

## About EIC

EIC is the leading trade body for environmental businesses. This response has been produced with the input and assistance of our Natural Capital Taskforce. The Taskforce brings together natural capital experts from most of the UK's large environmental consultancies, alongside some key landowners innovating in this field, including water companies, utilities and developers. We have worked closely with government over the last year to support its programme of implementing natural capital approaches into policy making.

This response represents a consensus view of the Natural Capital Taskforce, but does not necessarily reflect the views of individual members of the group.

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

Yes.

The government's main environmental principle is to "to leave the environment in a better state for the next generation", which implies a policy of biodiversity net gain, or indeed, full environmental net gain. By mandating biodiversity net gain, and setting out a nationally applicable net gain metric, varying approaches across local authorities would become more standardised, which in turn creates a simpler process for business.

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

A standardised national metric and toolkit, regularly updated. This allows for easier comparison between projects. Detailed habitat mapping by a national body would support delivery, and ensure a spatial approach to net gain.

Our members though believe it would be difficult to implement the policy properly without the provision of extra resources to local authorities, for instance to hire ecologists to verify the quality of biodiversity assessments. Training of those individuals who will be involved in the process (e.g. builders, local authorities, land management



companies) is also required to ensure biodiversity net gain is delivered properly, and this could be supported through government grants.

- 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?**
  - a. House extensions**
  - b. Small sites**
  - c. All brownfield sites**
  - d. Some brownfield sites (e.g. those listed on brownfield, or other, land registers)**

We would urge the government to restrict exemptions as much as possible.

For brownfield sites in particular, there is no ecological reason to exempt them. It is important these sites are not given exemptions from the requirement, as brownfield can often serve as ecological corridors and some provide valuable habitat in urban areas for a wide range of botanical, invertebrate and mammalian species. While EIC continues to advocate “Brownfield First” this should not be at the expense of good environmental practice.

For the smallest sites, such as road verges associated with highway improvements (for example), and for permitted developments that do not impact on a Habitat of Principal Importance or an area of green space greater than 500m<sup>2</sup>, exemptions could be appropriate, but these must be restricted and justified in writing to the local planning authority. This will require guidance on what is considered suitable for exemption.

We would be against all permitted development being exempted *carte blanche* as many PD projects can occupy large areas of countryside (e.g. Pipelines for utilities).

Similarly exemptions should not be permitted for nationally important infrastructure, as is currently the position in the consultation. By definition these





are generally large, complex projects that do involve significant habitat loss. They are also subject to rigorous scrutiny which should include assessing biodiversity gain opportunities (locally or through some form of offset via a tariff scheme). Many large infrastructure providers are already implementing their own biodiversity net gain targets so mandating it would not make a significant difference on the viability of projects.

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

No. Active industrial sites should not be excluded as they can have potential to achieve net gain.

Commercial development should not be exempt – with the redevelopment of existing sites there is likely to be limited biodiversity loss, so identifying biodiversity gain should be proportionally easier. Urban developments have significant opportunity through green roofs and other uses of urban space.

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

It is important that some kind of net gain occurs on as many developments as possible, thus we would support certain sites e.g. of low ecological value being subject to simplified measures, rather than being allowed to be exempt. Recently refurbished or reinstated sites could be also appropriate for a simplified process. A potential suitable threshold could be to follow the example of the BREEAM UK Non-Domestic New Construction guidance, which would mean that only sites with less than 500m<sup>2</sup> of habitat and no habitats of Principal Importance, could be allowed to use a simplified process.

**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?**





The definition of what is “local” is important here, which could be defined either by the Local Planning Authority boundaries, or through biodiversity catchment mapping.

Non-statutory locally designated sites offer significant biodiversity gain opportunity in many areas. Frequently their non-statutory designation reflects the lack of resource available to improve their management, the lack of protected species presence or the lack of capacity to carry out some form of rehabilitation. If the Defra Metric can recognise potential for such sites there could be a useful way of improving and protecting these locally important features. How they are considered within the metric could be determined by the individual LPAs. It is vital the mitigation hierarchy is strongly applied, that strong NPPF and local planning policies protect local sites and the metric calculations strongly disincentivise the development of local sites.

**7. Should local authorities be required to adopt a robust district level licensing approach for great crested newts, where relevant, by 2020?**

We agree that there should be robust district level licensing. Members have concerns that existing schemes are not robust, and that these should be evaluated. Upskilling in the LPAs may be required to manage the process properly. Members have mixed views about whether the timescale is appropriate.

**8. For what species is it plausible to use district level or strategic approaches to improve conservation outcomes and streamline planning processes? Please provide evidence.**

It is difficult to specifically identify species that district level or strategic approaches could be beneficial, but we believe this approach has merit in some circumstances. However any scheme would need to be robust and local authorities need to be adequately resourced to carry out this extra function. The roll-out of the great crested newt district licencing scheme provides a good testbed to ensure a similar approach would work for other species. We advocate that the Environmental Improvement Plans that have to be reviewed every five years could be one mechanism to identify species suited for a district level / strategic approach and for these to be reviewed as to their success every five years.





However these species-specific approaches should not replace the holistic approach to habitats.

**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.**

We support the implementation of a requirement for full environmental net gain (ENG) in the medium term, and biodiversity net gain should be considered both a key element of ENG and a stepping stone towards this goal. A future requirement for ENG should be a legislative requirement within the upcoming Environment Bill.

There already exists the Royal Town Planning Institute's Natural Capital Planning Tool, and Natural England's EcoMetric, which provide tools to achieve ENG once BNG is accomplished.

A natural capital and/or ecosystem services approach should be used as a framework for environmental net gain. But wider environmental net gains must also be targeted strategically, so that it can be tailored to address local environmental challenges – e.g. flood protection is a more important net gain in areas prone to flooding.

EIC is working with its Natural Capital Taskforce members this year to produce a paper, which will outline how full environmental net gain might work in practice.

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

Broadly yes. We see the Defra metric as an important step towards greater standardisation and national consistency, meaning a more simple process for businesses.

Some members had views that the updated metric was more complicated than the previous iteration, some of the reasons for which are laid out in our response to Q11. There was also concern about the subjectivity of some of the inputs (e.g. habitat condition, distinctiveness





etc), and how this did not ensure consistency of measurement. This means that transparency of usage along with assured management is required.

The metric should continue to be developed as the science develops and evidence of how it is being used is gathered. The metric is a simple tool that ignores important aspects, such as the presence of protected species or the impact of disturbance. Therefore the tool must be used by suitable competent practitioners to ensure the fullest understanding of the benefits and impacts of a development.

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

The running of trials on real projects should help identify any issues or potential improvements for the metric, though an initial suggestion would be that a net loss of a priority habitat should be compensated in addition to the overall net gain. The metric should have national default scores for each habitat distinctiveness, time to target, difficulty to deliver etc, as is already being developed by Natural England.

In addition, one member had some specific concerns about the updates to the metric:

- **Distinctiveness:** The distinction between the 'Very High' and 'High' is not very clear.
- **Condition:** Based on member experience in working with a three-step condition scale, the new intermediate categories will make the assessment more time-consuming.
- **Connectivity:** It is not clear how the freely available tool will be used to calculate the connectivity multiplier. It is unlikely that such tool will be of sufficient resolution to be useful at project level, except for large projects such as national significant infrastructure (these are in fact excluded from the new policy on net gain). The suggested local or site-specific connectivity analyses (quantitative spatial data) are usually complex and require specialist skills and software that are used mainly in research projects. The old approach of looking at habitat connectivity visually will not be appropriate to use with a quantitative metric.
- **Strategic significance:** This multiplier has issues because: a) many local policies do not have biodiversity or environmental areas clearly identified; b) it overlaps partially with the spatial risk multiplier; c) it overcomplicates the metric. The proposed 'strategic significance' and 'spatial risk' could be merged into one.





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

Most of our Taskforce support 10%, although there minority had the view it is too high and could be a point of contention with developers. Regardless, the level of increase should be subject to review after a period. One concern was that the number seemed to be arbitrary – further explanation in the document of the method undertaken to decide upon 10% may be useful. The proposed OEP could have a role in scrutinising the policy in general, and the suitability of the 10% target.

It was pointed out that there have been trials where a 20% gain has been required. This seems appropriate in areas where there is significant risk of success in the proposed new habitats being created, especially where there are concerns over the management of these habitats in the medium/long term. Defra could consider a sliding scale where less gain is accepted where there are binding agreements in place to ensure longer term success, and if this is not possible then a higher gain threshold should be set.

A net loss of a priority habitat should be compensated in addition to the overall net gain.

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

It is vital that the mitigation hierarchy is upheld, and that the tariff option should be a last resort. We would advocate that developers should have to provide evidence that they have explored every possible option before being allowed to take the tariff option.

Australia represents a good case study here. Initially the Australian government was more lenient in allowing developers to pay a tariff rather than achieve net gain, and it resulted in the widespread degradation of sites. Following this policy failure, the Australian government now mandates green infrastructure on sites.





However, there will of course be cases where exhausting all on-site or local opportunities is not possible, or the site is in, for instance, an isolated city centre location. In these cases, then a tariff approach, focused on improving nationally important biodiverse sites, could be suitable. The government could limit the use of tariff through a mandatory ratio, set to apply at the regional level. e.g. 80:20 – where no more than 20% of all biodiversity units across a local planning authority can be paid through the tariff mechanism.

**14. Would this be an appropriate approach to directing the location of new habitat?**

We agree that a spatial hierarchy should provide the basis for the BNG approach – from site improvements, to local off-sets, to nationally important habitats as a last resort. Offset site selection should be considered, and should link into any future national biodiversity strategy.

**15. How could biodiversity assessments be made more robust without adding to burdens for developers or planning authorities?**

GIS county level or regional maps which visualise all habitats, areas of connectivity and areas of low value habitat would be useful for developers to understand the areas of opportunity for both development and habitat creation.

Digital Environmental Impact Assessments could be fed into broader mapping to record mitigation and impact.

Auditing of BNG assessments by either the local authority or a specialist provider. The proposed OEP, National England or an industry body such as CIEEM or CIRIA could have a broader oversight role over assessments.

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

Yes, although some members have concerns about the potential workload of such a task.

**17. Should this be applied, as a minimum baseline, to:**  
**a. net gain calculations for all development?**





Broad habitat baselines should be supported by site surveys to ensure the relevance of assessments.

However, if a simpler assessment is developed for development of a small scale in low value habitat then it is possible the habitat map could be used to determine if a development was suitable to assess using a simpler assessment.

**b. net gain calculations in cases of suspected intentional habitat degradation?**

Yes. The national biodiversity map should be used by regulators if there are indications a development is, or has been, intentionally degrading habitat to reduce their potential BNG obligations for future development. However, more advanced remote sensor technology may be needed to have the required resolution to analyse most sites.

**18. What other measures might reduce the risk of incentivising intentional habitat degradation?**

Introduce a requirement for an ecological assessment when developers buy land to be registered with the local authority. This will then be available to check how the ecology on site has changed when land changes ownership.

Enable local authorities to reject planning applications if they are presented with evidence that the habitat has been intentionally degraded.

**19. How can the risks of penalising landowners making legitimate land use change decisions before deciding to sell their land for development be mitigated?**

There is a need for clear guidelines on what constitutes justifiable land use changes.

Penalties should only be issued with substantial evidence from the baseline data.





**20. The provision of compensatory habitats will need to be guided by habitat opportunity maps. At what scale should these maps be developed?**

- a. Locally (e.g. local authority or National Character Area)**
- b. Nationally (i.e. England) as a national framework to be refined, updated and amended locally**

The Taskforce had mixed views on this question.

**21. What other measures should be considered to identify biodiversity and natural capital priorities?**

Natural Capital Investment Plans are already being produced in some regions, which may overlap with strategic biodiversity or conservation areas.

Some potential measures could be:

- Setting up steering groups with conservation agencies, wildlife trusts, specialist recording and research groups, to inform priorities.
- On-site surveys incorporated into biodiversity net gain assessments where there are site-specific factors that are not captured by habitat maps.
- Local natural capital investment plans (where these exist) which will have identified the opportunities and priorities for investment in natural capital.
- Air quality management area maps
- Flood risk maps.
- Developing a map of natural capital opportunities at national scale with a requirement for local authorities to include these with local information in local plans.





## **22. Would mandating net gain through the planning system be enough to stimulate the growth of a market for biodiversity units?**

Yes, but it needs to be backed by conservation covenants, which would provide a mechanism to safeguard land use in the longer term. This does not currently exist on a statutory basis, which is why offsetting does not already happen.

The Basic Payment scheme at present makes it more difficult for landowners who want to change land use from agricultural production to biodiversity offsetting, because the BPS is only payable on agricultural land. A new UK version of the Common Agricultural Policy post-Brexit is an opportunity to address this.

Setting a high tariff price would better stimulate the growth of a market for biodiversity units, because it would make offsetting a viable alternative form of land use.

However, there is a need to consider the services provided by the land – and not lose vital services such as food production simply to achieve BNG, we need to ensure we do not end up “exporting” our ecological footprint overseas.

## **23. What further measures would help to ensure that the market provides:**

- **Sufficient biodiversity units for development?**
- **Cost-effective biodiversity units?**

Suggestions included:

- There would need to be a good incentive for private landlords to volunteer their lands, such as:
  - A financial reward (e.g. through the BPS)
  - Clear guidance and manuals for habitat creation or the requirement for an accredited conservation body to deliver habitat creation/restoration.
- Simplification of the current HLS procedure and introducing PES.
- Post-development monitoring would maintain confidence in the viability of the units market.
- A short-term, government-sponsored, zero interest rate rolling investment





fund for delivery bodies to enable early establishment of suitable habitat banks.

- A holistic approach with spatial integration and connectivity.

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

Yes.

**25. If so, what should the minimum duration be?**

- a. Less than 25 years**
- b. 25 to 30 years**
- c. Longer than 25-30 years**
- d. Permanent**

25-30 years would be a manageable and realistic duration for maintenance of habitats, which takes into account the likelihood of natural change, and the possibility that metrics may also change. However the required duration does depend on the type of habitat and the intervention required. After 25-30 years period, habitats could undergo annual or 5 year reviews.

**26. Would conservation covenants be useful for securing long term benefits from biodiversity net gain or reducing process and legal costs?**

Yes. The lack of a mechanism to safeguard long-term land use is a key reason why offsetting is not more common at present.

**27. What safeguards might be needed in the implementation of conservation covenants?**

Currently there is no statutory provision for conservation covenants, as is the case in Scotland, Canada, Australia and New Zealand.





It is important that conservation covenants are time-limited in a similar scope to the length a site should be maintained, as this takes into account natural change etc.

As part of broader EIC research looking at enforcement of environmental regulations, we have identified a potential issue caused by the cuts to funding provided to councils by central government, and the potential impact this may have on enforcement of environmental regulations. Figures from the Local Government Association show that from 2010 to 2020, councils will have lost 60p out of every £1 the government had provided for services. NAO figures show that from 2010-11 to 2016-17 funds spent on planning and development services in particular have been cut across local authorities by 53%, while within that, environmental initiatives in particular have had funding cut on average by 60%.

If local authorities are to have a role in monitoring and enforcing conservation covenants, their limited ability to do effectively could undermine the system. The OEP could have a role in both providing scrutiny of the broad success of conservation covenants, as well as being a conduit for cases where covenants are not being upheld.

**28. Does this proposed range for tariff costs fit with the principles set out in this section?**

The current proposed tariff price seems low, and we would like the government to explain the reasoning behind choosing these figures. Publication of the results of various trials that have taken place would be appropriate, and if they are not already, these results should form of the basis of the proposed range.

Tariff costs must be unattractive to developers, as a higher price will incentivise action on site or at least locally. A higher price would also better stimulate the market for offsets.

**29. Would this proposed range for tariff costs provide opportunities for cost-effective habitat banks and compensation providers to compete?**

No view.

**30. Do you agree with the proposed principles for setting the tariff rate, as set out in this section? Please suggest any other factors that should be taken in to account.**





No view.

**31. How should the tariff revenue be collected?**

- a. Locally (e.g. through a local authority)**
- b. Nationally (e.g. through Natural England or another national body)**
- c. Other, please specify**

Our preference is that tariffs should be collected locally, and that local nature partnerships could have a role in this.

While local authorities are the best option to collect the tariffs, central government must both adequately resource local authorities to carry out this role (see our response to Q27), and ensure they actually fulfil their duty to collect the tariff. (see our reference to the failure of CIL in our response to Q32)

**32. How should the tariff revenue be spent?**

- a. Locally (e.g. through a local authority)**
- b. Nationally (e.g. through Natural England or another national body)**
- c. Through a blended model, allowing spending at both levels**
- d. Other, please specify**

A blended approach, with an emphasis on local spending but the option for national spending. There would need to be some oversight of local spending at a national level, to ensure linkages are retained across county boundaries. This links to the need to have mapping work completed in advance. There should be restrictions as to how much of the money can be spent on administration; the government should look into ways of ringfencing the majority of the funds strictly for biodiversity enhancements. The allocation of funds must be transparently and thoroughly accounted for.

The new Office for Environmental Protection, which will come into place after Brexit, could have a role in scrutinising when, where, and how these funds are spent.

A report by our sister organisation, the Association for Consultancy & Engineering, found that the Community Infrastructure Levy was not functioning in the way it was designed, and that many councils were either not collecting funds where they had the opportunity to, or not spending the CIL funds they had available. Only 43% of councils with planning powers adopted the CIL, while the 2015 review of CIL found that its effectiveness was being undermined by





having too exemptions. ACE's research found that out of the £1.1 billion in CIL collected since the beginning of 2014, £443 million has not yet been spent.

It is essential that lessons are learnt from this with the implementation of the biodiversity tariff payments, and that local authorities are held to account (possibly by the OEP) in using the funds for biodiversity enhancements swiftly. The policy could mandate that tariff funds be used within 2 years.

**33. If tariff revenue is collected and spent nationally, should spending prioritise areas which have contributed the most through biodiversity net gain tariff payments?**

For BNG to have broad support it is important that the tariff is spent in the areas where development happens, and that local communities feel the benefit. Decision-making at a national level must show how it has taken account of local views when deciding how to spend the tariff. For example it must make reference to local plans, green infrastructure strategies or other document that sets out biodiversity priorities for a local area.

**34. What further measures will help to prevent burdens on local authorities increasing?**

Local authorities need to be properly funded to ensure they have the required ecological expertise to carry out their role, a small percentage of the tariff payment could be used to fund this.

**35. How could the proposals be refined to manage any negative impacts on the scale and delivery of other developer contributions (e.g. through Section 106 or Community Infrastructure Levy payments)?**

It is crucial that these payments are kept separate from CIL and Section 106 contributions. The tariff must exclusively be used for biodiversity enhancement. As we outlined above, we have concerns about how the CIL in particular has failed to deliver on its objectives.

**36. Would you, as a planning authority stakeholder, prefer any net gain tariff revenue to be paid through:**

- a. local authority administration?**
- b. a nationally managed funding scheme (which could then reinvest in**





**local habitat schemes best aligned with national strategic environmental priorities)?**

No view.

**37. How could the proposed net gain process be improved for developers?**

Government could require developers to make their GIS data available for use by stakeholders.

High quality, consistent guidance and information should be made available. Local authority staff should be properly trained to be able to support developers, particularly SMEs. The proposed national mapping should be available free of cost from the MAGIC website.

Developers need clarity and certainty over their potential costs to factor into their business models. If the BNG process is weakly implemented then developers will not know how to factor the impacts into their decisions, and then some developers will actively seek to avoid any commitment altogether.

**38. What other steps, considerations or processes in environmental planning could be integrated within a net gain approach?**

No view.

**39. Would any particular types of development (e.g. commercial, industrial, public sector, local infrastructure) be disproportionately affected by a mandatory biodiversity net gain requirement?**

No view.

**40. Do you agree that the proposal for staggered transitional arrangements would help to ensure smooth implementation of biodiversity net gain policy?**

Local habitat opportunity mapping should be in place before net gain is mandated, which could cause delay to implementation.

While large developers are well equipped to deal with the transition towards BNG, its take up on smaller sites, and by smaller developers is a much greater challenge. To rectify this,





BNG could be rolled out first only to the largest sites. This would then provide a testing ground and best practice examples for SME developers working with smaller sites to follow.

There is also the issue that those parties involved: local authorities, development organisations, land management companies and to a lesser extent consultancies, may need to upskill their workforce. This requires a transitional arrangement and possibly government driven training and funding programmes (particularly for local authorities). Without the necessary levels of expertise amongst these stakeholders, BNG may be implemented to a poor standard.

**41. Would the existing dispute resolution process provide the best way to overcome any disagreement over whether net gain is achieved?**

No view.

**42. Would an additional arbitration or approval process be necessary? If so, please specify why.**

No view.

**43. Are there any issues or measures, other than those outlined, that we should take into account when considering how to monitor biodiversity net gain?**

Habitat assessors do not currently need accreditation, and the consultation suggests this could change. Our view is that there should not be a separate accreditation scheme for habitat assessors, as there are already an abundance of accreditation schemes in this field. Instead we would advocate that accreditation be added onto an existing scheme, for example the SocEnv Chartered Environmentalist.

**44. Should local authorities be required to provide information about habitat losses and gains?**

Yes, but they may need extra resources.

**45. What technological or other innovative mechanisms could facilitate the delivery**





### **and monitoring of biodiversity net gain?**

- High resolution drone imagery and remote sensing could be useful in providing ecological baseline data, and to enforce habitat management, particularly in difficult to reach areas such as bogs, mountains, cliffs and intertidal habitats.
- App-based citizen science to monitor biodiversity.

