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Planning Enforcement: Biodiversity Net Gain preparedness

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Overview

- Research project led by the University of Birmingham and drawing upon planning academics and practitioners from the University of Birmingham, South Gloucestershire Council, BCP Council, and Bournemouth University.
- The project was undertaken with the support of the RTPI NAPE Network.
- The report findings present a summary of research undertaken at the end of 2023 / early 2024 focused upon the preparedness of planning enforcement in England to support the roll out of Biodiversity Net Gain (BNG).
- Project team:
 - Adam Sheppard MRTPI, FRGS, FHEA – University of Birmingham
 - Amelia Rose MRTPI – BCP Council
 - Frances Summers MRTPI - BCP Council / Bournemouth University
 - Scott Britnell MRTPI – South Gloucestershire Council

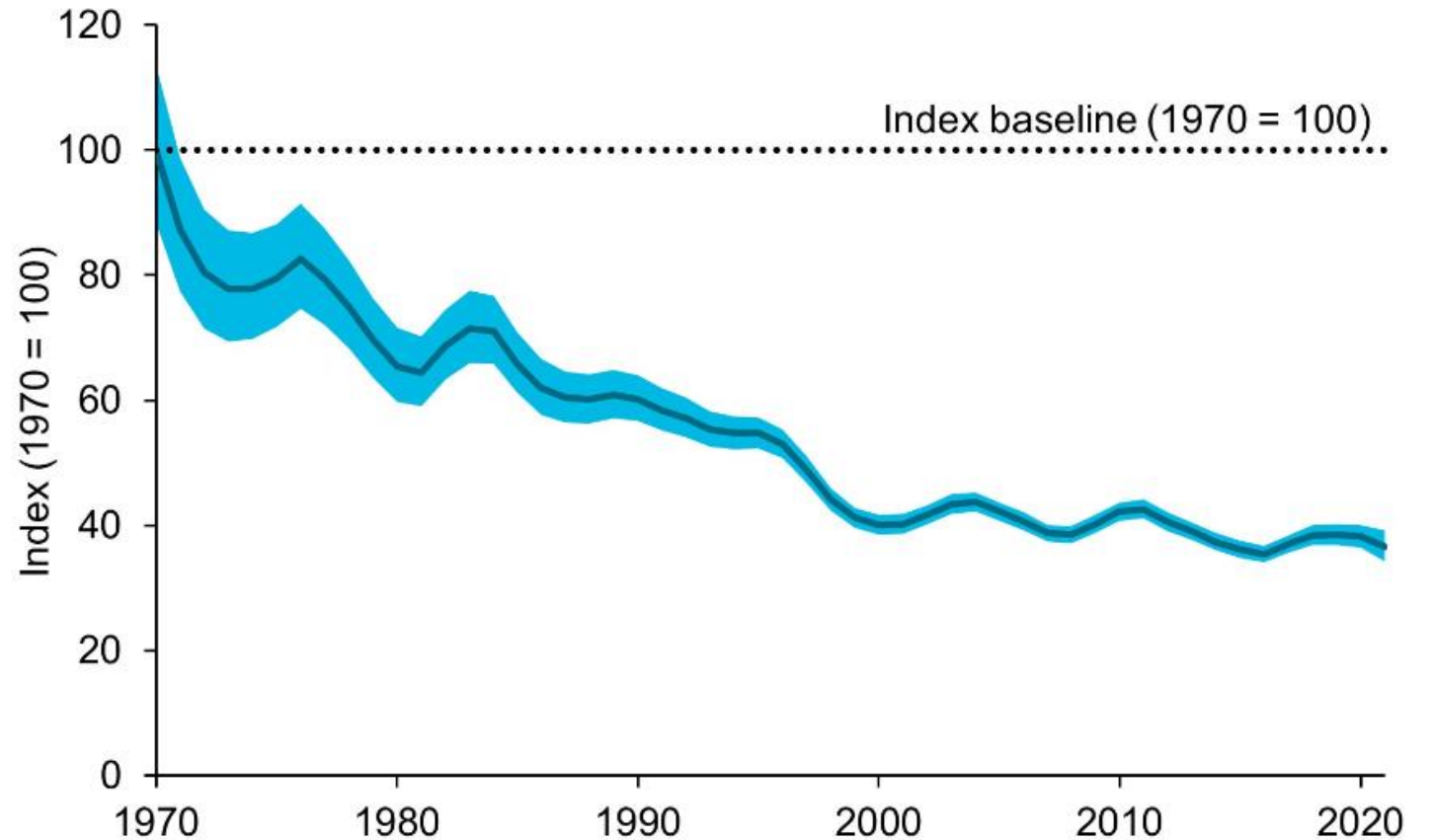


Biodiversity context

The UK's own review into performance against the 20 targets set to achieve a cessation of biological decline advised that *'at a minimum, the UK has failed to meet 14 of the 19 Aichi biodiversity targets'*

(House of Commons Environmental Audit Committee, 2021)

(JNCC, 2023)



Trend in the relative abundance of priority species in the UK, 1970 to 2021



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The response

“The [Environment Act](#) sets out the following key components of mandatory biodiversity gain:

- Amends Town & Country Planning Act (TCPA).*
- Minimum 10% gain required calculated using the [Biodiversity Metric](#) & approval of a biodiversity gain plan;*
- Significant on-site habitat and all off-site habitat secured for at least 30 years for at least 30 years via conditions, planning obligations or conservation covenants.*
- Delivered on-site, off-site or via a new statutory biodiversity credits scheme; and*
- National register for net gain delivery sites.*

It does not change existing legal protections for important habitats and wildlife species. It maintains the mitigation hierarchy of avoid impacts first, then mitigate and only compensate as a last resort.” (LGA, 2024)

The enforcement role

Planning Practice Guidance - Paragraph: 006 Reference ID: 74-006-20240214

How will biodiversity net gain be effectively monitored and enforced?

Failure to comply with the biodiversity gain condition by commencing development without approval of the Biodiversity Gain Plan will be a breach of planning control. Local planning authorities have a range of [planning enforcement powers](#) and have responsibility for taking whatever enforcement action may be necessary, in the public interest, in their area.

Effective enforcement is important to tackle breaches of planning control and maintain integrity of the decision-making process. Local planning authorities are already encouraged to prepare local enforcement plans, and set out the priorities for enforcement action, and they may want to update these to reflect the introduction of biodiversity net gain. This could cover both the initial delivery and ongoing management and maintenance mechanisms to assist monitoring of gains in the longer term.

Appropriately worded planning conditions and planning obligations would also help achieve effective monitoring and enforcement of biodiversity net gain, particularly in relation to the maintenance and monitoring of significant onsite habitat enhancements and registered offsite biodiversity gains.



The planning context



The RTPI 2023 State of the Profession report (RTPI) notes that:

“The planning system faces challenges across the UK. The cost of living and housing crises coincide with the rise of planning backlogs, the underfunding of local authority planning departments, and persistent labour shortages of planning professionals. In England, this is compounded by political uncertainty around “planning reform” on both sides of the aisle. These issues manifest as foregone construction of homes and infrastructure. Frustration with the state of the planning system also results in personal attacks on professionals in public and social media.”

It is into this environment of challenge that BNG is rolling out into. A recent RTPI survey (2023b) found that:

- 79% of public sector planners believe that BNG practice would be improved with confirmation of additional ‘skills and staff’.
- 78% of public sector planners believe that BNG practice would be improved with additional ‘guidance, advice and support’.

The planning enforcement context



'The RTPI conducted a survey with responses from 133 enforcement officers representing about a third of local authorities in England. The results were striking. 80% of respondents reported that there weren't enough officers in their team to carry out the workload, 89% that their councils are currently experiencing a backlog, 73% that their authority had struggled to recruit in the last year and 96% supported central government funding for direct action. Under 50% of authorities now have the capacity to monitor compliance of conditions once successful enforcement action has been taken...Thus, the last decade of cuts has had a tangible and damaging impact on planning enforcement'

(RTPI, 2022)



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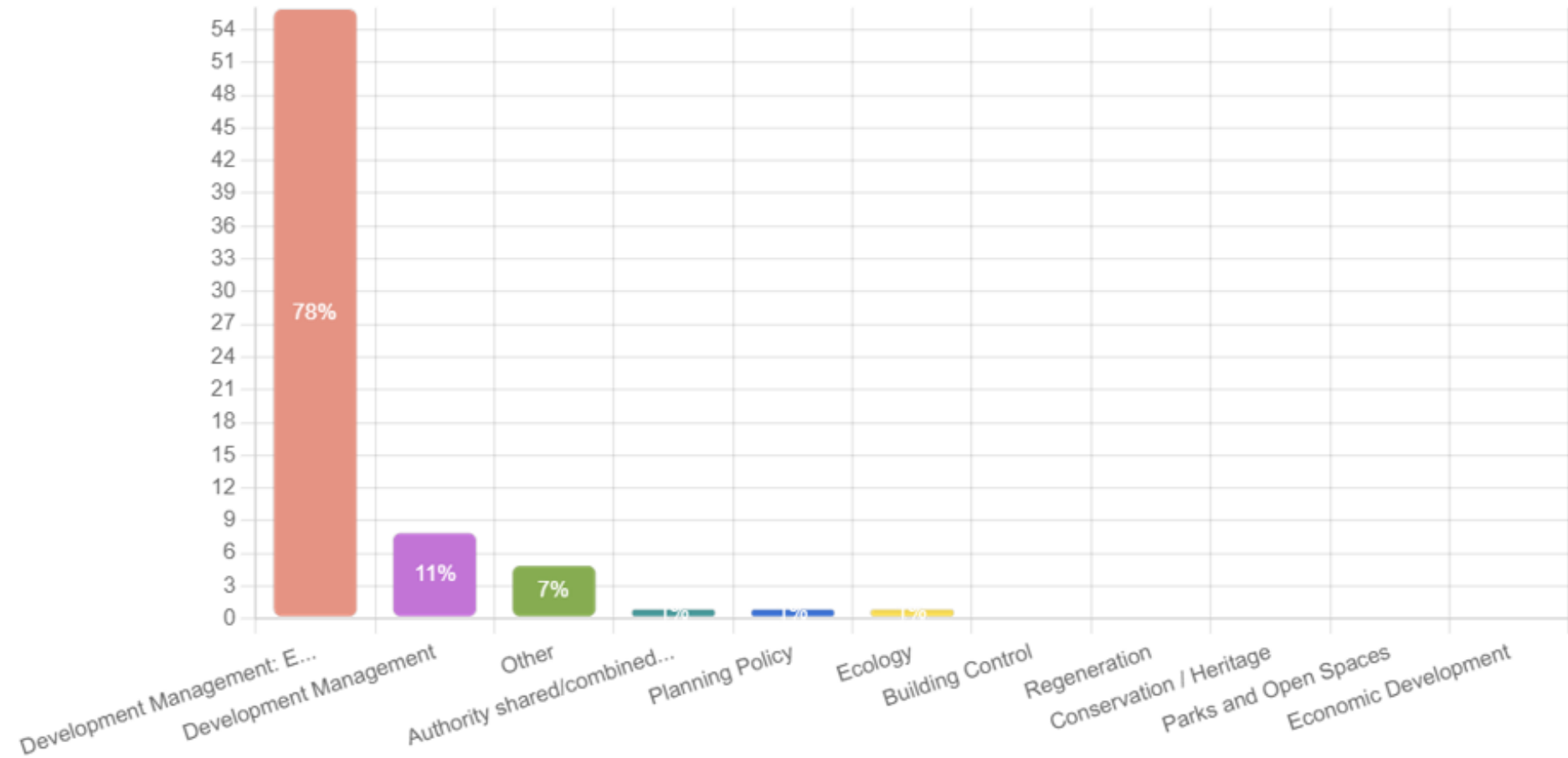
Method



Participation

Your role

Question responses: 72

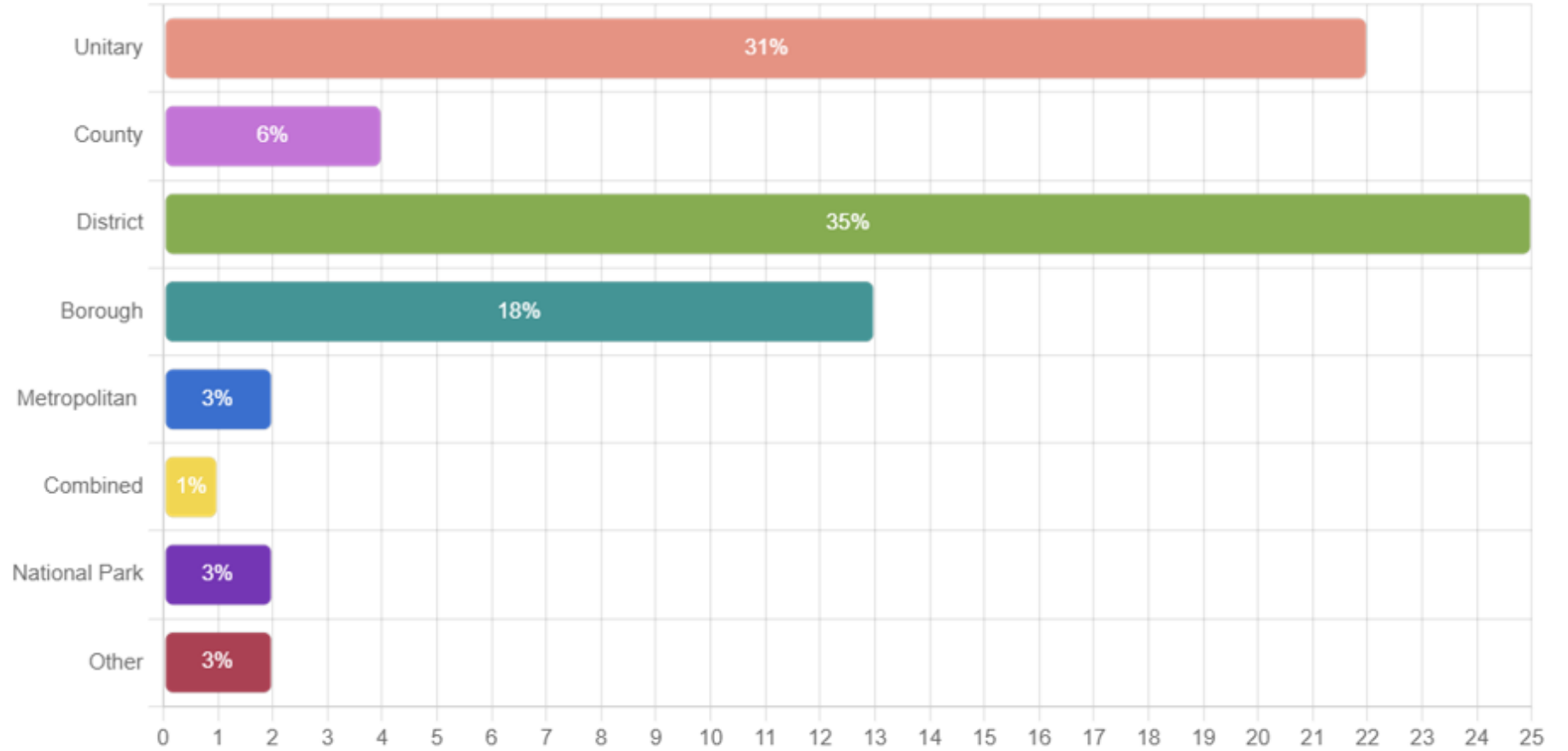


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Participation

Your Local Authority type

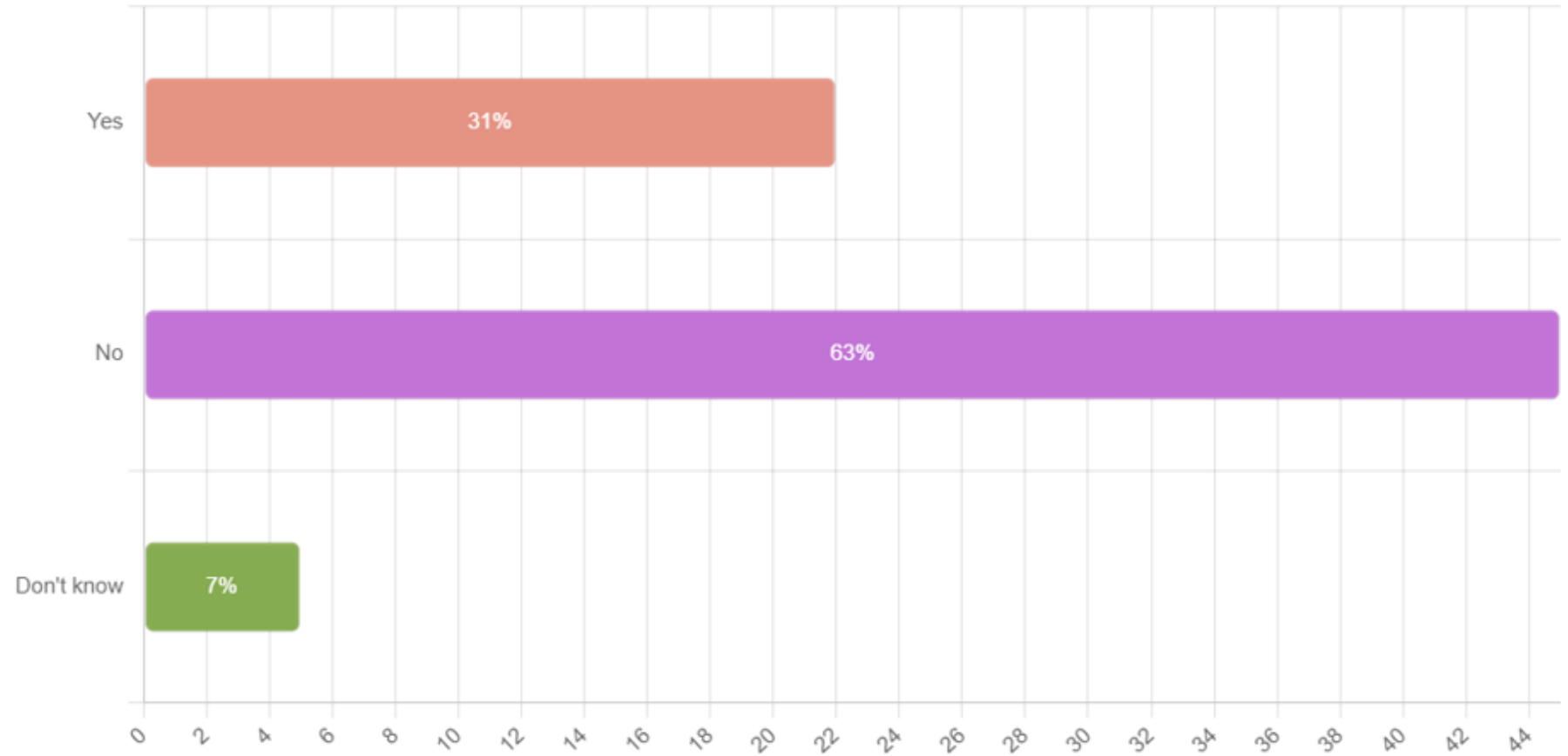
Question responses: 71



Survey

Do you feel your planning enforcement service is adequately resourced to meet current service demands?

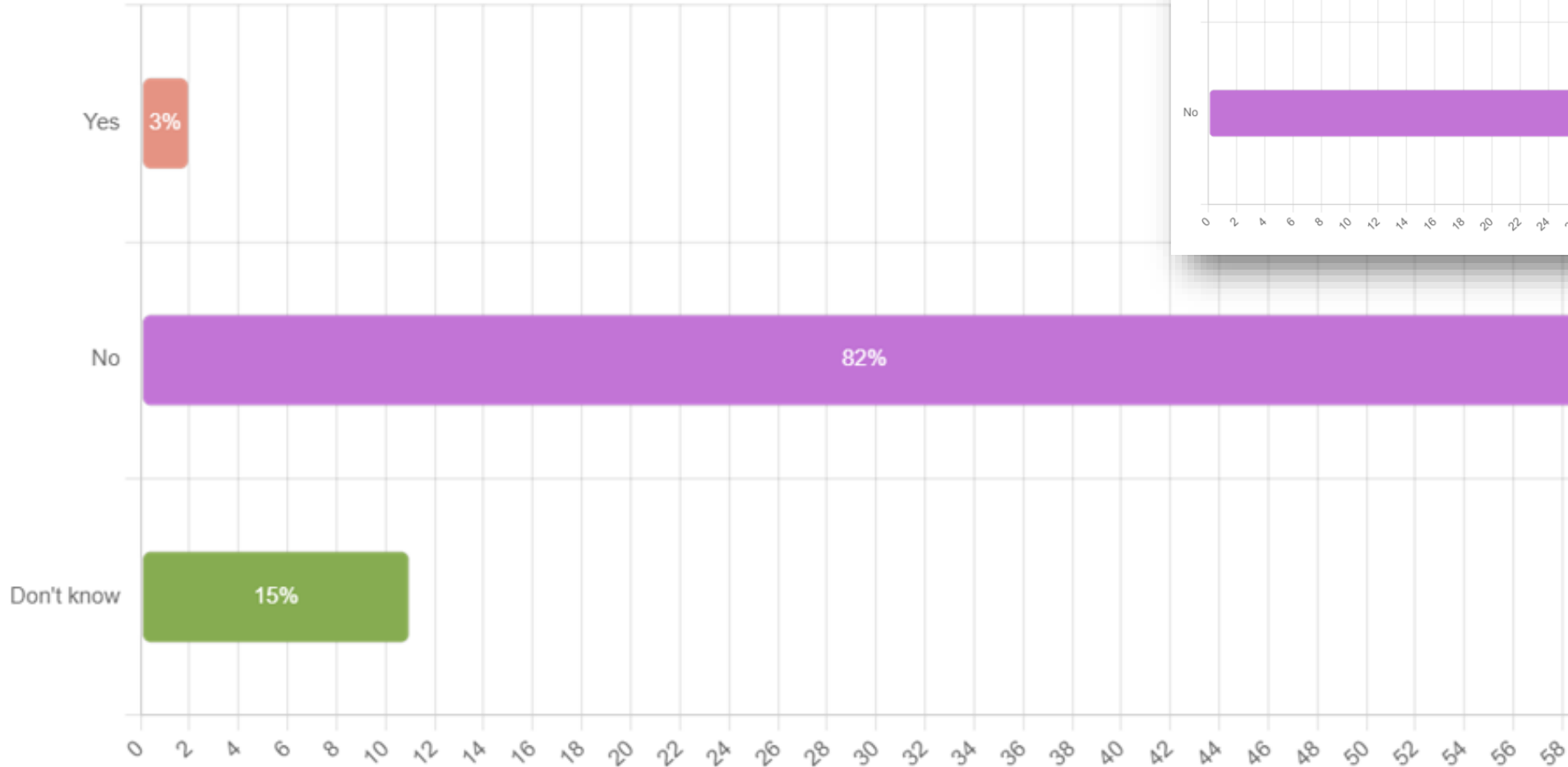
Question responses: 72



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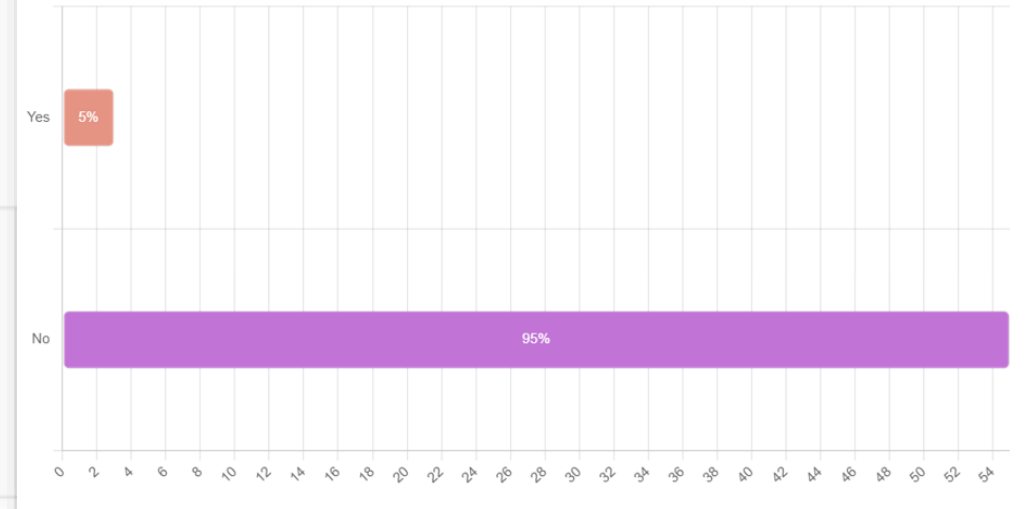
Do you feel your organisation's planning enforcement service is adequately resourced to meet expected the further service demands specifically related to BNG in 2024 in addition?

Question responses: 72



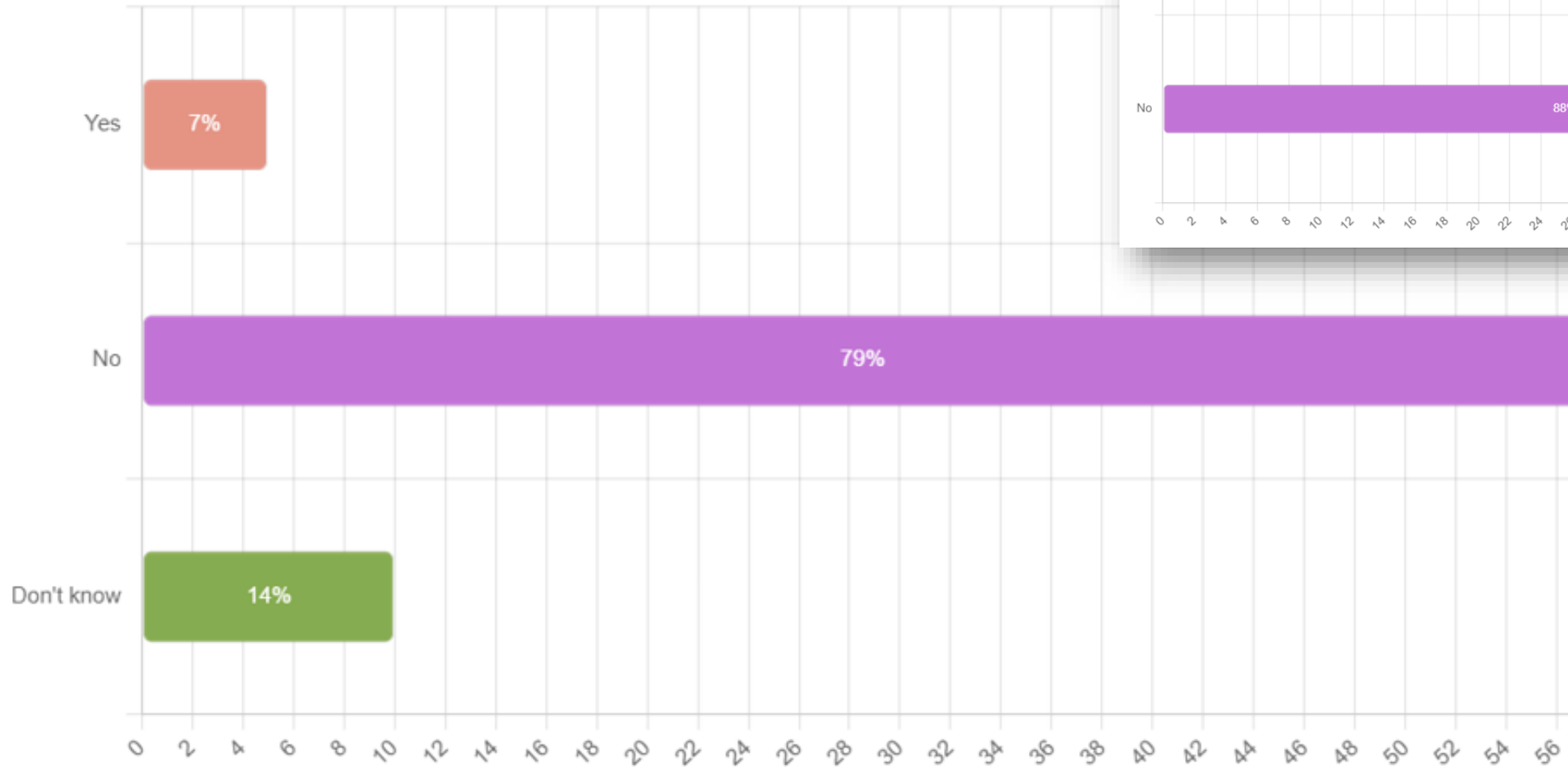
If you answered no to the previous question, are you confident resources will be forthcoming in a timely manner?

Question responses: 58



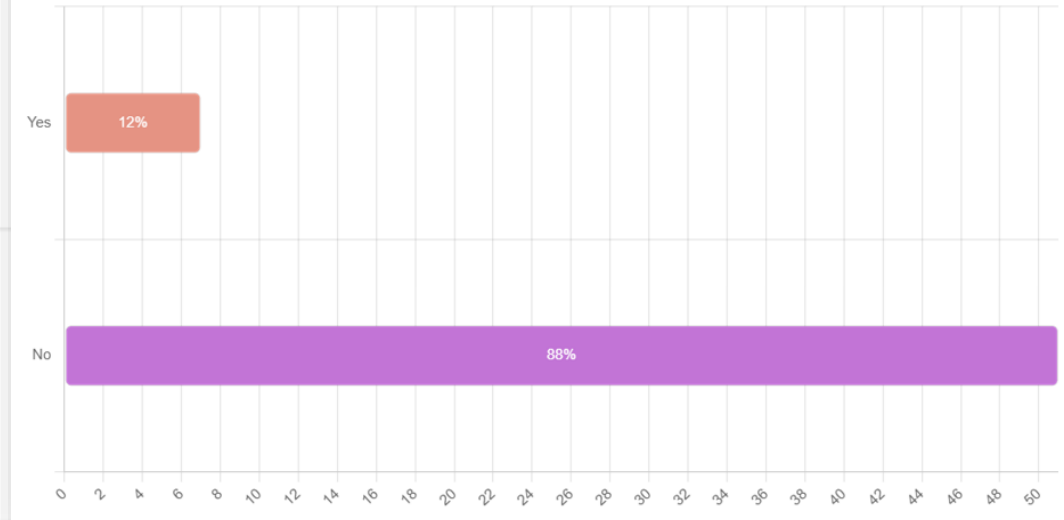
Do you feel your planning enforcement team have, or will have, the requisite skills, knowledge, and understanding to provide a BNG related enforcement service in Spring 2024?

Question responses: 72



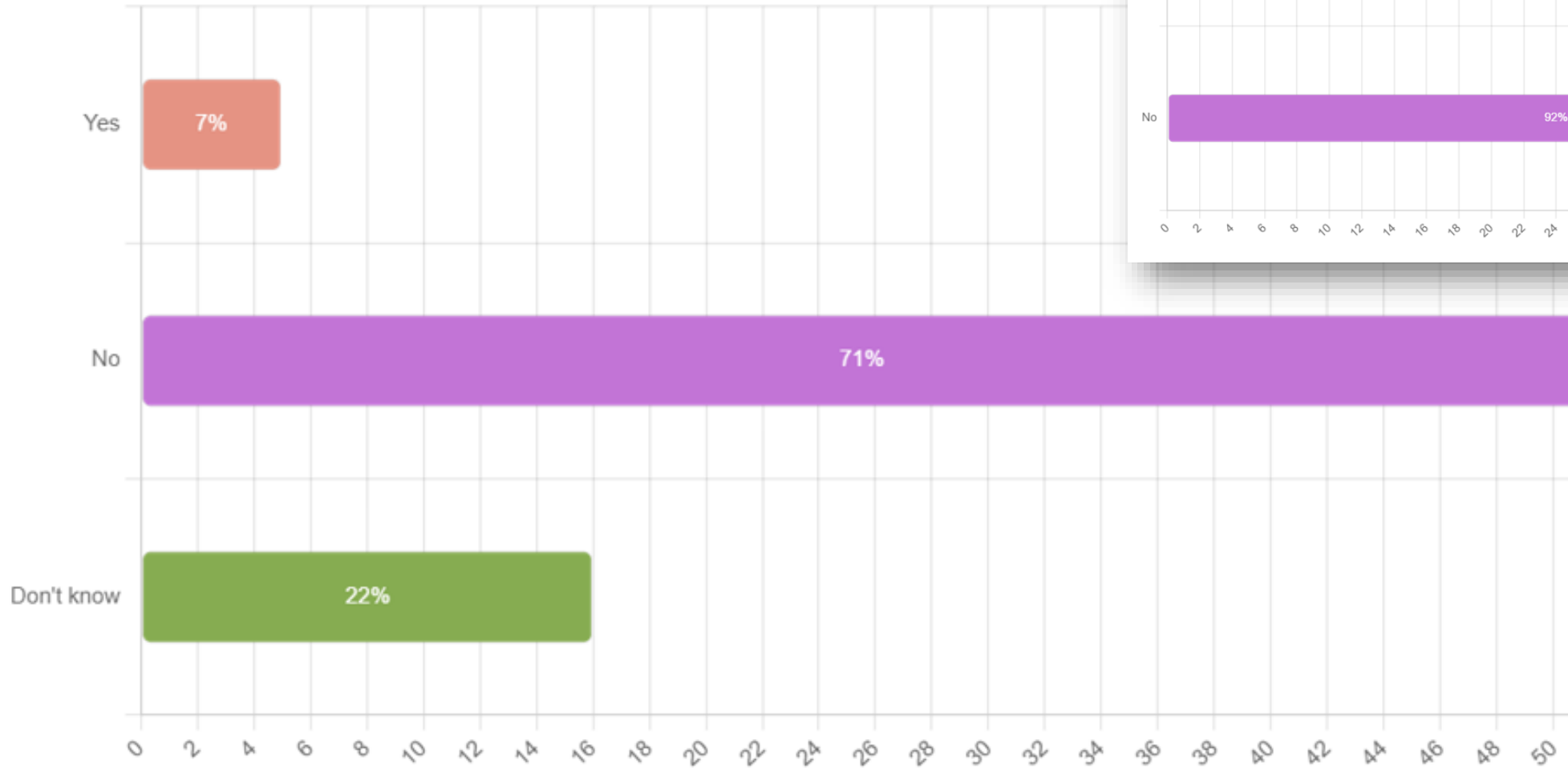
If you answered no to the previous question, are you confident this will be addressed in a timely manner?

Question responses: 58



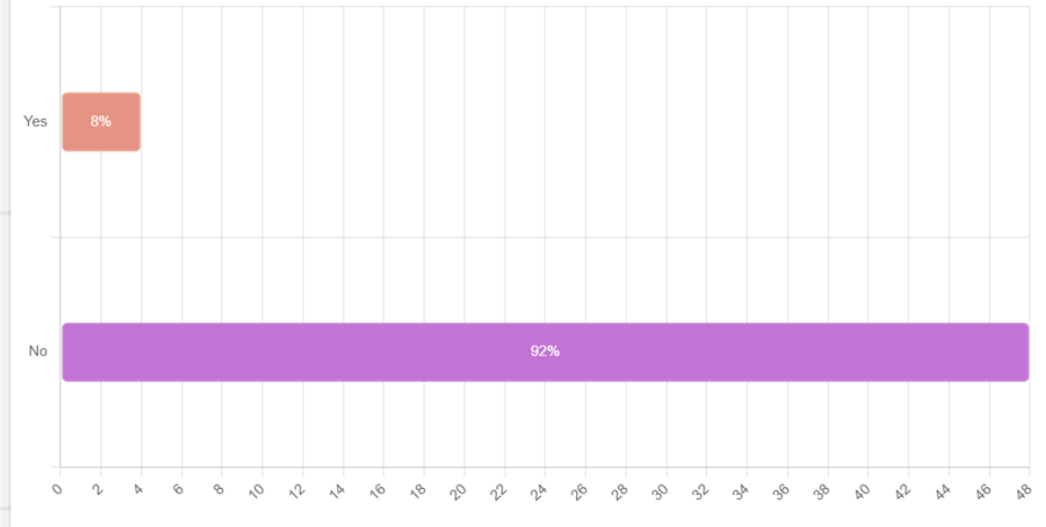
Do you feel you/your organisation has the necessary enforcement systems and processes to meet expected service demands specifically related to BNG from Spring 2024?

Question responses: 72



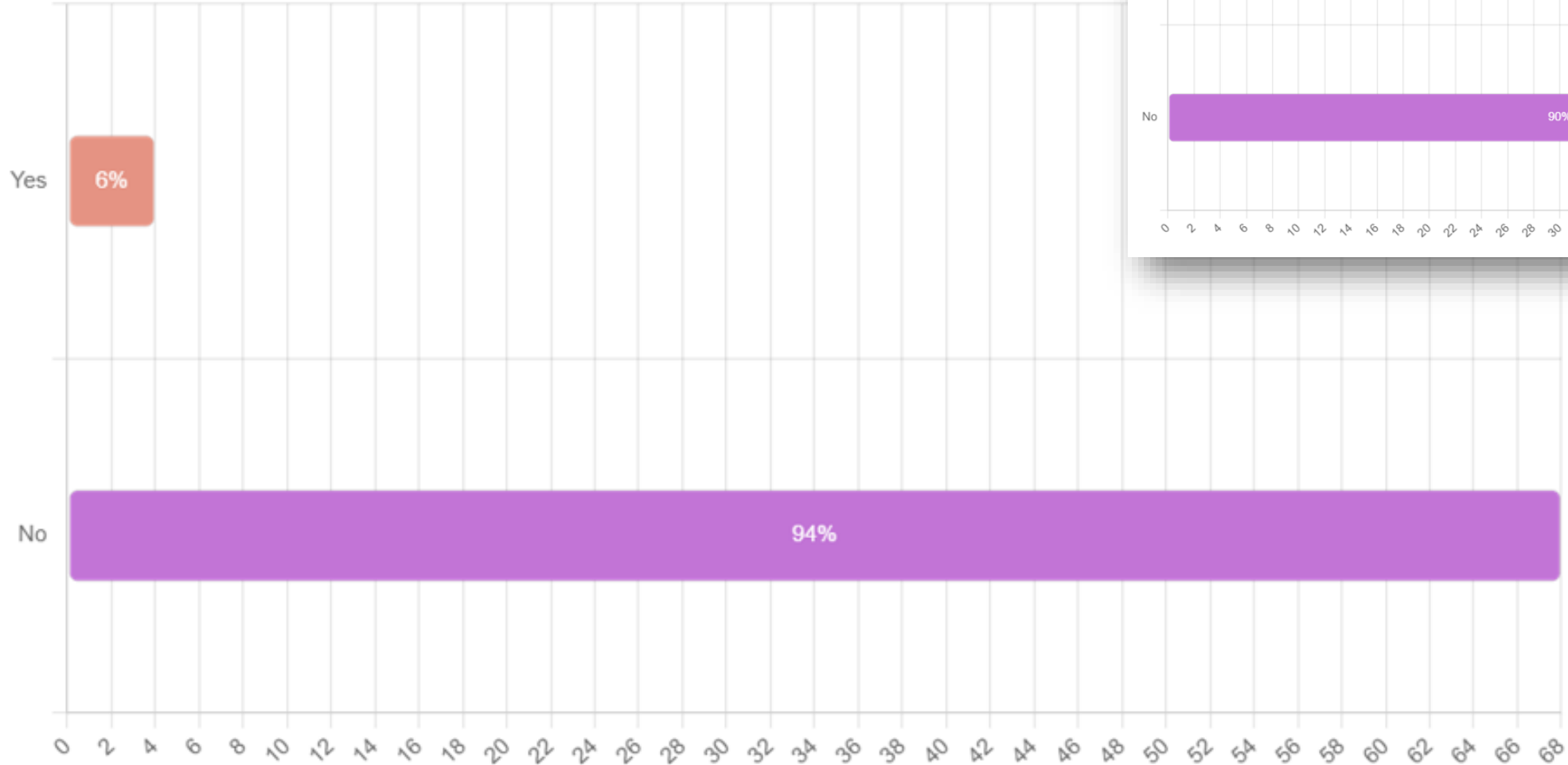
If you answered no to the previous question, are you confident these will be forthcoming in a timely manner?

Question responses: 52



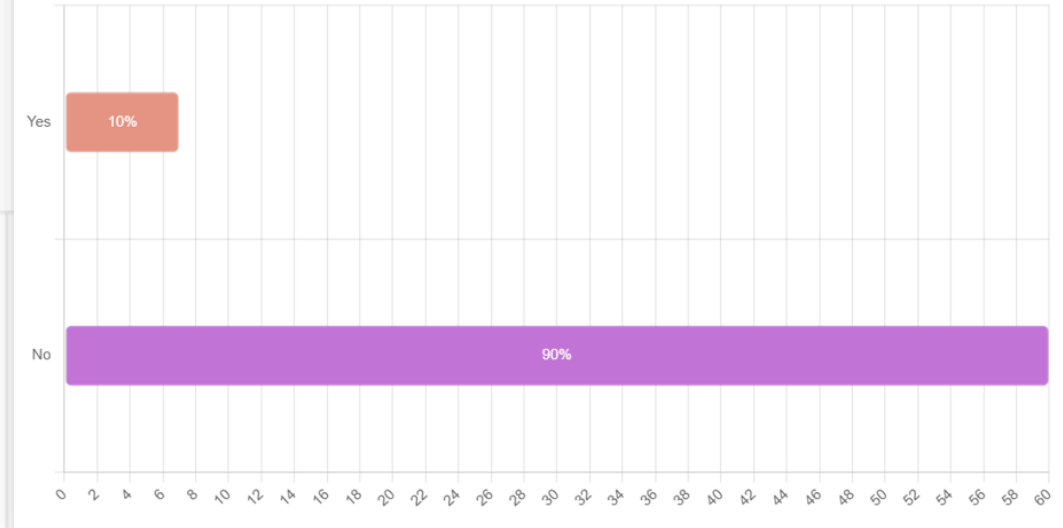
Do you feel you have the guidance and detail from Government to support the effective operationalisation of BNG specifically with regards enforcement and enforcement service implications?

Question responses: 72



If you answered no to the previous question, are you confident this will be forthcoming in a timely manner?

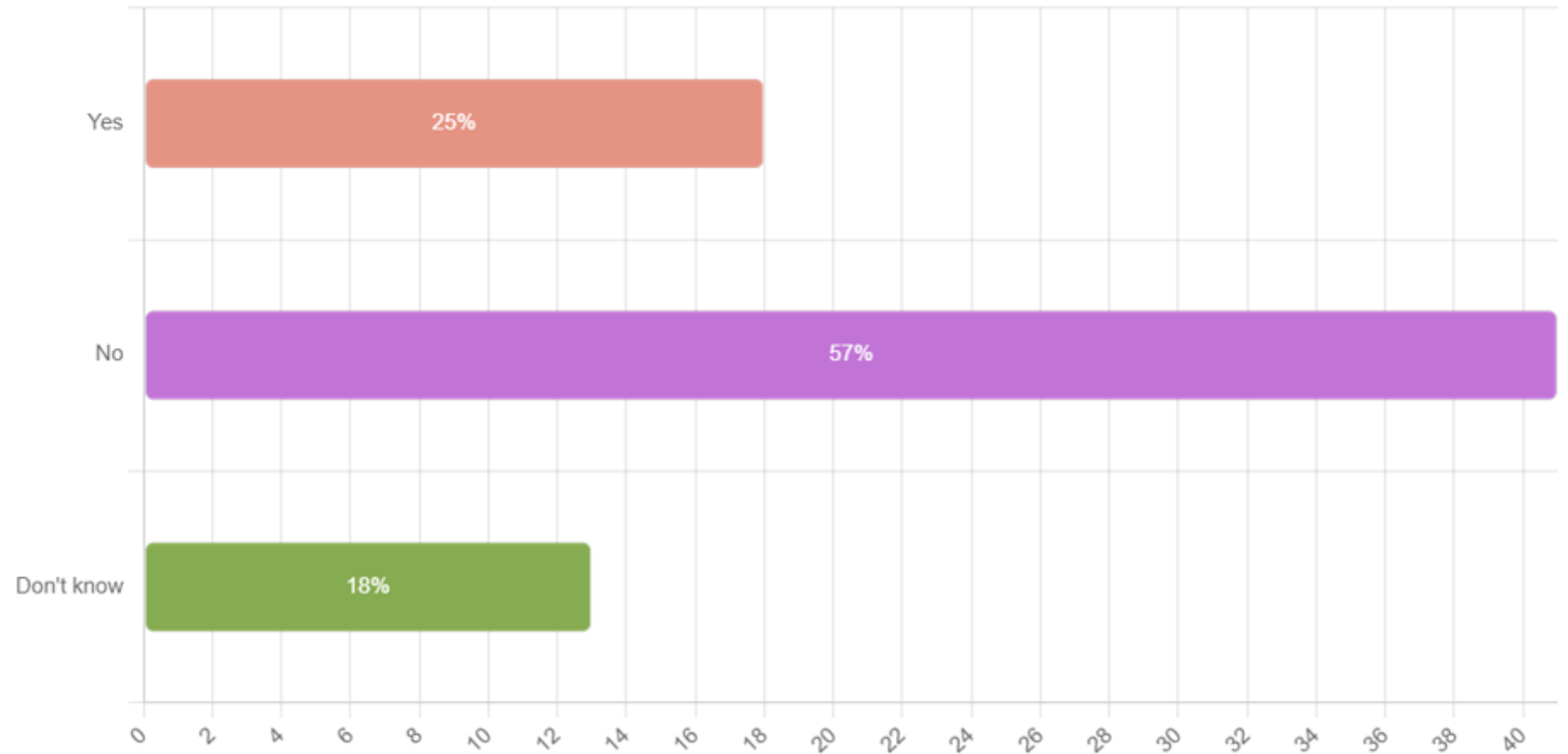
Question responses: 67



Survey

Do you feel your organisation has sufficient inhouse or outsourced ecological experts to meeting BNG work requirements?

Question responses: 72

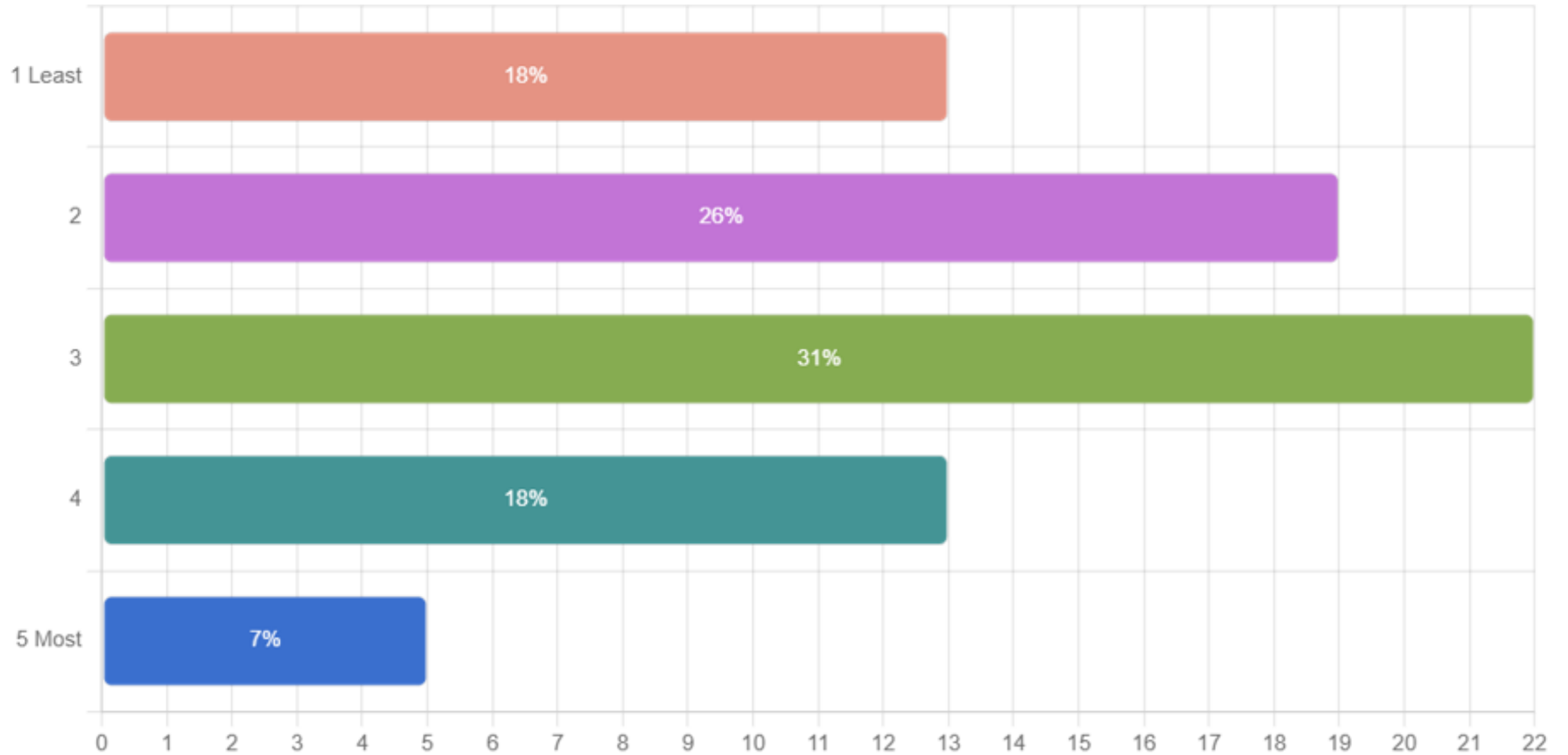


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Survey

How comprehensively do you feel your organisation's senior leadership team understand, and are planning/providing for, the implications of BNG within your planning enforcement service?

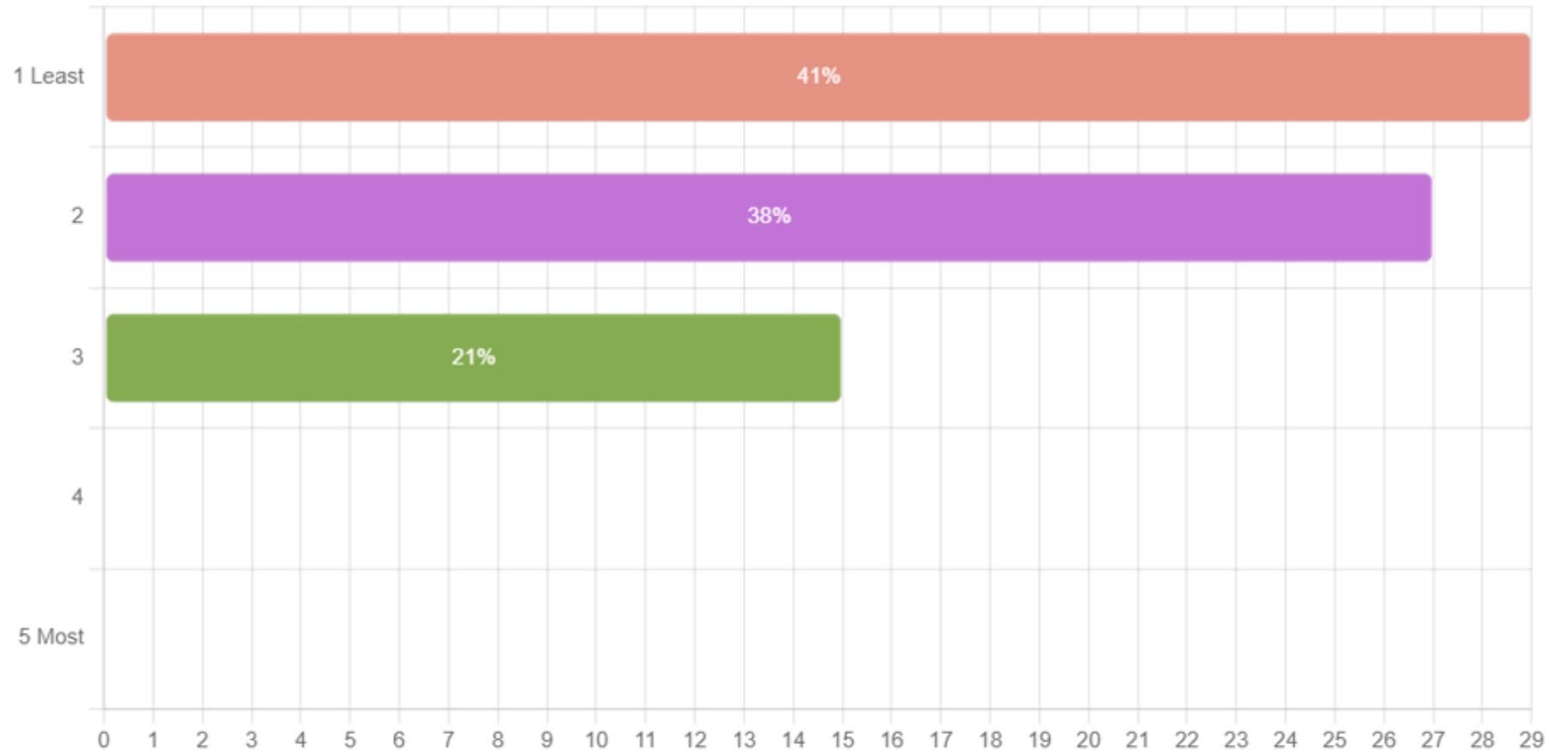
Question responses: 72



Survey

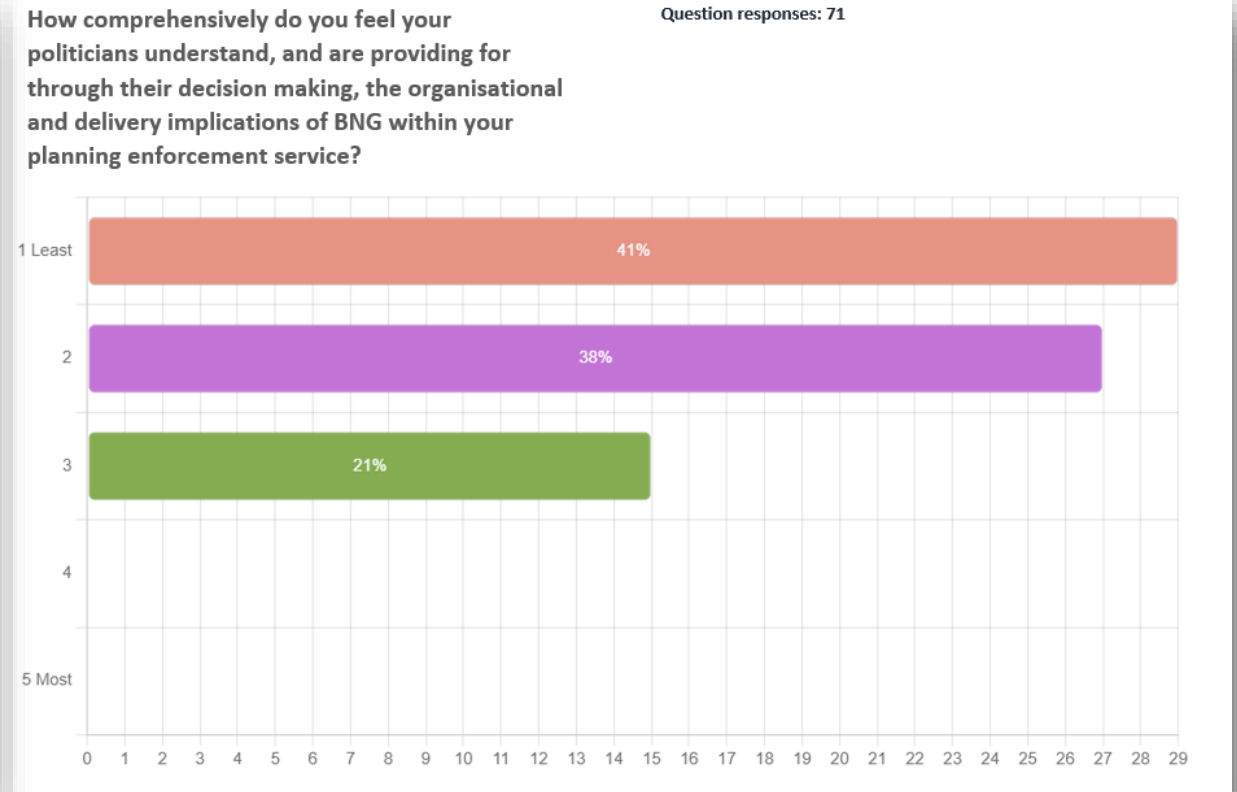
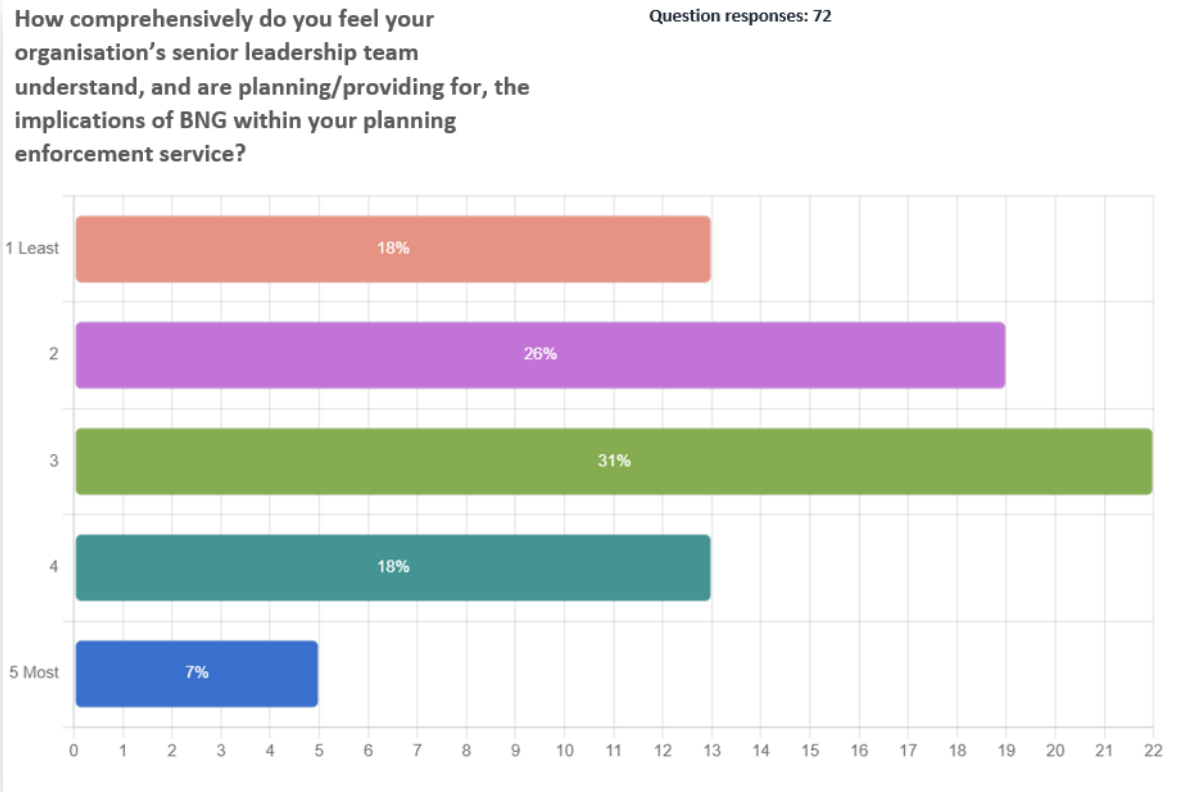
How comprehensively do you feel your politicians understand, and are providing for through their decision making, the organisational and delivery implications of BNG within your planning enforcement service?

Question responses: 71



Survey

- A mixed picture with regards recruitment of other resources (ecologists) and wider preparations, but LPA do appear to be responding to immediate requirements
- Sense that, as elsewhere, enforcement isn't being prioritised or considered adequately – particularly by political leadership:



Forum

Systems, tools and processes

Serving Notice

Priorities and resourcing

Monitoring and remediation

Liability

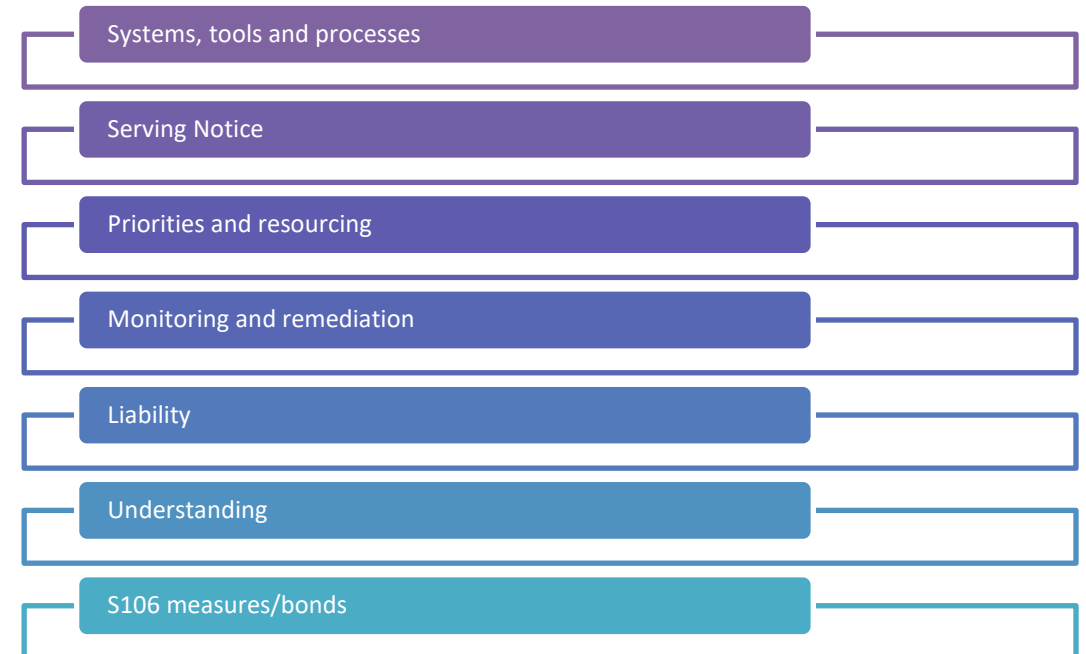
Understanding

S106 measures/bonds



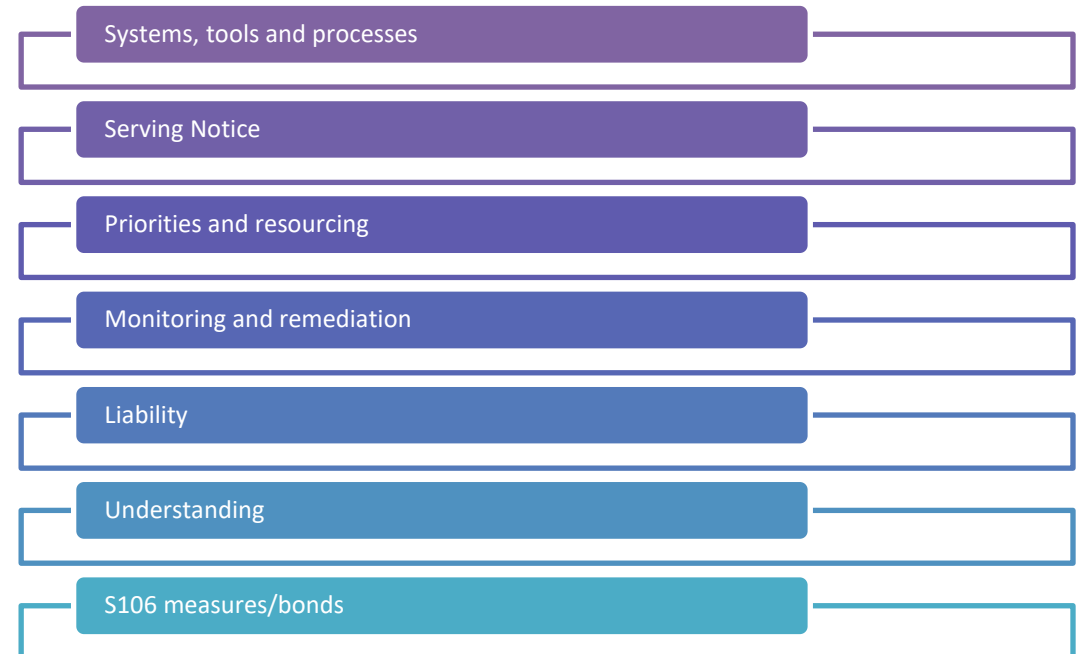
Systems, tools and processes

- Enforcement specific provisions currently lack details with regards process and approaches
- Further work needed with regards conditions and the BNG Plan to ensure effective interface with enforcement, and enforcement specific processes and actions
- Need for LPA review of enforcement plans and processes to ensure BNG proactively considered
- Relationships
- Skills and capacity implications



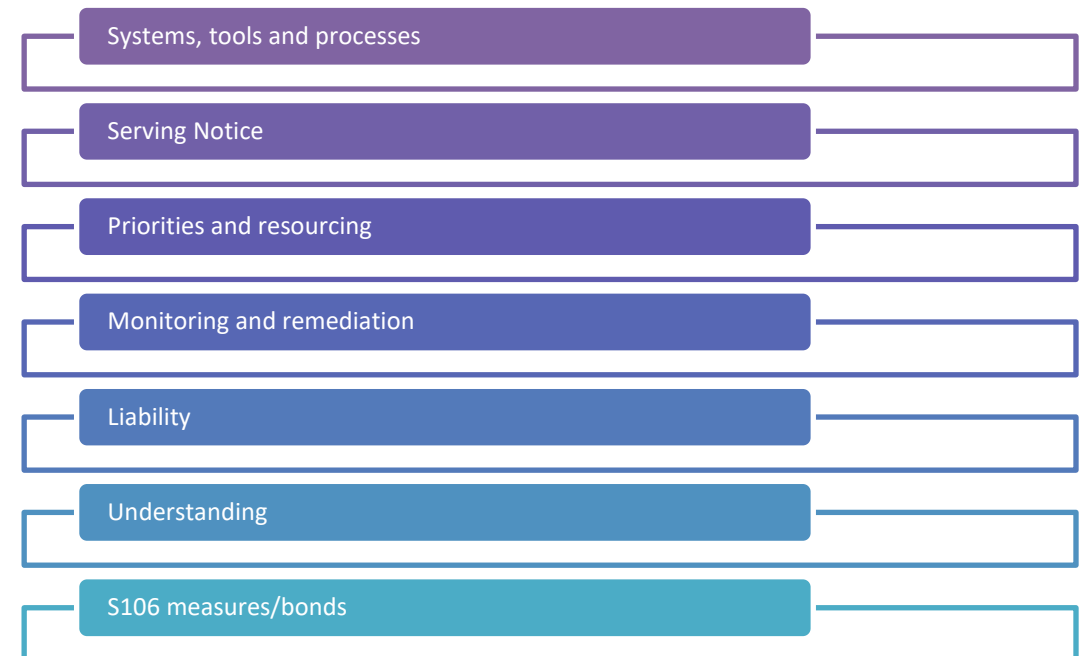
Serving Notice

- A general lack of confidence in how the BCN notice would work, and indeed the role of this
- Role of enforcement in a negotiated outcome associated with the BNG Plan?
- Legal dimension and focus?
- Skills and capacity implications



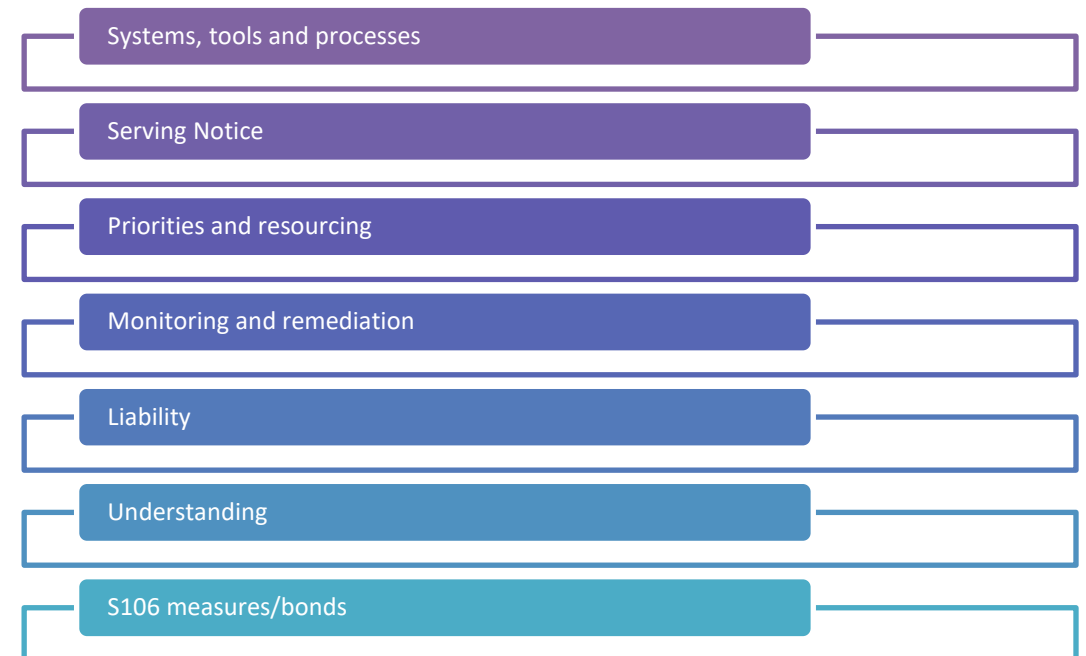
Priorities and resources

- A proactive approach? Or reactive and following the BNG Plan monitoring provisions?
- Current lack of resources and capacity – ‘...could not be effectively enforced without further resources’
- Lack of guidance and training as specific to enforcement
- In the extreme, a lack of dedicated enforcement service
- Skills and capacity implications



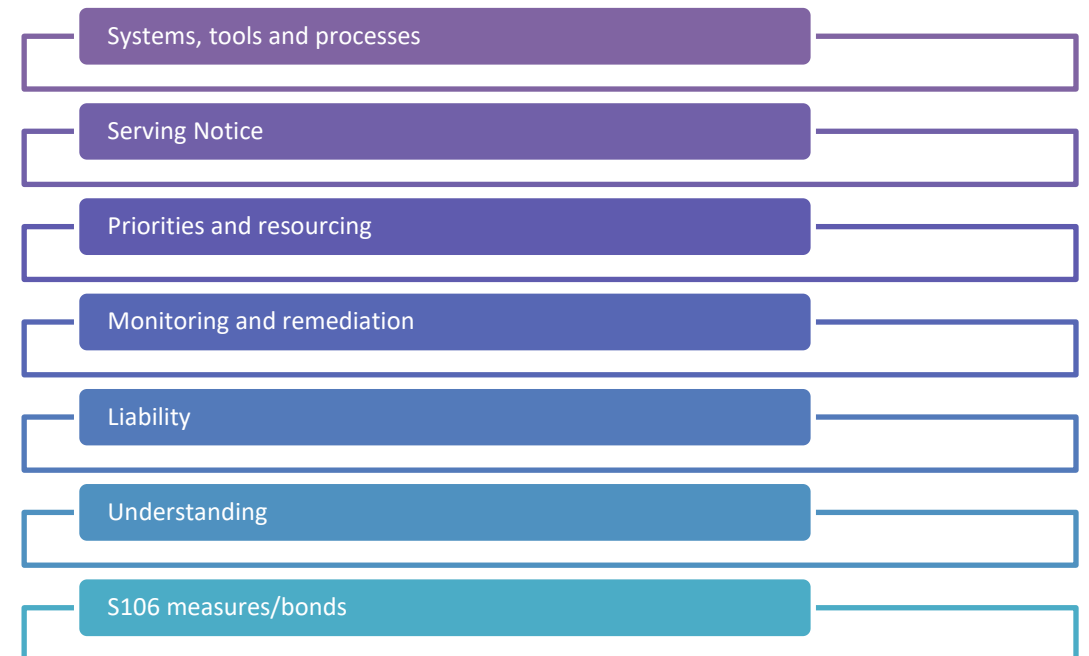
Monitoring and remediation

- 30 year period from completion
- Complexities with out of area matters
- Response options and management / agreement of these
- Legal requirement evolving into a discretionary space
- Skills and capacity implications



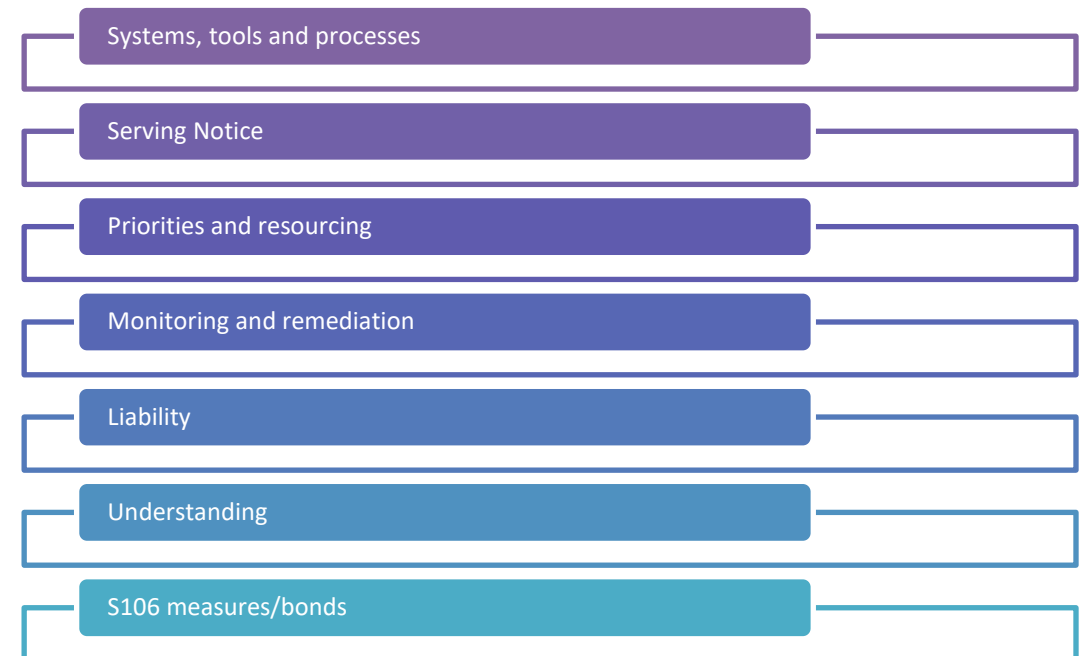
Liability

- Implications of ownership and liability complexities
- Homeowners, Community groups
- LA
- Multiple actors
- Completion commencement
- Loss of an actor
- Interface with processes (BCN), and sensitivity with relationships
- Skills and capacity implications



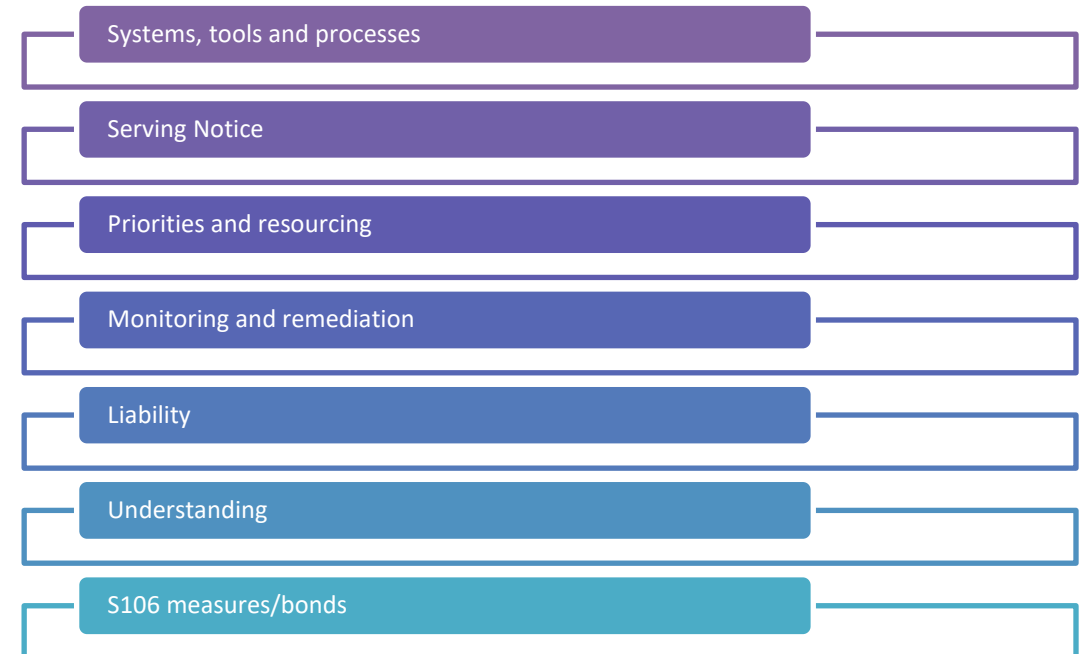
Understanding

- Training
- CPD provisions
- Linkages / organisational structures and processes



S106 measures / bonds

- Interface with legal services
- Timing of resourcing/funding
- Skills and capacity implications



Conclusions

- Sophus zu Ermgassen (2022) *“The government proposes that these can be monitored and enforced by local authorities through the existing planning enforcement system. But the government’s own guidance to local authorities advises them not to take enforcement action unless the violation of the relevant planning condition constitutes a ‘serious harm to a local public amenity’. Under the current system, it is highly unlikely that a developer’s failure to deliver a habitat of a given quality that was consented when the development was approved years ago will trigger this threshold – leaving these biodiversity gains unenforceable”*
- Sophus zu Ermgassen et al (2021) note that in France and Australia challenges concerning enforcement specifically, and guidance and skills/capacity more widely, have been impactful upon the implication and successes of ecological compensation systems.
- *“...the current reactive nature of English planning enforcement is poorly suited to guaranteeing the delivery of high-quality habitats within approved developments”* (ibid); **a critical consideration here is therefore the implications of enforcement upon the ultimate success of BNG.**
- As will all aspects of planning practice, enforcement is critical to credible service delivery. Without investment in enforcement services, BNG risks falling short of the aspirations associated with it.



Recommendations



1. **CLARITY** - To produce a BNG enforcement action plan with clarity on (2), (3), (4), (5), (6), and (7) below.
2. **SPECIFICITY** – A process to address, through engagement with RTPI NAPE members, critical knowledge/legal requirements. These will inform (3), (4), and (5) below.
3. **GUIDANCE** – A need for *enforcement specific* guidance, and advice wider process requirements.
4. **TOOLS** – Provision of *enforcement specific* materials for reference and use (templates etc) in association with (3).
5. **SKILLS RESOURCING** - Dedicated funding from central government to provide *enforcement specific* training and CPD for current staff
6. **RESOURCE** - Increased and sustained (ringfenced) funding for planning and ecology services to enable an increase in the number of posts within enforcement and ecology at each council
7. **RESPONSIBILITY** - Clarity required from government regarding liability and responsibilities, including queries relating to business insolvency, homeowners, and community organisation with regards liability. Plus, off-site and out of area / credit-based enforcement.



Recommendations

Local councils / RTPi NAPE:

1. Make internal training and staffing for BNG related work a priority where budgets allow, with a specific focus upon enforcement
2. Formation and continuation of use of support groups between local authorities / stakeholders to share best practice.

Planning agents and developers:

1. Ensure their teams have knowledge and training on their requirements in this role to reduce onus on councils.





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Thank you

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