



**RTPI**

Royal Town Planning Institute

# RTPI response to DEFRA Consultation on Biodiversity Net Gain Regulations and Implementation

*April 2022*

This is the Royal Town Planning Institute's (RTPI) response to the Department for Environment Food and Rural Affairs (DEFRA) consultation on [Biodiversity Net Gain Regulations and Implementation](#).

## About the RTPI

The RTPI champions the power of planning in creating sustainable, prosperous places and vibrant communities. We have over 27,000 members in the private, public, academic and voluntary sectors. Using our expertise and research we bring evidence and thought leadership to shape planning policies and thinking, putting the profession at the heart of society's big debates. We set the standards of planning education and professional behaviour that give our members, wherever they work in the world, a unique ability to meet complex economic, social environmental and cultural challenges.

## General comments

**Detailed Skills and Resources:** Professional and then bureaucratic and data capacity in local authorities, NGOs and the private sector will be crucial to delivering the process. Previously a "Phase 1 survey" was the method of preliminary ecological assessment of sites for whatever purpose. The UK Habitat Classification is considered to be more robust than Phase 1 and will presumably replace its use. The UK Habitat Classification is a more powerful tool for Biodiversity Net Gain calculations but requires a higher level of technical expertise in vegetation survey than is needed for Phase 1 survey. Developers and planners will therefore need to ensure that the consultants they engage have a demonstrable track record in vegetation survey to complement their understanding of the application of the metric. This makes clear the enhanced level of information and expertise that will be involved in the BNG process.

Defra suggests its skills assessment carried out with 10 local authorities in 2021 will be made available shortly. **It is essential that it is published** with a view to reviewing the match between demand (development scale) and supply (capacity). Until we can be satisfied that sufficient resources (and staff) will be available to deliver this initiative a gradual and cautious approach to BNG would seem to be needed.

**Site size threshold:** For this reason, in the absence of both the publication of the evidence and the guarantee of funding in 2023-4 and 2024-25, we advocate a cautious approach to implementation. We consider that sites of less than 10 dwelling/0.5ha (or equivalent commercial development) should be exempt until Autumn 2025. This would give time to evaluate whether indeed the both the promised funding AND the sufficient supply of ecologists has materialised.

In 2021, 5872 major residential applications were decided but 46035 minor residential applications were decided. So, reducing BNG temporarily to only major applications would hugely reduce the workload in the critical first two years. Furthermore, the *amount* of potential biodiversity which can be generated from small applications is much less per application, and but the level of administrative and professional input is not proportionately less. Therefore, in terms of real achievement of outputs, applying no threshold at all for BNG risks using a great deal of unconfirmed resources to achieve not a great deal of additional outcome.

Defra has put forward a small sites' metric, but it described as saving time *for applicants*. Our concern is whether it will save any time for local planning authorities. A much more effective way of matching resources to demand in the short term is simply to apply a 10-dwelling threshold.

Whilst DEFRA may have changed its mind regarding the small sites exemption since 2019, it is not clear whether this change of approach has been taken in the full knowledge of the resources available to deliver BNG in local authorities.

**Brownfield Exemption:** During the long passage of the Environment Bill and related side consultations Levelling Up has emerged as a Government priority. Indeed, even during the consultation period for BNG a Levelling Up White Paper has been published. The achievement of much urban regeneration in areas of focus for levelling up takes place on derelict or vacant land. In some cases, such land may have acquired biodiversity value as a result of having been in that state for so long. Much land of this kind is of negative land value. In some cases, it has also been derelict or vacant *partly because of repeated changes in government policy*. We consider that to impose BNG on vacant or derelict land in areas of precarious development viability would be effectively shooting regeneration policy in the foot. Furthermore, the continued pressure to meet housing targets, which have been especially and recently increased in the 20 key cities, means that regeneration schemes have taken on an extra importance. Upsetting the viability of derelict or vacant sites in levelling up priority areas would therefore also risk of increasing greenfield development to make up the difference.

However, we do support the imposition of BNG on *previously developed* land where the current use is continuing, and the general viability of development is healthy. We propose that the government considers how to make sure that its levelling up agenda is not compromised by blanket imposition of BNG by one or other of the following means:

- Local planning authority specific exemptions from application of BNG to previously developed land
- National exemptions for vacant and derelict land by defining it as an exempt form of previously developed land. We would be interested to explore how it could be defined.

The Government has recently increased its support for derelict land reclamation. To us it seems like a preferable method to securing some biodiversity preservation on derelict sites is for the conditions on grant to include an element of biodiversity preservation. This will necessitate



increasing grant levels. But it would be unduly bureaucratic to waste some existing grant money on satisfying BNG requirements – public money would just be going round in circles.

**Local Environment Improvement Plans:** The essence of ecology is interconnectedness. There is a clear danger in the approach adopted for procuring and managing BNG of ignoring and even weakening this interrelationship. It is arguable that LPAs will be led into determining and managing BNG separately to planning policy and control generally which would be a very retrograde step. The concept should be more closely integrated with land use planning policy and environmental policy as expressed in the Acts and in the NPPF.

Since 2020 the RTPI has been proposing Local Environment Improvement Plans which build on and go further than Local Nature Recovery Strategies should assist in more closely linking the existing planning system with this new initiative. LEIPs should be used to guide spatial distribution of spending on BNG.

The essential links between BNG and planning and environmental policy are comprehensively set out in Appendix A to the paper. Merely stating these links whilst obviously helpful is insufficient to ensure that they are systematically, and consistency operationalised and what is more in a strategic and collaborative way

**Output or Outcome? / Lack of focus on delivery and enforcement:** Whilst the mandatory requirement is to ‘achieve’ a minimum of 10% net gain, “achieve’ in accepted use means ‘to produce’, ‘to secure’ i.e., a concrete measurable outcome. However, the discharge will not be based on an outcome but meeting a protocol and set of theoretical metrics. Achieving or securing outcomes does not figure substantially in the guidance and there is no indication of what the consequences are for failure to do so. [Ecological researchers have recently cast some doubt](#) on whether a process-driven regime does necessarily generate the required outputs:

“It will be left to the existing planning enforcement system, overseen by local authorities, to ensure these “on-site” habitats actually deliver for nature. There are many risks: promised enhancements may not actually be implemented in the first place, they may not deliver the promised biodiversity gains, or biodiversity-improvement areas could be put to other uses further down the line. Our worry is that local authorities do not have the resources and capacity to ensure these biodiversity gains are actually realised and sustained. Indeed, the government [currently advises](#) local authorities against taking planning enforcement action unless a violation is considered a “serious harm to a local public amenity”. It is extremely unlikely that the failure to deliver a habitat that was promised in a planning application several years ago will meet this threshold...”

**Markets need to support holistic environmental solutions:** The Government has placed high hopes on a ‘market’ in biodiversity. As there is no equivalent market currently this must be seen as problematic at least in the short term. Evidence from related market mechanisms such as carbon (e.g., in Australia) are in no way encouraging, rather the opposite. We consider there is substantial potential in bringing in private money into nature recovery, but this should be done in a holistic way, looking at how the entirety of ecosystem services can be delivered not simply biodiversity net gain in accordance with a metric. Local Environment Improvement Plans would provide a strategy towards which market operations could be directed.

The best exposition of how high-integrity nature-based markets can deliver multiple benefits is the work being developed by the Broadway Initiative in coalition with the Green Finance Institute and Finance Earth on Financing Nature Recovery. The final report will be published in early April including recommendations for the policy and institutional architecture needed to accelerate high-integrity nature-based markets.

## Part 1: defining the scope of the biodiversity net gain requirement for non-national development

### Exemptions

#### Q1 – De-minimis Thresholds

It is not at all clear that the current planning system will be able to cope with capturing BNG for all development regardless of scale and proportionality, unless clear indications are made now regarding the scale of new burdens funding going to be provided to local planning authorities in 2023-24. Therefore, all development below 10 dwellings or 0.5 ha should be exempt from BNG until October 2025. This will give the system time to test whether sufficient resources are available to operate above the threshold first.

For this reason, we maintain that there is no need for a de minimis threshold.

#### Q2. Householder Development

We agree that Householder development should be exempt.

#### Q3 Change of Use

We agree that changes of use should be exempt. However, this then produces an unlevel playing field where new development is not treated equally. However please be aware that changes of use can have very significant impacts on habitat and biodiversity. Examples are storage, recreation, equestrian uses. This must be avoided.

#### Q4 Biodiversity Sites

Enhancement 'development' works within Biodiversity Sites should be exempt.

#### Q5 Self Build/Custom Build

There is no reason why custom or self-build should be exempt. Since many such proposals will be on sites of less than 10 dwellings/0.5ha then they would be exempt by virtue of our proposed threshold in any event (see Q9).

#### Q6 Brownfield Development

During the long passage of the Environment Bill and related side consultations Levelling Up has emerged as a Government priority. Indeed, even during the consultation period for BNG a Levelling Up White Paper has been published. The achievement of much urban regeneration in areas of focus for levelling up takes place on derelict or vacant land. In some cases, such land may have acquired biodiversity value because of having been in that state for so long. Much land of this kind is of negative land value. In some cases, it has also been derelict or vacant *partly because of repeated changes in government policy*. We consider that to impose BNG on vacant or derelict land in areas of precarious development viability would be effectively shooting regeneration policy in the foot. Furthermore, the continued pressure to meet housing targets, which have been especially and recently increased in the 20 key cities, means that regeneration schemes have taken on an extra importance. Upsetting the viability of derelict or vacant sites in levelling up priority areas would therefore also risk of increasing greenfield development to make up the difference.



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### **Q7 Temporary Consents**

Temporary permissions may be divided into those which are potentially permanent structures (e.g., marquees, or the “London Eye”) which are being tested for a temporary period, and genuinely temporary activities such as the construction of a road used solely for construction traffic to reach a railway line. If all temporary permissions are exempt the problem will be that when a permanent permission is granted, the ability to retro fit BNG is lost. So potentially permanent development should be required to make potential provision for BNG in due course.

### **Q8 Conservation Areas/AONBs/National Parks**

Yes – if only because such areas have high biodiversity and also the administrative complexity that such an exemption involves is high.

### **Q9 General Question on Exemptions**

Social infrastructure development to meet an identified need should be exempt.

### **Q10 Development within statutory designated sites for nature conservation**

We agree this should NOT be exempted.

### **Q11 Development on irreplaceable habitats**

We do not agree with the exemption of irreplaceable habitats from BNG.

It seems inconsistent to adopt one approach for statutory sites (i.e., the best national examples of their habitat type) and another for irreplaceable habitats. If anything, it seems to afford irreplaceable habitats greater protection, even though they must by default be of lower importance. We suggest there should still be a need to demonstrate site wide BNG, but then also require ‘additionality’ for loss of irreplaceable habitat (i.e., as proposed for Statutory sites).

## Part 2: Applying the biodiversity gain objective to different types of development

### Q12 Treatment of Outline Consent and Phasing

We would support front loading of BNG and whilst we would look to do this, it may not always be possible due to the particular phasing of a site or other practical and viability reasons. Therefore, this should not therefore be a restrictive requirement. The flexibility which allows phasing to be set out in the Biodiversity Information will ensure that this can be applied as appropriate to individual site circumstances.

With any application (not just outline) where BNG cannot be frontloaded there may be situations where later phases don't proceed. Restrictive conditions/s106 obligations which reflect site specifics could ensure a certain proportion is brought forward before particular triggers. This would need to be site by site specific, but such a process could be set out high level within a framework plan. The framework plan would be secured to later phases because it would be an overarching approved plan that later phases would need to align with – this could be secured via an appropriately worded condition.

Agree that at outline stage a framework BNG strategy needs to be established setting out how BNG can be delivered across the site and allowing for approval of a Biodiversity Gain Plan prior to commencement of each phase. Flexibility needs to be built in to allow phases to change if needed (as is currently done with outline planning submissions) and to allow one Biodiversity Gain Plan to cover more than one phase or for phases to come forward concurrently. It should be acknowledged that some phases may not deliver BNG and are reliant on wider development for the gain.

We have members working for developers who have considered how we might approach such applications – which broadly aligns with the proposed approach. We would be happy to talk this through in more detail.

The argument for front loading goes beyond simply avoiding 'net losses caused by later stages being delayed or cancelled'. Work to enhance biodiversity on large sites being undertaken early so that the later phases of development can be carried out within a physical or spatial context of thriving habitat` and biodiversity and which therefore can, for instance in the case of housing, be enjoyed by early occupiers. The availability of such habitat` must be factored in through the use of the metric.

### Q13 Phased development, variation applications and minerals

S96a – Agree that the net gain condition would continue to apply and any approved plans. Where changes may impact on BNG however (e.g., changes to landscaping that are otherwise non-material) assume that as per s73 a new plan would also need to be submitted and could be submitted pursuant to the original condition to discharge that condition.

S73 – Agree that the earlier plan remains as approved plan where no impact on post development BNG. Although in reality some form of submission will be required to demonstrate this. Where BNG is affected, it would be appropriate for a new plan to be submitted – this could be either pursuant to another condition or the original condition carried forwards to s73.



What about s73 for schemes predating BNG, it would be disproportionate to introduce this requirement as a new condition and we would suggest these should be included in list of exemptions

## Small sites

### **Q14 Use of metric to reduce burden of processing**

We are not clear what data the government has in its possession to suggest that the small sites metric will in fact reduce the burden of processing, and to what extent. Whilst the small sites metric requires *less information* than the standard one, this only means that it requires less resources on the part of developers to use it. We are not convinced that the small sites metric will have sufficient impact on *local authority* staff requirements. The government seems to be asking the public how the metric might help: surely it is for the government to indicate how it might help resourcing problems, so as to justify the application of BNG to small sites. What evidence does DEFRA have that using the small sites metric will reduce the burden on local authorities?

We would draw attention to the fact that the small sites metric guidance is 25 pages long excluding appendices, and this is intended to be used by SME builders.

### **Q15 Extension of period before which small sites brought into BNG**

Whilst the small sites metric may *reduce* the burden of processing small sites, this is not going anything like far enough in the wider context of a **planning system in resource crisis**. In the continuing absence of confirmation of the level of funding for the 2023-24 local government year, AND in light of the supply of ecologists generally, the only solution we can see that will enable BNG to be introduced successfully is to delay implementation for small sites until 2024.

### **Q16 Other process simplifications**

We do not know of any.

## Nationally Significant Infrastructure Projects

### **Q17 Are reduced / modified BNG requirements necessary for NSIPs?**

No – the policy is designed to introduce consistency and to set a different approach for NSIP would undermine this.

### **Q18 Use of Biodiversity Net Gain Statement and 2025 commencement date**

We agree with the proposal for BNG Statement across all types of NSIP

### **Q19 Commencement date for BNG for NSIPs**

We agree with the 2025 commencement date.

### **Q20 Threshold to set BNG**

We agree that acceptance for examination is the threshold.

**Q21 Approach to administration of NSIP BNG where off-site provision is in same ownership**

Yes, an approach where net gain can be facilitated using existing landholdings is supported. This approach should equally apply to any projects whereby the landowner has wider landholdings for consistency and equality in approach. However why is a lighter touch registration process required – surely the net gain register can be used just as other developers and landowners may use it to register off-site gains. The approach should be consistent.

**Q22 BNG achieved via a plan for NSIPs**

Yes, we agree that the same procedure should be used for NSIPs as for other development.

**Q23 Exemption for development which is mitigation development for NSIPs**

We consider that NSIPs should not get special treatment. Large TCPA developments such as new housing communities may also require substantial mitigation. So, either apply an exemption for all development including NSIPs, or for none.

**Q24 NSIP-specific information needed in a biodiversity gain plan?**

Not sure.

**Q25 Maintenance period for NSIP BNG projects**

For some schemes, a management period greater than 30 years would be necessary / appropriate. However, it would be essential for any extended management to include an acknowledgment of additional betterment that could be sought. For example, further maturity of woodland, Other Neutral Grassland to Lowland Meadow. The process should incorporate a mechanism for this ‘additional’ betterment to be acknowledged and rewarded. The additional betterment could off-set additional costs. The current Metric is silent on the value of maintaining a habitat in good condition. This is considered a shortfall. Some value should be afforded retaining habitats in peak condition and this will be even more meaningful where management extends beyond 30 years. The above comments equally apply to TCPA development.

**Q26 Further powers (e.g., CPO) needed**

Yes, the CPO option should be available to be used

**Q27 Schemes straddling on shore and offshore**

Yes, further guidance is needed on how to measure net gain in a marine environment and in an inter-tidal environment

**Part 3: How the mandatory biodiversity net gain requirement will work for Town and Country Planning Act 1990 development**

**Q28 – Biodiversity Gain Plans**

It is not clear whether an LPA could reject a planning application on the basis of inadequate ‘additional’ information or even what action it could take, that would add to the process if it came to that view. This must be clarified.

The notion that planning permission can be granted and *then* a BNG Plan be submitted is problematic. Biodiversity will almost always have been considered within the application



process. To do this without benefit of the 10 % gain would be counterproductive. If a planning application cannot be approved without 10% BNG — as this is mandatory— how is it possible to reconcile approving an application prior to receiving the BNGP?

The text refers to on site biodiversity gains to be secured for delivery within 12 months of the development being commenced or where not possible before occupation. As noted earlier what does ‘secured for delivery’ mean? It needs definition. It will not always be possible to implement biodiversity gains within 12 months or prior to occupation – particularly on large, phased schemes. This is built into the metric in any case. On-site and off-site delivery should be agreed through the Biodiversity Net Gain Plan and should be site specific.

What will define *significant on site enhancements*?

The document states that it “remains the UK Government’s intention to continue to allow higher percentage targets to be set by planning authorities at a local or site level”. We can see no justification for BNG guidance supporting this approach, nor can we see a means by which it could be achieved if mandatory BNG is already in place. It would seem to require a further S106 agreement or condition.

For most greenfield sites 10% BNG will prove to be a testing target to be achieved. Although any such alternative policy would have to be pursued via the Development Plan and subject of viability testing. If we are to achieve a simpler and swifter adoption process for Development Plans, we must eliminate the otherwise protracted debate at LP Examinations this would undoubtedly cause.

### **Q29 – Template**

Yes, this looks clear and succinct. Perhaps it could also include confirmation here of how much of the BNG is ‘additional’ above the 10% and can be sold on

### **Q30 – Further guidance on Off-site Biodiversity Gains**

The proposals for developing a local market for Biodiversity land are vague and need to be worked up in more detail as these will be critical for many Biodiversity Plans where all BNG cannot be met on site.

We would be interested to see what this further guidance sets out as to when on and off-site has been appropriately considered. For example, perhaps it is possible to provide BNG on site BUT more appropriate for other reasons (e.g., off-site land is of greater strategic importance) to develop the site and off-site the BNG; would that be allowed?

Clarification should be provided on interpretation of hierarchy (i.e., is on-site to be considered before off-site?). For example, adjoining land or using land of greater strategic importance should not be penalized (nor is it within the Metric).

Clarification is required on responsibilities for delivery. If off-site land is third party, obligations must sit with that third party. We have not seen this specified (although it is for Statutory Credits).

Off-site land should not be treated differently in terms of delivery to on-site land. The same timeframes should apply for habitat delivery (noting earlier comments re appropriateness of timeframes) for both – off-site and on-site serve the same mitigation purpose so should be treated in identical manner. Consistency is key.

Further guidance is required to clarify LPA powers to determine the appropriateness of off-site gains for development.

Flexibility is needed for LPAs in relation to creating a network of BNG offsetting sites e.g., a range of smaller sites, alongside larger strategic sites where offsets could be pooled to deliver greater impacts for nature ecosystem services.

Other factors such as additionality and wider environmental objectives as set out in local plan policies will need to be considered in the determination process - how much weight should these be given alongside achieving biodiversity gains?

The choice between covenants and planning obligations must be clarified. The paper suggests that covenants 'can ensure that habitats are maintained even if the land is sold'. The choice of words is worrying. Covenants **must** be framed to ensure this, at least for the 30-year minimum period. The 30-year timescale is problematic. It begs the question what happens afterwards, and it poses very significant issues of the means of ensuring and monitoring the health of the created habitat which are simply not addressed in the paper.

### **Q31 - Greater than 30-year Maintenance**

There are implications in terms of costs and ability to deliver development. Some monitoring of the current requirements would be appropriate to consider how it impacts on delivery of development prior to any consideration of extending the timescales.

### **The market for biodiversity units**

A 'market' in BNG or credits is proposed as part of the Government's policy on nature recovery. As there is no equivalent 'market that currently exists this must be seen as problematic. Evidence from related market mechanism such as carbon are in no way encouraging, rather the opposite.

### **Q32 – Supply of Biodiversity Units**

**We think the expecting local authorities to comply with the same regulations as other providers is overly restrictive.** Local authorities are governed by legal requirements to act in the public interest (especially the *local* public interest) and therefore do not need additional restrictions. Local authorities are already proving successful in nature recovery, and it would seem bizarre to *reduce* their role.

One issue that gains significance here is that of public access and accountability. Local authorities' land holdings that might attract BNG will by definition be in long term public ownership, thus reducing any concern about long term sustainability and will, all other things being equal, be open to public access. There is no such requirement so far as can be ascertained for private sector habitat creation. It is essential that provision for public access, consistent with habitat health is a fundamental requirement of off-site habitat creation.

The reference to avoiding conflicts of interest in relation to public bodies needs to be extended to avoiding such conflicts of interest in relation to the private sector.

The reference to "payment by results" suggests that a developer may retain some responsibility for off-site creation. This is not appropriate. By making a payment to a registered BNG site, the responsibility of delivery units should then lie solely with that off-site land manager. To do otherwise would create significant uncertainty, risk to developer etc and would not be



appropriate. For example, if unit delivery was less than expected, would the developer be responsible for seeking alternative options once a development is built out? There may no longer be a budget to allow this, or prices may alter significantly.

The purchase of units to deliver net gain away from the site should result in the equivalent biodiversity lost being replaced i.e., if the site is in Hampshire resulting in the loss of chalk grassland habitat it should not be replaced by a site in a different geological area.

### **Q33 Trading in BNG**

Yes, we support this provided there is genuine additionality. Further clarification is need as to why the green infrastructure policy has been included and how this should be assessed alongside biodiversity net gain policy. Additional measures that could also be considered alongside green infrastructure policy include carbon sequestration, pollution mitigation, reduced flooding, green infrastructure, recreation and access, health inequalities etc.

Developers should be able to use additional credits achieved towards other schemes where there is genuine additionality.

As noted earlier it would be appropriate for the Biodiversity Gain Plan to include a section to confirm what is additional gain (for sale) and what is required for that planning application

### **Q34 Government role in facilitating the market**

Don't know.

## **Habitat Banking**

### **Q35 Are the proposals for habitat banking sufficient?**

No. There does not appear to be any incentive to create a habitat bank. Funding will be key here – the funds mentioned are a welcome starting point, but will they be able to go far enough? It is important to know whether there is a market for such enhancements in the local area, and what constitutes a local area for development. For example, can tree planting be an off set for loss of grassland? It may be that those areas where habitat is lost have no equivalent replacement and if landowners can't see a market for habitat banking they won't want to do it. Perhaps as an incentive habitat banks can be treated as being created 1 year in advance which would offer a minor incentive to create genuine banks.

### **Q36 Start date for creation of new habitat**

We agree that a backstop date is appropriate, and January 2020 is reasonable assumption. Might there however be works that have commenced and crossed over this date and would there be a way of recording these projects for their full extent?

Further guidance will be required on how this uplift is calculated and verified – assume a Biodiversity Gain Plan and habitat management plan will need to be imposed and secured to confirm uplift and appropriateness of units for use.

### **Q37 Time limit for banking biodiversity units**

Not sure. A time of limit of five years would mean that the “units” had had time to mature. But there is potential it could act as a disincentive if someone were to carry out enhancement works but not sell credits within the time period and after which the enhancements are no longer treated as such even though the biodiversity benefit remains.

## The biodiversity gain site register

### Q38 Criteria for adding sites to register

There needs to be clarification that the off-site manager inherits legal responsibility / duty to achieve requisite gain and that the developer (etc.) is absolved of that responsibility once appropriate payment/agreement reached.

### Q39 Period for determining application to be on Register

Yes 28 days is acceptable in principle. However, this depends entirely on what resources have been made available set alongside the volume of applications. We are concerned that waiting for the registrar to accept sites will delay the planning system.

### Q40 Information requirements for applications

The proposals state the following minimum requirement:

“the planning reference of the development to which any of the units are allocated”

“the planning reference of the development to which the enhancement is allocated”

Some net gain sites will satisfy more than one development. We would recommend that the register clearly identifies how many units are allocated, where these are allocated, and how many remain.

### Q41 Inclusion of habitat management plan on register

Agreed. But there needs to be a mechanism to update / supersede the documents – e.g., when revised measures are agreed via the LPA as might be necessary.

### Q42 Fees and penalties

- a) Yes, to a fee for application – if cost recovery is evidenced. Although this is inconsistent with the approach taken to the determination of planning applications. Why?
- b) Yes, to penalty for false information – although it is interesting that there is no such penalty for putting false information on a planning application. Why?

### Q43 Appeals

Yes, there needs to be an appeal option, but process and timelines need to be set out clearly. We are very concerned at how this might delay the submission of a planning application in the first place if the applicant has to wait for this whole process to be completed.

## Additionality

Demonstrating additionally is clearly crucial to the justification for and effectiveness of this mechanism. The discussion of additionally illustrates some of the complexity of the process as envisaged. It is one thing to state that gain required due to a pre existing policy requirement cannot be counted as BNG. It is another thing to determine the difference, to establish the boundary, between the two. The further suggestions about 10% of the gain (presumably 10% of 10%) being additional to any mitigation measures required for protected species merely increases the complexity. The paper does not provide sufficient information to enable a proper judgement to be made as to how this calculation will or even can taken place in a satisfactory manner.

#### **Q44 Specific cases of additionality**

- a) Measures within development sites: yes
- b) Protected species and off-site impacts to protected sites: no – don't understand the requirement for at least 10% of this gain to be via other separate activities? Suggesting that at least some enhancement has to specifically deliver habitat uplift is bizarre. If the principle is accepted that mitigation for one scheme aspect can contribute to BNG, then it can only be reasonable to allow it all to count. To do otherwise would be arbitrary
- c) On site impacts on protected sites: Yes – agree this should be included
- d) **Achievement of River Basin Management Plan objectives: No. We the current series of unrelated plans for the environment should be phased out. As it stands, the metric rewards achievement of LNRs objectives. LNRs should be extended to form Local Environment Improvement Plans and BNG payments should be funnelled into achieving those objectives.**
- e) Yes, it is appropriate for these bodies to generate and sell

This section reads as saying that potentially up to 90% of the net gain required could be met by measures required to mitigate and or compensate for the impact on protected species. That does not sound like net *gain* is being delivered. Setting those measures aside it would seem sensible that the in-combination effects of all the green infrastructure proposed for a site where it has biodiversity value and would be managed as such should be recognised in the calculations.

#### **Q45 Non-designated features e.g. Local nature reserves eligible?**

Yes

#### **Q46 Coastal, intertidal and marine environments**

Yes

#### **Q47 “Stacking”**

Agree that payments for biodiversity and other environmental services can be combined so long as they are paying for separate items and not therefore reducing the benefit. There needs to be clarity on what distinct items are being paid for and more information required on this approach.

There are questions around how/if other agri-environmental payments will interact with BNG, along with other Government funding streams, such as the Nature for Climate Fund.

**The RTPI position is that Local Environment Improvement Plans should govern all environmental expenditure.**



## Statutory biodiversity credits

### **Q48 Proposals to ensure credits are a last resort**

We agree that there will need to be guidance on use of credits. This guidance needs to be clear for the applicant and decision maker as to when UK Govt credits can be used – what situations might this be acceptable as a last resort. This needs to ensure that landowners are not unfairly penalized where for example local strategies are not available to offset BNG

### **Q49 Alternative approaches to credits?**

Don't know

### **Q50 Mechanism for review of credit price**

Don't know.

### **Q51 Principles for credits investment**

We are not comfortable with the arrangements for government credits. It is not really clear what they will be put towards: the document only suggests they will be 'invested in strategic habitat creation and enhancement which delivers long term environmental benefits and is aligned to local nature recovery strategy priorities'. If there are LNRs in place (or preferably Local Environment Improvement Plans) then will the Government credits actually be needed? If they are plugging a gap before they come into place what will the credits be invested in in the meantime?

The arrangements for reporting seem to be vague and should be consistent with standards set for transparency in other regimes. Why can direct links between sites not be reported as with others via the net gain register?

## Reporting evaluation and monitoring

### **Q52 Project-level management**

We welcome these being secured via condition / obligation. The basics of monitoring report detail seems appropriate but we would welcome more guidance.

There is a need to consider the ability to submit an action plan of sorts where monitoring is not delivering as expected but outside of landowner/developers control e.g., habitat not evolved as expected.

**Where will the funding for local authorities to review and deal with monitoring reports and enforcement be found? We concerned there is no guarantee of funding to handle BNG management plans in the first place, let alone monitor them. What happens if the offsite provision is in a different district? Who monitors those sites?**

### **Q53 Earned recognition**

Yes agreed, if earned recognition is related to verification and certification standards.





**RTPI**

Royal Town Planning Institute

**Q54 Policy level proposals for monitoring**

No, these proposals are not sufficient. More clarity is needed regarding the type and level of information that needs to be collected and the templates used to inform that process. **The reporting requirement will have an impact on resources and capacity, and governance / delivery measures are unclear.**

**Q55 Additional data for Biodiversity Reports**

No suggestions for additional data, but this may need to be reviewed as practice develops.