



TAX AND LEGAL IMPLICATIONS



WATER NET GAIN
Westcountry Rivers Trust





This report is an output from the Water Net Gain project funded by the third Ofwat Innovation Fund Water Breakthrough Challenge.

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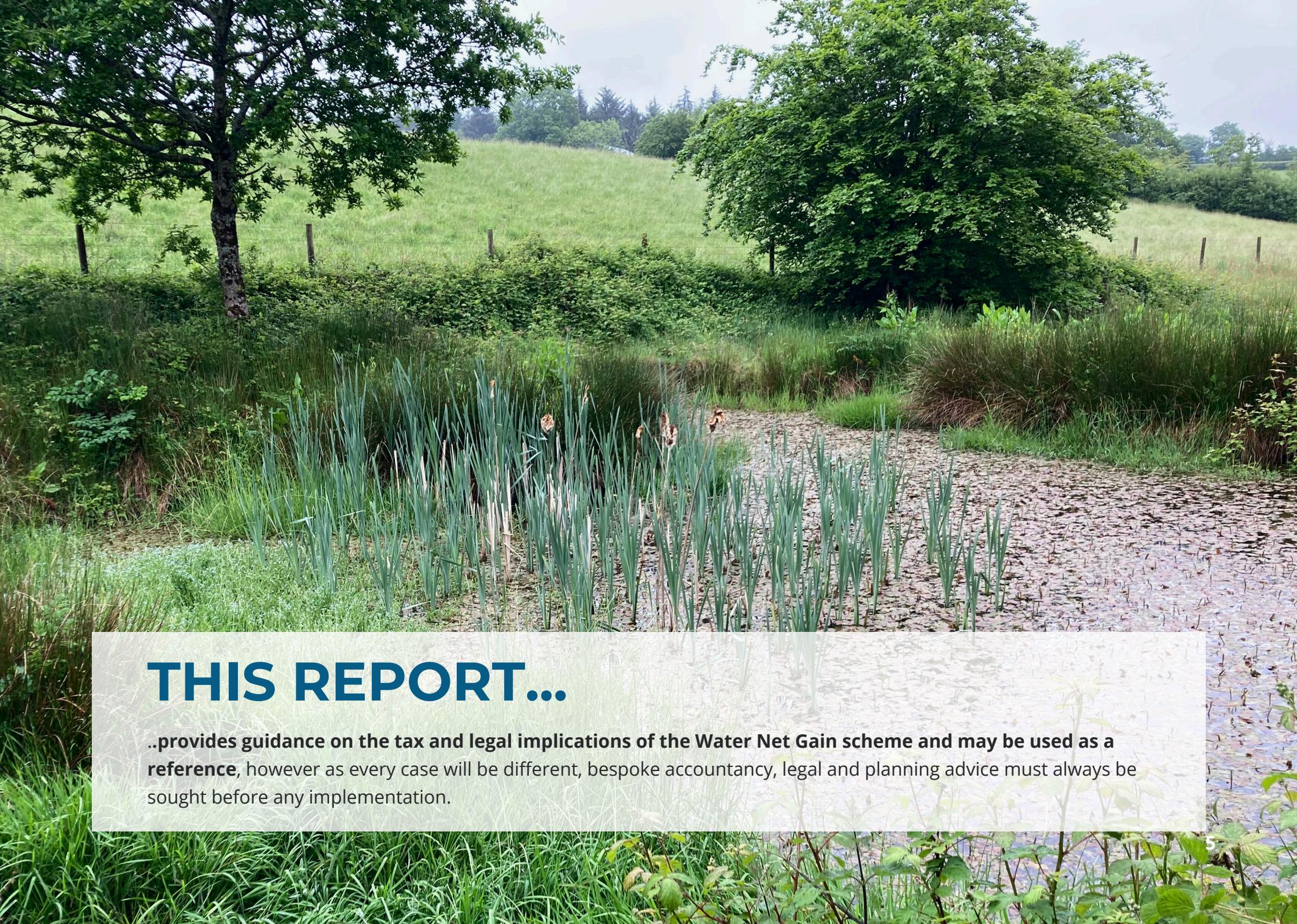
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A photograph of a rural landscape. In the foreground, there is a pond with several tall, green reeds growing in it. The water is calm and reflects the sky. Behind the pond, there is a grassy hill with a fence line. A large, leafy tree stands on the right side of the hill, and another tree is visible on the left. The sky is overcast and grey.

THIS REPORT...

..provides guidance on the tax and legal implications of the Water Net Gain scheme and may be used as a reference, however as every case will be different, bespoke accountancy, legal and planning advice must always be sought before any implementation.

EXECUTIVE SUMMARY

Water Net Gain (WNG) is a scheme that will require multiple stakeholders to work together, and it will operate under various national and local regulatory frameworks. Therefore, stakeholders participating in WNG will need to consider potential legal, tax and permissions implications.

This report outlines what arrangements might form part of the WNG pond installation as well as operation of the scheme and how they might be accepted by the various stakeholders. Sellers will be required to consider their legal entity and the potential to set up a separate legal entity, either individually or in cooperation with other sellers. There is a potential for physical, operational, market, reputational and political risk for the scheme. The magnitude of these risks and liability for them are scrutinised here as the first step to mitigate these risks and to understand which liabilities stakeholders would accept to take on. Ownership of land and WNG assets, as well as control and responsibilities for these assets need to be clear to avoid disputes. Coordination between landowners and tenants will be required for WNG arrangements on land with tenancy agreements in place. While land ownership will stay with the seller or, in case of tenancy with the sellers' current landlord, any technological assets are proposed to belong to the broker.

There may be tax implications when there is a land use change from agricultural land use to other land uses. Due to the novelty of nature markets, tax implications need to be reviewed on a case by case basis and may change, and further legal changes are likely in novel Ecosystem Service markets such as WNG seeks to develop.

Activities under WNG fall under several environmental as well as planning regulations. Therefore, there may be a need for abstraction licensing, discharge licensing or planning permissions as well as other consents or assessments. These will depend on the location as well as the specific activities for each WNG pond system, and it is therefore required to review the potential consents and then seek advice from the relevant authorities.

The research in this report will guide the draft contract development, and the results will help to inform stakeholders of implications when signing up to WNG. However, this report does not constitute legal, tax or permissions advice, and expert advice should always be sought by stakeholders before making decisions regarding WNG.

INTRODUCTION

Water Net Gain is exploring new ways in which we can support farmers to bolster drought-affected water supplies and ease associated river health pressures. The aim is to create a catchment scheme where farmers are paid to store water on their land in ponds and lakes which can act as 'water batteries'. This scheme could improve farms' resilience as well as benefit the wider society and rivers.

Sellers (farmers and landowners) and buyers (such as water companies) need to consider contracts, tax implications and regulatory aspects before joining the scheme. This report explores legal implications of various agreement options, tax implications for landowners due to the installation of pond systems on their land, and permissions that might need to be sought before pond installation. These aspects may change on an individual basis due to individual circumstances, and this report can only be a guide to understand potential implications. Legal advice should always be sought before entering into any agreements under WNG.



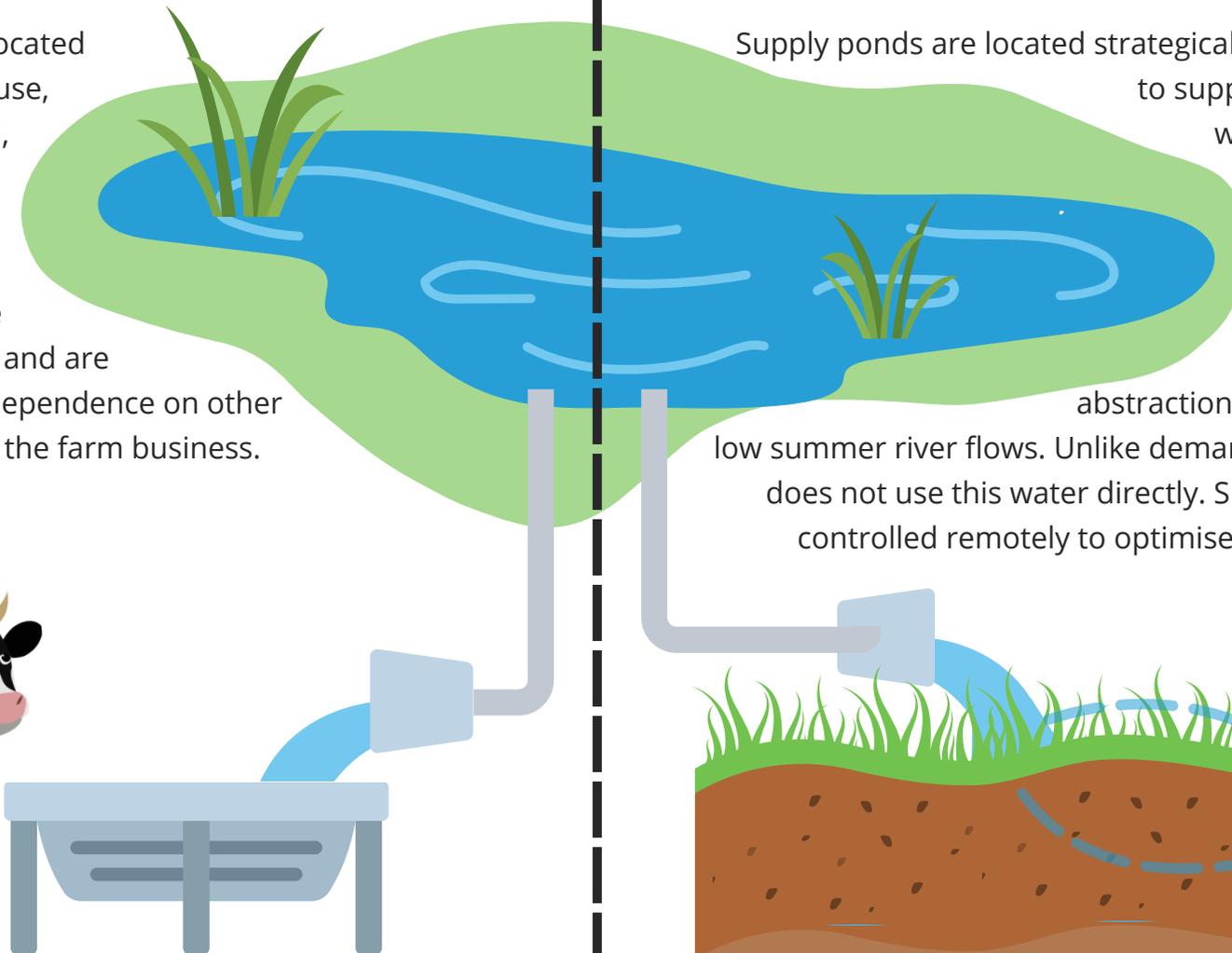
WATER NET GAIN PONDS

DEMAND PONDS



Are integrated into the farm water infrastructure, to provide resilience to the farm's water supply

Demand ponds are located close to the point of use, such as the farmyard, to provide readily accessible water for farm operations. They can incorporate rainwater harvesting and are designed to reduce dependence on other water sources within the farm business.



SUPPLY PONDS



Can be released to environment to support river flows

Supply ponds are located strategically in the landscape to support environmental water management. Water is released from these ponds to augment watercourses and downstream abstractions during periods of low summer river flows. Unlike demand ponds, the farm does not use this water directly. Supply ponds can be controlled remotely to optimise flow management.



STAKEHOLDERS



FARMER



LANDOWNER



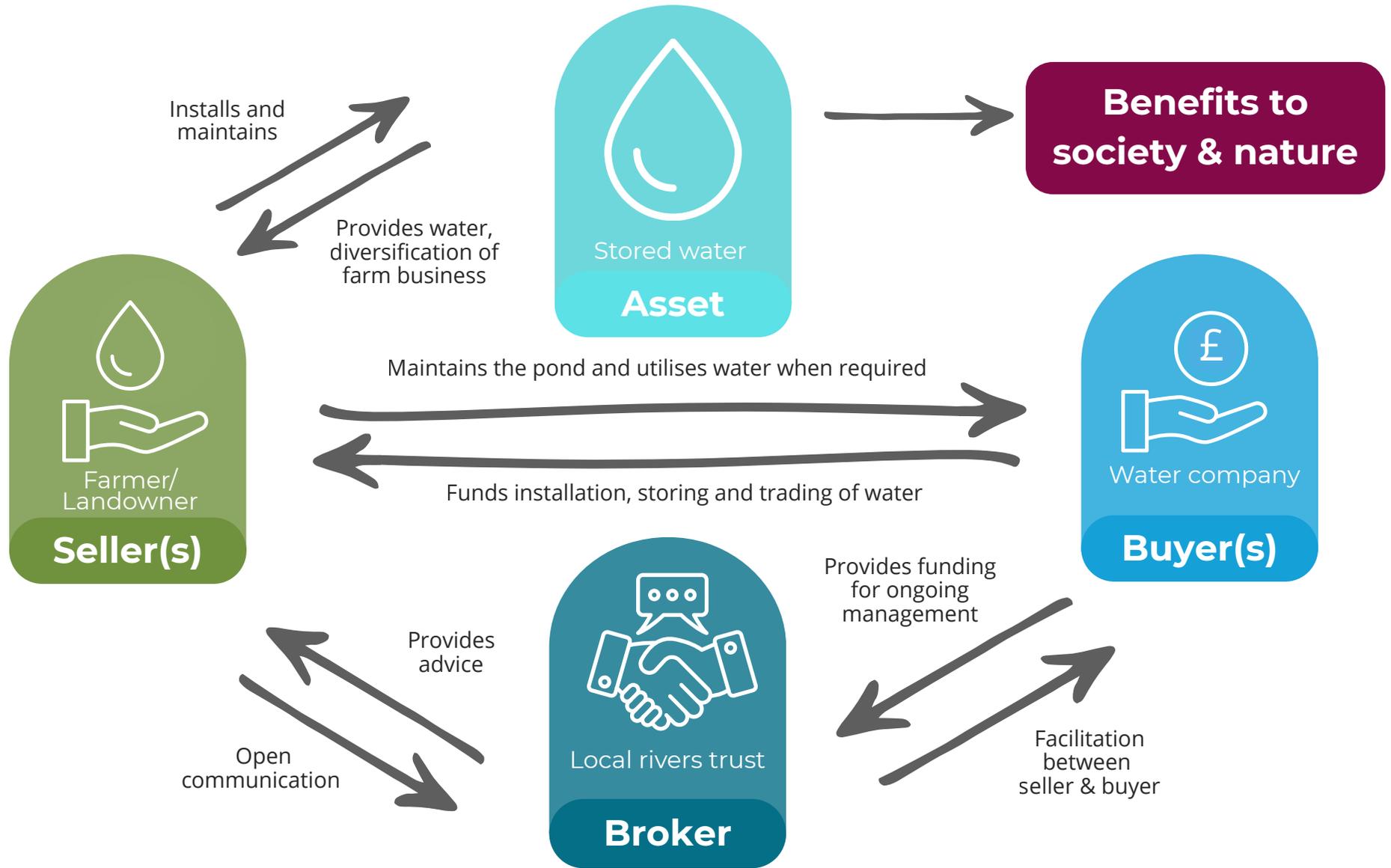
LOCAL RIVERS TRUST



WATER COMPANY

The farmer may also be the landowner or they may be a tenant farmer - this is relevant for the maintenance payments.

STAKEHOLDERS AND FUNCTIONS WITHIN WATER NET GAIN



LEGAL IMPLICATIONS AGREEMENTS

AGREEMENTS TO DELIVER THE POND SYSTEM INSTALLATION

There are several options as to how a pond system installation could be secured:

CONDITIONAL GRANT AGREEMENT

For this agreement, the seller would first install the pond system and cover all costs upfront. The agreement sets out certain conditions that have to be met, and only when they have been met, will the money be paid back. This agreement is commonplace in Upstream Thinking projects, especially for infrastructure projects.

CONTRACT DELIVERY AGREEMENT

This would be a contract between the seller, the buyer and a separate contractor, whereby the latter commits to deliver environmental interventions on the land¹, and the seller agrees for these interventions to be placed on their land. There might be an approved contractor list, and the seller could select a trusted contractor.

Procurement contracts with these approved contractors can be secured by the buyer early on, which might facilitate administration and procurement processes.

INSTALMENT PAYMENT AGREEMENT

An instalment payment agreement is a legal contract that outlines the terms of payment between two parties. It would detail the payment structure, timelines, amounts, and conditions under which payments must be made. This contract would allow for payments to be broken down into more manageable instalments².

UPFRONT PAYMENT AGREEMENT

The upfront payment would mean that the buyer pays the seller the full amount before the pond system installation.

A description as well as advantages and disadvantages per stakeholder are shown in Table 1. The agreement to deliver the pond system could cover the full cost of installation or a share of the capital cost. The willingness (and ability) of sellers to pay for the capital installation costs is being explored in a separate part of the WNG project, the **Willingness to Accept Study**.

1. Green Finance Institute. Farming Toolkit for Assessing Nature Market Opportunities. Online available at: <https://legacy.greenfinanceinstitute.com/gfihive/farming-toolkit/>

2. Juro. Payment Agreement Template. Online available at: <https://juro.com/contract-templates/payment-agreement#exit>

Table 1. Potential agreement types to deliver the pond system installation. (continues on next page)

	Conditional Grant Agreement	Contract Delivery Agreement	Instalment Payment Agreement	Upfront Payment Agreement
What would it mean for the buyer?	The buyer would not be involved in procurement. They would only have to pay once the pond system installation has been completed.	The buyer would be responsible for procuring and paying the contractor. This would mean that the contractor would need to comply with the buyer's procurement code.	Less risk than an upfront payment. However, there is still a risk for the buyer that the scheme is not completed, resulting in money lost without the benefit to the buyer. This risk could be mitigated by the buyer having step-in rights and the right to claw back payments which had already been made. This would be subject to the seller being solvent. The buyer would not be responsible for the construction, but there might be a higher farmer uptake in comparison to the Conditional Grant Agreement due to less financial burden upfront. This might be beneficial for the buyer, as it is anticipated that there would only be a significant benefit to the buyer with sufficient farmer uptake of WNG.	Risk to the buyer that the money is paid, but the seller does not deliver the pond system installation. Also, the upfront transaction might be higher than the cost of pond installation if the costs have been estimated too high. These risks could be mitigated by the buyer having step-in rights and the right to claw back payments which had already been made. This would be subject to the seller being solvent. It is unlikely that the buyer would agree to this type of agreement. However, there could be a partial upfront payment as outlined in the previous column.
Likelihood of buyer's willingness to accept				

	Conditional Grant Agreement	Contract Delivery Agreement	Instalment Payment Agreement	Upfront Payment Agreement
What would it mean for the seller?	The seller would have to meet all costs upfront, which might be a limitation for farmers who do not have that amount of capital available.	The seller would not have full control over choosing their own contractors. They would not have to meet any upfront costs.	This agreement would mean that the seller would not have to meet all upfront costs at once, which would help with maintaining cash flow. The seller would still be responsible for the delivery of pond construction, which is understood to be preferred by sellers as they would be in control of the installation.	This agreement would mean that the seller would not have to pay for the instalment, but would still be in control of the installation.
Likelihood of seller's willingness to accept				
What would it mean for the broker?	The broker would ensure that all the conditions in the agreement were met, and would then arrange the payment to the seller.	The broker might need to act as intermediary for communication between buyer and seller, to secure land access and meet other requests from the seller.	The broker would ensure that all the conditions in the agreement were met, and would arrange the payment instalments to the seller.	No specific requirements for broker involvement.
Further notes	This might work for the physical pond installation but would not be able to cover any smart monitoring assets, as the expertise and responsibility for these assets would not sit with the seller, but with the broker.		It is not anticipated that it would take a long time to install the pond system. Therefore the instalment might consist of two payments, the first part as upfront payment, and the second part once the installation is completed. There would be increased administration costs for the buyer and broker due to multiple payment sign offs.	

COVENANT AGREEMENT

A covenant will likely be set up between the buyer, seller and broker, which is attached to the land used for the scheme.

The land will be legally protected for the intended use of the scheme for the duration of the agreement, as set out in the contract. This means that the agreement could continue even if the land is sold to a new owner¹. Examples would be Section 106 agreements or conservation covenants.

The use of conservation covenants may come into place, in which case the broker would need to be registered as a responsible body³. A conservation covenant agreement must be executed as a deed which means it must be in writing, it must be clear that it is intended by all parties as a deed and be validly executed as a deed. A personal covenant could be completed by a signature, but this would not automatically bind future owners to the agreement.

The covenant agreement describes what the parties will do on the land, and can include restrictive obligations, positive obligations and things other parties can do on the land. The agreement can also include financial obligations, to make sure money is available to cover maintenance costs and monitoring obligations.

The agreement may also include the duration of the covenant, a break clause, the payment process, and how to deal with disputes.

The following implications are considerations for sellers/landowners:

- The restrictions of use during the specific timeframe may be less attractive to buyers if the land were sold, and there is therefore a risk that the land value might decrease, depending on the obligations or restrictions involved.
- Banks would be stakeholders to consult if the land is secured under a mortgage (see section on ownership for further details).
- There is a cost associated with registering the covenant on the Land Registry. This would need to be covered as part of a scheme payment.
- There may be an associated cost of the ongoing need for a solicitor for the duration of the agreement to deal with any changes to the covenant and Land Registry titles. This may include a change in business partners, probate following death, or selling of land.
- A land covenant may also delay applications for mortgages and incur additional costs.

3. Department for Environment, Food and Rural Affairs. 2024. Getting and using a Conservation Covenant Agreement. Online available at: <https://www.gov.uk/guidance/getting-and-using-a-conservation-covenant-agreement>

- The administrative burden of setting up and dealing with a covenant during the agreement length might deter some landowners. Including any transfers, leases, mortgages or grants of rights which affect the land within the scheme that will need written consent by the other parties in the covenant, increasing the administrative burden.
- Requiring banks to get involved as an additional signatory can prolong the set-up of agreements significantly.
- The break clause could detail that the seller could pay back the remaining amount of the capital payment, with a depreciation calculation determining the amount to be repaid, if the intervention paid by the scheme is no longer going to be used for its intended use. Therefore, if the agreement under the covenant is too much of a burden for a sale or transfer of ownership, a break clause would allow for removal of the covenant.

However, there is an administrative fee as well as the sum to be paid back associated with this process, as well as time delays.

AGREEMENTS TO SECURE OPERATIONAL ACTIVITIES

There are several options as to how a scheme could function during its operational phase:

OPTIONAL AGREEMENT

An option agreement for purchasing credits and units means the buyer has an 'option' to buy credits and units for a period of time. The terms of the sale are agreed in the option agreement and the buyer pays a 'deposit' or 'reserve fee' on signing the option (e.g. 10%). Importantly, the buyer can choose to exercise their right to buy or not.

FIXED PAYMENT AGREEMENT

This agreement is commonly used by water companies to pay farmers at regular intervals for management practices that improve water quality. The payment would need to be adjusted for inflation via the consumer price index (CPI)⁴.

A description as well as advantages and disadvantages per stakeholder are shown in Table 2.

4. OECD. Inflation (CPI). Online available at: <https://www.oecd.org/en/data/indicators/inflation-cpi.html>

Table 2 Potential agreement types to deliver the operational phase of a scheme

	Option Agreement	Fixed Payment Agreement
What would it mean for the buyer?	This would be interesting for the buyer as the buyer cannot predict how much water they would require, which is dependent on climate and annual weather variations. Therefore, with an option agreement, they would not have to commit to a certain volume of water purchased at the outset of the scheme, and they would only have to pay the option fee if the situation of requiring water does not actually arise during the operation of the scheme.	This agreement would mean a clear payment structure, and the right to take water as required. However, there is a risk that the water is not available when it is required, and the buyer having paid the seller more than what is being delivered.
Likelihood of buyer's willingness to accept		
What would it mean for the seller?	The seller would receive a small upfront payment for the deposit. However, there would be no guarantee for further income from the ponds if the buyer chose not to buy any water.	This agreement would mean that there is a secured annual income. However, it would not be possible to negotiate prices before water deployment, or to switch to a buyer that offers a better deal. The payment could be per volume or a fixed, agreed sum.
Likelihood of seller's willingness to accept		
What would it mean for broker?	The broker might encourage the seller to identify other buyers, to secure income for the seller, as well as an income for the broker. The payment for the broker could work similar to the process for development options (where e.g. housebuilders secure potential development land), where the broker could get payment from the buyer for making the introduction to the seller.	This agreement would mean a secured annual management fee for the broker. The broker would work with a contingency, to ensure there is sufficient water available even if some pond systems are not functioning as planned.

In addition to the agreements described, the following may also be required for the operation of a scheme:

MANAGEMENT AGREEMENT

This would be in line with the covenant agreement, but changes can be made to how the land is managed, without changing the covenant itself.

BROKERAGE AGREEMENT

Agreement between buyer, seller and broker, to ensure that the broker can perform their role during the operation of the scheme. This could include a fixed payment to the broker or a percentage income based on water trading transactions, and setting out the broker's responsibilities and liability. Most likely the broker would be a subcontractor to the buyer.

EXCLUSIVITY AGREEMENT

Buyers/ water companies might be interested in an exclusivity agreement, to ensure continuous supply. Otherwise, there might be a risk that the farmer would sell the water at a better price to another buyer. This would be especially important if the water company paid for some or all of the capital cost of pond installation. Therefore, an exclusivity clause might be included in capital, and operational agreements.



LEGAL ENTITY OF SELLER

There is the possibility for the seller to set up a separate legal entity to ringfence operations from the wider farm business¹. There may be advantages of using the existing legal entity for a scheme like WNG, such as not having to set up a separate legal entity or potential benefits of the existing set up. However, the seller might be interested to separate the liability for a scheme from the wider farm business, protecting the latter against financial loss or litigation. There are also different potential tax advantages or disadvantages of different entities. A separate legal entity might also be required if working collectively with other farmers.

A potential separate legal entity for an individual farmer may be a private limited company, or a limited liability partnership. These are further explored on the Farming Toolkit website: <https://legacy.greenfinanceinstitute.com/gfihive/farming-toolkit/liability-and-risk-management/>

Legal and tax advice should be sought to make a decision on legal entities.

AGGREGATION MODELS

One example for farmers to form a separate entity is for several WNG farmers to come together and form a community interest company (CIC), or a similar entity.

From a risk and liability perspective, an aggregation within a separate entity may offer benefits such as⁵:

- Overseeing the project over its lifetime, including operations, administration and finances.
- Holding contracts with stakeholders – including the farmers, which can shield them from the liabilities that the separate entity itself takes on.
- Sharing decision-making powers, when the separate entity is governed by a board of directors.

However, farmers may rather act as individuals, and may not want to share benefits and risks with other farmers. This may depend on the trust and relationship among the participating farmers and their individual preferences. The setting up of this entity in partnership with other farmers may also take time and money which a farmer may prefer to avoid. WNG would be able to work with both individual farmers as well as farmers aggregated under a separate entity.

1.Green Finance Institute. Farming Toolkit for Assessing Nature Market Opportunities. Online available at: <https://legacy.greenfinanceinstitute.com/gfihive/farming-toolkit/>
5. Green Finance Institute. Farming Toolkit for Assessing Nature Market Opportunities – Summary of the Wyre Catchment Natural Flood Management Project. Online available at: <https://hive.greenfinanceinstitute.com/gfihive/farming-toolkit/liability-and-risk-management/wyre-nfm/>

BREAK CLAUSE

A break clause could be built into the contract, the specifics of which would be negotiated between buyers and sellers when the agreement is negotiated.

There are two options for how the break clause could work. Either there would be specific points during the operational phase of the contract, when the break could be exercised (e.g. every 5 years) or the break could be exercised at any time. A notice period would apply to both options.

The break clause might have different conditions depending on the party to break the agreement. These conditions may include:

- Partial repayment of capital investment by the seller to the buyer, if the seller intends to break the agreement. This repayment would depend on the length of time still left of the full agreement, and the amount of capital investment from the buyer.
- Payment for income foregone by the buyer to the seller, if the buyer intends to break the agreement. This payment would depend on the length of time left of the full agreement.
- Different notice periods depending on the party.



DISPUTE RESOLUTION CLAUSE

A dispute resolution clause will be built into the contract, to have certainty about the jurisdiction and which law would apply in case of a dispute⁶, which would be acceptable for buyers, sellers and brokers. In the first instance, this would be the English courts applying English law, as WNG is proposed to be rolled out in England.

An alternative dispute resolution (ADR) clause can use an alternative form of dispute resolution without going to a court. Options are either mediation, expert determination or arbitration. These options might save money and time in comparison to litigation.

Arbitration is conducted by an arbitrator which has the power to come to a legally binding conclusion. This is particularly relevant where mediation and a decision which benefits both parties, does not work. However, this is unlikely to have a benefit for a scheme like WNG, as it is expensive and the benefit of privacy under arbitration is not paramount for this context.

Mediation is conducted by a non-partisan trained mediator, to come to a conclusion which benefits both parties.

The decision is not legally binding. The parties can, however, conclude a mediation by entering into a legally-binding settlement agreement.

Expert determination would mean that a relevant expert (e.g. chartered surveyor, chartered engineer, accountant or solicitor) would be appointed by the parties to determine who is right. This might be more appropriate than court action or arbitration when dealing with practical issues such as whether someone has done a job properly or defaulted on their obligations.

For the litigation process, the dispute resolution clause may include which jurisdiction and law will be used.

The clause should include the following:

- Which resolution option should be attempted in the first instance
- How will an agreed resolution be enforced
- How will costs incurred be apportioned
- Chosen jurisdiction
- Issues of privacy and confidentiality

6. Giambrone Law. Dispute resolution clauses in contracts. Online available at: <https://www.giambronelaw.com/site/advice/commercial-litigation/contractual-disputes/dispute-resolution-clauses-contracts/>

RISKS AND LIABILITY

As outlined in the Farming Toolkit for Assessing Nature Market Opportunities¹, consideration needs to be given to the various risk categories, as well as liability and responsibility of stakeholders to address these risks.

PHYSICAL RISK

What if the interventions are not properly installed, are destroyed or damaged? What happens if the water is polluted?

The sellers will be responsible for the land management needed for the pond system. This would follow a maintenance plan developed by the scheme. The plan will cover how to avoid water pollution due to land management, and the seller would be responsible for any water pollution due to non-adherence to the management plan. Further maintenance requirements may exist depending on the stacking of separate income streams, for example if the pond maintenance payment is covered by the Sustainable Farming Incentive.

There may be events where a pond system is destroyed or damaged, or water contaminated, through no fault of the farmers/land managers. This is termed a “Force majeure” event. For a scheme like WNG it is not envisaged that an overarching entity such as a CIC would be established which could hold this risk because of safety-in-numbers (see [The Wyre Catchment Natural Flood Management Project](#) for an example of this mechanism). Therefore, the default position would be that both parties can walk away at that point without consequence, but that both would have the right to replace the destroyed interventions if they wanted to do so.

There might also be an option of insurance where the broker might be able to arrange a block policy to cover all of the schemes it manages. Such an insurance policy would likely only cover physical damage, but not other force majeure events like catastrophic climate change effects, or a change in government policy.

The broker is responsible for the monitoring, adaptive management, and technology maintenance.

All parties would agree to an action plan to isolate any water pollution as quickly as possible, to avoid any pathway to the nearest watercourse.

1. Green Finance Institute. Farming Toolkit for Assessing Nature Market Opportunities. Online available at: <https://legacy.greenfinanceinstitute.com/gfihive/farming-toolkit/>

OPERATIONAL RISK

What if the water is not available when it is required, but it has already been paid for?

The amount of water available in the network would be managed by the broker. The broker would aim for a contingency, to allow for potential unintended deficits in the network. The broker would be responsible for the adaptive management, i.e. to identify the issues of potential deficits (such as water quality issues or pond leakages) and negotiate the rectification of these issues. The agreement will be set up to allow for a certain amount of redundancy in the system.

MARKET RISK

What if things like inflation, interest rates or prices move adversely?

If the annual fixed payment were chosen, the annual fees would need to be linked to the CPI index, to protect it against inflation risk. If the variable trading option were chosen, the fees would be defined to be appropriate at the time of deployment.

There would be less market risk, if the payment schedule from buyers were already agreed. Buyer payments could also be linked to inflation, and therefore there would be more protection against price risk, in comparison to variable fees depending on the water trading.

There would be a risk for farmers to be liable for the payments in the upfront investment if they used a loan to pay their part, as they would be liable for interest rate risk. This would need to be considered for the cost benefit analysis, and the sum of the annual payment.

REPUTATIONAL RISK

What if the project is accused of bad practices, such as depleting water resources or biodiversity loss?

There is the potential for reputational risk due to the public-facing nature of water companies. The sellers would not be required to be named publicly, to limit their risk. Communication with the public should be handled by communications professionals, with the broker and the buyer being involved. There should be open communication between seller, buyer and broker, as well as with other stakeholders as required.

In general, the project has strong co-benefits for water resource management, biodiversity and flood management, which should reduce the reputational risk.

POLITICAL RISK

What if changes in legislation, regulation or public schemes take place?

The Independent Water Commission provided many recommendations for a re-set of the water sector⁷. This is likely to result in future structural and regulatory changes of water companies or Ofwat.

As the Environmental Land Management schemes (ELMs) are currently still in development, there may be changes in their roll-out which may change farm business plans as well as how ELMs can work alongside WNG.

There may be competition among the various natural capital markets, especially given the lack of clarity around stacking and additionality. This means that sellers may want to exercise their break rights, or never enter into agreements in the first place if they think that they are going to get a better return in another natural capital scheme, such as Biodiversity Net Gain or Nutrient Neutrality. This might also implicate an inertia to enter into any natural capital scheme, if the seller is not sure whether a more profitable scheme or grant is developed in the future.

Furthermore, the recent changes in tax regulation⁸ may have an impact on agricultural businesses being able to invest or being motivated to participate in natural capital schemes. Whether this impact may favour or hinder natural capital schemes needs to be further understood.

Other changes in legislation, regulation or public schemes would be closely monitored by all stakeholders, and the broker would play a leading role in ensuring that these changes could be accepted and adapted to by the WNG stakeholders.



7. Independent Water Commission. 2025. Independent Water Commission: review of the water sector. Online available at: <https://www.gov.uk/government/news/governments-launch-largest-review-of-sector-since-privatisation>

8. Eve Collyer Merritt. 2024. Budget 2024: Inheritance tax and family farms. Online available at: <https://lordslibrary.parliament.uk/budget-2024-inheritance-tax-and-family-farms/>

OWNERSHIP

LAND OWNERSHIP

Tenants wanting to take part in a scheme like WNG will require consent from the landowner, due to potential changes in land use and long-term agreements. Maintenance payments and reimbursement payments for the construction should be received by the party delivering the project, which could be either the tenant or the landowner.

Tenants would also need to review their tenancy agreement to identify whether there are restrictions on practices on the land. In addition, clarity needs to be sought between tenant and landowner to ensure that the land in question has not already been committed under other schemes which might restrict the use of the land (such as under ELMs). This might involve legal costs if the farm business tenancy agreement includes a clause saying that the tenant must not take the land out of productive agricultural use, and that clause might need to be varied to allow the use of a specified area for WNG.

Further guidance on tenancies can be sought on the following websites:

- [Farming Toolkit for Assessing Nature Market Opportunities – Tenancy & ownership](#)
- Joint guidance from the Tenant Farmers Association (TFA) and Country Land and Business Association (CLA) - [Guidance for Landlords and tenants on entering public and privately funded environmental agreements in the contact of agricultural tenancies -](#)

MORTGAGED LAND

Further ownership considerations are related to land that is subject to a mortgage.

- **Is the land in question under a mortgage?** – If yes, consider the below points.
- **How high is the value of the land**, in comparison to the complete holding under mortgage? - Consult an up-to-date Red Book valuation, if unsure. The farmer/ landowner would need to provide this valuation, if the lender requested it, especially if the land value is potentially considerable. A contingency should be set aside for this valuation.
- **Engage the lender as early as possible**, as they will need time to consider the proposals, and may request further information.

- **The lender would likely want to release the land proposed for WNG out of the mortgage.** This would depend on the loan-to-value of the mortgage. Releasing the land might only be possible if it did not reduce the value of their security below the value required to support the lending (which is typically up to 60-70% of the value of the land). The updated Red Book valuation would show how much security the bank would have left when releasing the land from the mortgage.
- **Consider further reasons when releasing an area from the mortgage:** Examples may be, if the land in question was the only access through to another block of land over which the lender has security, or if something like a water network passes through that area. The lender would need to maintain control, otherwise there would be problems if it had to repossess (as the land which it had kept the mortgage over would then be landlocked, or wouldn't have water).
- **Keep the WNG land to marginal areas which don't have bearing on the practicalities of using the rest of the farm** (consider access and water).

WNG ASSET OWNERSHIP

- The land and the pond system, excluding the technological assets, will stay in the ownership of the seller. They will be responsible for the maintenance of these assets as outlined in the maintenance plan.
- Ownership and liability for the functioning of the technology which accompanies the WNG pond systems will fall with the broker, who will be responsible for the upkeep of these assets.
- The contract would give the buyer the right to request water deployment when they require it, and they will have the right to view the data the broker holds following the monitoring. The buyer will not hold ownership to any asset, but may have a certain level of control over the use of water (including timing and volumes) from the pond system.

OWNERSHIP



The broker owns the monitoring equipment.



Ownership of the land does not change. There is no relationship of landowner and tenant between landowner and water company.



The water company has rights to direct water use or deployment, as determined in the contract.

TAX IMPLICATIONS

The following section provides an overview of the main tax considerations for farmers participating in a scheme like WNG. Whilst the scheme is an opportunity for some landowners and tenants, there are many tax implications to consider for these 'Sellers' including capital gains tax (CGT), income/corporation tax, value added tax (VAT) and inheritance tax (IHT). The appendix of this report contains the full tax guidance document for WNG.

Farmers should always seek legal and tax advice for their own circumstances before signing up to WNG.

WNG will likely contain the following capital and ongoing payments:

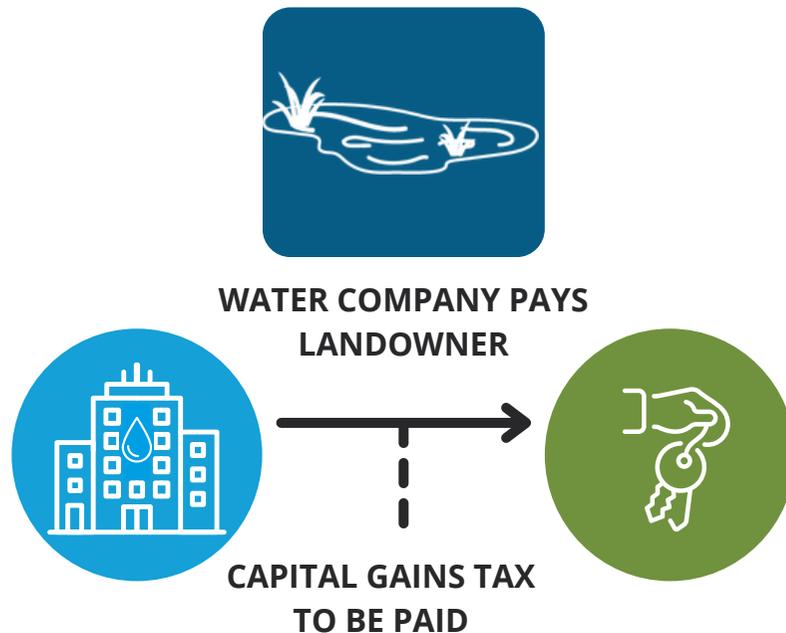
1. A re-imbusement or advance payment(s) to the Seller from the Buyer to cover the pond installation costs and the associated equipment on the Sellers's land. As such, a payment or payments will essentially be re-imbursing expenditure already incurred or have to be used for a specific purpose, and there are likely to be few income, corporation, CGT or IHT considerations.
2. A fixed annual sum for the duration of the Agreement paid by the Buyer to the Seller for ongoing upkeep costs, are likely to be classified as property income and subject to either income tax or corporation tax.

There is a recognition that farmers would have to invest in the scheme themselves, this investment comes from the land being given up to the scheme and a proportion of the capital works.

The WNG scheme has been designed to maximise the tax efficiency for the participating farmers.

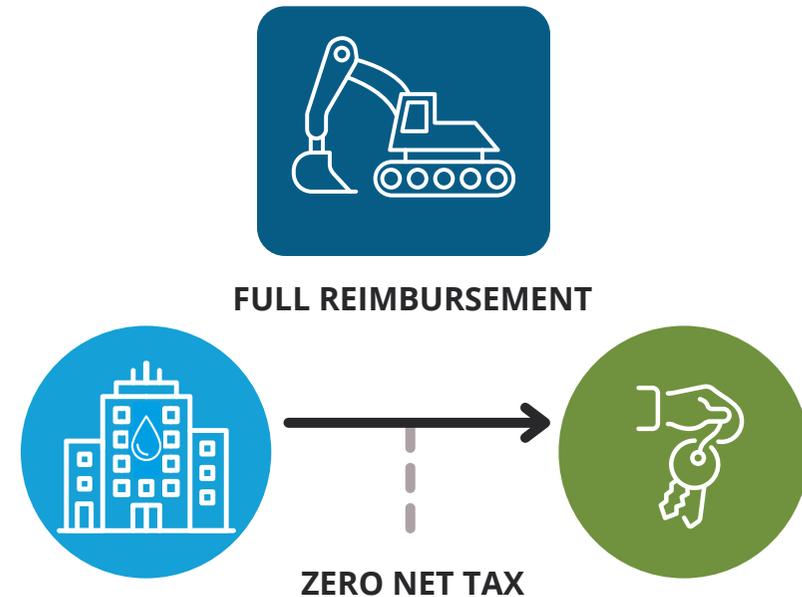
PAYMENTS

ONE-OFF LAND PAYMENT



Once and for all realization of part of the capital value of the land. Meaning that once the pond is installed, the same land cannot be used to install another pond, or cannot be used for anything else. This would only be required if the water company/ buyer paid the full amount of the capital cost, as well as a land payment.

CAPITAL INSTALLATION



If only partial reimbursement, the balance can be treated as a capital cost for the seller - shown as a fixed asset as relevant in a set of accounts, with capital gains tax relief available in respect of a cost that had enhanced the value of the land, should the land be sold in the future.

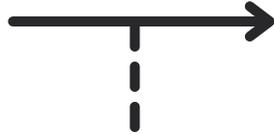
WNG will require a contribution from the landowner/farmer, which will consist of the land (as a minimum, with a potential partial cover of the capital cost too). There would not be a one-off land payment, and therefore no CGT tax requirement.

PAYMENTS

MAINTENANCE PAYMENT



WATER COMPANY PAYS FARMER FOR THE MAINTENANCE OF THE POND AND STORED WATER.

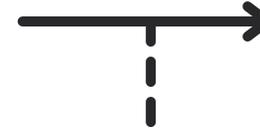


INCOME/ CORPORATION TAX TO BE PAID

BUYING BACK WATER



FARMER PAYS FOR POND WATER AT AGREED MARKET VALUE



TAX REQUIREMENTS FOR WATER COMPANY OUTSIDE OF SCOPE FOR THIS ASSESSMENT

This would only be required if the landowner received a one-off land payment (see page before). For WNG, this will not be relevant.

VAT

Depending on the contractual arrangements, the payments could be consideration for a single supply of land related services which will be exempt, unless the landowner opts to tax the land which would make this a taxable supply subject to 20% VAT. If an option to tax is made, the input VAT incurred and associated with this project would potentially be recoverable provided various administrative procedures, including VAT registration are undertaken. Alternatively there could be multiple supplies which each attract their own VAT rate and only those which are taxable provide a right to recover related input VAT.

IHT

There are agricultural property relief (APR) and business property relief (BPR) matters to consider but overall, the WNG project may not impact too much on these. See further information on the details of natural capital schemes and inheritance tax below.

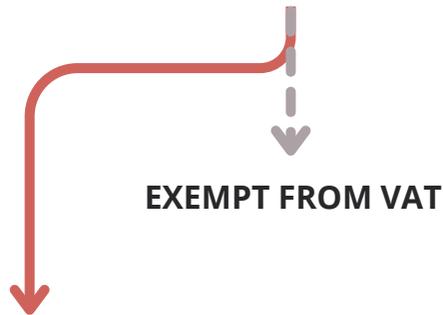


TAX

VALUE ADDED TAX



LAND RELATED SUPPLY



EXEMPT FROM VAT

!EXCEPTION!

If the landowner is **VAT registered** or **liable to register** and has **opted to tax the land**, the supply of the land will be subject to **VAT at 20%**.



Can reclaim VAT of expenses from HMRC

<https://www.gov.uk/guidance/vat-place-of-supply-of-services-notice-741a#sec7>

<https://www.hwb-accountants.com/news-guides/news/vat-on-supplies-of-land-and-property/>

LAND-RELATED SERVICES

These are services that directly relate to a specific site of land or buildings, and are derived from land, and where the land is a central and essential part of the service or where the service is intended to legally or physically alter a property.

Source: **Place of supply of services (VAT Notice 741A)**

The default position for land-related services is, that they are exempt from VAT. This means that no VAT is charged on the service, but any VAT from costs incurred for this service cannot be reclaimed.

However, the landlord can choose to tax their land, and therefore services are standard-rated, and VAT from costs incurred can be reclaimed.

Source: **VAT on supplies of land and property**

This information is based on current legislation and case law at the time of writing and will need to be revised should HMRC vary the existing exemptions and exceptions to those or publish new interpretations of the existing rules.

INHERITANCE TAX, AGRICULTURAL PROPERTY RELIEF AND BUSINESS PROPERTY RELIEF

Some agricultural property can be passed on without paying inheritance tax (Agricultural Property Relief or APR). APR will change to a 50% relief rate, with an allowance of £2.5 million, from 2026⁹. The following agricultural property is eligible for APR:

- Land or pasture that is used to grow crops or to rear animals
- Growing crops
- Stud farms for breeding and rearing horses and grazing
- Trees that are planted and harvested at least every 10 years (short-rotation coppice)
- Land not currently being farmed under the Habitat Scheme
- Land not currently being farmed under a crop rotation scheme
- The value of milk quota associated with the land
- Some agricultural shares and securities
- Farm buildings, farm cottages and farmhouses¹⁰

The use of a WNG pond system to sell the water off-site would exclude agricultural use of that pond and potentially remove the eligibility of APR. Any pond system elements that would still receive grazing or ponds that are used for agricultural purposes (livestock drinking water, irrigation or wash water) would potentially still be eligible for APR.



However, farmers can claim Business Property Relief when signing land up to projects under the Woodland Carbon Code and the Peatland Carbon Code, as “the activities necessary to create, manage and maintain the land for the purposes of generating credits for use or sale will mean any business undertaking these operations will, in general, not be mainly involved in the holding or making of investments, as required by IHTA84/S105(3)”¹¹. This conclusion should apply to WNG projects as well.

In addition to the current tax system, HM Treasury are also considering the taxation of environmental land management and ecosystem service markets. They announced that they would “extend the existing scope of agricultural property relief from 6 April 2025 to land managed under an environmental agreement with, or on behalf of, the UK government, Devolved Administrations, public bodies, local authorities, or approved responsible bodies”¹². This suggests that if pond systems under WNG received ELMs payments or

9. HM Revenue and Customs. 2026. Policy paper: Agricultural property relief and business property relief changes. Online available at: <https://www.gov.uk/government/publications/agricultural-property-relief-and-business-property-relief-reforms/summary-of-reforms-to-agricultural-property-relief-and-business-property-relief>

10. HM Revenue and Customs. 2024. Agricultural Relief for Inheritance Tax. Online available at: <https://www.gov.uk/guidance/agricultural-relief-on-inheritance-tax>

11. HM Revenue and Customs. 2024. IHTM25253 - Other relevant business property: Land used under the Woodland and Peatland Carbon Codes. Online available at: <https://www.gov.uk/hmrc-internal-manuals/inheritance-tax-manual/ihtm25253>

12. HM Treasury and HM Revenue & Customs. 2024. Taxation of environmental land management and ecosystem service markets - Government response to the consultation and call for evidence on selected tax issues. Online available at: https://assets.publishing.service.gov.uk/media/65e765a108eef600115a5618/Government_response_-_taxation_of_environmental_land_management_and_ecosystem_service_markets_w_logo.pdf

the broker were an approved responsible body, they might still be eligible for APR. In the future, land managed under accredited codes and schemes may also be eligible for APR. Therefore, this situation might change if WNG became an accredited scheme.

In total, as mentioned in the tax guidance (see Appendix), the WNG project will only cover around 1 acre of land, so it is unlikely to make a significant difference to larger scale farmers or landowners as to whether their business qualifies for inheritance tax relief or not. A more careful thought might be required for smaller scale farmers and landowners.



STAMP DUTY LAND TAX

Stamp Duty Land Tax (SDLT) is chargeable on 'land transactions', including the 'right or power in or over land', and the 'benefit of an obligation, restriction or condition affecting the value or any such estate'¹³. If a covenant is required, this tax may be applicable to the purchaser, although WNG does not aim to transfer any land ownership.

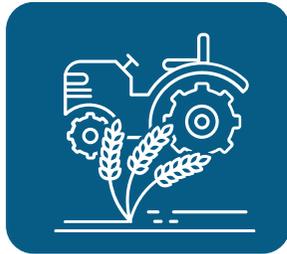
However, SDLT is only chargeable on the amount paid for the covenant itself (if over £150,000 was paid for the covenant) because the covenant is the only "land transaction". SDLT would not apply on the amount that is paid for the water, the service of water attenuation or the associated construction/ upfront works.

In practice for WNG, all the money would be paid for the water/ the works, and the covenant would just be an associated enforcement method. This would mean that no SDLT would likely be payable.

13. HM Revenue & Customs. 2016. Stamp Duty Land Tax Manual - SDLTM00280 - Scope: What is chargeable: Land transactions: Meaning of chargeable interest FA03/S48. Online available at: <https://www.gov.uk/hmrc-internal-manuals/stamp-duty-land-tax-manual/sdltm00280>

TAX

INHERITANCE TAX



AGRICULTURAL PROPERTY RELIEF (APR)

APR is now applicable for Environmental Land Management schemes. Confirmation is needed about whether Water Net Gain would be adopted as Environmental Land Management scheme.



BUSINESS PROPERTY RELIEF (BPR)

It may be possible for the land on which the WNG project is taking place to be encompassed within a claim for BPR, should APR not apply. But bespoke advice is needed.

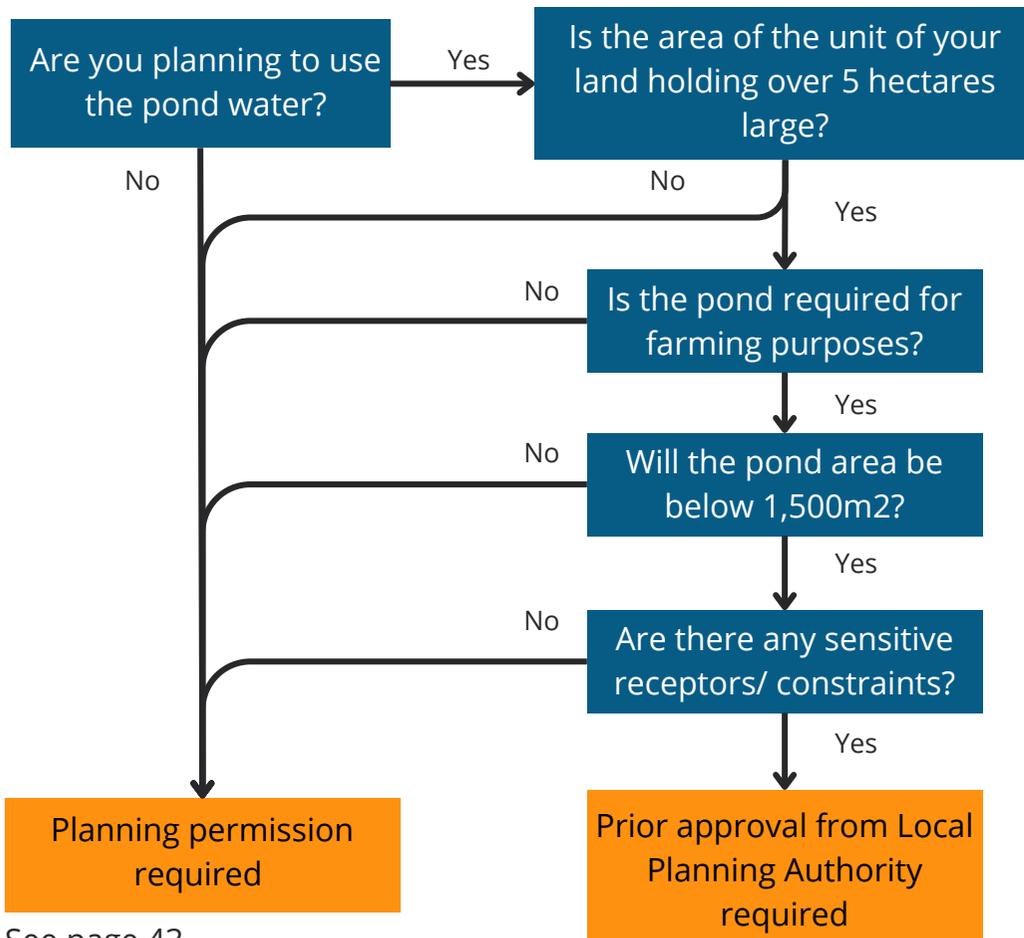
In general, the installation of Water Net Gain ponds are not likely to have a significant impact on farmers' inheritance tax considerations.



PERMISSIONS

The following figures give an overview of the potential permissions process that may need to be considered before installing a WNG pond system. Further information is also provided later on in this section.

Purpose of pond



See page 43

See page 43

Using stored water

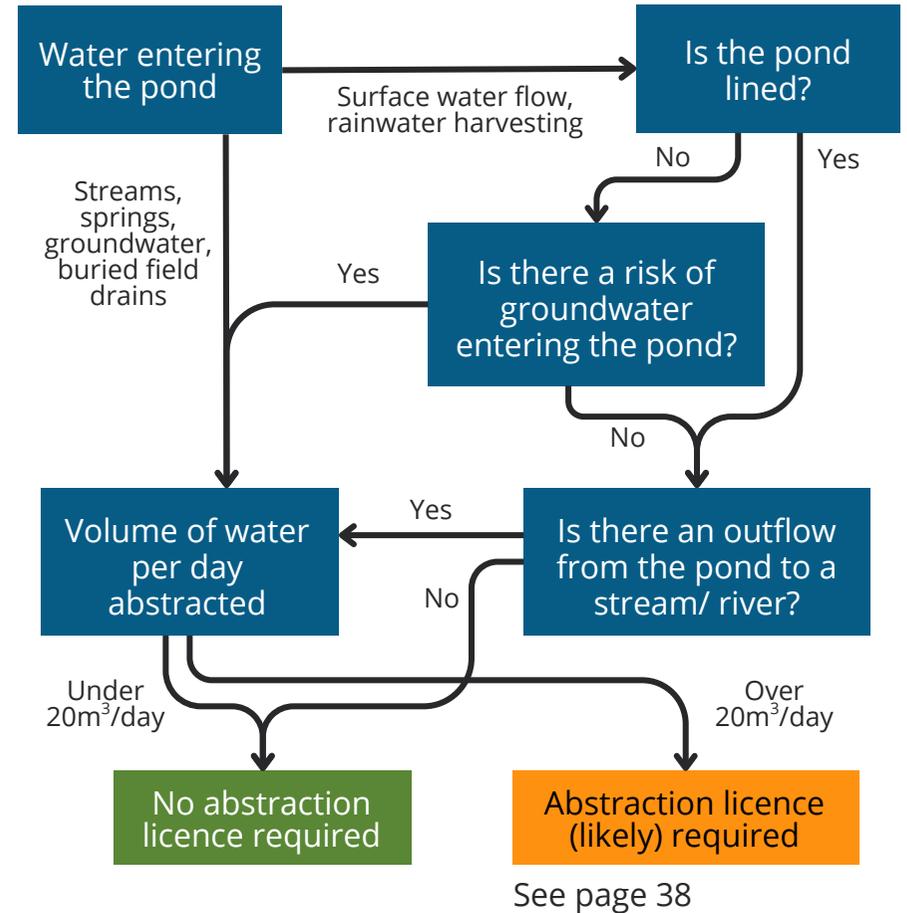
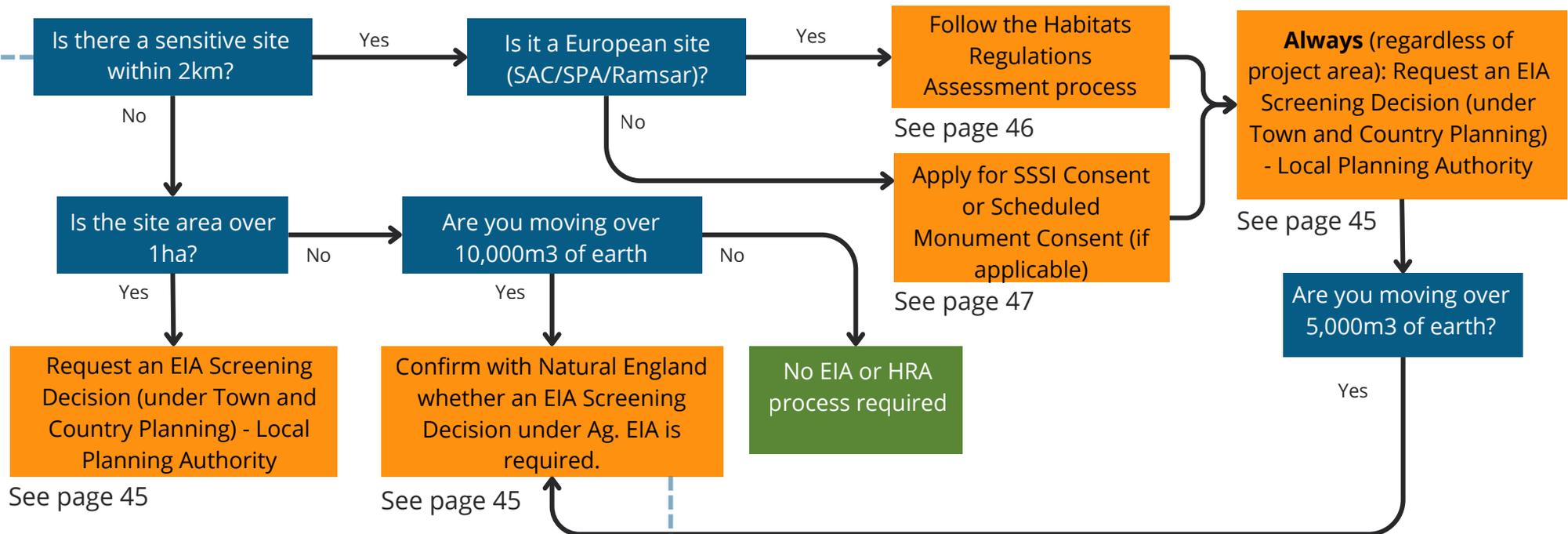


Figure 1 Decision tree to determine what planning permissions are likely to be required.

Figure 2. Decision tree to determine whether an abstraction licence is likely to be required.

Sensitive receptors



Sensitive sites:

- Site of Special Scientific Interest
- National Park
- National Landscape
- Scheduled Monument
- **Special Area of Conservation**
- **Special Protection Area**
- **Ramsar site**

Sites in **bold** are also European sites

Whether the WNG ponds fall under Permitted Development or require planning permission - they are always likely to fall under the Town and Country Planning Regulations. Projects are exempt from Agricultural EIA, when covered under Town and Country Planning.

Figure 3. Decision tree to determine what permissions are likely to be required regarding sensitive receptors.

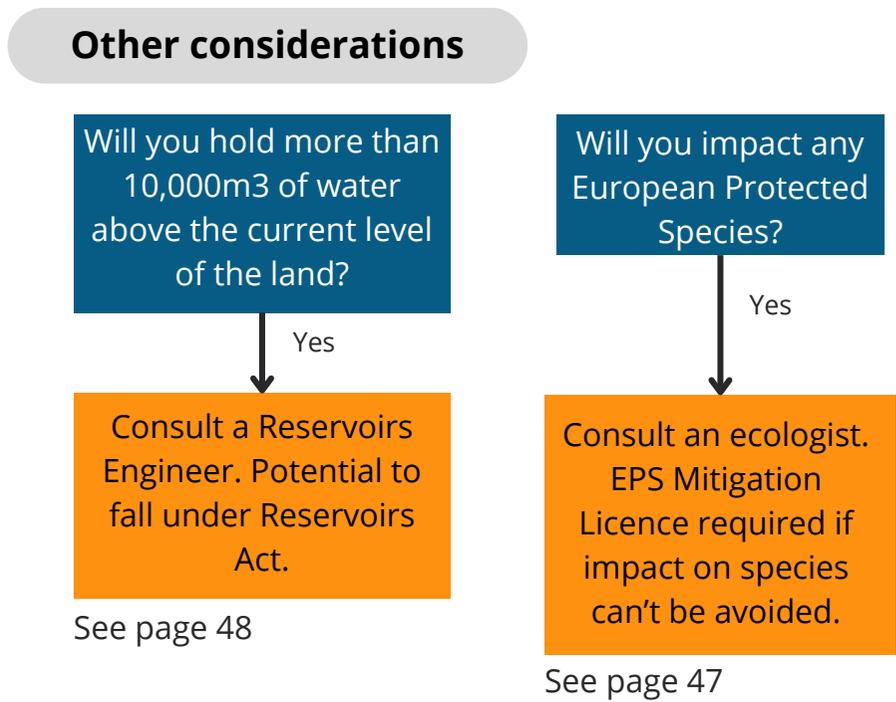
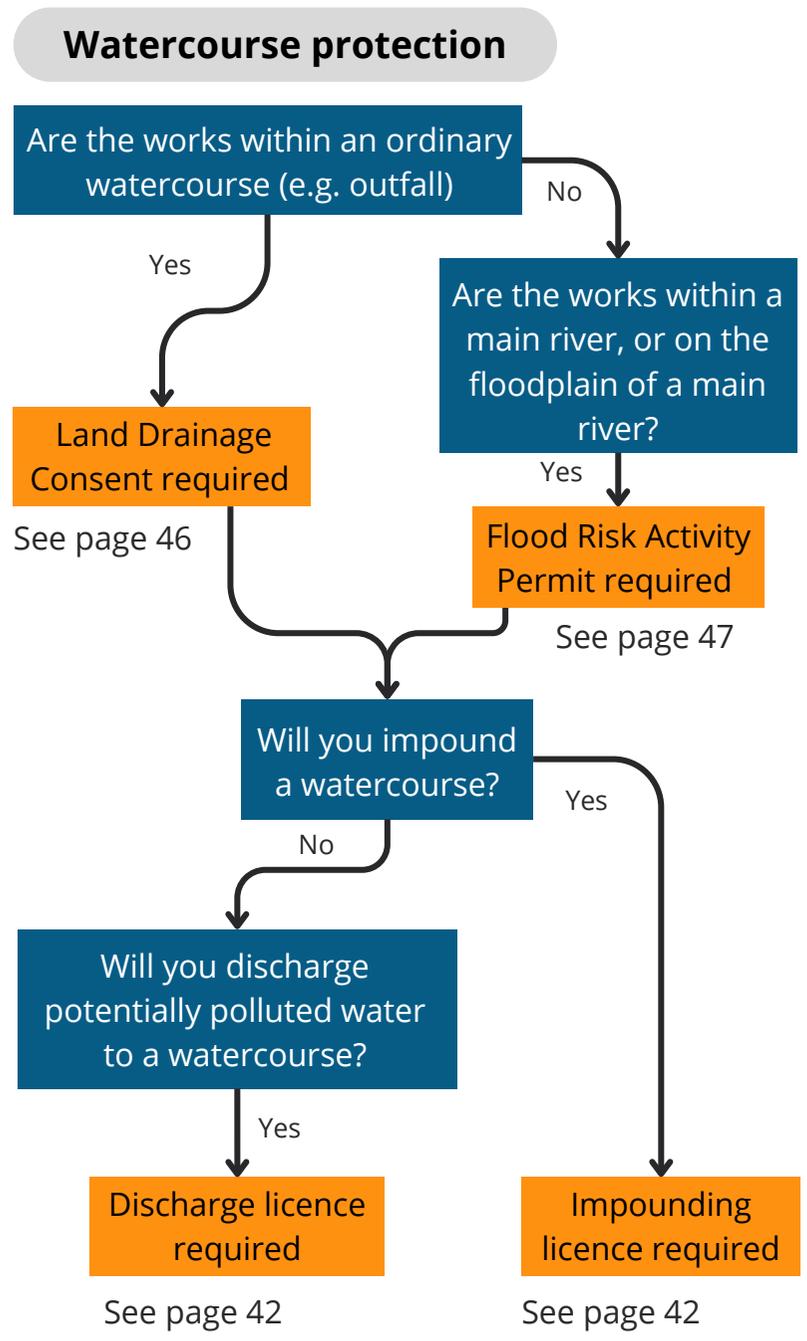


Figure 4. Decision tree to determine what permissions are likely to be required regarding watercourse protection.

Figure 5. Decision tree to determine what permissions are likely to be required regarding other considerations.

The following information provides a general summary of the potential permissions that may need to be considered before installing a WNG pond system. However, each system will depend on specific factors such as location, design and surrounding environment.

ABSTRACTION LICENCING

Abstraction is the action of taking water from a surface water or groundwater source. The Environment Agency controls abstractions to ensure that water is used sustainably. This means that WNG activities might require an abstraction licence under certain circumstances. There are several exemptions as well as details that determine whether an abstraction licence would be required. An outline is provided here, but there might still be the need for the Environment Agency to review specific WNG proposals, to ensure that The Water Abstraction and Impounding (Exemptions) Regulations 2017 are complied with.

If the Applicant is not the landowner of the point of abstraction, a formal right of access agreement needs to be in place.

The named Licence Holder is responsible for complying with the terms and conditions of any licence issued.

If in doubt, advice from the appropriate authority should be sought whether a permission is required.

The decision tree in Figure 1 can help to determine whether an abstraction licence is likely to be required, and the tables below provide more detail about specific aspects of abstraction licences with regard to WNG.

WHEN IS AN ABSTRACTION LICENCE NOT NEEDED?

EA Guidance ^{14,15}	WNG Interpretation
<p>Abstractions of 20 cubic metres or less a day, provided your abstraction is part of a single operation – if you abstract from the same source at multiple points, the exemption only applies if the combined total of all abstractions is 20 cubic metres or less a day</p>	<p>Each pond is a separate source of supply. However, if the ponds are groundwater-fed, the source of supply is the same groundwater body, and therefore the limit of 20 cubic metres per day applies to the full pond system.</p>
<p>Rainwater harvesting, with the following conditions:</p> <ul style="list-style-type: none"> • to harvest rainwater into a reservoir, with or without an overflow, if it only contains collected rainwater • to use harvested rainwater that has not entered inland surface waters or groundwater • if the rainwater storage system is used for irrigation, and is not a source of water supply • to use water stored for irrigation in a reservoir with an overflow, provided that the reservoir is only filled by harvested rainwater or water abstracted from another source under a full abstraction licence 	<p>Taking water from the following ponds would not require an abstraction licence:</p> <ul style="list-style-type: none"> • A pond collecting rainwater, with no water inflow from the groundwater or a spring, ditch or stream, and NO overflow into an inland water (ditch, stream, other waterbody) • A pond collecting rainwater, with no water inflow from groundwater or a spring, ditch or stream, AND having an overflow into an inland water - ONLY if the pond water is used for irrigation (any other water use is licensable).

The Rainwater Harvesting Position Statement states that rainwater harvesting within a catchment must not affect the normal watercourse flow:

‘You must not harvest so much rainwater or abstract so much groundwater that you contribute to the depletion of local inland waters or groundwater beyond safe environmental levels. For example, as set out in the Water Framework Directive or measured by Environmental Flow Indicators.’

If the Water Net Gain scheme aims to create many ponds within a catchment, changes to river flows need to be considered, and the Environment Agency will need to be consulted.

14. Environment Agency. 2023. Check if you need a licence to abstract water. Online available at: HM Revenue & Customs. 2016. Stamp Duty Land Tax Manual - SDLTM00280 - Scope: What is chargeable: Land transactions: Meaning of chargeable interest FA03/S48. Online available at: <https://www.gov.uk/hmrc-internal-manuals/stamp-duty-land-tax-manual/sdltm00280>
 15. Environment Agency. 2021. Rainwater harvesting: regulatory position statement. Online available at: HM Revenue & Customs. 2016. Stamp Duty Land Tax Manual - SDLTM00280 - Scope: What is chargeable: Land transactions: Meaning of chargeable interest FA03/S48. Online available at: <https://www.gov.uk/hmrc-internal-manuals/stamp-duty-land-tax-manual/sdltm00280>

WHEN IS AN ABSTRACTION LICENCE NEEDED?

EA Guidance	WNG Interpretation
<p>If taking more than 20 cubic metres of water a day from a surface or underground source, an abstraction licence is likely required. This includes taking water from:</p> <ul style="list-style-type: none"> • rivers • streams • drains • reservoirs • lakes • ponds • canals • tidal waters and estuaries • springs • aquifers 	<p>If the pond systems are connected to any of the water sources mentioned on the left, an abstraction license is required if more than 20m³/day is planned to be taken. The exception are ponds supplied wholly or mainly by rainwater and without an outflow into another inland water such as watercourses, ponds and lakes, which do not require an abstraction licence.</p>
<p>You must apply for a water abstraction licence for reservoirs which are unlined and wholly or mainly filled with water from underground strata. These reservoirs are sources of supply – you will need an abstraction licence for the total amount you abstract from them.</p>	<p>If the pond is in an area that is naturally wet, it is likely that the area is connected to the groundwater, and therefore taking over 20 m³/day of any pond formed in these areas without sealing it from the groundwater, would require an abstraction licence.</p>
<p>You must apply for a water abstraction licence if you combine harvested rainwater with water from any of the following sources into a reservoir storage system that discharges to inland waters:</p> <ul style="list-style-type: none"> • any watercourse • land drainage • underground strata • gravity intake • licensed water abstracted from another source <p>In these cases you will require both of the following:</p> <ul style="list-style-type: none"> • an abstraction licence for the total amount you abstract from the reservoir for irrigation • additional licences for any abstraction into the reservoir 	<p>If harvested rainwater is combined in the pond with water from another source, an abstraction licence is required. There might be a potential need for two abstraction licences, one for diverting water into the pond, and one for taking water out of the pond.</p>

WHAT DOES THE ABSTRACTION LICENCE APPLICATION PROCESS ENTAIL?

To apply for an abstraction licence, the application form and accompanying documents need to be sent to the National Permitting System. This website contains details about the application forms and process:

<https://www.gov.uk/guidance/water-management-apply-for-a-water-abstraction-or-impoundment-licence>.

When the application has been submitted, it may take approximately six weeks before a primary check of the forms is performed, to determine whether the application is valid, i.e. whether all forms have been completed with the appropriate information. Once valid, it may take approximately three to four months before a decision has been made on the application, depending on whether the application needs to be advertised.

The following documents need to be submitted alongside the abstraction licence application forms:

- Groundwater investigation consent – if the planned source of abstraction is groundwater, the local Environment Agency groundwater team needs to be contacted to explain the plans and ask whether groundwater investigation consent is required.

For the purposes of WNG, it is unlikely to be needed, but a written confirmation is required alongside the application that the groundwater team has been consulted.

- Justification of planned quantity of water abstraction – e.g. for livestock watering the number of livestock and volume of water per head of livestock, or for irrigation which crops and the area of land. For river flow augmentation, this could entail an assessment of how the abstraction of pond water into the river could help in the river, and weighing up the impact this abstraction would have on the pond.
- Designated sites and species – Habitat impact assessment, especially if water-related ecosystems have a potential to be impacted. Documentation of a pre-discussion with Natural England could support the licence application.
- Statement on efficient water usage – a statement describing e.g. routine monitoring and maintenance to reduce and stop leakage of infrastructure, night-time irrigation to reduce evaporation, float valve for troughs.

IMPOUNDING LICENCING

The Environment Agency describe impoundment as “a structure within inland waters that can permanently or temporarily change the water level or flow. This includes:

- dams
- weirs
- fish passes
- hydropower turbines
- sluices
- penstocks
- culverts
- lock gates
- retaining walls
- flumes
- reservoir embankments
- temporary diversions during construction work”

For WNG, an impounding licence would be required if the pond system uses a sluice gate system to impound a watercourse and to control the amount of water being released into the river. However, as online ponds are not proposed to be part of the WNG scheme it is unlikely that an impoundment licence will be required. The application process for an impounding licence is the same as for an abstraction licence, which is described above.

16. Environment Agency, 2024. Get advice before you apply for an environmental permit. Online available at: <https://www.gov.uk/guidance/get-advice-before-you-apply-for-an-environmental-permit>

DISCHARGE LICENCING

An environmental permit is required for activities that pollute the water or land. Activities under WNG should never discharge water into watercourses if there is a risk of pollution from that activity. This includes sediment, nutrient or agri-chemicals as well as temperature of the water. However, WNG ponds may require individual assessment by the Environment Agency, and therefore advice from the pre-application advice service will need to be sought¹⁶.



PLANNING PERMISSION



DEMAND PONDS PERMITTED UNDER PRIOR APPROVAL

Under The Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 6, several agricultural activities do not require a planning permission. For the purposes of WNG and pond installation, a planning permission will not be required, if:

- The unit of the land holding is over 5ha; and
- The pond is required for farming purposes (such as providing drinking water for livestock, or providing water for wash down activities); and
- The area does not exceed 1,500m²; and
- There are no sensitive receptors/ constraints

The installation of these ponds is subject to the prior approval process. This means that the Local Authority will need to be consulted as to whether “prior approval is required. The application must include a written description of the proposed development, the materials to be used and a plan indicating the site together with any fee required to be paid. The Local Authority has 28 days from receipt of the application let the applicant know of its decision. No work should begin before the Local Authority’s decision has been received, or the 28 period has expired”¹⁷.

17. Planning Portal. 2024. Application to determine if prior approval is required for a proposed: Agricultural or Forestry development. Online available at: Environment Agency. 2024. Get advice before you apply for an environmental permit. Online available at: <https://www.gov.uk/guidance/get-advice-before-you-apply-for-an-environmental-permit>

SUPPLY PONDS AND DEMAND PONDS NOT COVERED BY PRIOR APPROVAL



As planning permission is required for any engineering or excavation works, which are not necessary for the purposes of agriculture within the unit of the farm holding where the works are taking place, this means that WNG ponds with the purpose of selling water offsite will always require planning permission. This would likely also apply to ponds which are built with a view to being used for both on-site agricultural uses and for off-site sales or the change in use of an existing “agricultural” pond to use for off-site water sales (even if no works are involved). If planning permission is required for the project, the area and sensitivity of the site will determine whether it will require an application for minor development or an application for major development. It is likely that most WNG projects would fall under the minor development, if the project area is below 1ha.

The information in this report does not constitute planning advice. Pre-application advice must be sought from the local planning authority, to confirm the local planning requirements. All planning considerations need to be specific to the local site

The Local Authority has a validation guide which shows what documents might be required to support the planning application. For WNG projects, the following documents are likely required:

- Application Form
- Location Plan
- Block Plan
- Existing and proposed site levels
- Cross sections
- Biodiversity Net Gain documents (the Local Authority may require a higher uplift than the national requirement of 10%, it is important to check this in Local Authority guidance)
- Photographs

In addition, the following may be required, depending on site-specific constraints:

- Habitats Regulations Assessment
- Heritage Statement
- Archaeological Assessment
- Ecology Report
- Landscape and Visual Impact Assessment
- Public Rights of Way assessment
- Tree Survey

In general, it is advised to discuss the WNG proposal with the Local Authority as part of the 'pre-application advice' service, in order to determine planning or prior approval requirements and ensure all required documents are covered.



OTHER POTENTIAL CONSENTS AND REQUIRED ASSESSMENTS

STRATEGIC ENVIRONMENTAL ASSESSMENT

A Strategic Environmental Assessment (SEA) measures and evaluates the predicted environmental effects of a plan or programme, such as water trade. Water companies need to undertake an SEA when developing their Water Resources Management Plans¹⁸. WNG will need to be considered as part of this SEA, to assess its effect on the environment. SEA identifies potential conflicts and environmental opportunities, suggests mitigation and monitoring measures¹⁹.

ENVIRONMENTAL IMPACT ASSESSMENT

Schedule 2 of The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 sets out when a screening opinion must be requested to determine if an Environmental Impact Assessment is required.

For WNG, the following threshold is relevant:

1(b) Water management projects for agriculture, including irrigation and land drainage projects - The area of the works exceeds 1 hectare.

The Environmental Impact Assessment (EIA) (Agriculture) Regulations protect uncultivated land and semi-natural areas from damage caused by the introduction of or changes in activities that improve the productivity of land for agriculture²⁰. There are several thresholds over which a project may need to apply for a screening decision. While it is unlikely that they would apply under a WNG project the thresholds are shown for completeness. WNG should avoid impacting the land in these ways, as it would not apply to large areas of uncultivated land or semi-natural areas.

Whether the WNG ponds fall under Permitted Development or require planning permission - they are always likely to fall under the Town and Country Planning Regulations. Projects are exempt from Agricultural EIA, when covered under Town and Country Planning. Consult with Natural England, if unsure.

18. UKWIR. 2021. Environmental Assessment Guidance For Water Resources Management Plans and Drought Plans. Online available at: <https://ukwir.org/objectname-209>

19. Mott MacDonald. 2023. South West Water Updated Draft Water Resources Management Plan 2024 (dWRMP24) Strategic Environmental Assessment (SEA) Environmental Report . Online available at: <https://www.southwestwater.co.uk/siteassets/documents/about-us/wrmp/revise-wrmp/sww-dwrmp24-appendix-7-sea-report-dec23-main-report.pdf>

20. Department for Environment, Food and Rural Affairs. 2024. Check if you need a screening decision. Online available at: <https://www.gov.uk/government/publications/changing-uncultivated-semi-natural-and-rural-land-when-you-need-permission/check-if-you-need-a-screening-decision>

The following would apply to activities on uncultivated land or a semi-natural area of an area >2 ha (including changes to separate areas of land on the same holding that add up to 2ha or more):

- Disrupting the soil surface by ploughing, discing, harrowing or rotovating
- Disrupting the subsoil by subsoiling, soil loosening, shakeaerating or paraploughing
- Draining land, drainage works or changing water levels
- Smothering or clearing vegetation (including grassland and rush pasture) or scrub, with machines or chemicals, by animals, or by burning (excluding continued routine habitat management)

WNG will include earth movements due to the requirement to dig ponds. A screening decision would need to be applied for before removing or redistributing earth or other material over a certain area if it is:

- 10,000m³ or more (5,000m³ or more in a sensitive area such as a national landscape, the Broads, a national park or scheduled ancient monument)
- Over an area of 100ha or more (over an area of 50ha or more in a sensitive area)

HABITATS REGULATIONS ASSESSMENT

A Habitats Regulations Assessment (HRA) would be required if WNG activities have the potential to have a direct or indirect impact on European Protected Sites. This includes Special Areas of Conservation (SACs), Special Protection Areas (SPAs), proposed SACs or SPAs, Ramsar sites and areas secured as sites compensating for damage to a European site²¹. WNG will identify low risk locations and will take into account designated sites, and therefore impacts on the protected sites are unlikely. If a WNG pond is located within 2km of a European site, the HRA process needs to be followed.

LAND DRAINAGE CONSENT

An Ordinary Watercourse is defined as a watercourse that is not a main river, and includes:

- Streams
- Ditches
- Drains
- Passages through which water flows

Works within an ordinary watercourse may require a land drainage consent, if they are likely to affect the water flow or capacity of the channel²². For WNG, this might include blocking a ditch and re-directing that water, or a stream feeding into the pond. This will be managed by the Local Lead Flood Authority.

21. Department for Environment, Food & Rural Affairs, Natural England, Welsh Government and Natural Resources Wales. 2023. Habitats Regulations Assessment: protecting a European site. Online available at: <https://www.gov.uk/guidance/habitats-regulations-assessments-protecting-a-european-site>

22. Cornwall Council. 2024. Land Drainage Consent. Online available at: <https://www.cornwall.gov.uk/environment/countryside/flood-risk/land-drainage-consent/>

FLOOD RISK ACTIVITY PERMIT

A Flood Risk Activity Permit may be required if WNG activities are planned within a main river or within the floodplain of a main river. This would apply for the construction of ponds within the floodplain area, if a planning permission is not required for the pond installation. It would also include diverting or impounding the flow of water or changing the level of water in a main river, for example if the pond were fed by water from a main river, as well as quarrying or excavation within 16 metres of any main river, flood defence (including a remote defence) or culvert²³.

SITE OF SPECIAL SCIENTIFIC INTEREST (SSSI) CONSENT

SSSI Consent will be required if WNG activities are mentioned under the list of operations requiring Natural England's consent (ORNECS). This will be identified per SSSI, as these are site-specific. Written consent from Natural England will be required if an ORNEC is planned with a potential direct or indirect impact on the SSSI's designation²⁴.

EUROPEAN PROTECTED SPECIES MITIGATION LICENCE

A mitigation licence for European Protected Species (EPS) might be required if WNG activities were to disturb EPS in one of the following ways:

- Capturing, killing, disturbing or injuring them - on purpose or by not taking enough care
- Damaging or destroying their breeding or resting places - even accidentally
- Obstructing access to their resting or sheltering places - on purpose or by not taking enough care²⁵

Although WNG pond systems should be sited in locations where there is no risk of disturbing EPS, these species may be attracted to the ponds once established, meaning subsequent maintenance and water deployment activities could then cause disturbance.

23. Environment Agency and Department for Environment, Food and Rural Affairs. 2024. Flood risk activities: environmental permits. Online available at: <https://www.gov.uk/guidance/flood-risk-activities-environmental-permits>

24. Natural England. 2024. Sites of Special Scientific Interest: Managing your land. Online available at: <https://www.gov.uk/guidance/protected-areas-sites-of-special-scientific-interest#check-if-you-need-consent>

25. Natural England. 2022. European protected species: apply for a mitigation licence (A12). Online available at: <https://www.gov.uk/government/publications/european-protected-species-apply-for-a-mitigation-licence>

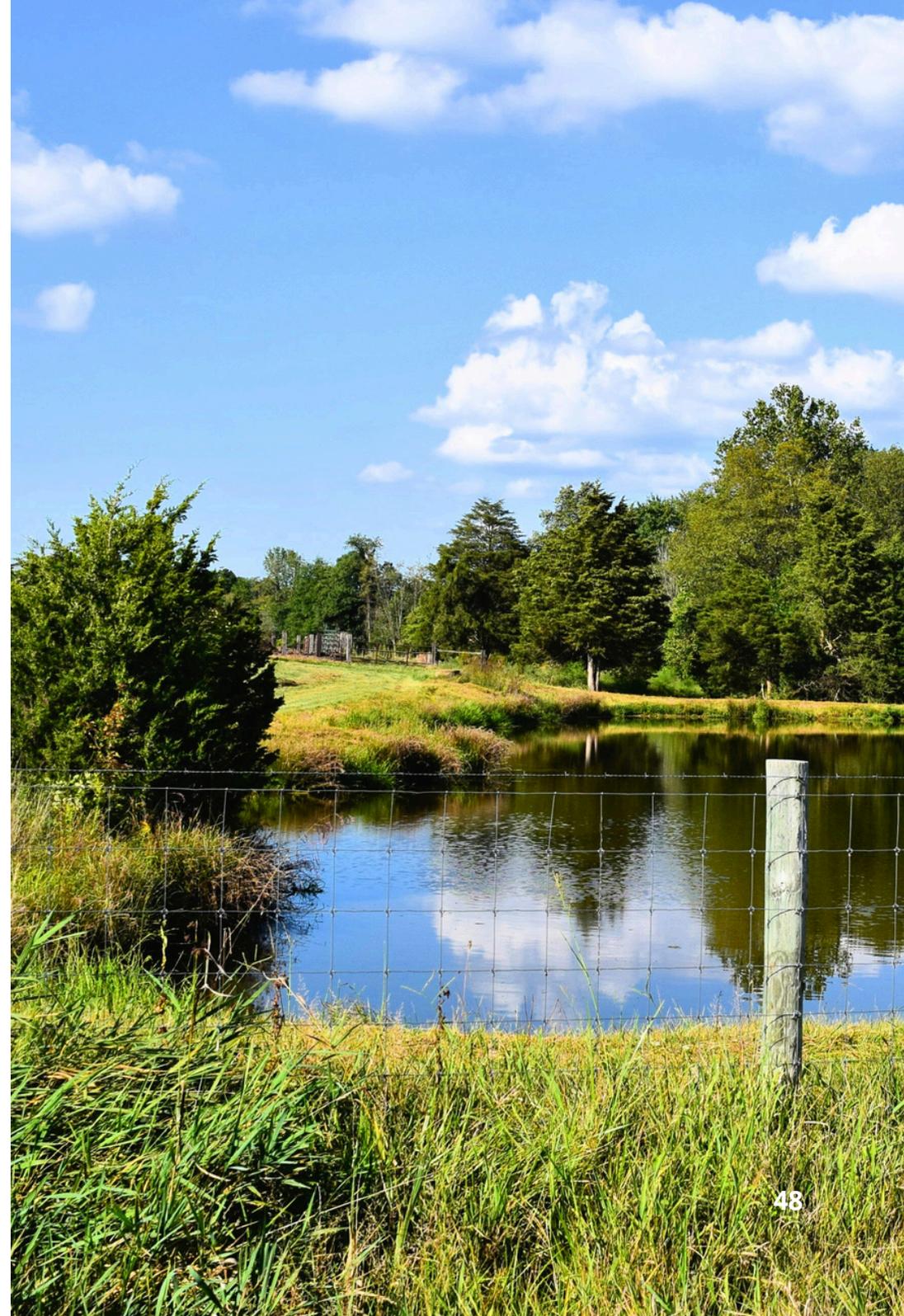
SCHEDULED MONUMENT CONSENT

A Scheduled Monument Consent would be required if WNG activities damaged a scheduled monument²⁶. The initial identification of suitable land will include a desktop search for Scheduled Monuments, and these areas will not be considered suitable for WNG. Therefore, Scheduled Monument Consents will not be required.

RESERVOIRS ACT

The Reservoirs Act 1975 provides the legal framework for ensuring reservoir safety. The act covers any large, raised reservoir which holds the volume of water above the surrounding land of 25,000 m³ or more²⁷. If the reservoir is a large, raised reservoir, it needs to be registered with the Environment Agency, and certain procedures and responsibilities are applicable. WNG features will be designed to avoid these dimensions, and therefore, the regulations under the Reservoirs Act 1975 will not be applicable or considered further in the project.

26. Gov.uk. Scheduled Monument Consent (England, Scotland and Wales). Online available at: <https://www.gov.uk/find-licences/scheduled-monument-consent-england-scotland-wales>
27. Environment Agency. A guide for reservoir owners and operators. Online available at: https://consult.environment-agency.gov.uk/solent-and-south-downs/reservoir-safety-reform-programme/user_uploads/quick-guide-to-the-reservoirs-act-for-owners-and-operators.pdf



CONCLUSION

This report explores the potential legal and tax implications for the WNG scheme. Various agreement options are described and the implications for stakeholders as well as their willingness to accept the options are analysed. Further legal implications which stakeholders will need to consider for WNG include legal entities, break clauses, risks and liability as well as land and asset ownership.

Tax implications as part of WNG include considerations around Value Added Tax, Inheritance Tax, and Income or Corporation Tax. WNG has been set up to be consider the tax system, and identify the most appropriate payment set-up.

The report further identifies potential permissions that will need to be sought for the delivery of WNG. This includes notably abstraction licensing, planning permissions, as well as other consents and assessments. These are often site-specific and project-specific and need to be considered in the upfront planning phases of individual WNG pond systems.

The research in this report will guide the draft contract development, and the results will help to inform stakeholders of implications when signing up to WNG. However, this report does not constitute legal, tax or permissions advice, and expert advice should always be sought by stakeholders before making decisions regarding WNG.

Every farm business has unique circumstances, with a different business set-up, varying business goals, and different regulations applying to them depending on location and farm type. Furthermore, Water Net Gain will be integrated into different water companies, and further work is required to narrow down the scope of the operational WNG scheme. Therefore, this guidance document does not suggest one single WNG approach, but rather summarises the various implications to consider.

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4. OECD. Inflation (CPI). Online available at: <https://www.oecd.org/en/data/indicators/inflation-cpi.html>
5. Green Finance Institute. Farming Toolkit for Assessing Nature Market Opportunities – Summary of the Wyre Catchment Natural Flood Management Project. Online available at: <https://hive.greenfinanceinstitute.com/gfihive/farming-toolkit/liability-and-risk-management/wyre-nfm/>
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25. Natural England. 2022. European protected species: apply for a mitigation licence (A12). Online available at: <https://www.gov.uk/government/publications/european-protected-species-apply-for-a-mitigation-licence>
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