We responded to the detailed consultation[1] into BNG for Nationally Significant Infrastructure Projects via the government portal in June 2025. Our key areas of concern were as follows:

1. It is good to see repeated references to the Mitigation Hierarchy as a first step and particularly that "When examining or determining whether an application meets the biodiversity gain objective, the Examining Authority and Secretary of State should consider whether the applicant has taken sufficient measures to deliver the biodiversity gain objective in conjunction with the mitigation hierarchy." It is essential that decision-makers challenge robustly to ensure that alternatives that avoid harm have been fully assessed.
2. There is no mention of how BNG for NSIPs will interact with Environmental Delivery Plans (EDPs) in the Planning and Infrastructure Bill (PIB). Nor is there any mention of how developers might swap between regimes under the PIB and what this might mean for BNG
3. Although a consent order's limits may be bigger than the development area itself, as acknowledged, there is also a risk that harm to habitats may happen beyond the order limits, for example on access roads. There must be a mechanism to include that harm or the promoter must include anything that is harmed in the order limits.
4. Irreplaceable habitats – the wording should be changed from minimize adverse effect to AVOID adverse effect. We remind that there must always be a significant buffer between development and irreplaceable habitat, although that is not directly applicable to these regulations.
5. It is understandable that no spatial risk multiplier will be applied when a project spans LPAs, However, there is a risk with linear projects that cross several LPAs (such as the Norwich to Tilbury pylons project which, at 180km, passes through three county councils and around seven LPA areas), that off-site habitat could be several districts or several counties away. There needs to be a mechanism to handle this in linear projects.
6. 'On-site' is not adequately defined and needs to be, not least because it will lead to legal wrangling. Does it mean within the order limits? Or does it mean in the developable area of the limits? The two are different as noted in the consultation and above.
7. When temporary land is in play our view is that voluntary agreement should be sought with the landowner for BNG if required, but if not the landowner should be allowed to return the land to its previous use and BNG should be delivered offsite or through statutory credits
8. Our view is that habitat status at time of submission will cause problems for very complex linear infrastructure projects and that there will need to be a degree of flexibility and leniency, perhaps accepting surveys from up to a year before submission.

[1] Biodiversity net gain for nationally significant infrastructure projects - GOV.UK