



# PLAN FOR ECOLOGY

## **Biodiversity Net Gain Design Stage Report – Statutory Biodiversity Metric**

Site:

Carn Thomas, St Mary's, Isles of Scilly

Grid Reference: SV 90693 10650

19<sup>th</sup> April 2024



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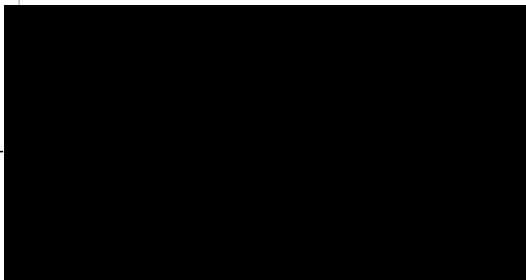
### Document Control:

<b>Site Name:</b>	Carn Thomas, St Mary's, Isles of Scilly
<b>OS Grid Reference:</b>	SV 90693 10650
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<b>Client:</b>	Westco Properties Ltd
<b>Report Reference Number:</b>	P4E3353
<b>Version:</b>	01
<b>Date:</b>	19 <sup>th</sup> April 2024

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### Declaration:

"The information, evidence and advice, which we have prepared and provided is true, and has been prepared and provided in accordance with the Chartered Institute of Ecology & Environmental Management's (CIEEM) Code of Professional Conduct. We confirm that the opinions expressed are our true and professional bona fide opinions."

<b>Kim Jelbert</b>	
<b>Lucy Wright</b>	

### Report Lifespan:

Ecological features can change over time, particularly if site management/ use changes. Typically, this Biodiversity Design Stage Report is valid for 12 months from the date of the baseline habitat survey on which the calculations are based (until 28<sup>th</sup> February 2025). However, the report may be valid for longer if the baseline habitat data is not uplifted in value in the interim.



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## 1.0 Introduction

### 1.1 Background & Purpose of Survey

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. BNG is measured using a Biodiversity Metric which calculates the number of biodiversity units present on a site before and after development and compares these figures to determine the % net losses and gains.

On 12<sup>th</sup> February 2024 the Environment Act 2021 became law, requiring all developments to provide 10% BNG measured using the Statutory Biodiversity Metric (DEFRA, 2024<sup>1</sup>).

In late January 2024, Kirkham Board, on behalf of their client Westco Properties Ltd, commissioned Plan for Ecology Ltd to undertake a UK Habitat (HAB) Classification Survey and Biodiversity Metric condition assessment of the site for the purpose of updating the Biodiversity Metric calculations and preparing a Biodiversity Net Gain Design Report to inform the planning application.

### 1.2 Objectives

This BNG Design Stage Report was prepared in accordance with current guidance on BNG reporting (CIEEM, 2021) and should be read in conjunction with the Ecological Impact Assessment report for the site (Plan for Ecology Ltd, 2024). The aims of this report are to:

- Describe the proposed development site and its planning background.
- Identify the planning policies, legislation and guidance which inform the BNG assessment.
- Describe the baseline condition of the site, the survey methods applied to establish this baseline and any limitations or refer the reader to the documents in which this information is presented.
- Describe the proposed development and how the design layout and landscaping plans have aimed to maximise the delivery of on-site BNG.
- Use the Statutory Biodiversity Metric calculations to identify the % BNG for habitats, hedges and watercourses (where relevant to the site).
- If the development is unable to deliver at least 10% BNG on-site (i.e., a net gain), identify a mechanism through which offsite BNG will be provided in order to meet this target.

### 1.3 Site Location & Description

The site, measuring c. 0.6 ha, is located within Hugh Town, in the west of the island of St Mary's, Isles of Scilly. St Mary's is located c. 43km south-west of the mainland at Land's End, Cornwall. The site formerly supported a secondary school comprising two buildings with associated gardens and amenity areas; the buildings have since been demolished and the site is currently disused. The site now comprises sparsely vegetated disused ground associated with the footprints of the former buildings in the north of the site, with extensive areas of dense scrub and introduced shrub to the south and east. There is an area of hardstanding associated with a former tennis court, and small areas of other neutral grassland that have been encroached upon by scrub and introduced shrub. Stone-faced, earth banks partially enclose the site on the east and west site boundaries. Beyond the site boundary, residential development associated with Hugh Town adjoins the site on all sides. Habitats in the wider area include coastal habitats, mixed farmland enclosed with hedges, heathland and wetland habitats, and small settlements.



Figure 1: Site location - approximate red line boundary.

#### **1.4 Proposed Site Plans**

The applicant proposes to develop the site for housing, to include a small area of public open space and a solar array. The proposed site layout (drawing 2225 01) is provided below (Fig. 2).

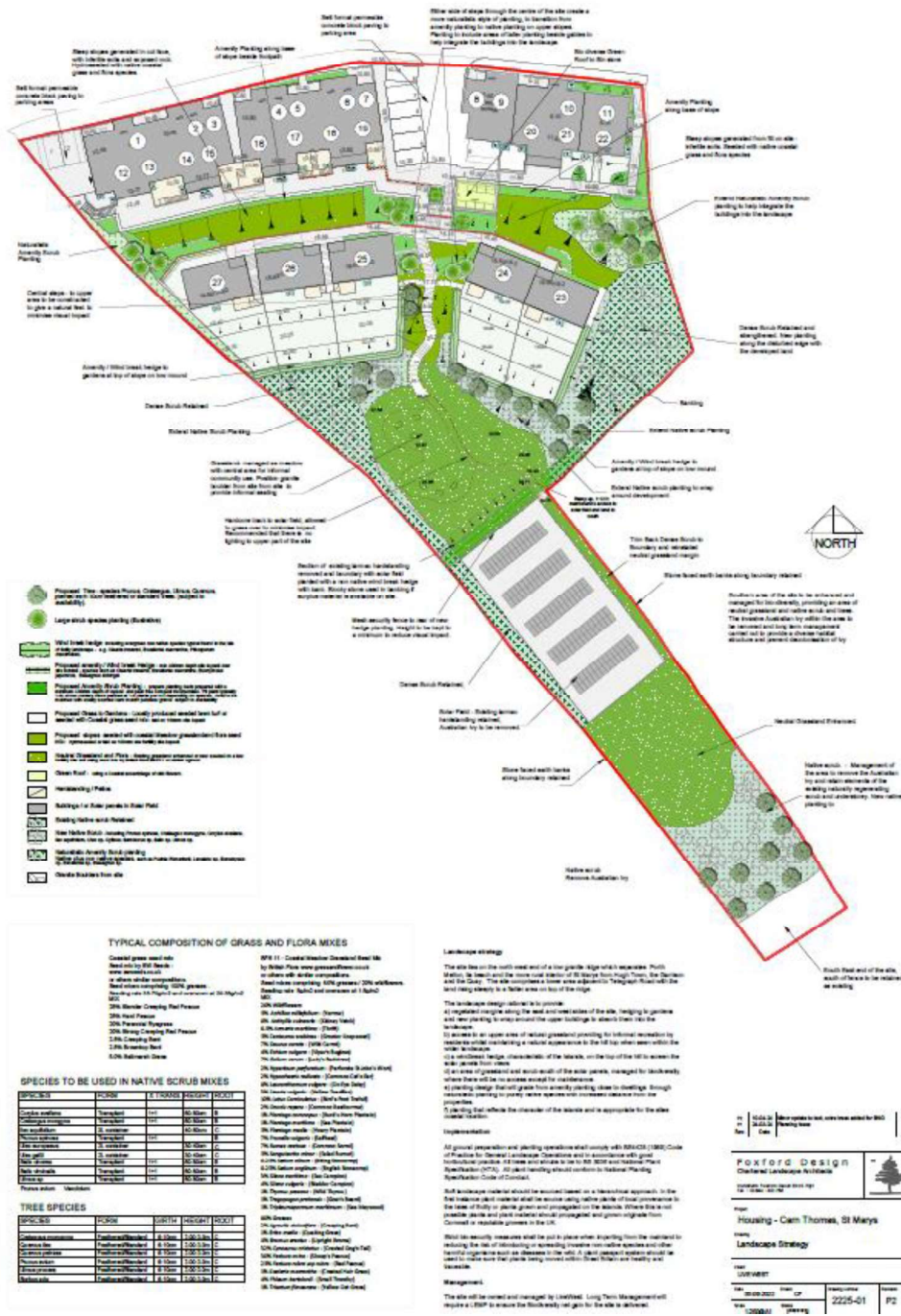


Figure 2. Proposed site layout



## 1.5 Project Administration

<b>Site Name:</b>	Carn Thomas, St Mary's, Isles of Scilly
<b>OS Grid Reference:</b>	SV 90693 10650
<b>Client:</b>	Westco Properties Ltd
<b>Planning Authority:</b>	Council of the Isles of Scilly
<b>Report Reference Number:</b>	P4E3353
<b>Site proposals:</b>	Residential housing and associated infrastructure, including a ground mounted solar array
<b>Survey Date:</b>	12/09/2022 – update Extended Phase 1 Habitat Survey 29/02/2024 (Update Phase 1 survey; UK HAB Classification Survey and Statutory Metric Condition Assessment)
<b>Surveyors &amp; Licence Numbers:</b>	Kim Jelbert BSc (Hons), MSc, PhD, MCIEEM (Registered Consultant: 224; Bat licence no: 2015-10444-CLS-CLS; BER0205 WML-CL47 (Annex A & B); Barn owl licence no. CL29/00037; Dormouse license no: 2016-22394-CLS-CLS) Lucy Wright BSc (Hons) MSc PhD MCIEEM (Bat licence no. 2024-11908-CL18-BAT)

## 2.0 BNG Policy & Legislation

The following planning, legislative and professional guidance documents have been considered in the preparation of this BNG assessment. Further information is provided at Appendix 1.

Baker, J., Hoskin, R. and Butterworth, T. (2019) Biodiversity Net Gain. Good Practice Principles for Development. A Practical Guide. CIRIA, 2019. ISBN: 978-0-86017-791-3.

BSI (2013) BS 42020: 2013 Biodiversity: Code of Practice for Planning and Development. BSI.

BSI (2021) BS 8683: 2021 Process for Designing and Implementing BNG. BSI.

CIEEM [Chartered Institute of Ecology and Environmental Management] (2018) Guidelines for Ecological Impact Assessment in the United Kingdom and Ireland. CIEEM.

CIRIA (2019). Biodiversity Net Gain. Good Practice Principles for Development. Part A: A Practical Guide. Baker, J. Hoskin, R and Butterworth, T. Joint collaborative report by CIEEM, IEMA and CIRIA. <https://cieem.net/resource/biodiversity-net-gain-good-practice-principles-for-development/>

Cornwall Council and Council of the Isles of Scilly (2021) Cornwall and Isles of Scilly Environmental Growth Strategy 2020-2065. Cornwall Council. Truro.

Council of the Isles of Scilly (2021) Isles of Scilly Local Plan 2015–2030. Council of the Isles of Scilly, St Mary's, Isles of Scilly.

Department for Food, Environment and Rural Affairs (2024) Statutory Biodiversity Metric. [Statutory biodiversity metric tools and guides - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/guidance/statutory-biodiversity-metric-tools-and-guides)





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Department of Levelling Up, Housing and Communities (2023) National Planning Policy Framework [National Planning Policy Framework - Guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/115172/nppf-2023.pdf)

HM Government (2006) The Natural Environment and Rural Communities Act 2006. HMSO, London.

HM Government (2021) The Environment Act 2021. HMSO, London.

### 3.0 Methodology

This BNG assessment has been carried out in accordance with BS42020-2013 Biodiversity – Code of Practice for Planning & Development (BSI, 2013) and BS8683:2021 Process for Designing and Importing Biodiversity Net Gain (BSI, 2021), as adopted by local planning authorities, and the Statutory Biodiversity Metric guidance (DEFRA, 2024<sup>1</sup>). Further information about wildlife legislation and policies relating to BNG is provided in Appendix 1.

#### 3.1 Approach to BNG

Mandatory biodiversity net gain as set out in the recently mandated Environment Act 2021, became law on 12<sup>th</sup> February 2024. The Environment Act 2021 requires all developments to achieve a minimum 10% BNG. All developments must quantify and describe habitat loss using the Biodiversity Metric (DEFRA, 2024<sup>1</sup>), and achieve a minimum 10% BNG.

BNG is calculated using the Statutory Biodiversity Metric that measures the pre- and post-development biodiversity value of the site based on the area and characteristics of the habitat(s) present/ lost, and the area and characteristics of the habitat(s) reinstated.

#### 3.2 BNG – Good practice principles for development

This BNG assessment has been completed using the ten good practice principles for development. These are as follows:

**Principle 1. Apply the Mitigation Hierarchy** – *'do everything possible to first avoid and then minimise impacts on biodiversity. Only as a last resort, and in agreement with external decision-makers where possible, compensate for losses that cannot be avoided'* (CIEEM, 2016).

**Principle 2. Avoid losing biodiversity that cannot be offset by gains elsewhere** – *'Avoid impacts on irreplaceable biodiversity – these impacts cannot be offset to achieve No Net Loss or Net Gain'* (CIEEM, 2016).

**Principle 3. Be inclusive and equitable** – *'Engage stakeholders early, and involve them in designing, implementing, monitoring and evaluating the approach to Net Gain. Achieve Net Gain in partnership with stakeholders where possible, and share the benefits fairly among stakeholders'* (CIEEM, 2016).

**Principle 4. Address risks** – *'Mitigate difficulty, uncertainty and other risks to achieving Net Gain. Apply well-accepted ways to add contingency when calculating biodiversity losses and gains in order to account for any remaining risks, as well as to compensate for the time between the losses occurring and the gains being fully realised'* (CIEEM, 2016).



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**Principle 5. Make a measurable Net Gain contribution** – *'Achieve a measurable, overall gain for biodiversity and the services ecosystems provide while directly contributing towards nature conservation priorities'* (CIEEM, 2016).

**Principle 6. Achieve the best outcomes for biodiversity** – *'Achieve the best outcomes for biodiversity by using robust, credible evidence and local knowledge to make clearly-justified choices when 1) delivering compensation that is ecologically equivalent in type, amount and condition, and that accounts for the location and timing of biodiversity losses; 2) compensating for losses of one type of biodiversity by providing a different type that delivers greater benefits for nature conservation; 3) achieving Net Gain locally to the development while also contributing towards nature conservation priorities at local, regional and national levels; 4) enhancing existing or creating new habitat; and 5) enhancing ecological connectivity by creating more, bigger, better and joined areas for biodiversity'* (CIEEM, 2016).

**Principle 7. Be additional** – *'achieve nature conservation outcomes that demonstrably exceed existing obligations (i.e. do not deliver something that would occur anyway)'* (CIEEM, 2016).

**Principle 8. Create a Net Gain legacy** – *'ensure Net Gain generates long-term benefits by: 1) engaging stakeholders and jointly agreeing practical solutions that secure Net Gain in perpetuity; 2) planning for adaptive management and securing dedicated funding for long-term management; 3) designing Net Gain for biodiversity to be resilient to external factors, especially climate change; 4) mitigating risks from other land uses; 5) avoiding displacing harmful activities from one location to another; and 6) supporting local-level management of Net Gain activities'* (CIEEM, 2016).

**Principle 9. Optimise sustainability** – *'prioritise Biodiversity Net Gain and, where possible, optimise the wider environmental benefits for a sustainable society and economy'* (CIEEM, 2016).

**Principle 10. Be transparent** – *'communicate all Net Gain activities in a transparent and timely manner, sharing the learning with all stakeholders'* (CIEEM, 2016).

### 3.3 Assessment of Baseline Biodiversity Value

A site survey was undertaken on 29<sup>th</sup> February 2024 to classify and map the habitats according to the UK Habitat Classification system (UKHab Ltd, 2023) (Appendix 2). The condition of habitats was assessed according to Statutory Biodiversity Metric condition criteria (DEFRA, 2024<sup>1</sup>) criteria on 29<sup>th</sup> February 2024.

The ecological baseline value of the site was assessed using information in the EcIA report (Plan for Ecology Ltd, 2024) and by assessing the condition of habitats in accordance with the Statutory Biodiversity Metric criteria (DEFRA, 2024<sup>1</sup>). Surveys include:

- A desk study of ecological records provided by the Local Records Centre (within Plan for Ecology Ltd, 2024);
- A web-based search for designated wildlife sites using MAGIC <http://www.magic.gov.uk> (DEFRA, 2024<sup>2</sup>);
- An extended Phase 1 Survey (Plan for Ecology Ltd, 2024) to classify habitats according to the UK Habitat Classification system (UKHab Ltd, 2023).
- A condition assessment according to the Statutory Biodiversity Metric condition criteria (DEFRA, 2024<sup>1</sup>).



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Habitats were mapped using Qfield and QGIS, and measurements of their areas were provided by Claire Foxford (Foxford Design). NB. No hedgerows or watercourses are present within the site pre-development.

### **3.4 Assessment of Post-Development Biodiversity Value**

The Ecological Impact Assessment report provides recommendations for habitat retention, enhancement and creation within the site, post-development. The predicted BNG resulting from the implementation of these measures is modelled using the Statutory Biodiversity Metric (DEFRA, 2024<sup>1</sup>). These recommendations are guided by the Mitigation Hierarchy (BSI, 2013; CIEEM, 2018). The Mitigation Hierarchy seeks to avoid impacts, then to mitigate unavoidable impacts, and, as a last resort, to compensate for residual impacts that remain after implementation of avoidance and mitigation measures. The predicted habitat condition of post-development habitats was assessed by applying professional judgement, based on location, habitat type, time to target condition and likely management/impacts over a 30-year period.

The site layout plan provided the basis for mapping the post-development habitats (Fig. 2) (Foxford Design). All post-development area and linear measurements were provided by Claire Foxford (Foxford Design).

### **3.5 Statutory Biodiversity Metric**

The Statutory Biodiversity Metric was used to calculate the pre- and post-development biodiversity units of the site based on the area and characteristics of the existing baseline habitats, and the area and characteristics of habitats retained, enhanced and created as a result of the development (DEFRA, 2024<sup>1</sup>). The Statutory Biodiversity Metric calculates the biodiversity units for habitats (measured in hectares), and hedges and watercourses (measured in linear kilometers) separately and a 10% BNG is required in each category that is relevant to the site. A completed Statutory Biodiversity Metric Excel spreadsheet accompanies this document.

The biodiversity unit scores are moderated by incorporating measurements of habitat condition, location (i.e. some locations are considered less favourable than others), difficulty associated with implementing new habitat features (i.e. some habitats are more difficult to establish successfully than others), and strategic significance.

### **3.6 Strategic Significance**

No Local Nature Recovery Strategy is currently available for the Isles of Scilly to guide categorization of strategic significance (Net Gain Zones) of existing or proposed habitats within the site. It is well recognized that the Isles of Scilly have a distinctive character and support a range of valuable habitats and species; the entire island group is encompassed within the Isle of Scilly Area of Outstanding Natural Beauty, and the islands support numerous designated sites of nature conservation importance. However, the proposed development site itself does not sit within or adjacent to a designated site of nature conservation importance. To the best of our knowledge, the habitat types within the site are not mapped or described as locally ecologically important within the specific site location, within documents specified by the relevant planning authority. We also do not consider the habitat types present within the site to be ecologically important within the specific site location or to be important in providing ecological linkage to other strategically significant locations nearby (Table 1).

In the absence of a Local Nature Recovery Strategy, strategic significance is determined as outlined in DEFRA (2024<sup>1</sup>) and summarised in Table 1, below. All pre and post-development



habitat features within the site are classified as 'low - area/ compensation not ecologically desirable/ in local strategy' for the purposes of the BNG calculations.

Table 1: Biodiversity metric strategic significance categories where an LNRS has not yet been published (taken from DEFRA 2024<sup>1</sup>)

Strategic significance category	Score applied in the metric	Description
<b>High</b> (Formally identified in local strategy)	1.15	The habitat type is mapped and described as locally ecologically important within a specific location, within documents specified by the relevant planning authority. <ul style="list-style-type: none"> <li>• If your project delivers the mapped habitat creation, enhancement or actions set out within specified alternative documents, or enhances an existing habitat identified within specified alternative documents as locally ecologically important, strategic significance can be recorded as high in the post-intervention sheets.</li> <li>• If the specified alternative documents identify existing habitat as locally ecologically important within a specified location, strategic significance may be recorded as high in the baseline.</li> </ul> You should record the name of the plan the relevant planning authority has specified in the user comments and record that you have used the specified document in your gain plan.
<b>Medium</b> (Location ecologically desirable but not in local strategy)	1.10	This category can be applied when the LPA has not identified a suitable document for assessing strategic significance. Users should: <ul style="list-style-type: none"> <li>• explain how the habitat type is ecologically important within a specific location</li> <li>• demonstrate the importance of that habitat in providing ecological linkage to other strategically significant locations</li> <li>• use professional judgement</li> </ul> When the above criteria are met, strategic significance may be recorded as medium in the baseline and post-intervention sheets.
<b>Low</b> (Area / compensation not in local strategy)	1	Where the definitions for high or medium strategic significance are not met.

### 3.7 Development Revisions

The landscaping plan has been revised to maximise BNG by retaining more grassland and scrub in the centre of the site, including provision of new native scrub in the far south of the site, and planting new small trees throughout landscaped areas. The southern part of the site will be fenced to prevent public access. See Fig. 2 for the proposed site layout.

### 3.8 Technical Competence

This report has been written by Dr Lucy Wright BSc (Hons), MSc, PhD, MCIEEM. Lucy Wright holds the following protected species licences: Bat licence no: 2024-11908-CL18-BAT. Lucy has >7 years



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of experience as an ecological consultant, is a full member of the Chartered Institute of Ecology and Environmental Management (CIEEM), has a BSc in Zoology, an MSc in Biodiversity and Conservation, and a PhD in Biosciences (molecular ecology of marine turtles). Lucy has undertaken the following recent training courses relevant to BNG: CIEEM (2022) Designing for Biodiversity Net Gain; CIEEM (2023) Introduction to UK Habitat Classification; UKHab (2024) UK Habs and Condition Assessment; and has attended recent CIEEM webinars following publication of the Statutory Biodiversity Metric.

### 3.9 Limitations

The UKHab Classification Survey and habitat condition assessment was undertaken at a sub-optimal time of year (late February) when some species will not be visible (remaining quiescent below ground), and few will be in flower or with seed capsules present (important species identification features). However, many plant species remain visible all year round and can be readily identified from their vegetative characteristics. It is usually possible to classify habitats, notably hedgerow, scrub and urban habitats, year-round due to the nature of the vegetation present. Most of the habitats recorded at Carn Thomas are modified and the timing of the survey is not considered to be a significant limitation. Furthermore, the warm climate on the Isles of Scilly results in earlier flowering periods for some plant species than is typical in other parts of the U.K.

The far south of the site was largely inaccessible due to the presence of dense vegetation and was viewed from the southern end of the former tennis court.

Ecological features can change over time, particularly if site management/ use changes. Typically, this Biodiversity Metric is valid for 12 months (until 28<sup>th</sup> February 2025) in line with the survey lifespan of the baseline habitat survey on which the calculations are based. However, providing that the baseline is the best representation of pre-development habitats on the site, then the validity of the metric can be extended for longer than 12 months.

Natural England has identified the following limitations of the Biodiversity Metric (Natural England, 2022); these are considered to also apply to the Statutory Metric.

*'The metric uses habitats as a proxy for biodiversity. Although this is a rational means of measuring biodiversity value, it is a simplification of complex ecological processes which are not readily captured. While the scoring of habitats is informed by ecological reasoning and the available evidence, the outputs of biodiversity unit calculations are not scientifically precise or absolute values. Therefore, the generated biodiversity unit scores are a proxy for the relative biodiversity worth of a habitat or site. This is appropriate for a variety of intended uses, but there may be exceptional circumstances where use of the metric is not appropriate.*

*The metric and its outputs should therefore be interpreted, alongside ecological expertise and common sense, as an element of the evidence that informs plans and decisions. The metric is not a total solution to biodiversity decisions. It can, for example, help you work out how much new or restored habitat is needed and in what condition to compensate for a loss of habitat, but it does not tell you the appropriate composition of plant species to use or which micro-habitats might benefit locally important species'.*

The Statutory Biodiversity Metric requires habitat areas to be provided as hectares (or kilometres for linear features). On small sites or where some habitat features are very small (i.e. <150m<sup>2</sup> or 8m length), accurately calculating net change is more difficult because the margin of error is amplified. Minor losses of hedgerow (<10m) are inflated by the metric such that their inclusion can be inaccurate representation of ecological reality.



The Biodiversity Metric Excel spreadsheet presents values in two decimal places, but the calculations behind the presented values have more than two decimal places, which can result in small deviations in reported values.

## 4.0 Baseline Biodiversity Value – Survey Results

The baseline biodiversity of the site is informed by the EcIA, the UKHab survey and the Statutory Biodiversity Metric habitat condition assessment (Plan for Ecology Ltd, 2024). The recommendations for mitigation and biodiversity enhancements provided in the EcIA provide the framework for this BNG assessment and the mitigation measures required to achieve 10% BNG (Plan for Ecology Ltd, 2024).

### 4.1 Designated sites

The site is not located within a designated site of nature conservation importance. There are six statutory designated sites of nature conservation importance within a 1km radius of the site: the Isles of Scilly Complex Special Area of Conservation, Isles of Scilly Special Protection Area, Peninnis to Dry Ledge MCZ, Lower Moors SSSI, Peninnis Head SSSI and Porthloo SSSI. The site is considered to be sufficiently distant that the proposed construction activities and subsequent operational use of the development is unlikely to impact the above statutory designated sites (Plan for Ecology Ltd, 2024).

The site lies within a SSSI Impact Risk Zone. This is a zone identified by Natural England within which certain development types could present a risk to the special features and conservation objectives of local SSSIs. Natural England has identified that residential developments of >100 houses that extend outside existing settlement could have potential impacts (DEFRA, 2024<sup>2</sup>).

### 4.2 Habitats

A total of nine UK Habitat Classification (UKHab) habitat types (inclusive of notable secondary codes) were recorded within the site during the site visit. These are listed below:

- Other neutral grassland, essential secondary codes scattered scrub, scattered bracken (g3c 10 12);
- Mixed dense scrub (h3h);
- Urban – Buildings (u1b5);
- Urban – Sparsely vegetated urban land, essential secondary codes ruderal or ephemeral, vacant or derelict land (u1f 81 82);
- Urban - Built linear feature (u1e);
- Urban – Introduced shrub (u1 847)
- Urban – Developed land – sealed surface (u1b)
- Stone-faced bank (h 113)
- Scattered trees (h 32)

**Of the habitats present within the site, mixed dense scrub, stone-faced bank and scattered trees are considered to be of significant ecological value.**

The proposed development will result in the loss of c. 0.14ha of dense mixed scrub habitat, c. 0.17ha of sparsely vegetated urban land and c. 0.09ha of introduced shrub habitat but, elsewhere, c.0.05ha of native dense scrub will be retained and enhanced and c. 0.06ha will be created. There will be an overall gain in other neutral grassland within the site and the stone-faced banks are fully retained. Approximately 10 immature scattered trees will be lost to the development, but 27 new small trees



will be planted to off-set this loss. The landscaping plan has been designed to compensate for habitat losses to achieve the required 10% BNG on-site.

### 4.3 Notable species

The site supports or has the potential to support the following legally protected species and species of conservation concern:

- Bats (foraging and commuting): The site was assessed as being of 'low suitability' for foraging and commuting bats; no further bat surveys were recommended to inform the proposed development. Mitigation measures have been implemented to avoid/reduce impacts on foraging and commuting bats (Plan for Ecology Ltd, 2024) (see section 5.2).
- Hedgehog and lesser white toothed shrew: The scrub, other neutral grassland, sparsely vegetated land, introduced shrub and stone-faced banks provide potential foraging and resting sites for hedgehog and lesser white toothed shrew and these species may be present on-site. No further surveys are required but precautionary measures must be applied during site clearance and construction (see section 5.2) (Plan for Ecology Ltd, 2024).
- Breeding birds: The scrub and introduced shrub habitats and scattered trees on-site may be used by nesting birds in the breeding season (March – August/September). No further surveys are required but precautionary measures must be applied during site clearance and construction (see section 5.2) (Plan for Ecology Ltd, 2024).
- Amphibians: The scrub, other neutral grassland and stone-faced banks have potential to support the commonly occurring amphibian species but there are no ponds that could be used as breeding habitat. No further surveys are required but precautionary measures must be applied (see section 5.2) (Plan for Ecology Ltd, 2024).
- Invertebrates: The scrub, sparsely vegetated land and grassland habitats on-site have potential to support a diversity of invertebrate species. The small-scale habitat loss is unlikely to have a long-term impact on invertebrate populations, but clearance and construction activities have the potential to cause disturbance and harm to individuals. No further surveys are required but precautionary measures must be applied (see section 5.2) (Plan for Ecology Ltd, 2024).
- Vascular plants: The sparsely vegetated urban land is the most botanically diverse habitat within the site. Construction activities have some potential to impact notable plant species as a result of direct disturbance and dust generation. Mitigation for habitat degradation and loss has been incorporated into the site layout and construction phase (see section 5.2) (Plan for Ecology Ltd, 2024). Four invasive non-native plants listed on Schedule 9, Wildlife and Countryside Act (1981, as amended) have been recorded within the site. Works must be undertaken under an Invasive Plant Method Statement.
- Non-vascular plants and fungi: The site is unlikely to be of significance for lower plants, but common species may be present. Site clearance and dust generation during construction could potentially impact populations. Mitigation for habitat degradation and loss has been incorporated into the site layout and construction phase (see section 5.2) (Plan for Ecology Ltd, 2024).

### 5.0 Potential Impacts and Mitigation

This section summarizes the potential impacts that the development may have on designated sites, habitats and species, in the absence of mitigation and compensation. To maintain and improve the biodiversity value of the site, the Mitigation Hierarchy has been applied so that potential impacts will



be avoided in the first instance, mitigated when avoidance is not possible, and compensated for when mitigation is not feasible. The mitigation recommendations given below are derived from the EcIA (Plan for Ecology Ltd, 2024) and any additional measures required to achieve BNG, as identified in the Statutory Biodiversity Metric calculator spreadsheet that accompanies this report.

## 5.1 Potential Impacts

- The site is considered to be sufficiently distant that the proposed construction activities and subsequent operational use of the development is unlikely to impact the statutory designated sites that lie within 1km of the site (Plan for Ecology Ltd, 2024).
- Loss of dense scrub, introduced shrub, sparsely vegetated urban land and immature scattered trees. Stone-faced banks will be retained but could become degraded.
- Disturbance and damage to retained habitats during construction through noise, vibration, dust, surface runoff and soil compaction.
- Disturbance to species of conservation value due to habitat loss and degradation, and construction noise, human activity, machinery and vibration. Disturbance from increased lighting once the new dwellings are occupied.

## 5.2 Proposed Mitigation and Compensation

### Habitat Mitigation

- **Stone-faced banks (degradation):** The stone-faced banks will be protected during construction and will be enhanced by removal of dominant non-native vegetation. There are no existing hedgerows within the site; therefore, a net gain in hedgerow habitat is not required. New ornamental and wind-break hedgerows are proposed within the site.
- **Dense scrub and scattered trees (loss):** Habitat loss will be compensated for by enhancing retained areas of scrub and other neutral grassland to achieve good condition, and by creating new native scrub and other neutral grassland in the south of the site. Scattered urban trees will be planted throughout the development. A 10% BNG will be achieved on-site post-development.

### Species Mitigation

- **Hedgehog and other mammals:** Measures will be taken during construction to avoid mammal injury and disturbance. All fences will have a gap to allow mammal movement through the site.
- **Bats (foraging and commuting):** The stone-faced banks will be retained and protected as potential foraging and commuting routes. New hedgerows and other habitats will be created to improve foraging opportunities on the site. A sensitive lighting scheme that retains dark corridors is required.
- **Birds:** Vegetation clearance will be timed to avoid/minimise the risk of disturbance to nesting birds or, alternatively, the works will be carried out under an ecological watching brief.
- **Amphibians:** The stone-faced banks will be retained, and scrub and other neutral grassland will be retained and enhanced or newly created within the site. Elsewhere, measures will be implemented to prevent injury or killing of individual animals during construction.





- **Invertebrates, vascular and non-vascular plants:** The implementation of mitigation recommendations for habitats will ensure habitats are maintained for these species groups.

## 6.0 Post-Development Biodiversity Value

### Retained habitats

The development will retain all stone-faced banks, c.0.09ha of introduced shrub habitat, c. 0.05ha of dense scrub habitat (to be enhanced) and c. 0.05 ha of other neutral grassland habitat (of which c.0.03 to be enhanced). The remainder of the site will be developed to provide residential units, associated infrastructure and landscaped areas. Habitat losses are compensated for as described in the mitigation measures in section 5.0 above.

### Enhancement measures

The following biodiversity enhancements that are additional to the mitigation and compensation measures will be included in the development:

- Use of a variety of native and other wildlife friendly plants in the landscaping scheme to improve habitats for pollinators.
- The proposed site layout incorporates c. 108m of new ornamental or windbreak hedgerow habitat that will provide new linear habitat features within the site.
- Bat and/or bird boxes will be incorporated into the proposed new dwellings.
- Bee bricks will be incorporated into the proposed new dwellings. Bee posts could be installed within landscaped areas to improve the site for pollinators. Suitable products are available at <https://www.greenandblue.co.uk>

## 7.0 BNG Good Practice Principles

The ten BNG good practice principles are identified in 'Biodiversity Net Gain. Good Practice Principles for Development. Part A: A Practical Guide' by CIRIA (2019). This chapter describes how the principles have been considered and applied within the proposed development at Carn Thomas (Table 2).

Table 2: Evidence of Compliance with BNG Good Practice Principles.

Principles		Description	Evidence
1	Apply the mitigation hierarchy	Do everything possible to first avoid and then minimise impacts on biodiversity. Only as a last resort, and in agreement with external decision-makers where possible, compensate for losses that cannot be avoided. If compensating for losses within the development footprint is not possible or does not generate the most benefits for nature conservation, then offset biodiversity losses by gains elsewhere.	<ul style="list-style-type: none"> <li>• Locally important habitats have been avoided by retaining and buffering the stone-faced banks and retaining areas of native scrub and grassland on-site.</li> <li>• Habitat losses are fully compensated for on-site through habitat retention, enhancement and creation.</li> </ul>



Principles		Description	Evidence
2	Avoid losing biodiversity that cannot be offset by gains elsewhere	Avoid impacts on irreplaceable biodiversity – these impacts cannot be offset to achieve No Net Loss or Net Gain.	<ul style="list-style-type: none"> <li>No irreplaceable habitats will be affected by the development.</li> </ul>
3	Be inclusive and equitable	Engage stakeholders early, and involve them in designing, implementing, monitoring and evaluating the approach to Net Gain. Achieve Net Gain in partnership with stakeholders where possible and share the benefits fairly among stakeholders.	<ul style="list-style-type: none"> <li>BNG is factored into the development design at an early stage through liaison with the client, master planner and landscape architect.</li> <li>Future BNG monitoring and outcomes will be shared with all stakeholders.</li> </ul>
4	Address risks	Mitigate difficulty, uncertainty and other risks to achieving Net Gain. Apply well-accepted ways to add contingency when calculating biodiversity losses and gains in order to account for any remaining risks, as well as to compensate for the time between the losses occurring and the gains being fully realised.	<ul style="list-style-type: none"> <li>The difficulty of creating new habitats and the time for habitats to reach target condition are accounted for in the Statutory Biodiversity Metric calculations and appropriate compensation provided.</li> </ul>
5	Make a measurable Net Gain contribution	Achieve a measurable, overall gain for biodiversity and the services ecosystems provide while directly contributing towards nature conservation priorities.	<ul style="list-style-type: none"> <li>The development will achieve a measurable overall BNG for habitats of 24.67% within the site.</li> <li>The development will contribute towards the delivery of national and local BNG policies.</li> </ul>
6	Achieve the best outcomes for biodiversity	<p>Achieve the best outcomes for biodiversity by using robust, credible evidence and local knowledge to make clearly justified choices when:</p> <ul style="list-style-type: none"> <li>Delivering compensation that is ecologically equivalent in type, amount and condition, and that accounts for the location and timing of biodiversity losses;</li> <li>Compensating for losses of one type of biodiversity by providing a different type that delivers greater benefits for nature conservation;</li> <li>Achieving Net Gain locally to the development while also contributing towards nature conservation priorities at local, regional and national levels; and,</li> <li>Enhancing existing or creating new habitat.</li> <li>Enhancing ecological connectivity by creating more bigger, better and joined areas for biodiversity.</li> </ul>	<ul style="list-style-type: none"> <li>This BNG report has been prepared using the most recent relevant planning policies, legislation and guidance.</li> <li>The BNG assessment is based on the most recent survey data and local knowledge.</li> <li>Habitat creation and enhancement measures are designed to complement existing habitats and reinforce the Green Infrastructure of the wider area.</li> </ul>
7	Be additional	Achieve nature conservation outcomes that demonstrably exceed existing obligations (i.e. do not deliver something that would occur anyway).	<ul style="list-style-type: none"> <li>The development has sought to exceed the minimum 10% BNG required by the Environment Act 2021 and the Local Planning Authority. These gains</li> </ul>



Principles		Description	Evidence
			would not likely have occurred in the absence of this BNG policy or for the purpose of fulfilling habitat and species-specific mitigation.
8	Create a Net Gain legacy	<p>Ensure Net Gain generates long-term benefits by:</p> <ul style="list-style-type: none"> <li>Engaging stakeholders and jointly agreeing practical solutions that secure Net Gain in perpetuity;</li> <li>Planning for adaptive management and securing dedicated funding for long-term management;</li> <li>Designing Net Gain for biodiversity to be resilient to external factors, especially climate change;</li> <li>Mitigating risks from other land uses;</li> <li>Avoiding displacing harmful activities from one location to another; and</li> <li>Supporting local-level management of Net Gain activities.</li> </ul>	<ul style="list-style-type: none"> <li>Stakeholders were engaged at an early stage in the development design to agree how BNG would be delivered by the project.</li> <li>The landscaping scheme has been designed to reflect the local environment and incorporates native and wildlife friendly planting to provide long-term ecological benefits.</li> <li>A Biodiversity Management and Monitoring Plan will be made a planning condition to ensure habitat target conditions are met and the predicted BNG is realised as outlined below. The Plan will detail how management will be implemented over a 30 year period and adapted to be resilient to external factors.</li> </ul>
9	Optimise sustainability	Prioritise BNG and, where possible, optimise the wider environmental benefits for a sustainable society and economy.	<ul style="list-style-type: none"> <li>Habitat compensation is designed according to the 'like for like or better' approach.</li> <li>Habitat creation and enhancement measures are designed to complement the natural surroundings of this site and reinforce the Green Infrastructure of the wider area.</li> </ul>
10	Be transparent	Communicate all net gain activities in a transparent and timely manner, sharing the learning with all stakeholders.	<ul style="list-style-type: none"> <li>This BNG Design Stage Report and supporting Statutory Biodiversity Metric will be shared with relevant stakeholders.</li> <li>A Biodiversity Management and Monitoring Plan will evidence BNG delivery and this will be communicated to the local planning authority.</li> </ul>

## 8.0 Compliance with National and Local Policy

National and local policies relating to BNG are described in Appendix 1. Table 3 demonstrates how the proposed development scheme at Carn Thomas has been designed to maximise BNG and comply with these policies.



Table 3: BNG Policy Compliance.

Policy	Compliance
National Planning Policy Framework	(174d): The mitigation hierarchy has been applied to minimise impacts of the development on biodiversity and to provide a net gain for biodiversity.
	(179a): The development will safeguard the stone-faced banks and improve habitat connectivity to contribute to the wider ecological network.
	179(b): The development will achieve a net gain for biodiversity through onsite habitat creation and enhancement measures.
	(180d): Habitat retention and creation of green spaces have been positioned to protect the Green Infrastructure of the wider area.
25 Year Environment Plan	25 Year Plan Target for Thriving Plants and Wildlife. The development provides a biodiversity net gain and contributes towards the target ' <i>creating or restoring 500,000 hectares of wildlife-rich habitat outside the protected site network</i> '.
Isles of Scilly Local Plan 2015-2030	Policy OE1: The development has sought to retain and improve Cornish hedges (stone-faced banks), which are a distinctive habitat and landscape feature.
	Policy OE2 (1): The development will achieve a measurable overall BNG for habitats of 24.67% within the site using the Statutory Biodiversity Metric calculator. Habitat retention and creation have been positioned to maintain wildlife corridors and protect the Green Infrastructure of the wider area.
	Policy OE2 (2): The mitigation hierarchy has been applied to avoid or minimise impacts of the development on biodiversity. No unavoidable residual impacts which will remain after avoidance and mitigation measures are implemented have been identified.
Cornwall and the Isles of Scilly Environmental Growth Strategy 2015-2065	The development will provide a BNG through on-site mitigation and compensation measures which will contribute to achieving the following: ' <i>At least 30% of our land and seas will be positively managed for nature by 2030, and by 2050 we are growing nature on twice as much land and four times as much of our inshore waters as in 2020</i> '
	A Biodiversity Management and Monitoring Plan will be implemented to ensure that the development meets its % biodiversity targets and contributes to the Growth Strategy.

## 9.0 Statutory Biodiversity Metric - Results

The Statutory Biodiversity Metric was used to calculate the pre- and post-development biodiversity value of the site in biodiversity units for habitats; there are no existing hedgerows or watercourses on the site. The detailed calculations are provided in the Biodiversity Metric Excel spreadsheet that accompanies this BNG assessment and the results are summarized below. **N.B.** The Biodiversity Metric Excel spreadsheet presents values in two decimal places, but the calculations behind the



presented values have more than two decimal places, which can result in small deviations in reported values.

### **Baseline habitats**

The current, pre-development biodiversity value of the site is **1.86 habitat units**.

- 0.103 ha of introduced shrub – 0.21 habitat units.
- 0.154 ha of vacant or derelict urban land in poor condition – 0.31 habitat units
- 0.014 ha of ruderal/ ephemeral in poor condition – 0.03 habitat units
- 0.187 ha of mixed scrub in poor condition – 0.75 habitat units
- 0.06 ha of other neutral grassland in poor condition – 0.24 habitat units
- 0.0407 ha of urban trees in moderate condition – 0.33 habitat units
- 0.068 ha of developed land (sealed surface) (buildings and hardstanding) – 0 habitat units.

In the absence of mitigation, the proposed landscaping works will result in the loss of **1.45 habitat units**.

### **Post-development habitats**

Habitat enhancements will deliver **0.79 habitat units** as follows:

- 0.05 ha of mixed scrub in poor condition uplifted to good condition – 0.5 habitat units. Management to include eradication of invasive non-native species, including Australian ivy, and reinforcement with native woody species.
- 0.03 ha of other neutral grassland in poor condition uplifted to good condition – 0.29 habitat units. Other neutral grassland to be enhanced by eradicating invasive non-native species including Australian ivy and species listed on Schedule 9 Wildlife and Countryside Act (1981), reducing encroaching scrub and bracken, targeted weed control, and an irregular cutting/ mowing regime. Extensive management will be applied by cutting the sward following flowering in late summer/ early autumn. Arisings (cuttings) will be left in place for a few days to drop seed, then removed to prevent soil enrichment and resulting dominance of weedy species. With this management in place, and the avoidance of fertilisers/pesticides, it is predicted that other neutral grassland in good condition can be attained in a 30-year period in areas of the site which will not be subject to recreational use.

Habitat creation will deliver **1.46 habitat units** as follows:

- 0.06 ha of vegetated garden – 0.12 habitat units
- 0.003 ha of modified grassland – 0.01 habitat units
- 0.06 ha of mixed scrub – 0.51 habitat units
- 0.02 ha of introduced shrub – 0.04 habitat units
- 0.03 ha of other neutral grassland in poor condition – 0.1 habitat units
- 0.04 ha of other neutral grassland in good condition – 0.34 habitat units
- 0.11 ha of urban trees in moderate condition – 0.34 habitat units

### **Post-development hedgerows**

Hedgerow creation will provide **0.10 hedgerow units** as follows:



- 
- 0.11 km of non-native and ornamental hedgerow – 0.10 hedgerow units

The calculations indicate that the current proposals will result in a predicted c. **24.67% net gain** in habitat units on-site with the trading rules satisfied (Fig. 3). The BNG for habitats exceeds the 10% gain required by National and Local Planning Policy.

The current proposals will also achieve a net gain in hedgerows post-development, but the percentage net gain cannot be calculated because there are no existing hedgerows within the site pre-development.

Biodiversity Net Gain is contingent on successful implementation and management of habitat features over a 30-year period. We recommend that management of the habitat features is undertaken in accordance with a Biodiversity Management and Monitoring Plan (BMMP).

The Statutory Biodiversity Metric calculations are habitat-based and do not take into consideration all of the enhancement measures listed in Section 6 above, particularly relating to species. It is recommended that the biodiversity gains calculated by the Statutory Biodiversity Metric and the enhancements listed in Section 6 are both considered in the development, when determining the planning application.



Carn Thomas		Return to results menu		
Headline Results				
Scroll down for final results $\Delta$				
On-site baseline	Habitat units	1.86		
	Hedgerow units	0.00		
	Watercourse units	0.00		
On-site post-intervention <small>(Including habitat retention, creation &amp; enhancement)</small>	Habitat units	2.31		
	Hedgerow units	0.10		
	Watercourse units	0.00		
On-site net change <small>(units &amp; percentage)</small>	Habitat units	0.46	24.67%	
	Hedgerow units	0.10	N/A	
	Watercourse units	0.00	0.00%	
Zero baseline units - % cannot be calculated				
Off-site baseline	Habitat units	0.00		
	Hedgerow units	0.00		
	Watercourse units	0.00		
Off-site post-intervention <small>(Including habitat retention, creation &amp; enhancement)</small>	Habitat units	0.00		
	Hedgerow units	0.00		
	Watercourse units	0.00		
Off-site net change <small>(units &amp; percentage)</small>	Habitat units	0.00	0.00%	
	Hedgerow units	0.00	0.00%	
	Watercourse units	0.00	0.00%	
Combined net unit change <small>(Including all on-site &amp; off-site habitat retention, creation &amp; enhancement)</small>	Habitat units	0.46		
	Hedgerow units	0.10		
	Watercourse units	0.00		
Spatial risk multiplier (SRM) deductions	Habitat units	0.00		
	Hedgerow units	0.00		
	Watercourse units	0.00		
<b>FINAL RESULTS</b>				
Total net unit change <small>(Including all on-site &amp; off-site habitat retention, creation &amp; enhancement)</small>	Habitat units	0.46		
	Hedgerow units	0.10		
	Watercourse units	0.00		
Total net % change <small>(Including all on-site &amp; off-site habitat retention, creation &amp; enhancement)</small>	Habitat units	24.67%		
	Hedgerow units	N/A		
	Watercourse units	0.00%		
0 baseline units - % cannot be calculated				
Trading rules satisfied?	Yes ✓			
<b>Unit Type</b>	<b>Target</b>	<b>Baseline Units</b>	<b>Units Required</b>	<b>Unit Deficit</b>
Habitat units	10.00%	1.86	2.04	0.00
Hedgerow units	10.00%	0.00	0.00	0.00
Watercourse units	10.00%	0.00	0.00	0.00
No additional area habitat units required to meet target ✓				
No additional hedgerow units required to meet target ✓				
No additional watercourse units required to meet target ✓				

Figure 3: Carn Thomas - BNG Metric Summary Output.

## 10.0 Project Implementation

The project will be implemented through the following documents and plans:

- Detailed landscaping plan
- Planting schedule
- Construction Environmental Management Plan
- Biodiversity Management and Monitoring Plan



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## **11.0 Biodiversity Management and Monitoring Plan**

It is recommended that a Biodiversity Management and Monitoring Plan (BMMP) is prepared to ensure that the project meets the predicted BNG targets. The Plan would include:

- Measurable objectives for BNG within all habitats and the management actions which will achieve these objectives.
- A work schedule for implementing management actions over a 30-year period, with milestones at years 2, 5, 10, 15, 20, 25 and 30 from commencement of development.
- A monitoring programme to measure key habitat indicators, assess habitat condition and evidence the successful delivery of BNG.
- A mechanism for reporting biodiversity outcomes and reviewing and adapting the work schedule as necessary.
- The responsibilities and the legal and financial arrangements for implementing the BNG Management and Monitoring Plan.





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## 13.0 Appendix 1: Legislation and Planning Policy

### Protected Habitats, Species and Designated Sites

- **The Conservation of Habitats and Species Regulations (HM Government, 2017) (as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (HM Government, 2019))**, referred to here after as the '**Habitat Regulations**', encompasses Special Areas of Conservation (SACs) and provides additional protection for Special Protected Areas (SPA's), RAMSAR Sites and European Protected Species (EPS). Protection is afforded from direct and indirect impacts, particularly where mobile wildlife populations for which the SAC is designated may be significantly affected. A Habitats Regulations Assessment/Appropriate Assessment must be completed by the competent authority, based on sufficient information provided by the applicant, to meet Regulation 63 of the Habitats Regulations. The Waddenzee judgement ruled that a plan or project may be authorised only if a competent authority has made certain that the plan or project will not adversely affect the integrity of the site. A decision can only be reached "where no reasonable scientific doubt remains as to the absence of such effects". Competent authorities must be "convinced" that there will not be an adverse effect. Where doubt remains as to the absence of adverse effects, the plan or project must not be authorised, subject to the procedure outlined in the Habitats Regulations regarding imperative reasons of overriding public interest.
- **The Countryside and Rights of Way (CROW) Act (HM Government, 2000, as amended)** The CROW Act places a statutory duty on Statutory Nature Conservation Organisations (SNCO) to have regard to biodiversity conservation and to promote conservation action by others. Section 74 of the Act requires the preparation and maintenance of lists of priority species and habitats. It also places a statutory duty on public bodies to conserve SSSIs and enhance their value, and provides SNCOs with the power to impose Management Schemes on owners of SSSIs. The CROW Act strengthens the legal protection for threatened species with regard to killing, injuring, disturbing or destroying places used for shelter and protection.
- **The Hedgerows Regulations (1997)** The Hedgerow Regulations 1997 were made under Section 97 of the Environment Act 1995 (HM Government, 1995) and took effect on 1 June 1997. They introduced arrangement for local planning authorities (LPAs) to protect important countryside hedgerows through a system of notification. Such hedgerows are frequently valuable because of their historical, ecological and landscape characteristics.

Under the Hedgerow Regulations 1997, an offence occurs when:

- o A person intentionally or recklessly removes, or causes or permits another person to remove, a hedgerow in contravention of regulation 5(1) or (9); and when
- o A person contravenes or fails to comply with regulation 6(2).
- o A hedgerow is a boundary line of shrubs or trees and is 'important', and protected, under the Hedgerow Regulations 1997 if it meets a specific criterion (see Table 1 and Appendix 1). Cornish hedgerows do not necessarily meet the criteria of the Hedgerow Regulations 1997 but are typically of great historic, landscape and biodiversity value. The Hedge (and wall) Importance Test (HIT), developed by the Guild of Cornish Hedgers, is an alternative measure of value and is required to inform planning decisions impacting hedgerows in Cornwall (Cornwall Council, 2018).



- **The Natural Environment and Rural Communities (NERC) Act (HM Government, 2006)** bestows a legal duty on public authorities to conserve biodiversity. The Section 40 duty requires Local Authorities to have regard to the purpose of conserving biodiversity. This particularly relates to Section 41 Habitats and Species of Principal Importance (sometimes called 'priority habitats' or 'priority species').
- **The Protection of Badgers Act (1992)** protects badgers as specified below.
- **The Wildlife and Countryside Act (HM Government 1981, as amended)** encompasses the protection of wildlife (fauna and flora), SSSIs, SPAs, National Nature Reserves (NNRs) and RAMSAR Sites.

**Badgers:** Badgers are legally protected under the Protection of Badgers Act 1992. As a result of this statutory legislation it is an offence to:

- Purposely kill, injure or take a badger;
- Intentionally or recklessly damage, destroy or obstruct access to a badger sett;
- Disturb a badger when occupying a sett.

**Birds:** In Britain the nests (whilst in use or being built) and eggs of wild birds are protected against taking, damage and destruction under the Wildlife and Countryside Act 1981 (as amended) (HM Government, 1981).

Some species (i.e. barn owl) are also listed on Schedule 1 of the Wildlife and Countryside Act (HM Government, 1981 as amended); it is an offence to:

- Intentionally capture, injure or kill a Schedule 1 listed species;
- Intentionally or recklessly disturb a Schedule 1 listed species whilst nesting;
- Intentionally or recklessly disturb a dependent young Schedule 1 listed species.

**European Protected Species (EPS) (Bat, dormouse, otter, water vole, sand lizard, smooth snake & great crested newt):** EPS are listed on Annex IV(a) of the European Communities Habitats Directive.

In Britain protection of EPS is achieved through their inclusion on Schedule 2 of the Conservation and Habitats Regulations 2017 (as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (HM Government, 2019)), Schedule 5 of the Wildlife and Countryside Act 1981 (1981, as amended) and Schedule 12 of the Countryside and Rights of Way Act 2000 (HM Government, 1981, 2000 & 2017).

As a result of this statutory legislation, it is an offence to:

- Deliberately capture, injure or kill an EPS;
- Intentionally or recklessly disturb an EPS in its place of rest/ breeding Site;
- Intentionally or recklessly damage, destroy or obstruct access to a EPS place of rest/ breeding Site (even if the EPS is not occupying the resting / breeding place at the time);
- Possess or sell or exchange an EPS (dead or alive) or part of an EPS.

**Reptiles** (adder, common lizard, slow worm and grass snake): reptiles are protected under Schedule 5 (section 9(1) and 9(5)) of the Wildlife and Countryside Act 1981 (as amended). This legislation makes it an offence to kill and/ or injure reptiles, and sell or transport for the purpose of sale. Sand lizard and smooth snake are also EPS (see above legal protection of EPS).



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**Invasive plants:** The WCA 1981 states that if any person plants or otherwise causes to grow in the wild any plant which is included in Part II of Schedule 9, he shall be guilty of an offence. Anyone convicted of an offence under Section 14 of the WCA 1981 may face a fine of £5,000 and/or 6 months imprisonment, or 2 years and/or unlimited fine or indictment. The following legislation is relevant to invasive plants:

*Control of Pesticides Regulations (CoPR) 1986:* CoPR 1986 require any person who uses a pesticide to take all reasonable precautions to protect the health of human beings, creatures and plants, safeguard the environment and in particular avoid the pollution of water. For application of pesticides in or near water, approval from the Environment Agency should be sought before use.

*Environmental Protection Act 1990 (EPA 1990):* EPA 1990 contains a number of legal provisions concerning 'controlled waste', which is set out in Part II. Material containing the propagules of species listed on Schedule 9 is classified as controlled waste and must be safely disposed of at an appropriately licensed landfill site in accordance with the Environmental Protection Act 1990 (Duty of Care) Regulations 1991. Section 33 (1a) and (1b) create offences to do with the deposit, treating, keeping or disposing of controlled waste without a license. Exemptions from licensing are available in some circumstances, and are set out in Schedule 3 to the Waste Management Licensing Regulations 1994 as amended, which makes it an offence to keep, treat or dispose of controlled waste in a manner likely to cause pollution of the environment or harm to human health. Anyone convicted is subject to a maximum fine of £20,000 and/or 6 months imprisonment and if prosecuted under the Crown court, this escalates to an unlimited fine and/or a maximum of two years imprisonment. Section 34 places duties on any person who imports, produces, carries, keeps, treats or disposes of controlled waste. Waste must be handled responsibly and in accordance with the law at all stages between its production and final recovery or disposal. Waste must be transferred to an authorized person i.e. either a registered carrier or exempted from registration by the Controlled Waste (Registration of Carriers and Seizure of Vehicle Regulations 1991). A waste transfer note must be completed and signed giving a written description of the waste, which is sufficient to enable the receiver of the waste to handle it in accordance with his or her own duty of care. The provisions concerning waste transfer notes are set out in the Environmental Protection (Duty of Care) Regulations 1991(as amended). Failure to comply with these provisions is an offence, with a penalty of a fine not exceeding £5000 up to an unlimited fine in Crown court.

*Hazardous Waste Regulations 2005 (HWR 2005):* HWR 2005 contains provisions about the handling and movement of hazardous waste. Consignment notes must be completed when any hazardous waste is transferred, which include details about the hazardous properties and any special handling requirements. If a consignment note is completed, a waste transfer note is not necessary. Material containing knotweed that has been treated with herbicide may be classified as hazardous waste.

*Waste Management Licensing Regulations (WMLR 1994):* WMLR state that failure to use a licensed operative could leave you liable to prosecution. The 'waste relevant objectives' are described in paragraph 4 of Schedule 4. These objectives require that waste is recovered or disposed of "without endangering human health and without using processes or methods which could harm the environment and in particular without risk to water, air, soil, plants or animals; or causing nuisance through noise or odours; or diversely affecting the countryside or places of special interest".

### **Statutory Designated Sites**

**Special Areas of Conservation (SACs) and Special Protection Areas (SPAs)** are of International nature conservation importance.



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**Sites of Special Scientific Interest (SSSIs) and National Nature Reserves (NNRs)** are of National importance. Development proposals with potential to affect a SAC, SSSI or NNR require permission from Natural England.

**Local Nature Reserves (LNRs)** are protected from development; the Local authority is responsible for LNRs.

### **Non-Statutory Designations**

Non-statutory Sites include **County Wildlife Sites (CWS), Site of Nature Conservation Interest (SNCI), Site of Importance for Nature Conservation (SINC), County Geology Sites (CGS), Roadside Verge Audit Biological Sites** and **Ancient Woodlands**. CWSs, SNCI, SINC and CGSs are of at least county importance for wildlife/geology; all are given increased protection through the planning process.

**Biodiversity Action Plans (BAPs)**: BAPs distinguish National and County level priority habitats and species for conservation. The list of habitats and species of principal importance under Section 41 NERC Act (2006) in England includes 56 habitats and 943 species first identified as priority habitats and species. The Local Authority has a duty to conserve habitats and species of principal importance; these habitats and species were previously identified as UK BAP priority habitats and species under Section 74 of the CRow Act (2000).

**Red Data Books & Lists**: detail the status of species in relation to threat.

### **Planning Context**

The local planning authority has a statutory obligation to consider impacts upon protected species resulting from development. Paragraph 99 ODPM Circular 06/2005 states: *'It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances, with the result that the surveys are carried out after planning permission has been granted. However, bearing in mind the delay and cost that may be involved, developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by the development. Where this is the case, the survey should be completed and any necessary measures to protect the species should be in place, through conditions and/or planning obligations, before the permission is granted'*.

**National Policy**: The National Planning Policy Framework (NPPF) was revised in September 2023 and sets out the government's planning policies for England and how these are expected to be applied. This revised Framework replaces the previous National Planning Policy Framework published in March 2012, revised in July 2018, 2019 and updated in September 2023.

Chapter 15 of the NPPF (2023) 'conserving and enhancing the natural environment' sets out how the planning system should contribute to and enhance the natural and local environment by:

- a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);
- b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland;



c) maintaining the character of the undeveloped coast, while improving public access to it where appropriate;

d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;

e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans; and

f) remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.

Of particular note are the following paragraphs:

NPPF Paragraph 174 states. Planning policies and decisions should contribute to and enhance the natural and local environment by:

a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);

b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland;

c) maintaining the character of the undeveloped coast, while improving public access to it where appropriate;

d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;

e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans; and

f) remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.

NPPF Paragraph 175 states. Plans should: distinguish between the hierarchy of international, national and locally designated sites; allocate land with the least environmental or amenity value, where consistent with other policies in this Framework; take a strategic approach to maintaining and enhancing networks of habitats and green infrastructure; and plan for the enhancement of natural capital at a catchment or landscape scale across local authority boundaries.

NPPF Paragraph 176 states. Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty which have the highest status of protection in relation to these issues. The conservation and enhancement of wildlife and cultural heritage are also important considerations in these areas, and should be given great weight in National Parks. Where significant development of agricultural land is demonstrated



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to be necessary, areas of poorer quality land should be preferred to those of a higher quality. The scale and extent of development within all these designated areas should be limited, while development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas.

NPPF Paragraph 177 states. When considering applications for development within National Parks, the Broads and Areas of Outstanding Natural Beauty, permission should be refused for major development other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Consideration of such applications should include an assessment of:

- a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;
- b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and
- c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.

NPPF Paragraph 178 states. Within areas defined as Heritage Coast (and that do not already fall within one of the designated areas mentioned in paragraph 176), planning policies and decisions should be consistent with the special character of the area and the importance of its conservation. Major development within a Heritage Coast is unlikely to be appropriate, unless it is compatible with its special character. Habitats and biodiversity

NPPF Paragraph 179 states. To protect and enhance biodiversity and geodiversity, plans should:

- a) Identify, map and safeguard components of local wildlife-rich habitats and wider ecological networks, including the hierarchy of international, national and locally designated sites of importance for biodiversity; wildlife corridors and stepping stones that connect them; and areas identified by national and local partnerships for habitat management, enhancement, restoration or creation; and
- b) promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species; and identify and pursue opportunities for securing measurable net gains for biodiversity. English National Parks and the Broads: UK Government Vision and Circular 2010 provides further guidance and information about their statutory purposes, management and other matters. For the purposes of paragraphs 176 and 177, whether a proposal is 'major development' is a matter for the decision maker, taking into account its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated or defined. Circular 06/2005 provides further guidance in respect of statutory obligations for biodiversity and geological conservation and their impact within the planning system. Where areas that are part of the Nature Recovery Network are identified in plans, it may be appropriate to specify the types of development that may be suitable within them.

NPPF Paragraph 180 states: When determining planning applications, local planning authorities should apply the following principles:

- a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;





b) development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest;

c) development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons<sup>63</sup> and a suitable compensation strategy exists; and

d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate.

NPPF Paragraph 181 states. The following should be given the same protection as habitats sites:

- a) potential Special Protection Areas and possible Special Areas of Conservation;
- b) listed or proposed Ramsar sites; and
- c) sites identified, or required, as compensatory measures for adverse effects on habitats sites, potential Special Protection Areas, possible Special Areas of Conservation, and listed or proposed Ramsar sites.

NPPF Paragraph 182 states. The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.

### **Local Policy**

See

<https://www.scilly.gov.uk/sites/default/files/document/planning/Adopted%20Local%20Plan%202015-2030%20Website%20Version.pdf> for policies relevant to the environment and biodiversity.

## 14.0 Appendix 2: Pre-development baseline habitats

