

Enclosure 1 – Wokingham Borough Council (WBC) Consultation responses to DEFRA’s Biodiversity Net Gain Regulations and Implementation Consultation (January 2022)

Part 1: defining the scope of the biodiversity net gain requirement for Town and Country Planning Act 1990 development

Exemptions

Developments impacting habitat below a minimum size ‘de minimis’ threshold for biodiversity net gain

Question 1

Do you agree with our proposal to exempt development which falls below a de minimis threshold from the biodiversity net gain requirement?

a) for area-based habitat:

[Yes (which of the following thresholds do you think is most appropriate: 2m², 5m², 10m², 20m², 50m², other threshold – please specify) / No (please explain why not) / Do not know]

A de minimis threshold is appropriate in order not to be too burdensome on small developments in habitats of lower distinctiveness. Medium distinctiveness habitat could include scrub and grassland habitat which is valuable in an urban context and the 50m² option could be significant in such a situation. WBC recommend either 10m² or 20m² threshold; the 20m² being more workable when considering an application.

WBC notes that the set threshold will, in part, depend on what the resolution/quality of aerial imagery supports. The de minimis threshold cannot be set smaller than can be observed in the aerial imagery record that will become the reference for site condition in the case of pre-application destruction of habitat on site.

WBC recommends LPA reporting should include the number of applications for which the de minimis exemption is applied, to facilitate a broad assessment and review of in-combination impact over time.

b) for linear habitat (hedgerows, lines of trees, and watercourses):

[Yes for hedgerows and lines of trees (which of the following thresholds you think is most appropriate: 2m, 5m, 10m, 20m, 50m, other threshold – please specify) / No for watercourses (please explain why not) / Do not know]

With regards to linear hedgerows and lines of trees, a de minimis threshold is appropriate in order not to be too burdensome on small developments on lower distinctiveness habitats. A 10m threshold for hedgerows and line of trees would be in line with Hedgerow Regs for field gates etc.

WBC believes there should not be a de minimis threshold for watercourse habitats, as by their nature, these are more reliant on continuity and are sensitive to modification. As these are calculated in separate linear units to hedgerow and trees, it is possible to have different de minimis values/rules.

Householder applications

Question 2

Do you agree with our proposal to exempt householder applications from the biodiversity net gain requirement?

[Yes / No (please explain why not) / Other (please tell us more) / Do not know]

Householder applications can result in loss of garden space. The Defra metric recognises the biodiversity value of vegetated gardens, but this would be overlooked if householder applications were exempted. The cumulative loss could be significant, especially in an urban context. Whilst it would be disproportionate for the current small sites Defra metric to be applied, consideration could be given to a simplified fixed tariff that could then be pooled to provide adequate off-site compensation. This could be collected upfront when a planning application is submitted for efficiency.

Change of use applications

Question 3

Do you agree with our proposal to exempt change of use applications from the biodiversity net gain requirement?

[Yes / **No (please explain why not)** / Other (please tell us more) / Do not know]

WBC believe any change of use exemption should be defined by area thresholds. Within Wokingham Borough there have been change of use applications for large sites, for example the creation of public open space, the change from agricultural to equestrian use, or a change from agricultural to garden/curtilage. Some of these applications could affect biodiversity net gain, thus warrant explicit consideration in the decision-making process. Where a change of use is combined with a full application for another smaller development (e.g. stabling for horses alongside change of use for remaining field), it will be important to consider these two components holistically, rather than see the change of use element as being exempt from the net gain assessment.

Creation of biodiversity gain sites

Question 4

Do you think developments which are undertaken exclusively for mandatory biodiversity gains should be exempt from the mandatory net gain requirement?

[Yes, only for biodiversity net gain (please explain why) / Yes, also for some other environmental mitigation purposes (please explain why) / No (please explain why not) / Other (please tell us more) / Do not know]

Not all off-site biodiversity gain proposals will require planning permission. There is a risk of introducing a bias in delivery of types of off-site biodiversity gain proposal if some will be required to achieve a 10% gain and some not.

Removing the 10% gain requirement in these specific situations is consistent with the current design of the Defra metric and tabulating the value of off-site provision. WBC believes the process will otherwise become very complex.

Projects which only enhance biodiversity for the purpose of net gain need a strict definition to make it easy for LPAs to recognise. It would be very helpful to have a Government-set standard condition or obligation wording to apply to any future consent, to ensure registration of the gain (and therefore its availability to the market).

Self-builds and custom housebuilding

Question 5

Do you think self-builds and custom housebuilding developments should be exempt from the mandatory net gain requirement?

[Yes (please explain why) / No (please explain why not) / **Other (please tell us more)** / Do not know]

As per householder applications, WBC considers self-build and custom housebuilding would be better suited to a standard fixed tariff for biodiversity net gain. This could be collected upfront when a planning application is submitted for efficiency.

If there was to be an exemption, it should not apply where medium or higher distinctiveness habitats are present, as this could present a loophole for significant biodiversity loss.

Brownfield sites

Question 6

Do you agree with our proposal not to exempt brownfield sites, based on the rationale set out above?

[Yes / No (please explain why not) / Other (please tell us more) / Do not know]

Brownfield sites can contain habitat of value for biodiversity and can be situated in locations that are important for retaining biodiversity in a suburban and an urban context. It is therefore important that development of these sites considers the baseline and post-development scenario using the metric and provide the net gain.

Temporary permissions

Question 7

Do you agree with our proposal not to exempt temporary applications from the biodiversity net gain requirement?

[Yes / No (please explain why not) / Other (please tell us more) / Do not know]

In Wokingham Borough there have been instances where a temporary consent is then followed by an application to make the development permanent, prior to its restoration. Exempting temporary applications could lead to net biodiversity loss, which then cannot be accounted for in the baseline of the subsequent permanent application. This could be a major loophole.

It is therefore important that a baseline habitat and condition assessment is required for any temporary consent applications.

WBC requests that the regulations clearly define whether an application made following a temporary consent, to maintain the development in perpetuity, would require an additional 10% net gain, on top of that which was originally achieved for the temporary consent application. Similarly, the regulations need to specify whether a follow-up application should use the original baseline data from the temporary application or whether it should use the post-development restoration plan as the baseline instead.

Developments for which permitted development rights are not applicable due to their location in conservation areas, areas of outstanding natural beauty or national parks

Question 8

Do you agree with our proposal not to exempt developments which would be permitted development but are not on account of their location in conservation areas, such as in areas of outstanding natural beauty or national parks?

[Yes / No (please explain why not) / Other (please tell us more) / Do not know]

WBC agrees that developments for which permitted development rights are not applicable due to their location in conservations areas, areas of natural beauty or national parks should not be exempt, as any exemption would undermine the physical form and function of both the natural and historical environment of such places.

General question on exemptions

Question 9

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?

[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]

WBC notes that in the webinar facilitated by PAS, it was clarified that a section 73 variation application would open up a review of the entire outline site (so including all completed phases and their biodiversity delivery) with remaining phases having to resolve any deficit in delivery compared to that which was predicted in previous phases/applications. This is welcomed as too often the section 73 process is used as a way of watering down and eroding the environmental benefits of a scheme.

Development within statutory designated sites for nature conservation

Question 10

Do you agree with our proposal not to exempt development within statutory designated sites for nature conservation from the biodiversity gain requirement?

[Yes / No (please explain why not) / Other (please tell us more) / Do not know]

A biodiversity net gain in the course of development on our sites of national and international importance should be required as these are designated as the sites that are fundamental to biodiversity and landscape recovery. It would not be acceptable for an exemption to otherwise require no net loss of biodiversity when the risk is on these most important of sites.

Irreplaceable habitat

Question 11

Do you agree with the stated proposals for development (or component parts of a development) on irreplaceable habitats, specifically:

a) The exclusion of such development from the quantitative mandatory biodiversity gain objective?

[Yes / No (please explain why not) / Do not know]

It is appropriate for such development to be resolved outside of the calculator through bespoke compensation. The regulations need to set out that the bespoke 'compensation' must not aim for no net loss only, but rather must have the objective of net gain in order to be in accordance with the mandate.

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?

[Yes / No (please explain why not) / Do not know]

It is important for the biodiversity gain plan, which will be available for the public to scrutinise through the planning process, to show what is happening to all habitats within the red line boundary, including any that are considered irreplaceable and resolved outside of the metric. It is expected that the public will show substantial interest in what is happening to irreplaceable habitats within a site and therefore transparency is crucial.

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?

[Yes / No (please explain why not) / Do not know]

If irreplaceable habitats are within the red line boundary but not negatively impacted by the development, it is still relevant under the Environment Act to seek a related net gain for these habitats. Where this can be achieved through enhancement and quantified in the calculator then it is appropriate and more straightforward to secure in this manner.

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?

[Yes / No (please explain why not) / Do not know]

It is crucial to have a clear definition in order to make the process work smoothly. There is no current exhaustive list of irreplaceable habitats, and this can slow down assessment of planning applications. It would be beneficial to have more guidance on indicators of irreplaceable habitat and the reasons behind a habitat being considered irreplaceable.

e) The provision of guidance on what constitutes irreplaceable habitat to support the formation of bespoke compensation agreements?

[Yes / No (please explain why not) / Do not know]

This has a degree of overlap with d). When considering bespoke compensation agreements, it would be useful to have examples of successful compensation and guidance on elements that needed to be considered within any plan/strategy in order to achieve that success.

Part 2: Applying the biodiversity gain objective to different types of development

Phased development and development subject to subsequent applications

Question 12

Do you agree with our proposed approach that applications for outline planning permission or permissions which have the effect of permitting development in phases should be subject to a condition which requires approval of a biodiversity gain plan prior to commencement of each phase?

[Yes / No (please explain why not) / Do not know]

It is only as reserved matters come forwards for each phase that the detail is available to calculate a specific on-site post-development scenario. This must be captured and agreed in a transparent way. The indication that guidance will recommend 'frontloading' biodiversity gains early in the phasing is welcome. The detail of subsequent phases needs to be compared to the original indicative post-development scenario, in order to confirm that it is not trending away from the mandated gain. From a biodiversity perspective, it would be preferable to pick up on any such trend as early as possible in the phases, in order to be able to resolve additional off-site measures early and 'frontload' these where possible.

Question 13

Do you agree with the proposals for how phased development, variation applications and minerals permissions would be treated?

[Yes / No (please suggest alternative approaches) / Do not know]

WBC notes that in the webinar facilitated by PAS, it was clarified that a section 73 variation application would open up a review of the entire outline site (so including all completed phases and their biodiversity delivery) with remaining phases having to resolve any deficit in delivery compared to that which was predicted in previous phases/applications. This is welcomed as too often the section 73 process is used as a way of watering down and eroding the environmental benefits of a scheme.

Small sites

Question 14

Do you agree that a small sites metric might help to reduce any time and cost burdens introduced by the biodiversity gain condition?

[Yes / No (please explain why not) / Other (please tell us more) / Do not know]

To use the small sites metric, the user needs to have a degree of ecological expertise (in order to be confident that it meets the narrow requirements for its application in terms of habitats present). It is hard to think of situations where such expertise would not allow for the full metric to be used with equal cost and burden. There is a risk that offering a small sites metric for use would increase the complexity and time required for the review process by the local planning authority as it means training in (and switching between) two different systems and an awareness of the differences and what this means in terms of assessment.

Question 15

Do you think a slightly extended transition period for small sites beyond the general 2-year period would be appropriate and helpful?

[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]

An extended transition period will lead to gamification of the system. It will also lead to confusion and delays in the validation and assessment process where there is disagreement over whether the application qualifies as an appropriate small site.

Question 16

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?

[Yes (please outline your suggestion and explain how it would help) / No / Do not know]

Not in terms of process simplification, but it will be important for smaller site developers to receive grants or incentives to support and assist them with what is required, as all too often then they lean on LPAs for support, which results in a drain on LPA time and resource.

Nationally Significant Infrastructure Projects

Scope, percentage, and targeted exemptions

Question 17

Are any targeted exemptions (other than that for irreplaceable habitat), reduced biodiversity net gain objectives, or other modified requirements necessary for the application of the biodiversity net gain requirement to NSIPs?

[Yes, exemption (please define your proposed exemption) / Yes, percentage reduction (please define your proposed reduction) / Yes, other modified requirement (please define your proposed modified requirement) / **No** / Do not know]

Whilst LPAs do not have the powers to grant NSIPs, it should be noted that previous NSIPs have affected Wokingham Borough, such as the M4 Smart Motorway work

It is not clear why NSIPs that cannot achieve a 10% net gain on-site or are unable to use off-site options through the national register. NSIPs funded by national government should be setting the standard and leading the way; demonstrating biodiversity net gain delivery during development.

Setting the requirement and transition arrangements through 'biodiversity gain statements'

Question 18

Do you agree that the above approach is appropriate for setting out the biodiversity net gain requirement for NSIPs?

[Yes (please explain why) / No (please explain why not) / Other (please tell us more) / Do not know]

As per the response to question 18, it is not apparent why NSIPs that cannot achieve a 10% net gain on-site are unable to use off-site options through the national register. NSIPs funded by national government should be setting the standard and leading the way; demonstrating biodiversity net gain delivery during development.

Question 19

Do you consider that November 2025 is an appropriate date from which NSIPs accepted for examination will be subject to the biodiversity net gain requirement?

[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]

It is not apparent why NSIPs require a longer transition period than many other developments which can be highly complex in nature and scale. Residents would understandably feel aggrieved if an extended transition period led to local failure to deliver nature recovery via a NSIP and developers would be frustrated if their developments were already delivering a share. The transition periods for NSIPs should therefore be brought into line with all other developments.

Question 20

Do you agree that a project's acceptance for examination is a suitable threshold upon which to set transition arrangements?

[Yes (please explain why) / No (please explain why not) / Do not know]

As per the response to question 19, it is not apparent why NSIPs require a longer transition period than many other developments which can be highly complex in nature and scale. The transition periods for NSIPs should be brought into line with all other developments.

NSIP off-site gains and a 'portfolio approach'

Question 21

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?

[Yes (please explain why) / **No (please explain why not)** / Do not know]

Tipping the balance to make delivery on existing landholdings easier introduces greater risk that the delivery of biodiversity net gain will fall outside of the local area to a NSIP. There is a risk to residents that a NSIP causes a local reduction in biodiversity with the compensation/gain being remote and unsatisfactory to residents of the Borough.

Process and demonstrating biodiversity net gains

Question 22

Do you consider that this broad 'biodiversity gain plan' approach would work in relation to NSIPs?

[Yes / No (please explain why not) / Do not know]

Yes, broadly. However, it is not clear why NSIPs need to be given a different pre-development biodiversity value date for those occasions where habitat degradation has occurred. This should be consistent between NSIPs and other development. NSIPs should not be benefitting from intentional habitat degradation; this goes against the aspirations of national government to halt decline and achieve nature recovery, as was legislated long before the provisions set out in the Environment Act.

Question 23

Should there be a distinction made for NSIPs between on-site habitats (which are subject to the biodiversity net gain percentage) and those habitats within the development boundary which are included solely for environmental mitigation (which could be treated as off-site enhancement areas without their own gain objective)?

[Yes (please explain why) / No (please explain why not) / Do not know]

Habitats required for environmental mitigation are an integral part of any NSIP; the NSIP design is unacceptable without the environmental mitigation. Therefore, these areas must be 'on-site' and should not be considered separate to the project and the BNG requirement.

Question 24

Is there any NSIP-specific information that the Examining Authority, or the relevant Secretary of State, would need to see in a biodiversity gain plan to determine the adequacy of an applicant's plans to deliver net gain (beyond that sought in the draft biodiversity gain plan template at Annex B)?

[Yes (please state what information) / No / Do not know]

Given that NSIPs can cross local authority boundaries and Local Nature Recovery Strategy boundaries, it will be necessary for there to be a nested structure to the net gain plan, so that it can account for the spatial and strategic significance variations at all scales.

Maintenance period for Nationally Significant Infrastructure Project developments

Question 25

Do you think that 30 years is an appropriate minimum duration for securing off-site biodiversity gains allocated to NSIPs?

[Yes / Yes, but it should be reviewed after practice and biodiversity gain markets are evaluated / No, it should be longer / No, it should be shorter / Do not know]

It would seem sensible that the same minimum duration is applied to both NSIPs and other development. That way those negotiating conservation covenants can do so with a view to supplying to either market.

Compulsory acquisition

Question 26

Are further powers or other measures needed to enable, or manage the impacts of, compulsory acquisition for net gain?

[Yes, to enable compulsory acquisition (please explain what is needed) / Yes, to manage impacts of compulsory acquisition (please explain what is needed) / Yes, both (please explain what is needed) / No / **Do not know**]

[No further comments.](#)

Marine infrastructure

Question 27

Is any guidance or other support required to ensure that schemes which straddle onshore and offshore regimes are able to deliver biodiversity net gain effectively?

[Yes (please explain what is needed) / No / Do not know]

This question is best answered by other LPAs in a different geographic situation to Wokingham Borough, which is located in Berkshire and landlocked.

Part 3: How the mandatory biodiversity net gain requirement will work for Town and Country Planning Act 1990 development

Biodiversity gain plan

Question 28

a) Do you agree with the proposed content of the biodiversity gain information and biodiversity gain plan?

[Yes / No (please explain why not) / Other (please tell us more) Do not know]

No further comments.

b) Do you agree with the proposed procedure for the submission and approval of biodiversity gain information and the biodiversity gain plan?

[Yes / No (please explain why not) / Other (please tell us more) Do not know]

It is fundamental that the core elements of biodiversity gain information are considered prior to determination. It is likely that the conditions of approval and any specific obligations will need to be agreed prior to determination, to ensure the complete biodiversity gain plan is viable. Allowing for this to be a single or two stage process gives appropriate flexibility to manage the vast spectrum of project proposals.

Question 29

We will continue to work with external stakeholders and industry on the form and content of the template. Do you agree with the proposed information to be included in a biodiversity gain plan as shown in the draft template?

[Yes / No (If not, is there anything in particular that ought to be removed, added, or changed to make the biodiversity gain plan fit for purpose?) / Other (please tell us more) / Do not know]

Things that need to be added:

- a) Any existing relevant obligations or agreements on-site – it will be important to capture whether there are existing expectations which need to be compensated or carried forward to the post-development scenario.
- b) Any existing relevant obligations or agreements off-site – it will be important to demonstrate that off-site measures pass the additionality test and where ‘stacked’ with other funding, that these are compatible.
- c) Summary of how trading rules have been satisfied.
- d) Where off-site provision of units is required in the case of a large site that is providing units to more than one project, some form of position statement to show that the units are available and not at risk of being double counted on different projects will be required.

Off-site biodiversity gains

The use of off-site biodiversity gains

Question 30

Do you agree that further guidance is needed to support decision-making about what constitutes appropriate off-site biodiversity gains for a given development?

[Yes (please state what in particular would help most) / **No** / Do not know]

This should already be covered in the Metric guidance and trading rules.

Question 31

How should the UK Government encourage or enable developers and landowners to secure biodiversity gain sites for longer than the minimum 30-year period?

Monitoring and reporting by local authorities to national government should trigger the offer from Natural England/Defra to automatically roll those schemes delivering high distinctiveness habitat in moderate or good condition into environmental benefit grant schemes.

Regulations could set out how sites being considered for delivery of biodiversity units post the 30 year minimum (in other words, providing a second round of biodiversity net gain for a different development), must take the minimum baseline as being that reported at the end of the 30 year period; degradation to a lower value habitat or condition does not lead to consideration of value on 30 January 2020 but instead value from the final monitoring report.

The market for biodiversity units

Question 32

Do you agree with our proposals for who can supply biodiversity units and the circumstances in which they may do so?

[Yes / No (please explain why not) / Other (please tell us more) / Do not know]

Broadly, yes - please see answer to Q33.

Question 33

Do you agree that developers which are able to exceed the biodiversity gain objective for a given development should be allowed to use or sell the excess biodiversity units as off-site gains for another development, provided there is genuine additionality?

[Yes / No (please explain why not) / Other (please tell us more) / Do not know]

This would effectively set the biodiversity gain objective for a given development as a maximum as well as a minimum. It is unclear whether government analysis has considered the implications of having a maximum gain or whether this would slow nature recovery and decrease the potential to meet national nature recovery targets. This should only be allowed if the analysis clearly demonstrates that it does not put the delivery of national nature recovery targets at risk.

If allowed, the demonstration of likely excess biodiversity units and how the additionality test is met must be included in the complete biodiversity net gain plan for the project, as that is the only time an LPA can confirm it is satisfied that these units are not required to satisfy the development otherwise effecting the change.

Any creation of biodiversity units over and above those set out in the complete biodiversity net gain plan (e.g. by creation of a higher distinctiveness habitat or higher condition score), could be allowed to be used as off-site gains for another development, but this should be to the credit of the landowner/manager maintaining the habitat, as the responsible party for the uplift.

Question 34

Do you agree with the proposed scope of the UK Government's role in facilitating the market, as set out above?

[Yes / No (please explain why not) / Other (please tell us more) / Do not know]

Broadly, yes. One crucial aspect that the UK Government must take on in facilitating the market is to include the status of allocation/consumption of any registered units on the biodiversity gain site register. This cannot be left to disparate planning authorities or brokers to monitor and keep track, as registered sites may have their units allocated to many different projects, not all of which may be local. The UK Government register will be needed to prevent fraud and double counting.

Habitat banking

Question 35

Are the proposals outlined here sufficient to enable and encourage habitat banking?

[Yes / No (please specify what else could be done and why it is needed) / Do not know]

Habitat banking and ongoing monitoring could demonstrate delivery of habitat and condition that does not follow the standard risk and temporal modifiers in the metric. Further guidance needs to be set out as to how habitat banking can accurately track unit generation until such time as the units are allocated and how justified divergence from the standard risk and temporal modifiers in the metric should be recorded. This will encourage habitat banking to plan and execute high quality habitat enhancement because it will bring a greater return on investment if the time and risk is reduced compared to the metric standard.

Question 36

Do you agree with our proposal that to be eligible to supply biodiversity units for mandatory biodiversity net gain, habitat must be created or enhanced on or after a specified date, proposed to be 30 January 2020?

[Yes / Yes, but not this specific date (please suggest an alternative date and explain your choice) / No (please explain why not) / Do not know]

Yes, but the UK Government must provide resource to establish habitat value in a consistent manner across the nation on 30 January 2020 (or whichever date is subsequently used).

Question 37

Should there be a time limit on how long biodiversity units can be banked before they are allocated to a development? What would you consider to be an appropriate time limit?

[Yes (please specify what this limit should be) / No / Do not know]

Units should be allocated from a habitat bank within 30 years of creation (commencement of habitat creation) as thereafter the benefit is no longer secured through the biodiversity gain process.

The biodiversity gain site register

The criteria and process for registration

Question 38

Do you agree that the eligibility criteria for adding sites to the biodiversity gain site register are sufficient?

[Yes / No (please explain which additional criteria should be included or which existing criteria should be excluded, and your reasons for this) / Do not know]

Although see response to Q40 regarding additional required information.

Question 39

Do you agree that the register operator should determine an application within a maximum of 28 days unless otherwise agreed between both parties?

[Yes / No (please explain why not) / Do not know]

Although it would be appropriate to have facility to reset of the clock if the register operator requires additional information.

Information that will be required by and recorded in the register

Question 40

Do you agree that this list of information requirements will be sufficient to demonstrate that a biodiversity gain site is legitimate and meets the eligibility criteria?

[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]

Additional information to justify strategic significance applied for the enhancement site needs to be included. A single line reference within the metric may not be sufficient for the register operator and/or local planning authorities to be confident in the correct application of this modifier.

It is appropriate for the site being registered to be checked against the additionality and stacking rules. However, if a site is registered and not allocated, there needs to be a registration reconfirmation process undertaken periodically, to check that the site still follows these rules.

Question 41

Do you agree that the UK Government should require a habitat management plan, or outline plan, for habitat enhancement to be included on the register?

[Yes / No / Other (please tell us more) / Do not know]

Yes, this needs to be a transparent process.

Application fees and penalties for false and misleading information

Question 42

Do you agree that the UK Government should allow the register operator to:

a) set a fee for registration in line with the principle of cost recovery?

[Yes / No (please explain why not) / Other (please tell us more) / Do not know]

The registration fee will be passed on in the cost of consuming units.

b) impose financial penalties for provision of false or misleading information?

[Yes / No (please explain why not) / Other (please tell us more) / Do not know]

This is required to disincentivise the provision of false information that would undermine the scheme.

Appeals against rejection of a biodiversity gain site application or non-determination of an application by the register operator

Question 43

Do you agree with our proposal to allow applicants to appeal a decision by the register operator where the applicant believes that the registration criteria have not been appropriately applied?

[Yes / No (please explain why not) / **Other (please tell us more)** / Do not know]

Whilst the broad principle of being able to appeal a decision can be agreed with, the proposals so far do not indicate who would determine the appeal and, in the case of this being on criteria that require judgement, how the determiner will be trained and experienced in making that judgement. An appeal process would only be suitable if it was fair and independent.

Additionality

Additionality with respect to wider environmental planning policy and legislation

Question 44

Do you agree with our proposals for additionality with respect to:

a) measures delivered within development sites?

[Yes / No (please explain why not) / Other (please tell us more) / Do not know]

It should be noted that this would be contrary to Natural England's guidance regarding Suitable Alternative Natural Greenspace (SANG) used as avoidance within the Thames Basin Heaths Special Protection Area Planning Zone (which affects Wokingham Borough). However, it would mean that SANG provided within the red line of the project will be counted, thus bringing SANG into line with all other Green Infrastructure required by statute or policy, which would make consideration on a net gain plan much more straight-forward.

b) protected species and off-site impacts to protected sites?

[Yes / No (please explain why not) / Other (please tell us more) / Do not know]

It is unclear how these will be separated out and measured. For the minimum 10% figure to be calculated there needs to be a clear process in the metric for working this out and checking it. If the check is not accommodated in the metric, then it should not be required.

It is not clear whether this refers to off-site measures delivered for protected species (e.g. through district licensing). If so, then there may be a traceability issue that needs to be resolved. There may also be a timing issue as to measures approved for protected species licences off-site: which comes first, the licence approval or biodiversity net gain plan approval? Conventional licences would normally require something akin to the biodiversity net gain plan condition to be discharged prior to application, but this would not work if the biodiversity net gain plan is reliant on approval of the licence.

It is unclear whether the 10% rule also goes as far as that 10% needing to meet the trading rules. It may be that 10% is achievable outside of mitigation and compensation measures, but this relies on low distinctiveness habitat only, whereas all the medium or high distinctiveness habitat that is being created (and needs to be created to satisfy the trading rules overall) is within mitigation and compensation locations. How is this situation be resolved in relation to additionality rules?

Broadly, protected species mitigation and compensation measures being allowed to be counted in the calculation is reasonable because the mitigation and compensation is a specific requirement of the project and therefore an integral part of the project.

c) on-site impacts on protected sites, and any associated mitigation and compensation?

[Yes / No (please explain why not) / Other (please tell us more) / Do not know]

It is not clear if this question is also supposed to be considering indirect impacts on protected sites (as mentioned in the proposals bullet points).

The biodiversity net gain plan cannot be used as a substitute to Habitat Regulations Assessment for a European site (or any other process for considering the integrity of a national site). This is an independent consideration of the project relevant to the qualifying/designation features. However, if an Appropriate Assessment relies on mitigation measures which generate a measurable habitat

change (e.g. SANG creation) then these measurable habitat changes should be included in the net gain plan for the project.

d) achievement of River Basin Management Plan Objectives?

[Yes / No (please explain why not) / Other (please tell us more) / Do not know]

A checks and balances process must be defined to ensure that these measures are included only where they are not subject to grant funding or other support measures that would otherwise be subsidising the unit cost and calling into question the additionality.

e) the strengthened NERC Act duty on public authorities?

[Yes / No (please explain why not) / Other (please tell us more) / Do not know]

If public authorities are otherwise excluded from generating and selling biodiversity units but still have a strengthened duty under the NERC Act, then the UK Government will need to supply additional funding to cover the cost of the additional duties. Allowing public authorities to generate and sell biodiversity units could reduce the cost of the additional duties mandated.

Enhancements in statutory protected sites for nature conservation

Question 45

Do you think that A) the non-designated features or areas of statutory protected sites and/or B) local wildlife sites and local nature reserves, should be eligible for enhancement through biodiversity net gain?

[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]

It is too complicated to disentangle the non-designated features and designated features of statutory protected sites for both category A and B sites to be eligible at present. It is better to exclude category A) at present and review this once the skill and expertise in the market has matured.

It is essential that category B) sites are eligible, as there is otherwise no statutory requirement for their biodiversity enhancement.

Question 46

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?

[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]

This question is not directly relevant to Wokingham Borough given it is in a landlocked location, however it would be sensible for there to be both a range and a height above high-water mark limitation, if this exception is allowed as both are equally relevant.

Stacking of payments for environmental services

Question 47

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?

[Yes / No (please explain why not) / Other (please tell us more) / Do not know]

Stacking is appropriate where there are additional outcomes and the same outcome is not delivered twice. However, other environmental services such as recreation may compromise the deliverability of some habitat condition scores, thus a process of checks and balances within the registration process and biodiversity net gain plan approval process is required, to account for compromises between stacked benefits.

Statutory biodiversity credits

Credit price and sales

Question 48

Are these proposals for statutory biodiversity credits sufficient to:

a) Ensure, when supported by suitable guidance, that they are only used by developers as a last resort?

[Yes / No (please explain why not) / **Other (please tell us more)** / Do not know]

It is only when the prices for statutory biodiversity credits are announced that it will be clear whether this is a last resort. As the guidance is yet to be published there is no way of assessing whether it is suitable or not. However, as is the case for all guidance, there is likely to be a degree of variation in interpretation by developers as compared to LPAs. The real proof of whether statutory biodiversity credits are a last resort is when they are priced higher than the local market.

b) Mitigate the market risk associated with the sale of statutory biodiversity credits by the UK Government?

[Yes / No (please explain why not) / **Other (please tell us more)** / Do not know]

Statutory biodiversity credits will create an upper price limit to biodiversity units. This risks suppression of supply to a free market and its collapse. The proportion of statutory biodiversity credits being required within the market needs to be kept under regular review, with it being a diminishing figure. There must be the flexibility to modify the credit price reasonably quickly when necessary, to reduce the suppression of supply. It is not clear from the proposals just how frequent and responsive the credit price review process will be.

Question 49

Do you think there are any alternatives to our preferred approach to credit sales, such as those outlined above, which could be more effective at supporting the market while also providing a last resort option for developers?

[Yes (please explain the alternatives and your reasoning) / **No (please explain why not)** / Other (please tell us more) / Do not know]

To get to the point of requiring statutory biodiversity credits (as a last resort) the market must have been shown to have failed for the development being considered. Allowing for any refund process (should a supply of biodiversity units then become available later) consequently reduces the supply available to those future developments and pushes the risk of market failure onto a different development/developer; it does not resolve the root cause of the market failure, so there cannot be a preferred alternative.

Question 50

Do the principles for how we will set, and review credit price cover the relevant considerations?

[Yes / No (if not, what further considerations should be included?) / Other (please tell us more) / Do not know]

It is not clear how the credit price set or review copes with the variety of credits required to satisfy trading rules. Reference to 'a' credit price is of concern, as there will inevitably need to be more than one to satisfy trading rules.

It is not clear whether the principles allow for regional variation in credit price, which could aid both the development (and balance) of the market supply and provide a reasonable, cost-effective way to achieve net gain for developers.

Further information is required to set out the principles review frequency.

Credit investment

Question 51

Do you agree with the proposed principles for credit investment?

[Yes / No (please explain why not) / Other (please tell us more) / Do not know]

WBC broadly agree with proposed principles, except that there will not be a traceable link between an individual development that has purchased credits and sites that have received investment. This means that there is no scrutiny of the unit delivery, taking into account the temporal risk multiplier, the spatial risk multiplier and /or any trading rules for the scheme purchasing credits. This increases the risk of failure to deliver one unit per credit sold.

Reporting, evaluation, and monitoring

At a project level

Question 52

Do the above project-level management, monitoring, enforcement, and reporting proposals seem sufficient, achievable, and not overly burdensome on practitioners, developers, or planning authorities?

[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]

The proposals indicate that monitoring reports should be secured so they will always be submitted to planning authorities which suggests planning authorities are expected to take an interest in delivery of off-site units secured by conservation covenants. The Environment Act allows conservation covenants to be agreed in the absence of the planning authority. It also allows such covenants to be amended in the absence of oversight by the planning authority. This means there is a risk that a planning authority would only discover any modifications many years later, within a monitoring report.

It is not clear how the planning authority can take enforcement action when there is failure to deliver a biodiversity net gain outcome expected through a conservation covenant. If the responsible body for the conservation covenant refuses to take enforcement action or agrees a modification to the conservation covenant that has a material difference to the delivery of the expected biodiversity net gain, how will the planning authority be able to force action to make up this deficit? The regulations and UK Government guidance needs to set out standard conditions and obligation wording to ensure that this loophole is closed.

There is potential for one development to be responsible for monitoring reports being submitted for several habitat creation projects started at different times. There may be a single habitat creation project needing to report on behalf of several different developments to several different planning authorities. This would quickly result in a very complex and confusing situation where monitoring becomes very hard to track. To solve this problem, there needs to be a commitment to develop a project-level case management system that can be widely adopted by planning authorities to track and report at this level.

There has so far been insufficient funding declared to cover the additional costs that planning authorities will incur in respect of monitoring, reporting and enforcement and this is a significant concern.

Question 53

Do you think earned recognition has potential to help focus enforcement and scrutiny of biodiversity net gain assessments, reporting and monitoring?

[Yes (please explain why this would help) / No (please explain why this would not help) / Do not know]

Earned recognition should drive up the standard of monitoring and reporting and help improve the confidence that planning authorities have in the results presented. This will reduce the scrutiny cost for planning authorities.

At a policy level

Question 54

Do the above proposals for policy-level reporting, evaluation and enforcement seem sufficient and achievable?

[Yes / Yes, but not sufficient / Yes, but not achievable / No (if not, how could they be improved?) / Do not know]

The reporting requirements would be improved by splitting them into two different streams. It would be more appropriate for the gains and losses and quantitative actions reporting to be achieved through a live process, so data can be kept up to date and entered as and when. Reports should be able to be run for any time period that the viewer cares to choose. Other elements of the reporting are more stable and would therefore suit periodic reporting.

It is not clear how Local Nature Recovery Strategies (LNRS), indicated as required to reference in support of strategic significance multiplier reporting, are to coincide with the reporting periods required for biodiversity net gain. What happens if the LNRS has not been agreed for a significant part of the future reporting period?

Question 55

Considering the data requirements set out above and in greater detail in Annex C:

a) is there any additional data that you think should be included in the Biodiversity Reports?

[Yes (please describe the data and explain the reasons for your view) / No / Do not know]

Reporting is missing:

- 1. Gains and losses – a) Expected – summary by habitat distinctiveness types and condition scores proposed to be created.
- 1. Gains and losses – b) Resulting i) – summary of units for the three categories (currently only proposed to breakdown by number of projects which could hide the skewing factor of large projects).
- 1. Gains and losses – b) Resulting i) 2) – summary by habitat distinctiveness types and condition scores that are failed to be met. This will allow review and revision of the Defra metric risk scores (and habitat creation guidance) to recognise evidenced results.
- 2. Actions – b) Quantitative – the planning authority should be reporting the number of applications for which a de minimis exemption is applied, so it can be reviewed whether there is actually a risk of an in-combination impact over time.

b) is there any data included here that should not be required as part of the Biodiversity Reports?

[Yes (please describe the data and explain the reasons for your view) / No / Do not know]

No further comments.

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