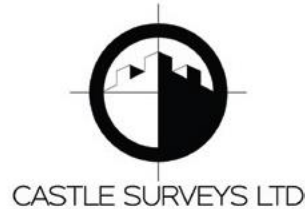


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Biodiversity Net Gain – Facts, Challenges and Case Studies

16 May 2024



FREETHS

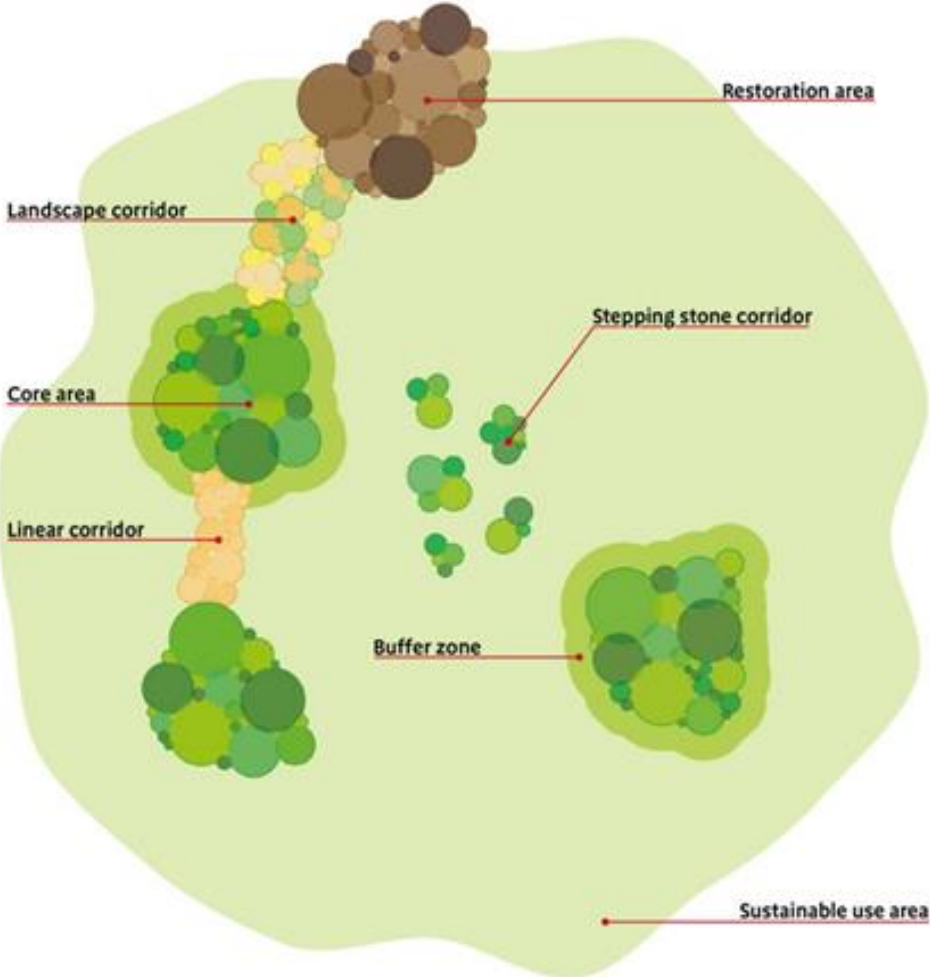
OVERVIEW OF THE MANDATORY BIODIVERSITY NET GAIN LEGAL FRAMEWORK

Penny Simpson
Partner
Planning & Environment
Freeths LLP
16 May 2024

The State of Nature in the UK

- UK one of the most nature-depleted countries in the world – only half of its entire biodiversity left, in bottom 10% of the world's countries for biodiversity
- 73 million fewer wild birds since 1970 (BTO, May 2023)
- Lost 97% of wildflower meadows in last 90 years
- 60% of species have declined, 31 declined seriously
- 90% of the UK's wetland habitats over the last 100 years





“More, bigger, better and joined”

What is Mandatory Biodiversity Net Gain?

- Applies to planning determinations of applications made on or after the start date
- Start date = 12 February 2024 for most applications
- Start date = 2 April 2024 for “small sites”
- Not subject to Mandatory BNG:
 - Permissions granted before 12 February 2024
 - Permissions granted after 12 February 2024 where the application was made before 12 February 2024
- Applies to all developments in England (subject to minor exemptions)

A new 'general planning condition'

- Development cannot commence until:
 - A **"Biodiversity Gain Plan"** (BGP) has been submitted to the local planning authority; and
 - The local planning authority has approved this BPG
- This condition cannot be removed, modified or disapplied
- The BGP must explain how the development will meet the **"Biodiversity Gain Objective"** – i.e. the requirement to deliver at least 10% BNG measured from a baseline of the **"pre-development biodiversity value"** of the development site

Calculating the biodiversity value of a site

- Biodiversity gains and losses measured in “**biodiversity units**”
- Using the **Statutory Metric**
- Metric uses habitats as a proxy for biodiversity – calculates units by taking account of the type, extent and condition of habitats.
- [Calculate biodiversity value with the statutory biodiversity metric – GOV.UK \(www.gov.uk\)](http://www.gov.uk)

Exemptions

- Does not include the following (fall outside the regime):
 - Permitted Development
 - Marine development
 - Urgent Crown development
- Does not include the following due to the operation of the Statutory Metric:
 - Where a site's baseline biodiversity score is zero (e.g. hardstanding, sealed surfaces)
 - Where temporary impacts will be restored within two years

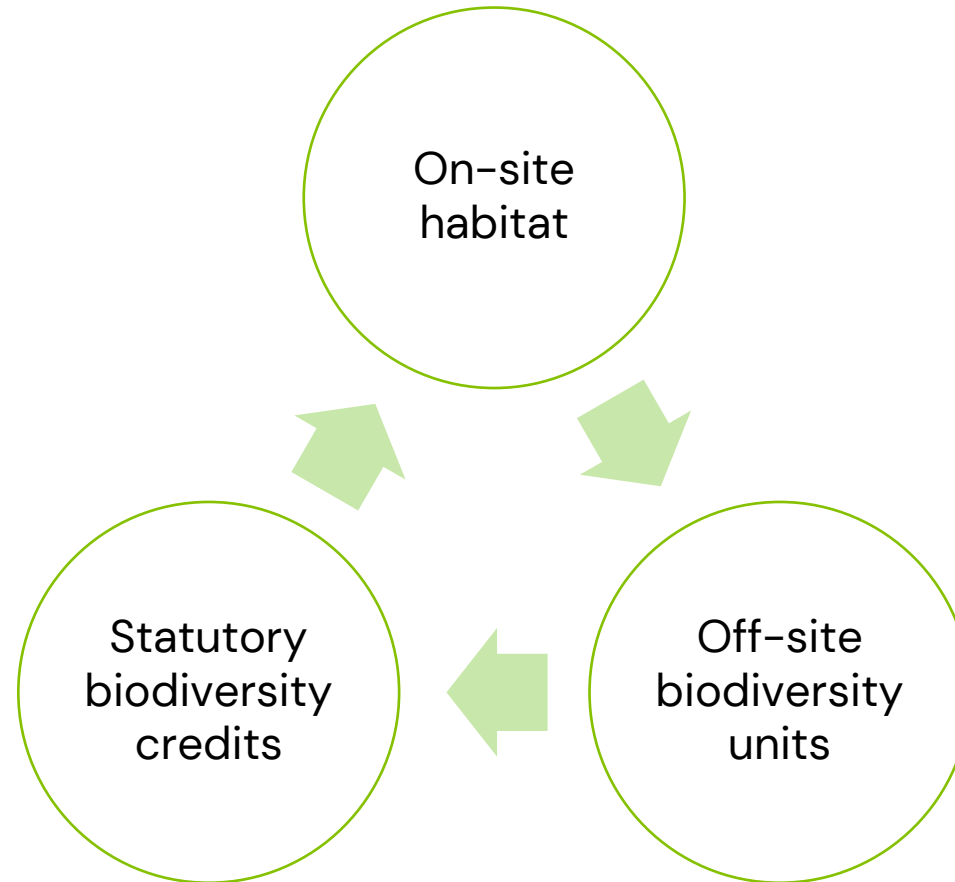
Exemptions

- Does not include the following due to statutory exemptions under the Biodiversity Gain Requirements (Exemptions) Regulations 2024:
 - “De minimis” onsite habitat area i.e. where (i) no onsite “priority habitat” is impacted; and (ii) onsite area is <25m² with a biodiversity value of >0 OR <5m length (onsite linear habitat i.e. watercourse or hedgerow)
 - Householder applications (extensions / gardens)
 - Small scale self-build and custom housebuilding where no more than 9 dwellings on plot of no more than 0.5ha (“self-build and custom housebuilding” is where individuals design and build their own homes)
 - there are more.....

Biodiversity Gain Plan

- Developer must get planning permission first
- After planning permission, LPA must get approval of the “Biodiversity Gain Plan”
- Plan must show biodiversity gain of “at least 10%” between:
 1. “pre-development biodiversity value of onsite habitats”; and
 2. “biodiversity value attributable to the development”
- Development cannot commence until LPA has approved the Biodiversity Gain Plan

- The “biodiversity value attributable to the development” is comprised of:



Using on-site biodiversity units

- **“Significant”** on-site enhancements
 - Areas of habitat enhancement which contribute ‘significantly’ to BNG
 - Maintenance for 30 years must be secured by a legal agreement (planning condition; planning obligation (s106) with LPA; or conservation covenant with a responsible body)
- **“Non-significant”** on-site enhancements
 - eg private gardens
 - Maintenance for 30 years not a legal requirement
 - But LPA still likely to secure some maintenance

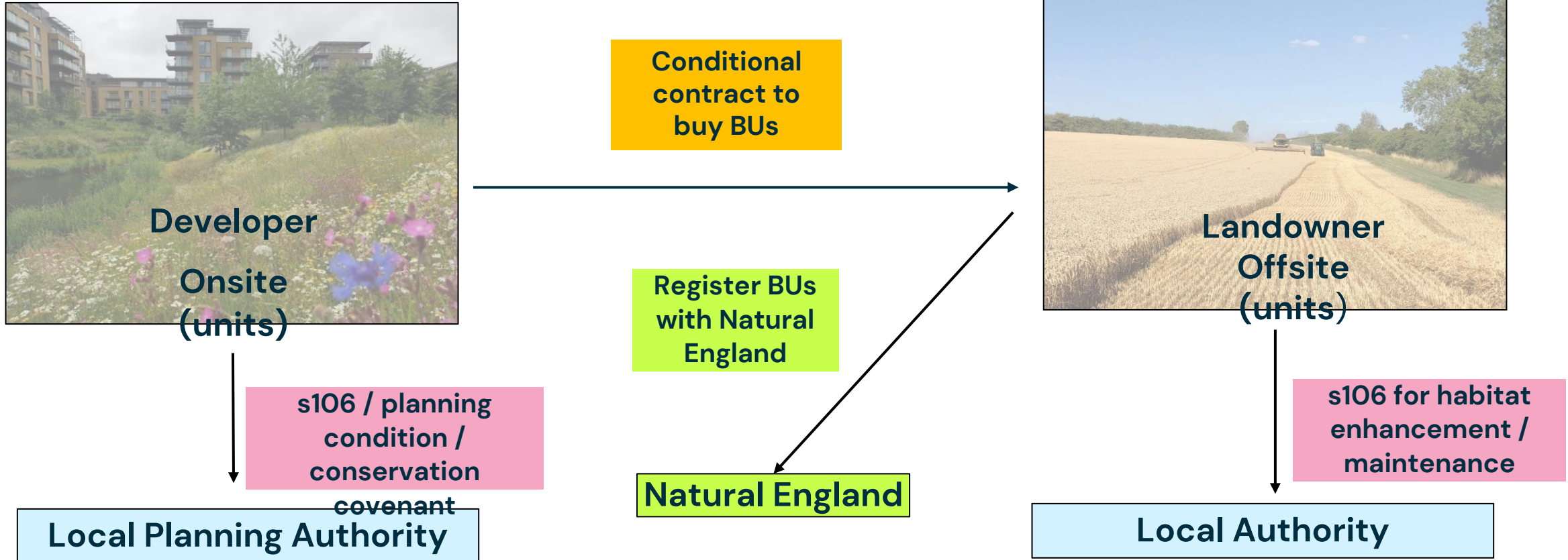
Using off-site biodiversity units

- Considerations:
 - Create off-site biodiversity units on own land OR purchase off-site biodiversity units from another landowner
 - Statutory Metric incentivises off-site BUs close to development site
 - Statutory Metric incentivises off-site BUs in areas of strategic significance, i.e. those set out in local nature recovery strategies

Off-site biodiversity units

- Must be legally secured through legal agreement between landowner of offsite land and a “policeman”:
 - Planning obligation (s.106 agreement) – policeman is LPA; or
 - Conservation covenant – policeman is responsible body
- Developer not normally a signatory
- Once legally secured (and registered as a local land charge) it must be registered on the Biodiversity Gain Site Register administered by Natural England
- Developers can only rely on *registered* off-site biodiversity units for their Biodiversity Gain Plans

Offsite biodiversity units via s106 obligation



Statutory biodiversity credits

- Government scheme
- Income used by Government to carry out enhancement works or to buy land to enhance
- Expensive as a disincentive
- 8 week application process
- Non-transferable
- Not a realistic solution!

Thank you



Penny Simpson

Partner, Sheffield

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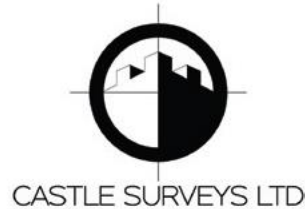
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16 May 2024



John Bristow
Senior Nature Conservation Officer
Leicester City Council

Why is BNG Important?

- *Nearly one in six species at risk of being lost from Great Britain.*



- *On average, 19% of UK species studied have seen decline since monitoring began in 1970.*



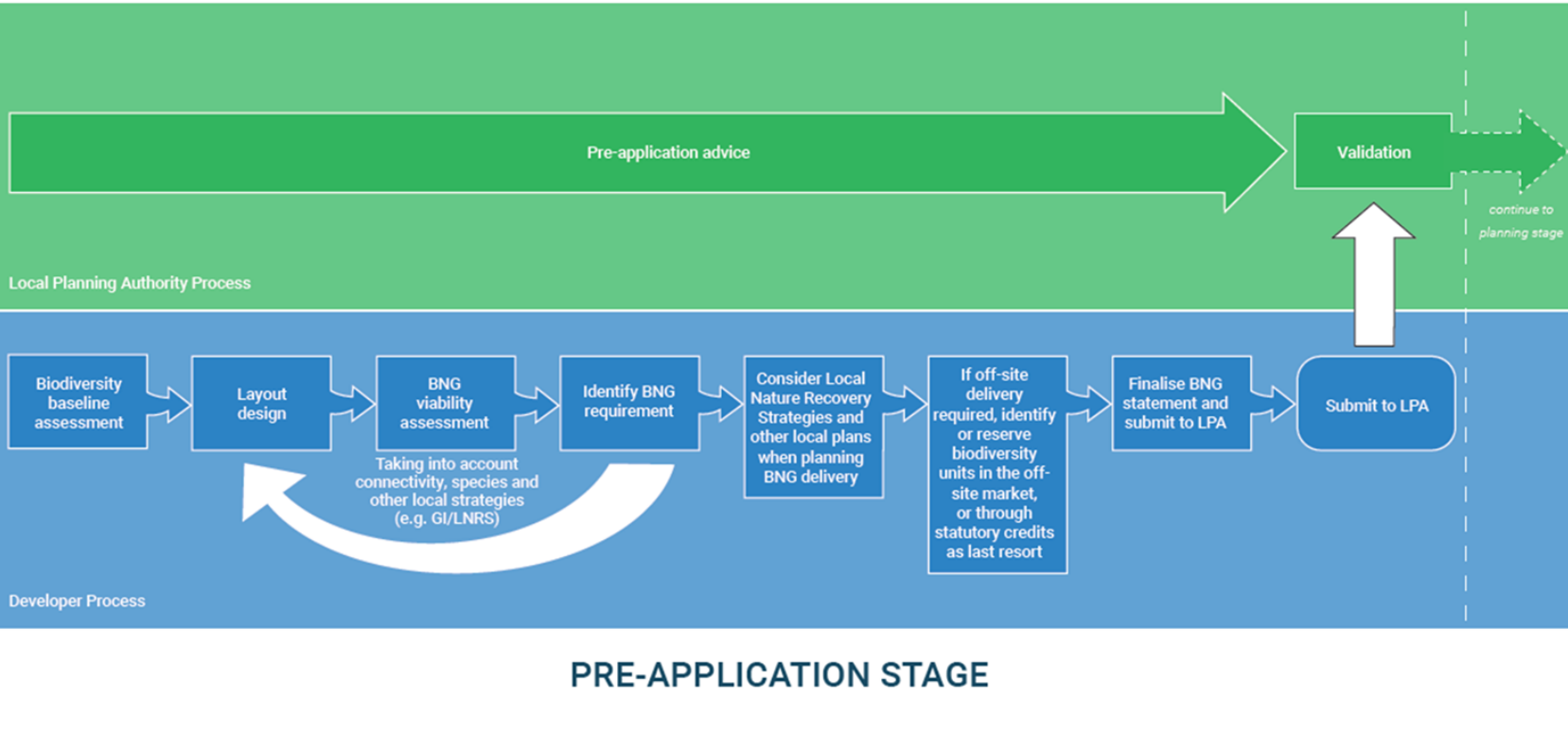
- *Habitat degradation and habitat loss key drivers for declines but **restoration projects can and do have clear benefits for nature.***

Challenges





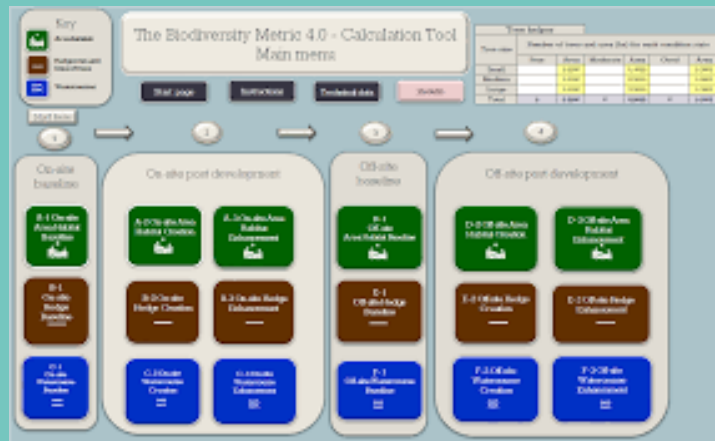
BNG Best Practice Process Flow




Validation

The national/minimum requirements plus:

- Fully completed Defra Metric
- A draft Biodiversity Gain Plan
- A draft Habitat Management and Monitoring Plan



 Department for Environment, Food & Rural Affairs

Biodiversity gain plan

Submit a biodiversity gain plan to show how your development will achieve biodiversity net gain.

When to use this form
A biodiversity gain plan shows how a development will achieve 10% biodiversity net gain (BNG). Submit this form to your local planning authority after they approve your planning application.

Unless your development is exempt, you cannot start the development until the LPA approves your biodiversity gain plan and biodiversity metric calculation tool.

1. Submission details

1.1 Date
For example, 3/11/2023

1.2 Planning application reference number

1.3 Local planning authority (LPA)

1.4 Development site address
If the site does not have an address, enter the OS grid reference.


1.5 Describe the development
Tell us about the proposed development and any changes of use (250 words).

2. Developer details

2.1 Applicant name

2.2 Company name

Page 1 of 10

 Department for Environment, Food & Rural Affairs

Habitat Management and Monitoring Plan

Site Name:

Date: Click or tap to enter a date.

Version:

Author:

Client:

Template Version 1.0 November 2023



Challenges



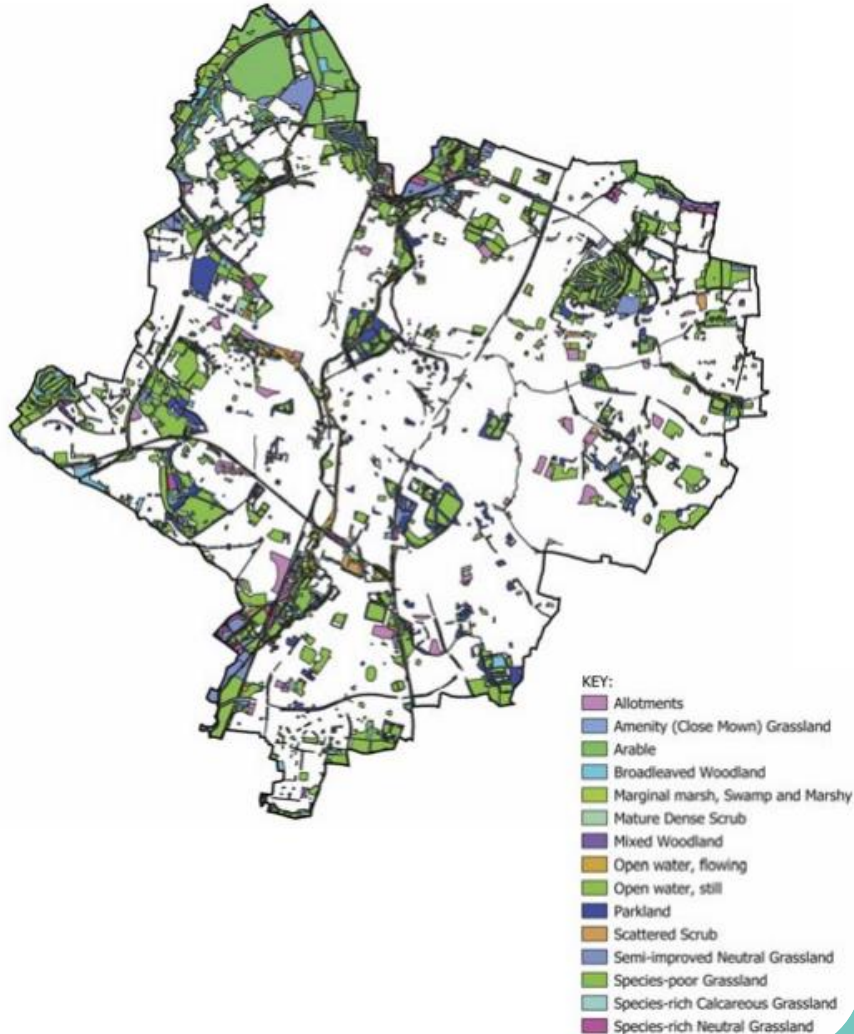
Opportunities?



Leicester City



Leicester City



- The city surface is 7335 hectares.
- 1613 hectares of the city surface is parks and green spaces (22%).
- The River Soar & Grand Union Canal.

Species Records



- 9000 Invertebrates
 - 500 Birds
 - 40 Fish
 - 80 Mammals
 - 25 Reptiles & Amphibians
 - 2800 Plants
 - 3000 Fungi, Algae & Lichens
- TOTAL = over 15,000 species**



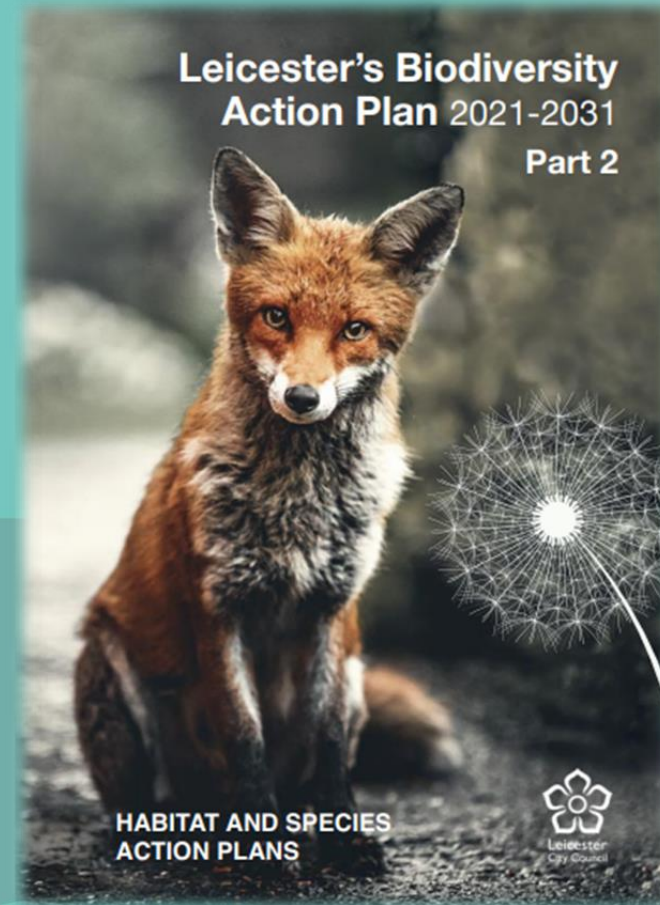
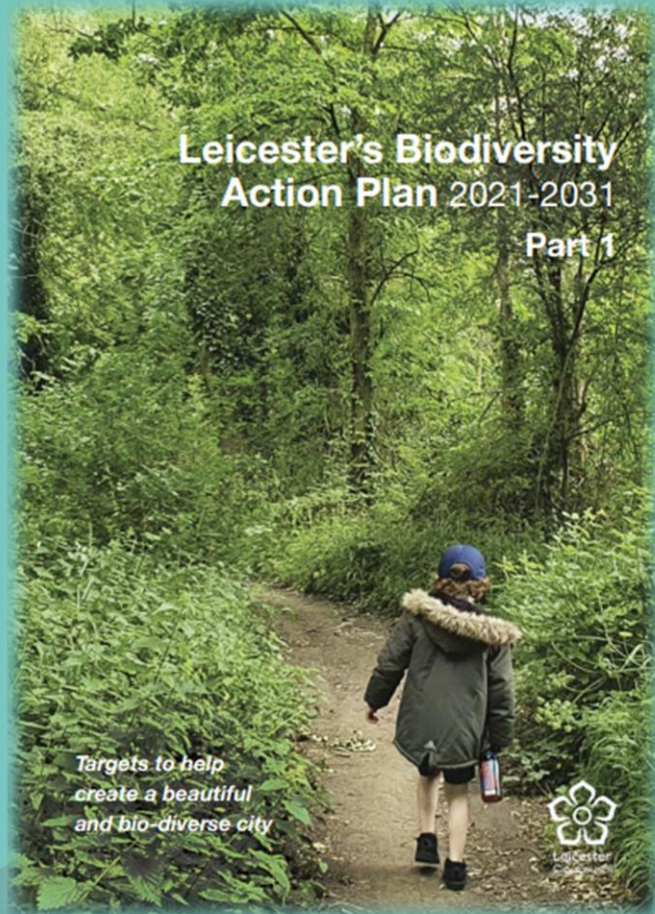
Opportunities

Improving Wildlife 'Corridors'

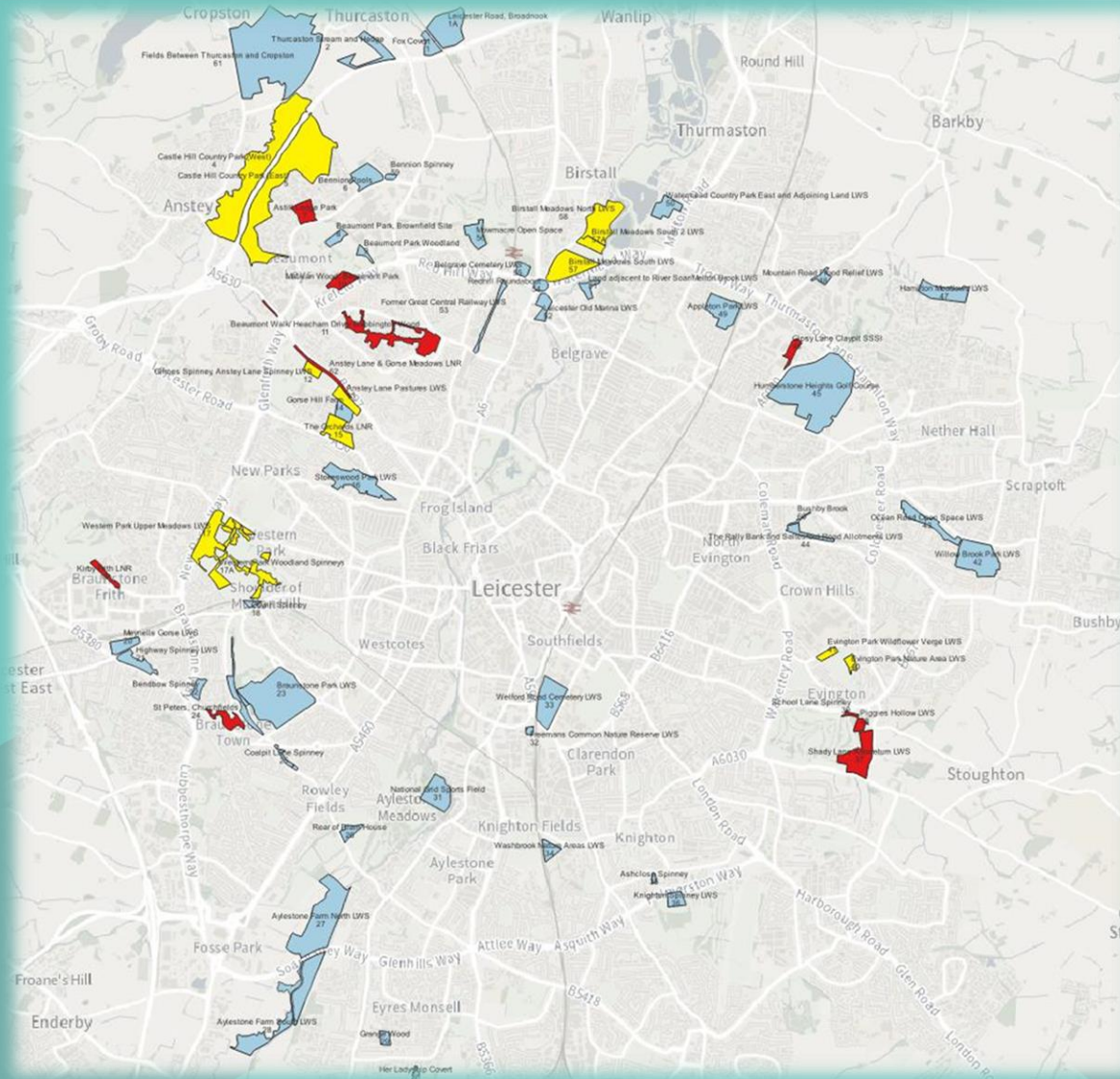
To thrive, wildlife needs a network of sites that are 'bigger, better, and more joined up'.



Opportunities



Biodiversity Opportunity Sites





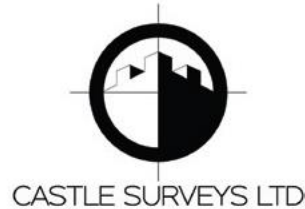


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the habitat bank

a sustainable future for the development industry

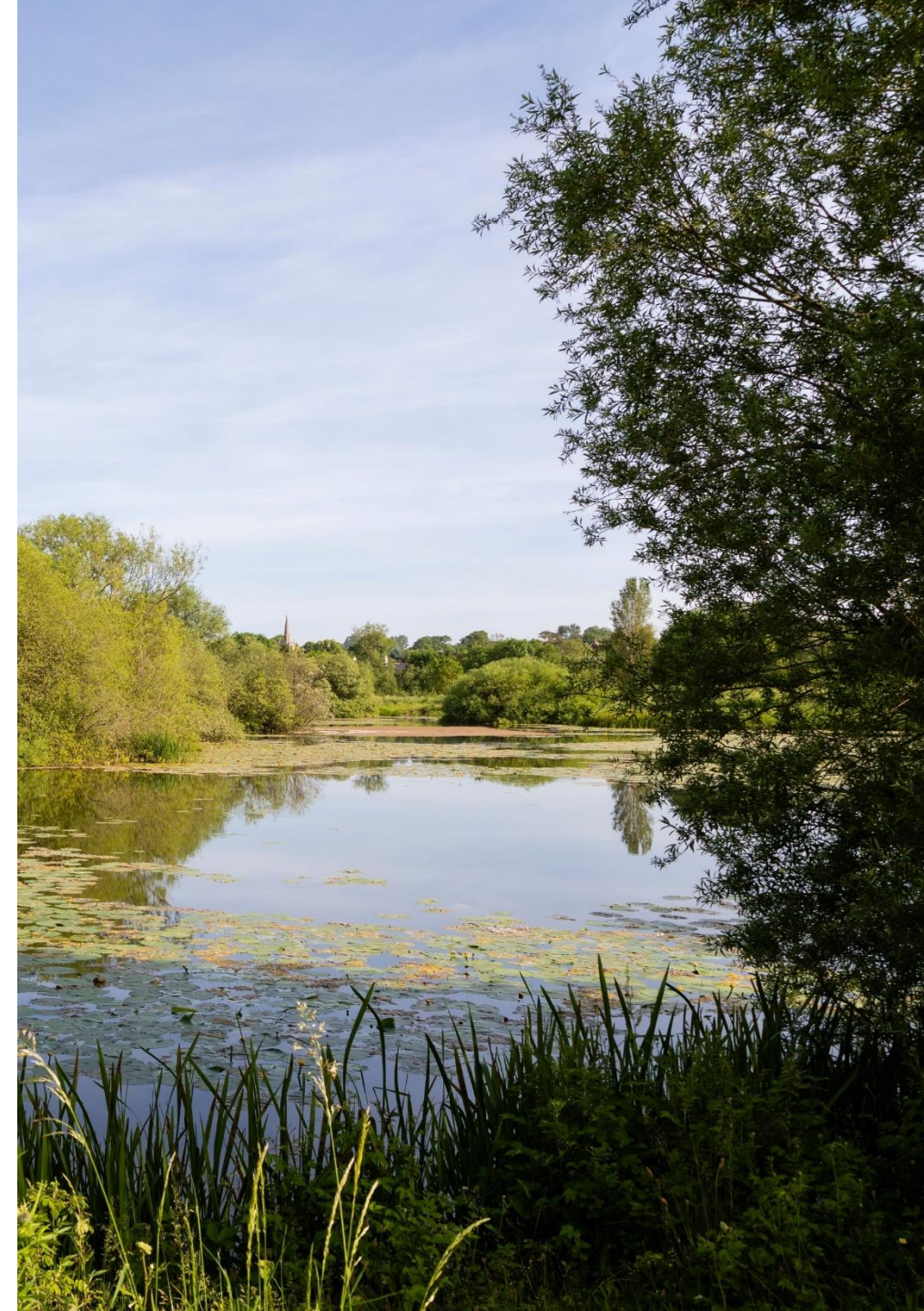


what is biodiversity net gain (BNG)

*“Biodiversity net gain (BNG) is an approach to development, and/or land management, that aims **to leave the natural environment in a measurably better state than it was beforehand.**”*

Local Government Association – Planning Advisory Service.

Google – PAS BNG





baseline assessment is critical

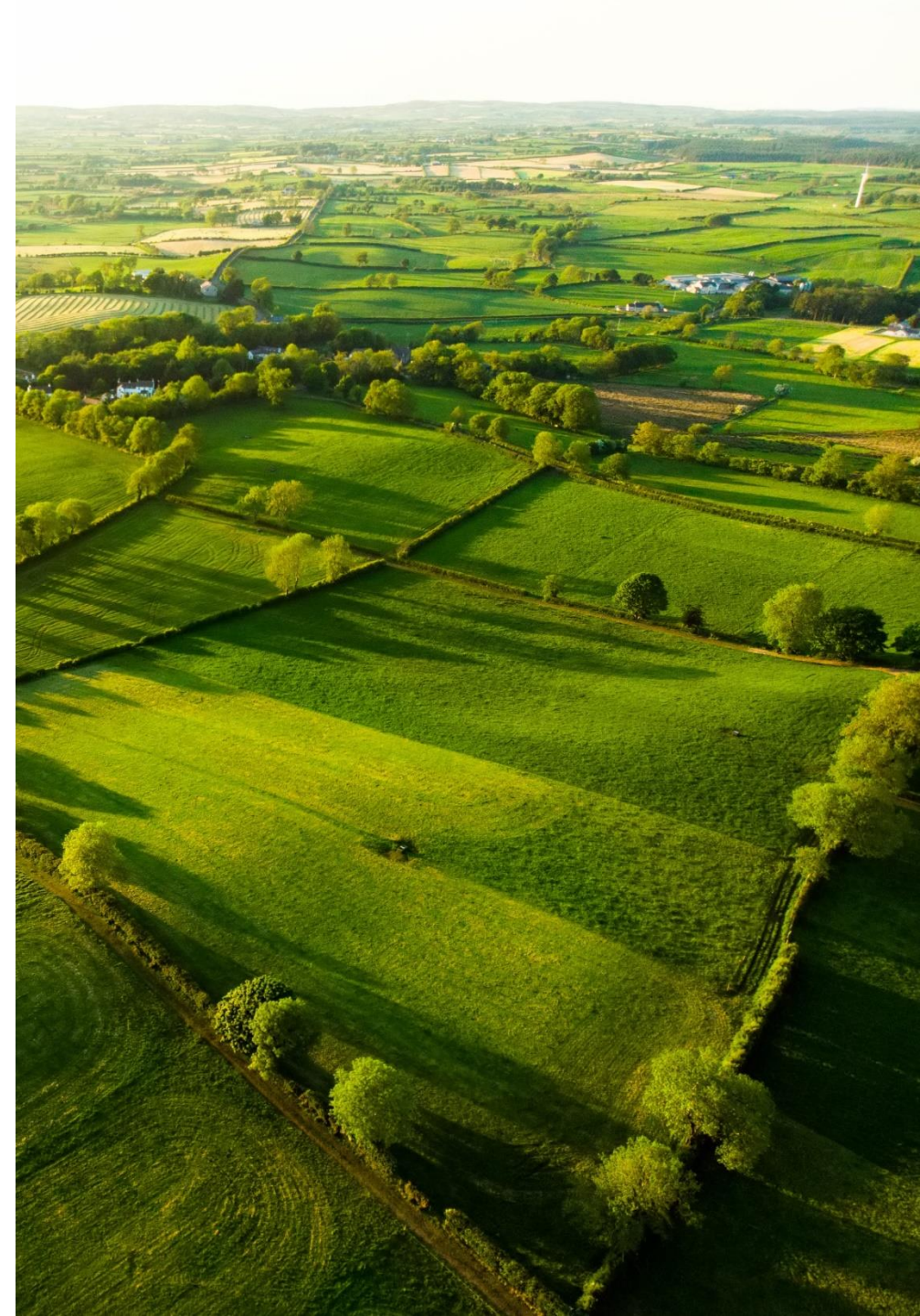
- Arable land is simple and can be assessed within reason at any time of the year.
- Pasture is more difficult and must be assessed at the right time of the year (May to August).
- Make sure the assessor has the right qualifications (Field Identification Skills Certification – FISC). Levels 1 (beginner) to 5 (professional). We require all assessors to be 3 or above.
- Be careful of habitat manipulation (intentional or accidental). Legislation allows the Local Authority to use appropriate evidence to identify manipulation and apply the precautionary approach.





trees and the metric have changed

- The way the statutory metric assesses tree loss and planting has changed.
- Trees no longer secure the increases in on-site BNG as they did in previous versions of the metric.
- Make sure where you have schemes assessed in a previous version of the metric that have not been submitted as part of a planning application are updated to take account of this change. You are likely to experience a drop in the delivery of on-site units.
- The statutory metric no longer allows the loss of medium and large trees to be met by planting small trees. Medium trees must be replaced with medium trees (trunk diameter 30cm >).





What's important and what have we learnt so far?

watercourse

watercourse

watercourse

watercourse

watercourse

watercourse

watercourse

watercourse

watercourse

watercourse

watercourse

watercourse





understand the watercourse module

- The legislation is clear that the watercourse module is engaged within the riparian zone.
- The riparian zone is measured as:
 - 10m from priority rivers;
 - 10m from other rivers and streams;
 - 10m from canals; and
 - 5m from ditches
- Any change to the habitat within the riparian zone will require either proportionate enhancement to a watercourse on site, or the purchase of watercourse units.
- Be careful water course units are rare and expensive
 - Statutory Credit price £230,000.00 + VAT





What's important and what have we learnt so far?

brownfield

brownfield

brownfield

brownfield

brownfield

brownfield

brownfield

brownfield

brownfield

brownfield

brownfield

brownfield





brownfield and reclaimed land

- The nutrient poor condition of most brownfield land and reclaimed sites is perfect for the development of high distinctiveness mosaic habitats.
- If you have such sites in your portfolio that are unmaintained check the baseline habitat to gauge what has established.
- If you are inheriting sites that are being decommissioned keep the existing site maintenance regime in place.
- If you are purchasing or bidding on such sites take advice from your ecologist to establish whether you are likely to inherit a BNG burden.





What's important and what have we learnt so far?

maintenance

maintenance

maintenance

maintenance

maintenance

maintenance

maintenance

maintenance

maintenance

maintenance

maintenance

maintenance





Are your maintenance teams ready for BNG

- Maintaining BNG habitats is specialist and very different to maintaining standard open space on development sites.
- Do your maintenance teams understand BNG, are they aware of the condition assessment sheets.
- Who will check that you are delivering BNG and how will they do it. The delivery of BNG for the mandatory 30-year term is a legal requirement.
- If it fails who is responsible and how much will it cost to put right.





the habitat bank

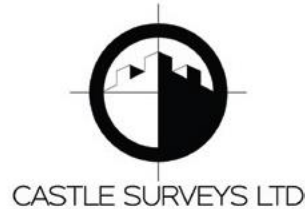
a sustainable future for the development industry

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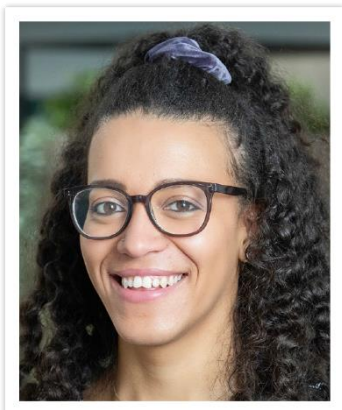
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How will Biodiversity Net Gain impact you?



**Simone
Codrington**

Sustainability Manager
Willmott Dixon



WILLMOTT DIXON

SINCE 1852

Our journey with **BNG** so far

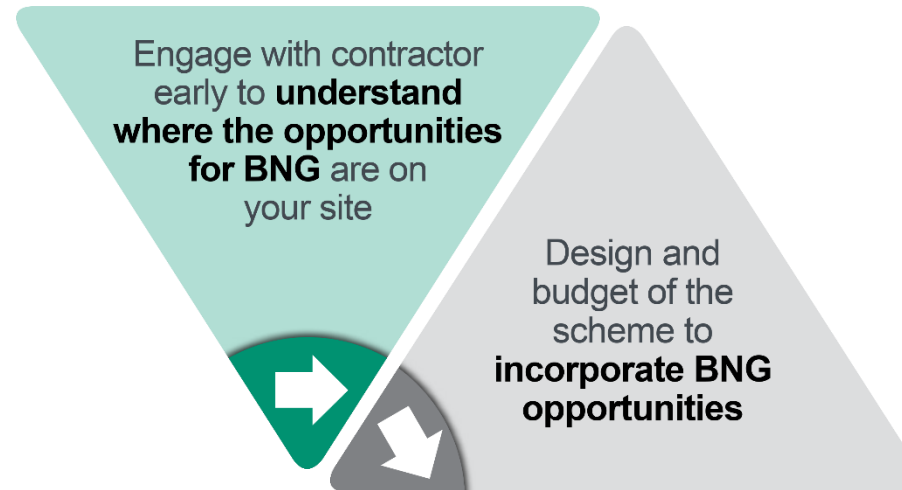


Getting started with **BNG**

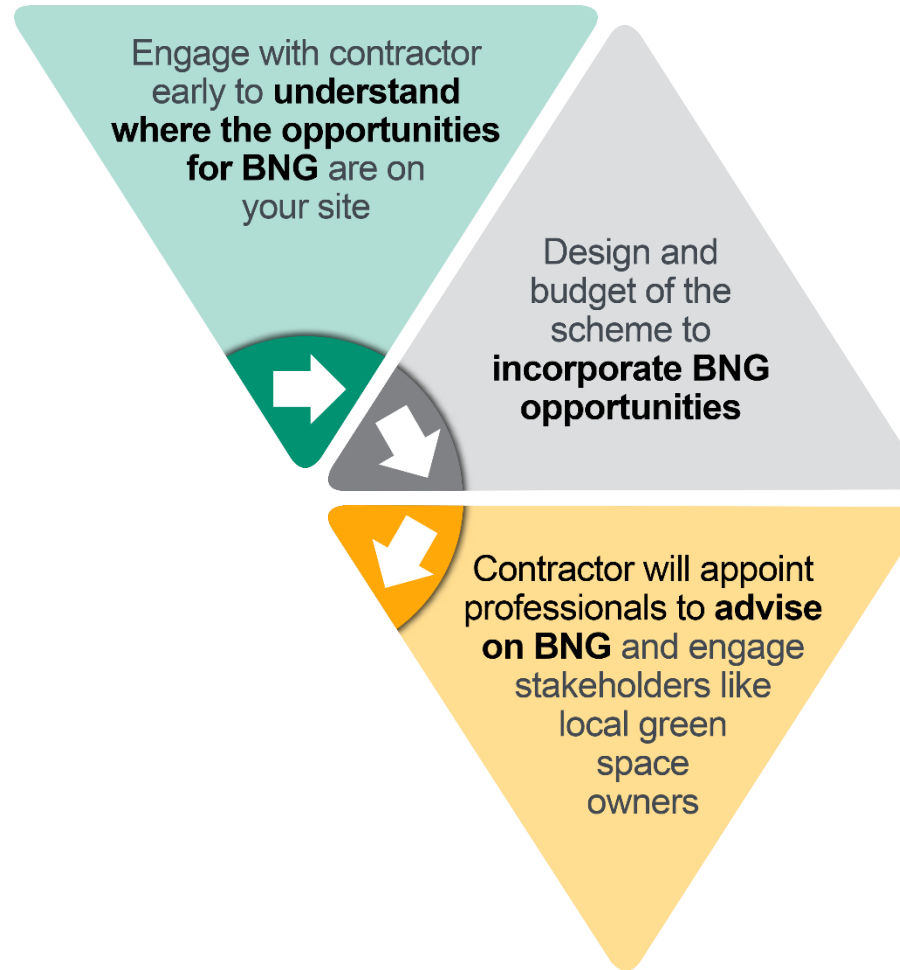
Engage with contractor
early to **understand**
where the opportunities
for BNG are on
your site



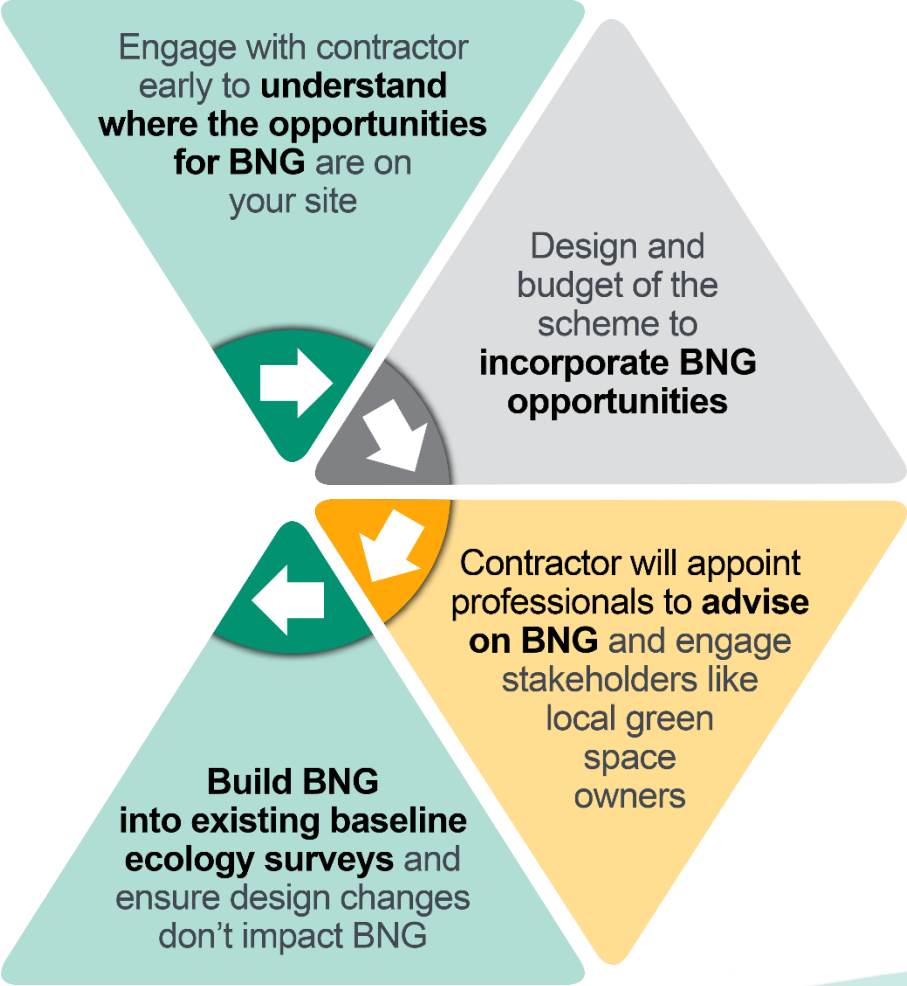
Getting started with **BNG**



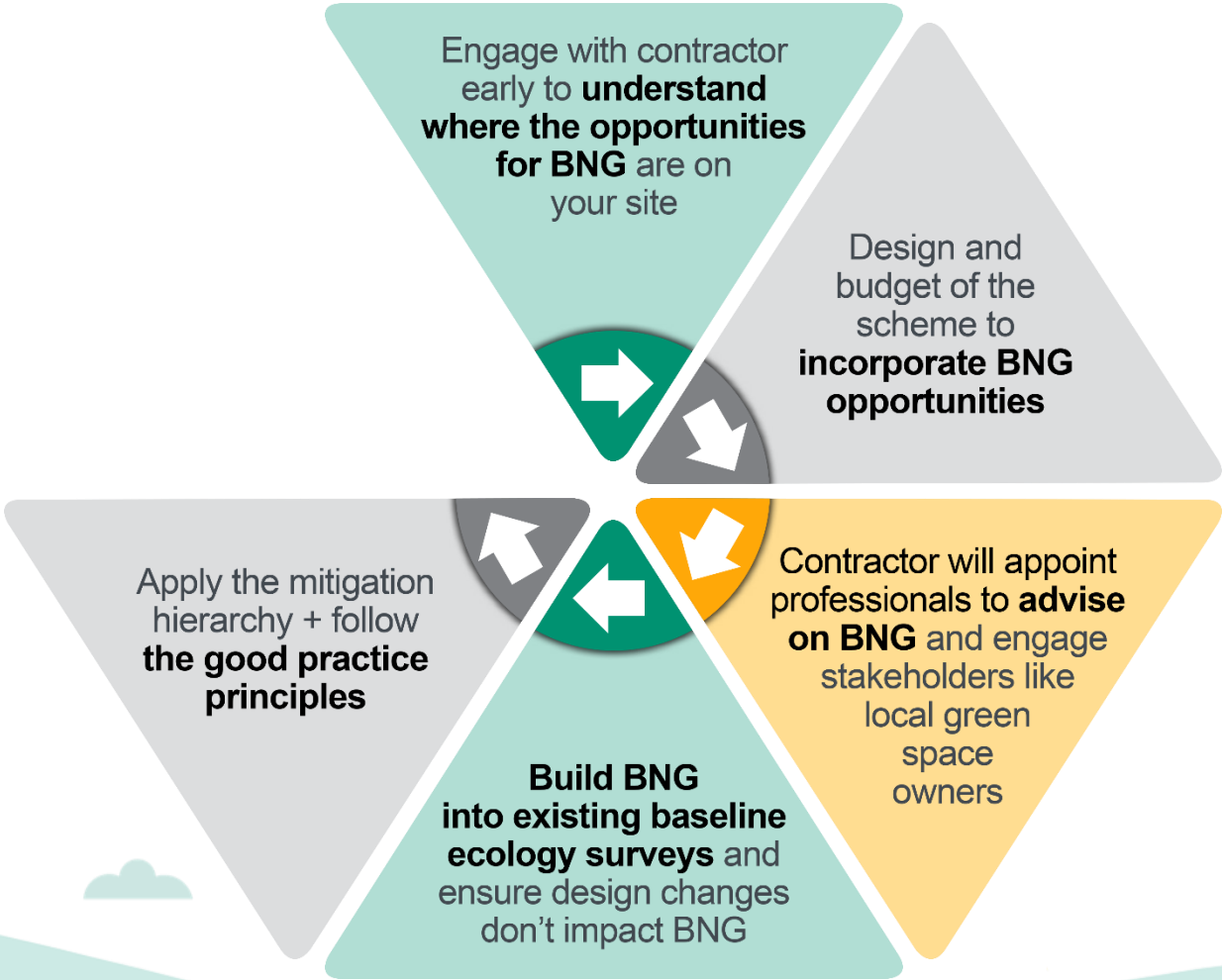
Getting started with **BNG**



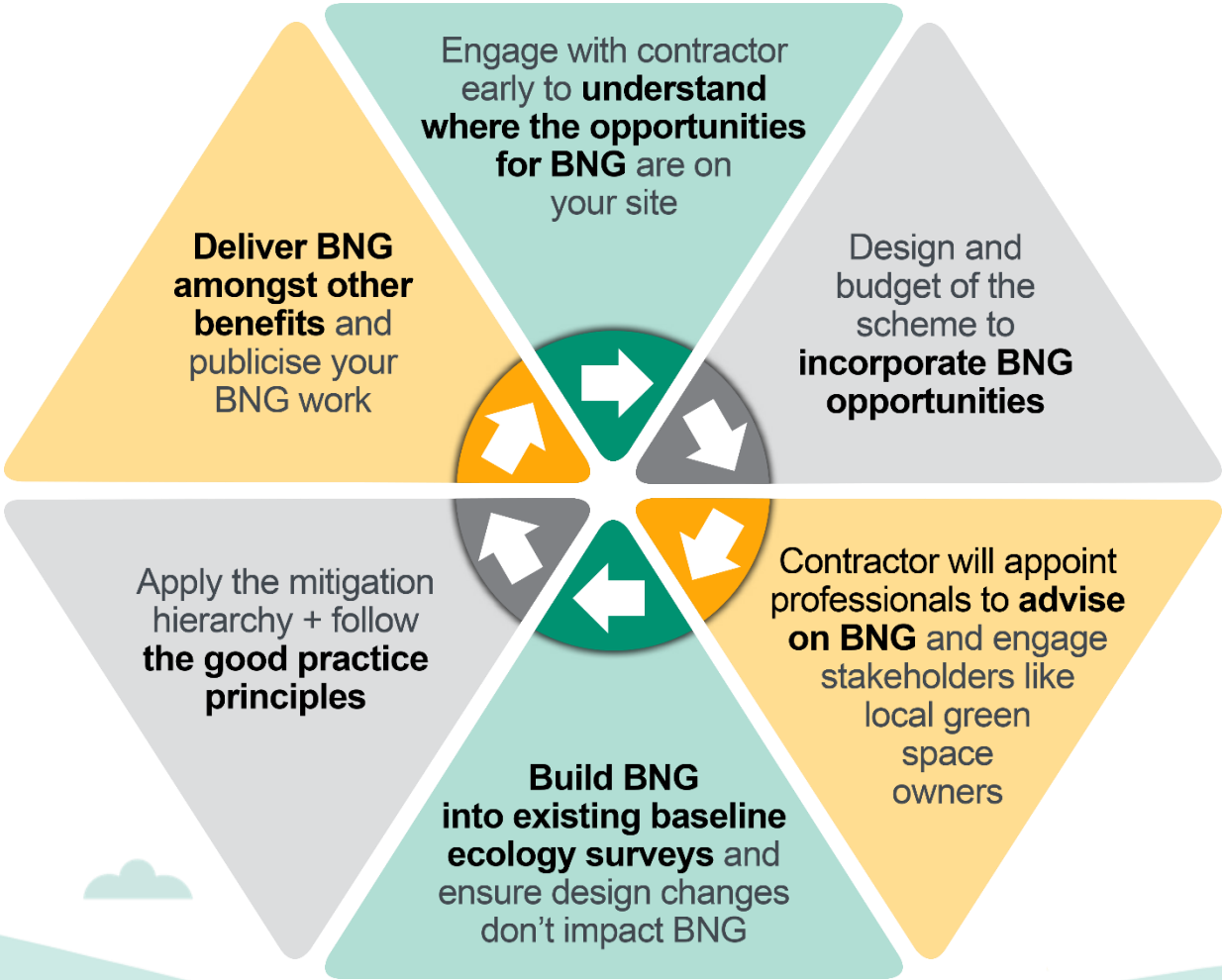
Getting started with **BNG**



Getting started with **BNG**



Getting started with **BNG**



10 best practice principles

1.
Apply the mitigation hierarchy

2.
Avoid losing biodiversity that cannot be offset elsewhere

3.
Be inclusive and equitable

4.
Address risks

5.
Make a measurable net gain contribution



10 best practice principles

1.
Apply the mitigation hierarchy

2.
Avoid losing biodiversity that cannot be offset elsewhere

3.
Be inclusive and equitable

4.
Address risks

5.
Make a measurable net gain contribution

6.
Achieve the best outcomes for biodiversity

7.
Be additional

8.
Create a net gain legacy

9.
Optimise sustainability

10.
Be transparent



Top tips for adherence

- ✓ Early engagement
- ✓ Allow suitable budget
- ✓ Aim for onsite solution with landscaping – mitigation hierarchy
 1. Avoid – avoid impacting
 2. Minimise – minimise duration, intensity and extent of impact
 3. Mitigate – rehabilitate/restore – improve degraded or removed ecosystems
 4. Offset
- ✓ Know your portfolio and land ownership, then maintain
- ✓ Link up with local landowners



BNG IN ACTION

Case study: onsite BNG - refurbishments

Customer: Brighton and Hove City Council

Project: Portslade

Refurbishment project delivers BNG through a new sensory garden and outdoor space

- ✓ End-user gains, improving health and wellbeing, workplace performance and learning outcomes.
- ✓ Created new space through a Willmott Dixon volunteering day



39%
habitat
net gain

90%
hedgerow
net gain



BNG IN ACTION

Case study: onsite BNG

Customer: Lincolnshire County Council

Project: St Lawrence SEND School

Planning for the future with a net-zero in operation facility



- ✓ Planting additional trees, wildflowers, grassland and hedgerow

9.63%
habitat
net gain

216%
hedgerow
net gain

Project: Sleaford Secure Children's Home

Aiming to be net-zero carbon in operation



57%
habitat
net gain

16.45%
hedgerow
net gain

BNG IN ACTION

Case study: offsite BNG

Customer: Rushcliffe Borough Council

Project: Bingham Arena and Enterprise Centre

A low-carbon facility
for the local community

- ✓ Offsite habitat creation with wildflowers

Onsite loss of
4.99
biodiversity
units



WILLMOTT DIXON

SINCE 1852

The importance of **engaging specialists early**

The contractor

We can add value during the early stages and feasibility of a scheme by:

Developing the BNG plan to ensure the planning process **runs smoothly**

Helping your team **understand BNG**

Finding ways to incorporate BNG on site, and suggesting the **best solutions for your budget**, programme, building users and environment

Identifying potential challenges – stopping them from becoming a problem

Opening possibilities to extend BNG to Environmental Net Gain – providing natural cooling, shade, flood protection, and improved air and water quality

Assisting with **partnerships** with local wildlife bodies and landowners for off-site solutions

Introducing you to **suitable** ecologists

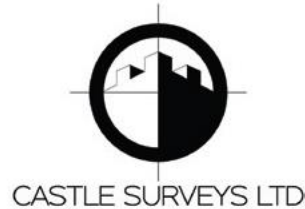


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BNG – A Consultants Perspective

Emelye Kenyon

Director – Head of Environmental Services



**PICK
EVERARD**

Deliver better together.

Enhancing Biodiversity - Habitat Creation - Retrofitting Green Infrastructure

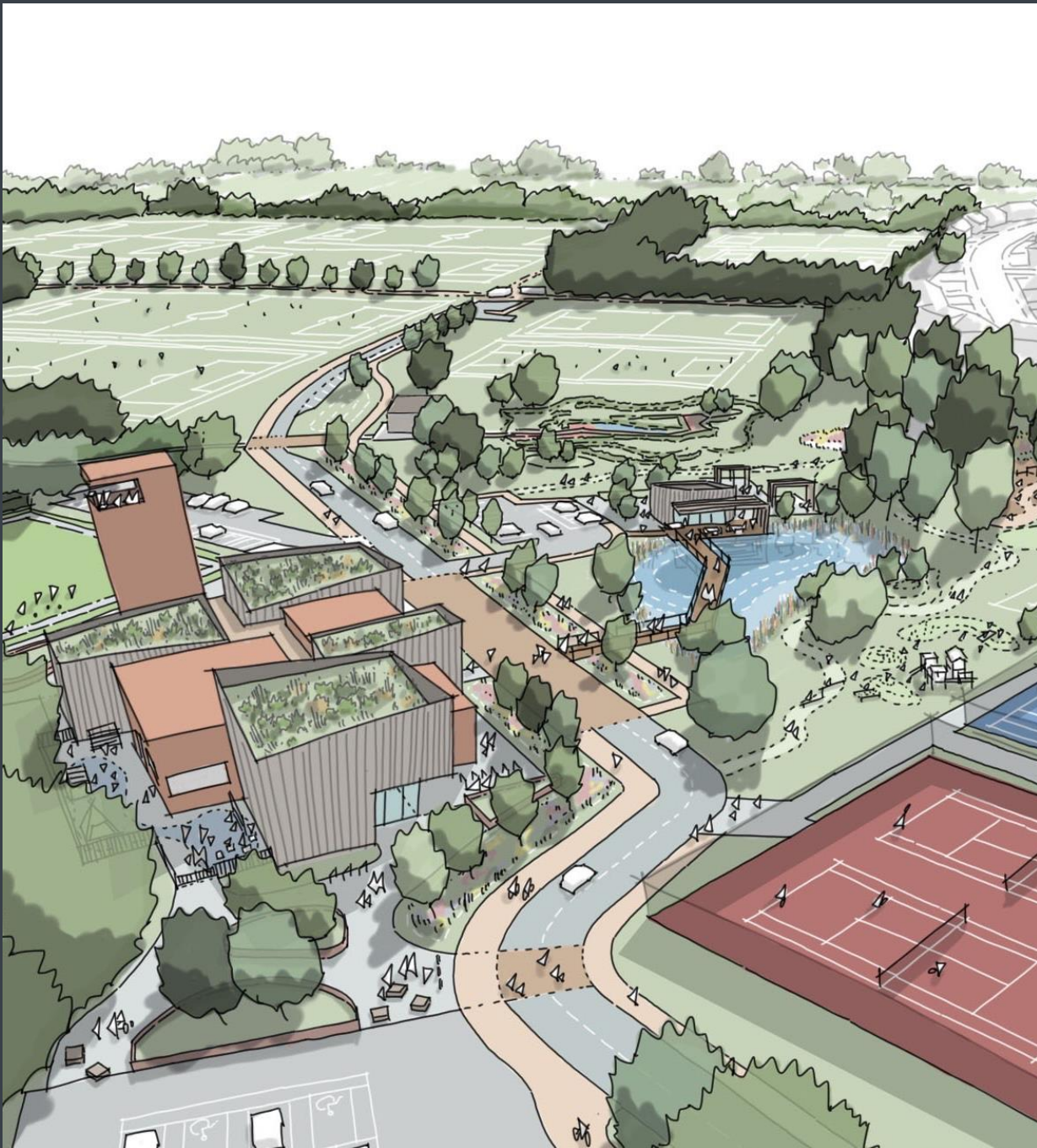


Incorporating BNG in Design

Who needs to be included

- Primary
 - Ecology
 - Landscape Architecture
 - Architecture
 - Civil Engineering
- Secondary
 - Environmental consultants
 - Flood Risk Engineers
 - Cost Management
 - Project Management
 - Other Designers





Challenges We Face

- Timing
- Proposed land usage
- Spatial limitations
- Contamination risks (which may restrict onsite biodiversity improvements)
- Flood Risks

Challenges We Face

- Offsite Solutions or purchase statutory credits as a last resort
- Management and Maintenance
 - The Environment Act 2021 mandates that habitat enhancements be maintained for at least 30 years post-development
 - Potentially indefinite maintenance for protected sites
- Different Interpretation
- Conflicting guidelines for land use / habitat requirements



Opportunities

Strategic insight

- Consider ecology from the outset of projects, providing robust solutions that align with legislative requirements and ecological sustainability.

Education and appreciation

- Greater public education and appreciation for ecological diversity in urban and rural developments.

Baseline Data

- Ensure early capture of baseline data to inform design. Speak to specialists at RIBA 0/1 to understand the potential habitats you have.



Green Infrastructure Led Approach

- Place the environment at the centre of the scheme from the outset
- Ecology and Landscape Architecture - hand in hand
 - Visioning for Development and Green Infrastructure Strategies for Open Space Requirements / BNG / Play / Sports / Suds / Active travel
 - Landscape Visual Impact Assessment (LVIA) Landscape Capacity Assessment, Biodiversity Impact Assessment (BIA), Analysis and Evaluation
 - Collaborative design approach across both the design team and client
 - Whole life costing, Habitat Management and Monitoring Plans (HMMP) Landscape and Ecological Management Plans (LEMP) & Aftercare



A modern office lounge with people sitting and talking, overlaid with an orange tint. The scene includes a man standing by a whiteboard, a man sitting in a chair, a woman sitting on a stool, and another woman standing near a planter. The room features contemporary furniture, hanging plants, and a warm, orange-toned lighting.

Thank you.

PICK
EVERARD

Deliver better together.

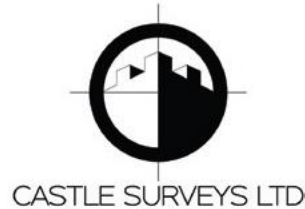
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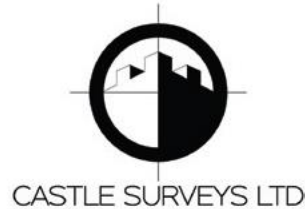
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Q&A



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