

## **Response to the Consultation on the Defra Net Gain Proposals**

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### **Introduction : why we need mandatory Biodiversity Net Gain (BNG)**

**Currently biodiversity in the UK is under significant and ongoing decline** with marked reductions across most ecosystem services first identified in the UKNEA (2011).

Consistently there are other requirements such as housing and employment land needs that dictate the development agenda. Biodiversity comes to the table often at a later stage in the planning process weakened unless the development sits in a protected site.

**Mandatory BNG creates a level playing field**, where developers know what they need to deliver up-front and are able to establish the strong partnerships needed for effective placemaking and biodiversity enhancements.

**However key to the success of any mandatory scheme are the resources and guidance to ensure that it is not bypassed, misused or evaded.**

**First, there needs to be baseline** (state of nature report) which can be used to measure and monitor progress. This has to have nationwide coverage; more than the nature recovery network as outlined in the 25 year environment plan.

**Second, the mitigation hierarchy has to be positioned as the mandatory decision making structure from which BNG considerations are developed.** There is a risk that BNG gets disconnected from the mitigation hierarchy given the desire to get to offsetting stages rather than seek different sites or avoid damage. There is incomplete understanding of BNG within the mitigation hierarchy.

**Third, the issue of monitoring and enforcement needs to be properly resourced concomitant with a clearer understanding over what timescale the mandatory increase should be judged to have been achieved.** There can be no one size fits all approach here as the BNG will be dependent on the nature of the habitat being created, the effort required, and the time needed to reach the required standard and maintain it for the long-term. (I assume this to be at least 30 years). Without proper resources devoted to this there is a risk that the promised BNGs will not be delivered and there needs to be clarity over when monitoring interventions can be made to require changes if the BNG is not going to be delivered.

**Fourth, there are some habitats which are deemed irreplaceable and are therefore not suitable for the BNG model.** However if they are then removed it should not be possible for any developer

to claim that the development is delivering BNG. By removing the irreplaceable habitats outside the scope of net gain there is a risk that BNG ingredients are considered in isolation. In such circumstances BNG cannot not should be claimed by default.

**Fifth, forthcoming guidance on achieving BNG from CIRIA<sup>1</sup> may be helpful for this but there is an urgent need for effective guidance for the built environment sector to show how BNG can be achieved through case studies and demonstration projects.** Not enough attention is paid to ensuring that concise and usable guidance is produced and clearly this will also need to be translated into the NPPG where there is something of a policy void. .

**We also need to move away from the current approach of policy disintegration** where different areas of policy are designed, implemented and evaluated in isolation<sup>2</sup>. So for example clear opportunities for joined up policy exist through the Agriculture Bill and Industrial challenges (from the BEIS Industrial Strategy) to enable future land use to be managed in a way that reduces negative impacts on biodiversity and the natural environment.

However perhaps the biggest issue facing our understanding and delivery of effective BNG is **the incremental conflation of terms that now form part of the core environmental vocabulary**. Often these terms are used loosely and without reference to each other and crucially without a full understanding of how these terms relate to each other. BNG should not be viewed as separate to such terms. **Yet there is limited academic research or commentary on the nature of the interrelationships between natural capital, ecosystem services, green infrastructure, biodiversity net gain and environmental net gains which now permeate environmental policy and practice**. In my view BNG cannot be fully understood without reference to these terms and, indeed, stepping out wider to social, and economic net gains which are present in the revised NPPF.

## Consultation Questions and Responses

The answers should be read in conjunction with the introductory material above.

### What development should be in scope of a net gain policy?

1. Should biodiversity net gain be mandated for all housing, commercial and other development within the scope of the Town and County Planning Act?

The primary goal of mandating BNG must be to halt and reverse the decline in biodiversity and to enhance natural capital stocks.

The proposal to mandate BNG is strongly supported for most development but it must be underpinned by robust evidence, with regular review. This should also include many smaller household applications and minor developments where the cumulative impact can be significant for BNGs. I do accept that the scale of some planning applications should preclude its use such as advertisements and fences. The approach currently being pursued by South Downs national park

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<sup>1</sup> <https://www.cieem.net/biodiversity-net-gain-principles-and-guidance-for-uk-construction-and-developments> (2016) accessed 8th February 2019 with a new updated version due shortly

<sup>2</sup> Scott et al 2018 Mainstreaming ecosystem science in spatial planning practice: exploiting a hybrid opportunity space Land Use Policy 70 232-246

over its householder applications offers a suitable model where options can be followed. This enables multiple benefits to be achieved including BNG<sup>3</sup>.

It is also essential that Nationally Significant Infrastructure Projects fall under the scope of this as well as marine areas outside the operation of town and country planning system. Thus applications made under Electricity Act 1989, Planning Act 2008 and Transport for Works Act 1992 should be included.

In order for this to be done effectively adequate and increased resources need to be given to LPAs and developers. It would also seem appropriate to have a phased introduction.

## 2. What other actions could government take to support the delivery of biodiversity net gain?

There are a wide range of actions the government can take to support such delivery, but collectively, we have focused on small number of suggestions, with further ideas being presented within consultation responses from partner organisations.

- Unpacking the interrelationships between natural capital, ecosystem services, green infrastructure, biodiversity net gain and environmental net gains which now permeate environmental policy and practice. This improved understanding should then inform NPPG and stronger local plan responses and policies.
- Identifying pilot projects as demonstration projects where live data is streamed freely to show the benefits to Biodiversity but alongside this the wider economic and social benefits accruing. All too often the guidance manuals are no substitute for a suite of demonstration projects that allows data to be made available and also makes the developers and relevant members of the team contactable to show how and why this projects works.
- Improving local plan policies to ensure BNG perhaps with requirements for SPGs to improve its design and delivery.
- Ensuring there is a baseline that can be used to monitor progress for biodiversity as a whole; not just confined to designated sites.
- Making a legal requirement to use the mitigation hierarchy as part of the process of BNG. Offsetting is a measure of last resort only.
- All National Infrastructure developments should be required to deliver NBG
- Ensuring that additional resources are made available to the administration, delivery and enforcement of BNG. Ecologists should be present in all LPAs. Equally enforcement is a real risk and it is on good waiting 30 years to find that the developer changed plans post

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<sup>3</sup> <https://www.southdowns.gov.uk/wp-content/uploads/2018/04/Core-06-Ecosystem-Services-Technical-Advice-Note-householder.pdf> accessed 8th February 2019

planning. There needs to be proper enforcement procedures and timings laid out. This should include random unannounced inspections by a competent authority.

- I agree with the wildlife trusts response that free training should be provided to LPAs, their infrastructure teams, developers, house builders, planning consultants and other delivery partners to ensure they all understand and implement the BNG process correctly and effectively. This could be delivered for free through accredited local 'champions'.
- Conservation covenants and section 106 agreements need to be applied to land under BNG agreements. Furthermore, there are inevitably risks associated with such a mechanism, so a legally robust approach needs to be set up to ensure that sites are not deliberately damaged to reduce their BNG value either at planning application or when landowners seek to sell land, therefore undermining the entire BNG system. Incentives should encourage landowners to put forward land for enhancement and restoration to ensure enough supply of sites to deliver net gain and meet the demand and take land value into consideration.

3. Should there be any specific exemptions to any mandatory biodiversity net gain requirement (planning policies on net gain would still apply) for the following types of development? And why?

All developments should try to deliver biodiversity net gain with only exceptional exemptions to the BNG requirement. Any exemptions would undermine the aim of net gain and the 25 Year Environment Plan particularly given the cumulative impact planning problem<sup>4</sup>. I have outlined earlier that even small householder applications should follow the South Downs example<sup>5</sup>. This covers house and garage extensions, small sites and brownfield sites.

4. Are there any other sites that should be granted exemptions, and why? For example, commercial and industrial sites.

No. Commercial and industrial sites should not be exempt. Such sites can offer great potential for significant biodiversity gains via green roofs and sustainable drainage systems (SuDS).

5. As an alternative to an exemption, should any sites instead be subject to a simplified biodiversity assessment process?

This should be established via the local plan process. It is incumbent to make BNG as simple as possible in any case for it to be workable.

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<sup>4</sup> 10. Scott AJ, Shannon P and Hardman M, Miller, D. (2014) Evaluating the cumulative impact problem in spatial planning: a case study of wind turbines in Aberdeenshire, UK *Town Planning Review*, 85 (4) 457-486

<sup>5</sup> <https://www.southdowns.gov.uk/wp-content/uploads/2018/04/Core-06-Ecosystem-Services-Technical-Advice-Note-householder.pdf> accessed 8th February 2019

### **Biodiversity features in scope of net gain policy**

6. Do you agree that the Defra metric should allow for adjustments to reflect important local features such as local sites? Should the Defra metric consider local designations in a different way?

We support a Defra metric that takes into consideration local importance and circumstance. However local plan policies set the statutory context for this. BNG applies to all sites and should be applied consistently whether designated or not.

### **Ambitions for wider net gain**

9. Are there wider elements of environmental net gain that could be better incentivised? If so, please specify which, and any benefits that such incentives could provide.

It is my view that BNG should normally be the core net gain unless local plan policies dictate otherwise. Once BNG is achieved you are then able to look at securing other NEGs. These should be based on a common set of ecosystem services such as those currently being developed for the Defra ecometric project<sup>6</sup>. In such respects it is critical that there is no one measure of net gain. Rather the different environmental net gains are secured in line with agreed local plan policies and best available evidence.

### **A biodiversity metric**

10. Is the Defra biodiversity metric an appropriate practical tool for measuring changes to biodiversity as a result of development?

The Defra metric is a useful tool and welcome the ongoing development of a clear metric which is widely used in order to create comparability and consistency across the country – version 2.0. However it is important that it is only used as a decision support tool with the ability to take into account other evidence.

In the new version the value of irreplaceable habitat needs to be better accounted for so that no net gain can be claimed where an irreplaceable habitat is destroyed. Locally derived metrics that allow for local variations in habitat quality and rarity/distinctiveness, etc, would also be central to ensuring that the delivery of net gain in biodiversity is characteristic of the local area and makes a meaningful contribution to the landscape.

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**11. What improvements, if any, could we most usefully make to the Defra metric?**

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<sup>6</sup> <https://www.ciwem.org/assets/pdf/Events/Past%20Presentations/ENG18/2.2%20Alison%20Smith.pdf>  
accessed 8<sup>th</sup> February 2019

The metric, once published, must be supported by good, clear guidance and adequate free training provision and rigorous monitoring and enforcement with appropriate fines and revocation in extreme cases to act as a disincentive to those seeking to abuse the system and thus ensure that its uptake and use is as intended. This also requires local authorities to be adequately resourced, with sufficient data and ecological expertise.

How much 'gain'?

12. Would a mandatory 10% increase in biodiversity units be the right level of gain to be required?

I do not support the use of one size fits all figure here. However 10% as a universal minimum, has some attraction. Nevertheless, dependent on local circumstances and context that figure should be raised where there is clear evidence of need.

### **Mitigation hierarchy**

13. In clearly defined circumstances, should developers be allowed to pay through the tariff mechanism without fully exhausting on-site and local compensation opportunities?

The terms "compensation" and "net gain" are used interchangeably in the document when they are clearly not the same. The example of the system used in Warwickshire, Coventry and Solihull relates to no net loss and not to net gain.

It will be essential to explicitly mandate the mitigation hierarchy so that an 'avoid first' approach is clear and transparent. I have concerns from an environmental and social justice viewpoint where off site mitigation is proposed to secure the best BNG there may be a danger in off site developments taking precedence. I do feel that there should be a priority to deliver BNG in the local area and that is why the 10% figure might be justified on occasion. The mitigation hierarchy should define on-site and local opportunities to be exhausted first.

### **Baseline**

16. Should a baseline map of broad habitats be developed?

Yes. These should include verified local data with the resolution/ground truthing consistently applied and properly resourced. This approach has worked well in Warwickshire and has meant that disputes over habitat type and condition have been avoided. It also ensures the process of calculating habitat change is consistent and transparent. However the ecological resource in Warwickshire is very different to many other parts of England.

### **Legacy**

24. Should there be a minimum duration for the maintenance of created or enhanced habitats?

Yes.

30 years is acceptable with section 106 agreements needing to be legally binding as a mechanism to safeguard land allocated for BNG.

## **Summary**

In summary, this consultation is welcome but I would have preferred it to be positioned within a wider consultation on net gains.

There is an urgent need with strong support across part of the built environment industry for a mandatory BNG requirement to level the playing field and creating high quality developments in the right place. I would argue that securing ENG be also statutory where it fits in with local plan policies.

I do feel however for any mandatory system to work effectively it has to be properly resourced. This needs additional resources and training. It also will need rigorous administration monitoring and enforcement functions.