-level management, monitoring, enforcement, and reporting proposals seem sufficient, achievable, and not overly burdensome on practitioners, developers, or planning authorities?</p> <p>[Yes / No, not sufficient / No, overly burdensome or not achievable / No (please explain why not and suggest how could they be improved) / Do not know]</p> <p>No, not sufficient</p>	<p>We will be clear that planning authorities should set any specific and proportionate monitoring requirements as part of planning conditions and obligations used to secure offsite or significant on-site habitat enhancements. Where enhancements are secured</p>

Question No.	Question and Response	DEFRA Proposal
		<p>with conservation covenants, the responsible body should ensure that appropriate monitoring proposals are also secured. It will be the landowner or developer's responsibility to ensure monitoring and reporting obligations are fulfilled, or adequately delegated to another body (with necessary funding), to the specifications set out in the biodiversity gain plan. Natural England are currently scoping whether accreditation and earned recognition approaches would help to focus enforcement and scrutiny of assessments. The number of monitoring assessments will depend on the habitat type and extent, but a typical schedule for a medium sized habitat creation project might result in reports for years 2, 5, 10, 20 and 30.</p>
53	<p>Do you think earned recognition has potential to help focus enforcement and scrutiny of biodiversity net gain assessments, reporting and monitoring?</p> <p>[Yes (please explain why this would help) / No (please explain why this would not help) / Do not know]</p> <p>No – set standards or accreditation would be more appropriate to ensure consistency</p>	<p>It will be the landowner or developer's responsibility to ensure monitoring and reporting obligations are fulfilled, or adequately delegated to another body (with necessary funding), to the specifications set out in the biodiversity gain plan. Natural England are currently scoping whether accreditation and earned recognition approaches would help to focus enforcement and scrutiny of assessments.</p>
54	<p>Do the above proposals for policy-level reporting, evaluation and enforcement seem sufficient and achievable?</p> <p>[Yes / Yes, but not sufficient / Yes, but not achievable / No (if not, how could they be improved?) / Do not know]</p> <p>Yes but not sufficient</p> <p>There should be a statutory requirement for enforcement</p>	<p>Several biodiversity net gain mechanisms and wider policies will support the policy-level monitoring of biodiversity net gain outcomes:</p> <ul style="list-style-type: none"> • the biodiversity gain site register, which will provide a publicly accessible record of proposed off-site⁵⁷ enhancements

Question No.	Question and Response	DEFRA Proposal
		<ul style="list-style-type: none"> • Biodiversity Reports published every five years by planning authorities and other designated public authorities • clearer, more standardised, reporting of habitat losses and gains in biodiversity gain plans • enhancement monitoring and habitat survey data, coordinated by planning authorities, responsible bodies, and local environmental records centres, which can provide data that will indicate the extent of success or failure of particular habitat enhancements • the annual report on statutory biodiversity credits investment
55	<p>Considering the data requirements set out above and in greater detail in Annex C:</p> <p><i>a) is there any additional data that you think should be included in the Biodiversity Reports?</i></p> <p>[Yes (please describe the data and explain the reasons for your view) / No / Do not know]</p> <p>Yes – data on enforcement action and results of enforcement should be included.</p> <p><i>b) is there any data included here that should not be required as part of the Biodiversity Reports?</i></p> <p>[Yes (please describe the data and explain the reasons for your view) / No / Do not know]</p> <p>No</p>	<p>The Environment Act also requires that local planning authorities include in their Biodiversity Reports ‘information about any biodiversity gains resulting or expected to result from biodiversity gain plans approved by the authority during that period’. Proposed biodiversity net gain data requirements to be collected from planning authorities under the NERC Act duty are set out in full in Annex C, and in brief, comprise:</p> <ul style="list-style-type: none"> • quantity, composition, and location of expected biodiversity gains (or losses), split by on-site, off-site and gains achieved through credits • number of developments impacting irreplaceable habitat, protected sites, and protected species • results of biodiversity net gain monitoring • actions taken by the planning authority to carry out biodiversity net gain

Question No.	Question and Response	DEFRA Proposal
		planning functions during the reporting period • plans for carrying out biodiversity net gain planning functions over the next reporting period