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51st ANNUAL SERIES

Natural Capital
What is it, and what are the implications for property rights, valuation principles, and user of land?

Tuesday 16 June 2026
Inner Temple, London

Supported by Falcon Chambers

SPEAKERS

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Natural Capital: What is it, and what are the implications for property rights, valuation principles, and user of land?

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Caveat: This paper was written in June 2026 at a time when natural capital markets and the policies underpinning them are developing rapidly. The paper is reflective of the position at the current time and as such, all references to market information in particular should be treated with due caution.

1. An Introduction to Natural Capital

1.1 At its essence, "natural capital" is the soil, water and air on which we all depend. In 2014 the Natural Capital Committee defined natural capital as:

"the elements of nature that directly and indirectly produce value or benefits to people, including ecosystems, species, fresh water, land, minerals, the air and oceans, as well as natural processes and functions."[1]

1.2 Fundamentally, natural capital underpins the other capitals upon which society is based:

- Human capital (knowledge and skills)
- Produced capital (goods and services, including financial services)
- Social capital (including the rule of law)

1.3 None of those other measurables could function without natural capital, yet our economic system is woefully inadequate in accounting for the value to society of things like healthy soil, unpolluted catchments and intact ecosystems.

1.4 To put this into perspective, in January 2026 the Government published its National Security Assessment on Global Ecosystems[2] which acknowledged a very serious threat to the UK's national security of ecosystem degradation and collapse. It noted that those countries best placed to adapt to a world in which ecosystem collapse was a real and present danger were those that invested in ecosystem protection and restoration, and resilient and efficient food systems.

1.5 What we are trying to do now is to create markets for those hard to value "ecosystem services" on which we all depend, in order to incentivise society to deliver more of them. Ecosystem services are the flows from the natural capital stocks and include:

1.5.1 Provisioning services, such as food, fuel, water, and fibre, for which there are existing economic markets

[1] Defra, *Enabling a Natural Capital Approach (ENCA) Guidance* (2026)
[2] Defra, *National Security Assessment on Global Ecosystems* (2026)

1.5.2 Cultural services, such as recreation, tourism, cultural identity and a sense of place, for which there are some markets, particularly in leisure and tourism

1.5.3 Supporting services, such as photosynthesis, soil formation and the water and nutrient cycles, which underpin all other services

1.5.4 Regulating services, such as carbon sequestration, flood risk mitigation, thermal regulation, nutrient uptake and air quality purification, for which new natural capital markets are emerging

1.6 These emerging natural capital markets are split into Compliance Markets and Voluntary Markets. There are only currently two compliance markets in England: statutory biodiversity net gain ('BNG') and the regulatory market of nutrient neutrality. All other natural capital markets, including woodland and peatland carbon markets, are currently voluntary in that there is no obligation on buyers to participate.

1.7 Natural capital markets are emerging rapidly on a global basis, driven by agri-environment reform, corporate ESG commitments, global frameworks such as the Taskforce for Nature-related Financial Disclosures (TNFD) and private investment in nature-based solutions. These markets depend upon long-term land use change, enforceable ecological obligations, and durable income streams capable of supporting valuation and finance.

1.8 *An historical perspective:* Before we get into the detail of the questions, it might be helpful to rehearse a little from history about land use and occupation and the emergence of industrial scaling of agricultural production. For it is in this corner of provenance that we can see the seeds of change emerge in the commodification of land use and its yield as a principal focus of 'efficiency' and, in consequence the place of natural capital in an economic and political context.

1.9 This extract comes from George Ewart Evans' 1956 book, "Ask the Fellows who Cut the Hay"- a social history of the Suffolk village of Blaxhall:

"We can … be fairly sure that the … efficiency of the machine is likely to improve, and the character of the farming which uses the machine will itself be changed by it. It seems almost inevitable that arable farming in the future will take on the nature of a purely business economy". (Evans, p238)

1.10 The point is that the industrialisation of agriculture, and the enclosure of the land which preceded it, moved land use very rapidly into an era of the 'business economy'. That had not been the case in the past, which had seen an evolution of agriculture over millennia at a scale and pace consistent with the cycles of regeneration and sustainability which accommodated customs, politics, society and the natural environment - although it would never have had to be couched in those terms.

1.11 With the industrial revolution and the Enclosures Acts came the inevitable impact of growth and with *that* came a point at which use of the land and the water – that is, of the natural capital – would tip into extractive exploitation. In other words, how far could one push the business yield before the natural capital which gave rise to it could no longer provide?

1.12 The genie was out of the bottle and the consequences on trade, economics and politics ballooned, overshadowing any concern of sustainable production, yield or benefit and certainly not considering seriously the broader derivative impacts on the environment, biodiversity or the climate until quite a lot of damage had been done.

1.13 And so we find ourselves here today, talking of natural capital as an 'emerging market' and a 'concept'. Arguably, this debate might better be viewed through the prism of a quite near history. Perhaps we should see 'innovative techniques', such as regenerative agriculture or silvo-pasture, or 'novel concepts' such as biodiversity net gain and 'interventions', such as wildlife corridors and leaky dams, as nothing more the restitution of the old ways, re-formatted to cope with a 'business economy' which seems now to be a necessary component of dealing with land, agriculture and natural capital and ensuring that those who control them (and advise on them) are adequately equipped. It is the role of those users of land, above all else, to deal with their custodianship now and in the future without losing control and without losing out commercially.

2 The legal framework for natural capital

Are the existing legal frameworks for land and property occupation going to be fit for purpose when it comes to natural capital markets? If not, what needs to change?

2.5 In England and Wales, this framing of natural capital and ecosystem services has become embedded in environmental governance through the Environment Act 2021, the provisions of the Conservation of Habitats and Species Regulations 2017, and policy support for private nature markets following the UK National Ecosystem Assessments in 2011 and 2014 which confirmed:.[3]

2.5.3 The UK's natural environment underpins the economy, health and wellbeing but is systematically undervalued in decision-making.

2.5.4 Natural capital underpins growth but is invisible in traditional valuation terms.

2.5.5 Approximately 30% of ecosystem services are in decline.

2.5.6 There must be a move away from sector-based, retrospective mitigation to integrated, early stage review.

2.5.7 Incorporating full ecosystem service valuation (including non-market benefits) leads to more efficient, sustainable decisions.

2.6 This change in how ecosystem services are perceived represents a tangible shift in the relationship between land law, agricultural production and environmental regulation.

2.7 In order to generate the required deliverables, natural capital projects can frequently require land to be managed for specific environmental outcomes over extended time periods. Conservation covenants have been introduced as a new tool specifically to facilitate such projects and they are considered in more detail below. Such requirements will also pose a challenge to a land tenure system historically designed to prioritise agricultural productivity, and security of tenure rather than permanence of land use.

2.8 Natural capital markets typically require long-term commitments, often extending thirty years or more, to deliver and maintain environmental outcomes such as habitat creation, carbon sequestration, or nutrient mitigation.[4]Permanence, additionality, exclusivity, and verifiability are central to market integrity and investor confidence.

2.9 Unlike traditional agri-environment schemes, participation in these markets often involves legally enforceable obligations, restrictions on alternative land

[3] Environment Act 2021; Defra, *Nature Markets Framework* (2023)
[4] The Wildlife Trusts, *Nature Markets Principles* (2023)

uses, and mechanisms intended to bind successors in title. These characteristics introduce new forms of land encumbrance that are at odds with existing landlord–tenant frameworks.

2.10 The existing agricultural tenancy frameworks in England are not yet fully equipped to support high-integrity natural capital markets at scale. Whilst steps to adapt industry standard terms are being made, the sector as a whole is a little way off accommodating natural capital projects.

2.11 If natural capital markets are to mature effectively they will require improved alignment between tenure and long-term land use change and settled approaches to valuation and compensation. Agricultural tenancies in England have been historically restrictive in character toward the tenant, although things are starting to change albeit, quite slowly.

3 The Agricultural Holdings Act Tenancy

3.5 In practice, there are two types of agricultural tenancy which are encountered most frequently – those under the Agricultural Holdings Act 1986 ('AHA') and those under the Agricultural Tenancies Act 1995.

3.6 Tenancies under the AHA are marked by strong statutory protection, including security of tenure for life and qualifying successors, and tightly regulated rent review mechanisms assessed by reference to the holding's productive capacity for agriculture.

3.7 The right of succession under these tenancies has meant, traditionally, that once a tenant is in occupation the potential for a landlord's input is minimal. So it continued that tenants would die, new tenants would succeed and nothing would or could change. Yet, around these long-term tenancies, new opportunities around diversification and regenerative agriculture and pressures resulting from geopolitical instability have meant that reforms were required.

3.8 Under the Agriculture Act 2020, reforms around succession came into force on 1 September 2024. Successors now face a much more rigorous hurdle, in having to provide evidence of the following as part of a 'suitability test':

3.8.1 Strong farming skills;
3.8.2 Commercial acumen;
3.8.3 Financial robustness; and
3.8.4 A credible plan for the holding.

3.8 There is now a stronger emphasis on profitability, efficiency and (arguably) environmental stewardship.

3.9 These reforms are reflective of a clear intention to improve productivity in the tenanted sector and to ensure that the land is farmed by those who can make the best economic and environmental use of it. The suitability test explicitly

includes the requirement to farm with environmental care, aligning with the current land management expectations.

3.10 While this regime has historically supported agricultural stability and tenant investment, it significantly constrains the ability of landlords to impose land use change. In the landlord and tenant sphere, collaboration is vital. Habitat creation, rewilding, or long-term withdrawal from agricultural production generally requires tenant consent and so it is vital that both parties are aligned. It is easy to foresee resistance where such changes negatively impact the tenant's statutory rights or livelihood.

3.11 The compensation regime under the AHA further complicates natural capital participation. Compensation provisions were designed for physical improvements and disturbance rather than environmental enhancement.[5] As a result, there is no clear statutory basis for valuing biodiversity gain, carbon stocks, or ecosystem services accruing during the tenancy, or for determining ownership of such value upon termination.

4 Farm Business Tenancies

'*The need for deregulation was perceived following the dramatic decline in let land and the increasing use of devices to avoid granting security of tenure under the AHA 1986, either utilising exceptions or loopholes in the AHA 1986 (grazing agreements or Gladstone v Bower agreements) or avoiding the land and tenant relationship altogether by the use of partnership, contracting or share farming arrangements*[5].'

4.8 Farm Business Tenancies (FBTs), introduced by the Agricultural Tenancies Act 1995, permit significantly greater contractual flexibility and are now the dominant form of agricultural letting in England.

4.9 The main features of the FBTs are:

4.9.1 No minimum term

4.9.2 Minimal security of tenure, being only an extension of the common law notice period for notices to quit annual tenancies; a requirement for fixed-term tenancies of more than two years to be terminated by a prescribed period of notice and a control over the length of notice required to exercise contractual break provisions in certain fixed-term contracts

4.9.3 The ability to allow substantial diversification away from agriculture without losing the status of the tenancy as a farm business tenancy

4.9.4 Limited freedom over rent review. The parties can choose to have a no reviews or one of the statutory options but otherwise the rent will be reviewed on an open market basis. Timing and frequency of reviews are a

[5] Scammell, Densham & Williams Law of Agricultural Holdings (11th Ed)

matter of contract, with a fall-back position to allow reviews every three years.

4.9.5 A compulsory statutory scheme for the compensation of tenant's improvements, but otherwise compensation is left to the bargain between the parties.[6]

4.10 Lettings of land beginning on or after 1 September 1995 for the carrying on of agricultural businesses will be farm business tenancies under the ATA 1995, provided they comply with the conditions set out in s1 of the ATA and are not excluded by s2 or 4 of the Act.

4.11 It is clear that the aim of the ATA was to allow tenants the ability to diversify their activities. The ATA *'requires a minimum of primary agricultural use at the outset and allows the parties to choose to stay in the farm business tenancy regime thereafter, even if there is substantial diversification, for so long as there is some farming activity on the holding.'*[7]

4.12 S1 (1) of the ATA provides:

A tenancy is a "farm business tenancy" for the purposes of this Act if:

4.12.1 It meets the business conditions together with either the agriculture condition or the notice conditions; and

4.12.2 It is not a tenancy which, by virtue of section 2 of this Act, cannot be a farm business tenancy.

4.13 The business condition: S1 (2) of the ATA provides:

The business conditions are-

(a) That all or part of the land comprised in the tenancy is farmed for the purposes of a trade or business, and

(b) That, since the beginning of the tenancy, all or part of the land so comprised has been so farmed.

4.14 Farming includes any agricultural activity under s38 (2) of the ATA, and therefore could be seen to include activities which are beyond the definition of agriculture. Agriculture includes horticulture, fruit growing, seed growing, dairy farming and livestock breeding and keeping, the use of land as grazing land, meadow land, osier land, market gardens and nursery ground, and the use of land for woodlands where that land is ancillary to the farming of land for other agricultural purposes, as defined in in s38 (1) of the ATA and s96 (1) of the Agricultural Holdings Act 1986. [8]Agriculture depends on purpose, and not simply the act of cultivation.

[6] Scammell, Densham & Williams Law of Agricultural Holdings (11th Ed)
[7] Scammell, Densham & Williams Law of Agricultural Holdings (11th Ed)
[8] *Dow Agrochemicals Ltd v E A Labe (North Lynn) Ltd (1965)*

4.15 To satisfy the business conditions, at least some of the land must be farmed commercially throughout the lease term. However, there is no restriction on the tenant in relation to which part or parts of the holding can be farmed, giving the tenant greater flexibility whilst in occupation, which is certainly useful when battling an increasingly challenging climate.

4.16 The business conditions do require adherence for the duration of the term. In the event of a period of non-observance takes place, the tenancy will fall outside the ATA 1995, and potentially into a business tenancy under the Landlord and Tenant Act 1954, returning only as and when the character of the lease becomes primarily agricultural again.

4.17 The agriculture condition requires the character of the tenancy to be primarily or wholly agricultural. Whether a farm business tenancy meets the agriculture conditions is assessed having regard to the terms of the tenancy, the use of the land, the nature of the commercial activities carried out on the title, and any other relevant matters. This assessment is not limited to examining the tenancy agreement alone.

4.18 Reliance on the agriculture condition can create uncertainty, as the tenant must continue to satisfy the condition throughout the term, and therefore the potential for diversification is restricted. In practice, parties tend to rely upon the notice conditions rather than the agricultural condition to mitigate the potential danger of a tenancy falling outside the farm business tenancy regime and into a business tenancy (with all the associated risks relating to security of tenure) under Pt II of the Landlord and Tenant Act 1954.

4.19 In principle, FBTs provide greater scope for incorporating natural capital obligations through bespoke drafting, being more flexible by nature. In practice, however, most FBTs are granted for shorter terms than are required to bring about meaningful change or enhancement. This creates a structural mismatch between the duration of occupation and the extended time horizons required by natural capital schemes. Tenants may control land management but lack the long-term interest demanded by markets to implement any meaningful changes to the land, while landlords retain the reversion.

5 Landlord–Tenant Misalignment

5.8 Natural capital markets expose a fundamental misalignment between landlords and tenants in the agricultural sector. Landlords typically capture long-term land value uplift, while tenants bear operational responsibility and opportunity cost. Without careful drafting and guidance from advisors, tenants may assume delivery risk without a proportionate share of long-term benefit. The fact that units are usually registered to the landowner raises further questions around allocation of future payments received as a result of the project.

5.9 Current market responses rely heavily on bespoke arrangements, including side agreements, licences, and management contracts. While functional, such arrangements increase legal complexity, transaction costs, and risk, particularly where they intersect with statutory tenancy protections. The process of

encapsulating terms in legal agreements is still largely reactive rather than proactive.

5.10 It is key to the long-term success of any natural capital project that all parties take advice as soon as possible and certainly before any terms are agreed.

6 The provisions of the Code of Good Practice in relation to diversification projects

6.8 The TRIG Code of Good Practice ('the Code') was updated in 2021 and was published to reflect the Agriculture Act 2020, new subsidy regimes and the need for tenants to diversify.

6.9 The intention behind the Code is to provide a framework for landlords and tenants to agree changes to tenancies and to enable access to diversification opportunities. The Code set out a 5 stage process to be followed in relation to any application by a tenant for landlord's consent. Although not legally binding, the emergence of the Code in 2004 is indicative of the sector becoming more alive to the necessity of diversification in order to secure the longevity of family farming operations and to facilitate conversations between landlords and tenants around how best to insulate farming against the future, indicating that the proverbial door might now be open for more radical diversification in relation to some landlord and tenant arrangements.

7 The eFBT: a step in the right direction?

7.8 Environmental FBTs were introduced into the sector in May 2025 when The Crown Estate launched its own 15 year eFBT model in conjunction with the Tenant Farmers Association. The model is designed to be collaborative and environmentally focused.

7.9 The eFBT is a framework of three linked parts:

7.9.1 The Farm Business Tenancy
7.9.2 The Farm Green Book (setting out environmental and sustainability ambitions)
7.9.3 The Farm Partnership Book (confirming shared objectives and codifying the working relationship between Landlord and Tenant)

7.10 The Books are non-binding, rather, a guide to behaviour and decision making, and are subject to periodic review to allow the working relationship to adapt over course of the term, which in turn, places a greater reliance on the strength of the relationship between the parties.

7.11 The core legal features of the tenancy document include providing longer term security, with a standard term of 15 years designed to encourage long-term planning and investment, limited break options and the potential for lower rent to be demanded in return for increased environmental enhancements.

7.12 The key innovation of the eFBT is the integration of environmental objectives, with an explicit focus on nature recovery, biodiversity and soil health. The tenancy has been designed to enable participation in Environmental Land Management (ELM) schemes, biodiversity net gain projects and in the carbon markets, which is a shift away from traditional FBTs which have often restricted tenants' involvement in the sector.

7.13 The expansion of the permitted use away from solely agricultural activities encourages diversification projects, and both parties are encouraged to collaborate (extending to the sharing of benefits of the environmental delivery). Clause 4 of the eFBT provides that:

> '*4.1 The Landlord hopes to enhance the environmental condition, carbon sequestration capacity and biodiversity of the Holding by working with its farm tenants and recognises that different holdings will offer differing potential to achieve this, and this may become an important income stream for both the Tenant and the Landlord in future*.
>
> *4.2 The Landlord envisages an approach to achieving environmental benefits on the Holding that would result in the benefit of the enhancement being shared in an appropriate proportion between Landlord and Tenant.*'

7.14 There are now over 10,000 acres of the Crown Estate let on eFBTs. It is hoped that the eFBT will prove to be a guide for other estate owners for exploring natural capital projects on tenanted land and stimulate a more collaborative approach going forwards.

8 Dealing with land: Conservation Covenants

8.8 The enhancement model of natural capital projects, generating improvements over an extended period of time spanning decades, naturally means that multigenerational commitment is required. There was a gap in English land law for a mechanism to bind successors in title to positive or negative obligations on the land, making such long-term commitments difficult to achieve until the introduction of conservation covenants.

8.9 Initially proposed by the Law Commission in 2013 and finally brought into effect by Part 7 of the Environment Act 2021, a conservation covenant is a private, voluntary agreement to conserve the natural or heritage features of the land. It may relate to buildings as well as land and must both be for the public good and have a conservation purpose.

8.10 A conservation covenant is at the same time a binding private agreement, an interest in property (a covenant) and a statutory agreement (one that qualifies as such under the relevant statutory constraints of the Environment Act 2021 ('2021 Act').

8.11 The covenant, which is executed as a Deed, must be between a landowner (or leaseholder with at least 7 years remaining on their lease) and a Responsible Body registered with Defra. The Responsible Body, which may be a local

authority, a charity or a private entity, is responsible for registering the covenant on the local land charges register, submitting an annual return to Defra and enforcing the terms of the agreement. The Responsible Body may transfer the covenant to another Responsible Body or, if it ceases to be a Responsible Body, the covenant will be transferred to the Defra Secretary of State.

8.12 At the time of writing (June 2026) there are 48 registered Responsible Bodies. Each Responsible Body will offer its own set of terms and have its own appetite for risk, meaning that there is a wealth of choice for landowners. However, as the market is in its infancy, there will undoubtedly be organisations which prove to be more popular than others and therefore over the longer term it is likely that the offering will become more streamlined.

8.13 Responsible Bodies have a quasi-regulatory role in relation to the enforcement of covenants. The remedies available to Responsible Bodies in the event that court action is required as a result of non-compliance are:

8.13.1 Specific performance;
8.13.2 Injunction;
8.13.3 Damages; or
8.13.4 Payment of an amount due under an obligation

8.14 Some statutory regulation of the entitlement to such damages is provided for in the 2021 Act, such as the requirement for the Court to have regard to the public interest in the discharge of the obligation.

8.15 It may also be the case that the Court considers whether the matter requires the payment of exemplary damages, which are specifically provided for in the 2021 Act. These are enhanced damages which require the covenantor to pay more simply than what is needed to make good the breach and also pay punitive sum imposed by the Court to express its displeasure at the conduct it is addressing.

8.16 It is likely that a mediated settlement would be the most agreeable option, as it will preserve a reasonable relationship between the parties, which is a necessity when viewed in the context of the overarching timeframe of the project itself.

8.17 The parties to a conservation covenant may agree to vary the terms or to end it early – an important safeguard for what can be very long-term agreements. Where the parties fail to agree on such changes, the dispute can be referred to the Lands Chamber of the Upper Tribunal.

8.18 To date, conservation covenants have mainly been used for BNG and nutrient neutrality projects, but there is scope for them to be used much more widely to secure long term management agreements over land and property.

8.19 The interaction of conservation covenants with agricultural tenancies remains under-examined, particularly where covenant obligations conflict with tenant rights or rent assessment assumptions. In practice, the Responsible Body will look carefully at both title and occupation as part of its due diligence process before a covenant is offered.

9 Section 106 agreements

9.8 Section 106 agreements are an alternative mechanism of underpinning and guaranteeing performance of a natural capital project, but as familiarity with conservation covenants improves, the use of s.106 agreements may decline. They run with the land, meaning that the landowner at any given time during the lifetime of the project will be liable for delivery and maintenance of the outcomes of the project. Any disposal of the project land will require the giving of covenants in terms of observance and performance, to continue compliance.

9.9 In practical terms, the timeframe of settling the terms of an agreement varies from local authority to local authority. Delays can prove costly and present a hurdle for landowners to accessing the open market as quickly as possible.

9.10 The need for a more streamlined approach from local authorities is clear and present, but this will undoubtedly take time given the current economic climate in England.

10 Incumbrances: Overage

10.8 The way in which payments are received from natural capital projects over its lifespan creates a hurdle when the land which is part of such a project ('project land'), is burdened with overage.

10.9 Overage has traditionally been based around the payment of a proportion of any uplift in value following the occurrence of certain trigger events (usually the grant of planning permission or the disposition of land with the benefit of planning permission). The value of agricultural land with the benefit of planning permission increases from the date at which planning permission is granted. Confirmation of value is sourced by comparables of similar sites in the surrounding areas.

10.10 In the context of a natural capital project any value uplift will arise from the constraint of land use, not the intensification, and from a speculative environmental market and not current market evidence, as with development value calculated on the grant of planning permission. It follows that the standard logic around overage (taking a share of an uplift) must be inverted when thinking about natural capital projects.

10.11 The overage mechanism itself could take the form of:

- A percentage of future income from unit sales; or
- One-off payment upon registration on the Biodiversity Gain Site Register or carbon market equivalent (*which would only work in practice if registration was imminent at the time of completion of any disposal.)*

10.12 The potential of the natural capital market to force a new approach when it comes to the matter of overage should not be underestimated. As the market

continues to scale, a new standard procedure for dealing with overage will emerge.

11 Compulsory Purchase and Compensation

11.8 The interaction of natural capital with compulsory purchase and compensation is being seen initially in the context of Biodiversity Net Gain. Statutory BNG already applies to most development, including compulsory purchase under the CPO regime, but it has specifically excluded Nationally Significant Infrastructure Projects (NSIPs) – those larger infrastructure projects which are consented through the Development Consent Order (DCO) process. They will be brought into the regime from November 2026 and so will have to deliver a net biodiversity gain of at least 10%.

11.9 The Planning Inspectorate confirmed that at the end of 2025, there were 30 live NSIPs (i.e. in pre-examination or examination) in England and Wales. Many of these projects are wide reaching and affect extensive tracts of rural land, generating a significant demand for BNG units.

11.10 One key question is whether the powers held by acquiring authorities include the right to use compulsory purchase to deliver statutory BNG requirements. No new powers were created by the Environment Act 2021, so in practice this will require an interpretation of existing statute which was not framed with this particular issue in mind. We will doubtless see case law emerge in future as acquiring authorities test the point. In practice, statutory undertakers such as National Highways and National Grid are already developing procurement strategies to help them to meet their requirement for BNG units from the market, recognising that this is likely to be more certain in cost and timeliness than seeking to use statutory powers.

11.11 On the other side of the coin, infrastructure projects may also affect land which has been committed to a long-term natural capital project and this will raise new issues for advisers to consider in relation to compensation for land taken and injurious affection, such as:

- What is the recognised existing use of the land and what evidence is there of its existing use value?
- Will early survey and trial work (such as digging trenches and boreholes) cause a breach of the environmental agreement?
- If the land will be so adversely affected that the agreement will be breached, what provisions can be made for the project to be relocated?
- Who will own the rights to existing or future natural capital during and after the scheme?
- How are compensation receipts to be treated for tax purposes?
- Will future opportunities for stacking natural capital projects be limited by the infrastructure works and if so, how might future losses be compensated for?

12 Valuation

How are valuers addressing the question of how to value these new income streams and assets? Where are the risks and liabilities? How are lenders approaching this?

12.8 Valuers are increasingly required to assess land subject to long-term environmental obligations and policy-dependent income streams. Within the framework of the RICS Valuation – Global Standards (the "Red Book"), this has prompted greater reliance on discounted cash flow analysis, explicit risk adjustment, and clear separation between land value and scheme income.[99]

12.9 Key valuation risks include policy volatility, enforceability uncertainty, market immaturity, and the potential sterilisation of land for alternative uses. Professional judgement and enhanced disclosure have therefore become central to credible valuation outputs.

12.10 Valuers are in new territory here, so the default approach of relying on comparable evidence is of limited use. There is caution. At the time of writing (June 2026) neither the RICS nor the CAAV has yet published any guidance for professionals specifically on the valuation of natural capital assets or projects, although the RICS has convened a working party to start the process.

12.11 The comments below are drafted with BNG sites in mind, as these are probably the most likely to be encountered. Many of the principles will apply to other types of natural capital project, such as nutrient credit banks and woodland or peatland carbon credit schemes.

12.12 Valuers have, of course, found ways to value novel assets before: in 2010 the CAAV published its first guidance on the valuation of solar parks, for example, and the key metrics and approach are now widely understood. The critical difference in some natural capital markets is the nature of the income flow, which is typically less certain and more lumpy than a traditional rent.

12.13 At the moment, valuations of natural capital projects, ecosystem services and natural capital assets have to be dealt with on a case-by-case basis, each assessed by reference to the particular circumstances in hand. In seeking to advise a client on the potential value of a natural capital project for example, the valuer will need a detailed understanding of the contract: what are the costs to and obligations on the seller, and so what is the minimum price that they should take? And what is the value to the buyer: is it a cost saving, or statutory or regulatory compliance where the cost is passed on to a third party? What is the maximum price they will pay? The obligations on the seller might often be very long term: at least 30 years for BNG, but 80 years or more for some nutrient mitigation or carbon schemes. The obligations will usually be binding on successors in title if secured through a Conservation Covenant.

[9] RICS, *Valuation – Global Standards* (Red Book, 2025).

12.14 The cost of such a long term obligation presents particular valuation challenges, because while a valuer might be able to estimate the costs of maintaining an upland hay meadow over the next 5 years with some accuracy, how will she estimate the cost in 20 or 30 years' time? What will be the cost of diesel to run the tractor and mower, for example? Will tractors even run on diesel, or will they be using hydrogen? Will we even need tractors, or will we have solar-powered robots mowing the hay? We will stop there on the edge of that particular rabbit hole, but the difficulty of preparing a detailed budget for land management over the long term is apparent, even before attempting to forecast the possible impact of inflation.

12.15 The benefit to the buyer could be an important factor in the valuation, but it may be just as difficult to assess. Here we may venture into the world of the special purchaser. Take as an example a water company buying nutrient mitigation offsets as a temporary measure while expensive upgrades to a water treatment works are planned and delivered; finding accurate information on the cost saving to the water company might be very difficult indeed. For a developer buying BNG units for a typical housing development, it might be easier to understand the development viability calculations, but that won't necessarily be the case for more specialist or one-off developments.

12.16 Other questions that the valuer may wish to consider include:

- At what point in the project lifecycle is the valuation date?
- Are the markets for the outputs local, regional or national?
- In a worst-case scenario, what would the price of the outputs be if there was a forced sale situation? How does that affect the valuation?

12.17 Some projects may be based on a lease/lease back model, such as that offered by habitat bank providers where the regular income stream and clearly defined terms might make the valuation relatively straightforward, but offers arguably less financial benefit to the landowner in light of the reduction in risk exposure.

12.18 A scheme being delivered directly to the market by the landowner may mean that the income stream is more lumpy and less certain, as a result of its reliance upon sales. Direct schemes could require discounted cash flow approach, with the inevitable questions about the rate of discount to be applied.

12.19 The long-term nature of most agreements coupled with the sometimes very prescriptive restrictions on the use to which the land can be put, will in many cases result in a reduction in the underlying capital value of the land, as is typically seen when planting farmland with trees. The lack of experience and evidence makes this difficult, but again, the particular facts of the case in hand are of prime importance.

12.20 But for all the challenges around valuation, there have already been examples where a natural capital opportunity- whether real or perceived – creates an uplift in value. How much of this is simply a bubble and how much endures remains to be seen. On the passing of the Environment Act 2021, some commentators mused that all land in England might now claim to have an element of hope value for use as a habitat bank; while it might be true in theory, differentiation swiftly emerged in practice between those sites which simply had potential and those which had active intention with some demonstrable evidence of baseline surveys and draft habitat plans.

12.21 We might see the arguments on valuation most actively played out in the realm of compulsory purchase and compensation. Does the land taken or injuriously affected by the scheme have value above its existing use value due to its suitability to deliver ecosystem services in a no-scheme world? This will doubtless be as difficult to prove as any other alternative use case, for which case law is abundant.

12.22 NSIPs are due to come within the scope of BNG from November 2026 which could stimulate huge demand for biodiversity units, but there is no clear view yet on whether acquiring authorities will be willing and able to use existing statutory powers to acquire land solely to discharge BNG requirements.

13 Lending and Finance

13.8 UK lenders have generally adopted a cautious approach to natural capital income. In most cases such income is treated as supplementary rather than core security, with primary reliance placed on the underlying land value subject to encumbrance.[10][10]

13.9 Concerns persist around policy stability, long-term enforceability, exit risk, and the realisability of value on enforcement. Perhaps unsurprisingly, private banks with a traditional client-base of landowners are largely more receptive to the potential of lending in relation to land entered into natural capital projects, however, lending in this context is very bespoke and is not guaranteed.

13.10 While lender engagement is increasing, driven by ESG and emerging TNFD considerations, conservative credit treatment currently prevails. This often leads to the lender preferring to remove the project land from the loan security – a process which in itself can add to cost and delay and which may have consequences for the loan-to-value ratio.

13.11 The emergence of insurance for natural capital projects will undoubtedly bolster confidence when it comes to lending. The insurance sector has been slow to provide products but we are now seeing the market grow, with recognised providers entering the fray. There is an argument to be made that without the provision (and protection) of insurance, that the market is unlikely to scale. We look forward to further developments in the insurance products offered.

[10] Cushman & Wakefield, *ESG and Valuation for Secured Lending* (2023).

14 Taxation

14.8 The question of how receipts from natural capital markets should be assessed for taxation has started to be considered by both HMRC and practitioners. The authors of this paper are not tax advisors and appropriate professional advice should, of course, always be sought for the matter in hand but, to date, we have seen:

- Confirmation that carbon credits are standard rated for VAT (September 2024)
- The extension of Agricultural Property Relief from Inheritance Tax to land within an “environmental management agreement" (s61. Finance Act 2025)
- Publication of the HMRC Technical Note on ecosystem services (May 2026)

14.9 From a practitioner's perspective, it is vital that appropriate tax advice is taken as early as possible to ensure that funds flowing from any project do not create a knot which requires unpicking in terms of taxation for another part of the holding or for the farming business.

15 Is investment in natural capital just the latest Emperor's New Clothes?

15.8 There are some parallels between the evolution of natural capital markets and Hans Christian Andersen's tale of the passing conmen:

15.9 The Emperor (the markets) are convinced by the conmen (the natural capital enterprises) that the clothes they weave are so magnificent (the hyperbole) that they are only visible to those who are wise enough or of sufficient sophistication (the blinkered view). The Emperor, of course, is terrified that he should be deemed unwise or unsophisticated and parades his new clothes down the street (the emerging bubble), before realising his misadventure and falling foul of the jeering crowds (the bubble bursts).

15.10 Of course, the question is as much one of easy metaphor as it is of optics. There is an equal point to be made which sees investment in natural capital as a recognition befitting its station and, perhaps, well overdue. Natural capital is existential by virtue of its necessity to life itself. Pretty much every market globally relies on a degree of status quo in the environment and on the underlying land (or water) on which it sits or crosses.

15.11 Moreover, investment in natural capital generates an identifiable market. That identification brings with it recognition and moves its ownership, use and exploitation to a point of parity with other metrics we are more familiar with; such as capital values, yields, risk, migration, trade movements, supply chains and so on. Parity is incredibly important if we are to address the way we own, use and exploit natural capital (not as a market, but as a material asset) – particularly if we recognise the need to sustain natural capital if we are going to continue to rely upon it.

15.12 But how does this really help us navigate this emerging market? What are practitioners meant to do with this characterisation? There are any number of different ways one can project onto this, but one such projection might be to identify the investment (and, by extension, the commercial opportunity) as either an investment in future opportunity (long-term), or an investment in an opportunity responding to a direct requirement.

15.13 The former can be prepared for, of course, and one's assessment on the value of the investment is as much reliant upon analysis on trends, futures and variables as it is on the realisable gains and associated risks. The point on hope value and complications of grounding the opportunity in a value-metric are espoused above in this paper. Nevertheless, it is a real prospect and will be addressed as the market develops.

15.14 The latter projection is an assessment on a tangible commercial opportunity driven by defined terms and material obligations.

15.15 As noted above, valuation of assets subject to those positions is 'variable'. Apart from anything, the direct causal effect of land use change, management, interventions, contractual restrictions or positive covenants is very difficult to disentangle from the direct causal effect of macro-political

events, global climate, competing land use and the infinite complexities of life on earth which sit outside our control. Binding these contracts in a legal framework and delivering against set, quantifiable targets is far from certain.

15.16 Whether one considers this the Emperor's New Clothes will not determine the outcome – it will define those who simply miss a vast and necessary component of land use, value, commercial opportunity, regulatory compliance and credibility. The monetisation of natural capital and the derivative ecosystem services has created a frame and given an identity to something which underpins every asset, every trade and the existence of enterprises and supply chains that rely upon it. It is, in other words, the creation of the single biggest asset class and trading base globally. It is less the Emperor's New Clothes and more the foundations of the Emperor's domain.

16 How should lawyers and surveyors respond to the shifting sands of policy development and the rapid pace of market development?

16.8 Political uncertainty, both at home and abroad, is currently a significant barrier to the development of natural capital markets. BNG, having been introduced by primary legislation, may be at the more certain end of the scale, whereas nutrient neutrality is caught in a more difficult position. As a regulatory market it might be easier to overturn (although Rishi Sunak's government failed to do so in 2023) and we have already seen changes to the implementation of the policy at a local level. This uncertainty reduces the confidence of landowners and investors to create very long-term projects to deliver nutrient credits, putting further pressure on developers in affected catchments and so increasing their demands to scrap it altogether. This febrile atmosphere does nothing to deliver for either the environment or development.

16.9 Opportunities to systemise and formalise the relationship between occupiers and owners of land – whether that is tenant farmer and landowner or occupying utility company and landowner – are beginning to emerge. There are emerging cases, underpinned by statutory process, which are already beginning to provide examples of the potency of collaborative approaches by virtue of their scale, and their commitment to commercialise and bake-in natural capital value and ecosystem services over the long-term. This is a real and developing approach, focussing on opportunities and combining the relative strengths of the counter-parties. Lessons will be learnt here as they have been in the emergence of the Crown Estate's eFBT and other crystalised relationships.

17 Conclusion

We can see therefore, that far from being a case of the Emperor's New Clothes, natural capital and ecosystem services are not only stabilising emerging markets; they are fundamental to the stability of almost all other market sectors. It is true there has been a good deal of froth as they begin to accommodate their new financial identity and with that comes the inevitable fluctuation in performance, risk and value. But it is equally true to say that it is now inconceivable to consider a world in which natural capital and ecosystem services, as markets, will not be taken in measured parity with all the other competing metrics and values which landowners, lawyers and surveyors must consider when dealing with land and land use. Understanding how the legal mechanisms and valuation principles apply is critical to bring that evolution to maturity. This is a discussion which is only just beginning and will have many more iterations over the coming months and years.