

Defra's Net Gain Consultation Proposals

Response from the Buckinghamshire and Milton Keynes Natural Environment Partnership

Introduction

The Buckinghamshire and Milton Keynes Natural Environment Partnership (the "NEP") is the area's Local Nature Partnership. We bring together local authorities and organisations from across the public, private, health and education sectors, as well as conservation and community organisations to champion the value of the Buckinghamshire environment in decision-making, and to encourage environmental protection and improvement for multiple benefits – for the environment, businesses and the economy, and the health and wellbeing of communities and the society of Buckinghamshire.

We welcome the opportunity to comment on the proposed indicator framework to measure progress towards the goals of the Government's 25 Year Environment Plan.

Our response is based on input from our partners and experts, and learning from our current work priorities including preparing a working net biodiversity gain and biodiversity accounting scheme for Buckinghamshire and Milton Keynes.

Summary

The NEP sees significant potential opportunities to address some of the serious decline in biodiversity in the UK resulting from a planning and development system which has not yet developed a coordinated and consistent approach across the country. This provides an important opportunity to create 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.

We welcome a nationwide approach with a clear simplified system, with clear guidance, so that all parties can work cooperatively and reduce costs of duplication and delay.

Our key points are as follows

- ***All major and minor development should be required to demonstrate net biodiversity gain using the metric and applying the mitigation hierarchy.***
- ***Net biodiversity gain should also be a mandatory requirement for all national infrastructure projects.***
- ***The proposed 10% net gain not ambitious enough. We do not believe this would deliver the level of net gains required to genuinely compensate habitat losses.***

- **Setting a target of 20% has been shown to be highly achievable and acceptable to developers.** A 20% gain would also disincentivise future uses of the land for development – as it becomes significantly more costly to do so – so the higher the required % net gain, the easier it is to secure longer-term gains.
- **Longevity of offset – should be permanent,** to match the time-period of development-caused biodiversity losses (or where not possible, at least longer than 25-30 years as a minimum. If the loss is permanent, the gain should be too. The use of conservation covenants could assist with this, to ensure biodiversity net gain agreement remains embedded in any future land sale.
- **Monitoring should also be long term** – and ensure gains are achieved – so that, after say 30 years, a site achieving net gains should be significantly more costly to develop as there should now be better high-quality habitats.
- **The cost of a biodiversity offset unit should be set at a more realistic, higher level,** to allow for funding and long-term, good-quality maintenance for longer-term offsets, and to allow for including land purchase to secure offsets permanently. The tariff should include provision for all administrative, implementation, monitoring and enforcement costs. The tariff level proposed in the consultation document is too low. **At this low level, some potential delivery partners would be priced out of the market.**
- **Resources** – will be needed and should be provided and supported to operate the scheme throughout the process – including ecological expertise and consistency.
- **The NEP supports local collection and allocation of monies** in preference to operating a national tariff, which risks biodiversity offsets being located far away from the area of loss – also to ensure that local biodiversity priorities are met, and to avoid possible ecological deserts.
- There needs to be **a legally robust mechanism** of redress for unachieved gains.
- **Work towards a broader, environmental net gain standard** should be pursued but must not trade-off or dilute commitments to achieving net biodiversity gains.

Detailed Consultation Response

The NEP’s views, thoughts and suggestions in response to the specific questions asked in the consultation are provided below:

Question posed in the consultation	NEP’s response
SCOPE	
What development should be in scope of a net gain policy?	
1. Should biodiversity net gain be mandated for	Yes.

Question posed in the consultation	NEP's response
<p>all housing, commercial and other development within the scope of the Town and Country Planning Act?</p>	<p><i>In addition, biodiversity net gain should also be a requirement mandated for all national infrastructure projects. These currently fall outside the scope of the consultation and represent significant potential for loss of biodiversity – yet could provide significant opportunities for biodiversity net gains.</i></p> <p><i>The mitigation hierarchy, particularly with avoid first, then minimising impacts and mitigation onsite first before looking at possible offsite offsetting, should equally be an explicit requirement. The summary statement on page 5 could therefore be stronger – replacing “should” with “must” in the following sentence: “Net gain for biodiversity should must seek firstly to avoid and mitigate against environmental damage”.</i></p> <p><i>The proposal states that the government will only mandate BNG if it is satisfied that it will deliver benefits for development, including greater clarity and process cost savings. The primary goal of mandating BNG must be to halt and reverse the decline in biodiversity and to enhance and increase our natural capital to the benefit of all.</i></p> <p><i>Whilst the proposal to mandate biodiversity net gain for the majority of developments is strongly supported, the Town and Country Planning Act (TCP Act) covers all sorts of development where it would not be relevant or appropriate. For example, advertisement applications, air conditioning units, changes of use, extract ducting, fences, removal of fire escapes, roller blinds/shutters etc. However, net gain must be mandated for all developments, not just those within the scope of the TCP Act (such as Nationally Significant Infrastructure Projects) and underpinned by a standard metric for measuring the impact of development on biodiversity. This is an important and defining opportunity to provide both the development sector with surety as to their obligations and expectations with regard to ‘biodiversity net gains’ as set out in the National Planning Policy Framework 2018.</i></p> <p><i>We realise that a period of roll-out may be required to support the scheme’s smooth implementation and additional capacity is likely to be required by LPAs and developers in the initial stages, along with other engaged partners. However, this should not be taken as a reason not to pursue it, but rather should be accepted and adequately recognised and resourced through the setting of appropriate tariffs and provision of adequate support to LPAs and Local Record Centres.</i></p> <p><i>LNPs believe that mandating the net gain proposals will ensure greater uptake than the current voluntary approach, whilst also providing a level playing field for developers across the country and consistency across all planning authorities within the planning</i></p>

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	<p>system. The proposal to mandate BNG is strongly supported for most development but it must be underpinned by robust evidence, and its effectiveness should be regularly reviewed.</p>
<p>2. What other actions could government take to support the delivery of biodiversity net gain?</p>	<p>We believe the following actions are also required:</p> <p>Ensure national infrastructure projects are also covered by the requirements for net biodiversity gain. All major and minor development should demonstrate net biodiversity gain using the metric and applying the mitigation hierarchy. We need to ensure major national infrastructure projects are also covered by the requirements for net biodiversity gain. Therefore, applications made under Planning Act 2008 and Transport for Works Act 1992 should be included.</p> <p>Resourcing – providing adequate resourcing (particularly in respect of suitably qualified and trained ecologists) to ensure proper assessment of net gains (proposed and achieved) and sufficient monitoring and reporting of gains into the long term. The BNG process needs to be adequately resourced for the whole span of the process, from the application validation stage through to management and monitoring of schemes. This will require input from several organisations and professionals, including the need for LPA ecologists, Planning Consultants, Ecology Consultants, etc to assist LPAs in meeting the necessary requirements. Currently only c. 30% of LPAs employ in-house ecologists due to a lack of resources.</p> <ul style="list-style-type: none"> • <u>Adequately resourced Local Nature Partnerships or equivalent bodies</u> are charged with responsibility for local oversight and implementation of BNG. Local Nature Partnerships are ideally placed to co-ordinate a strategic and consistent approach to BNG across their area as they already bring together all relevant partners such as LAs, NGOs and landowners. • <u>Adequate training for developers and LPAs</u> in the application of the metric should be provided. • <u>Local record centres</u> need to be adequately resourced to ensure that decisions are based on the best available information. Robust monitoring will require a formal strategy to be developed and a baseline of data from which to monitor from. This will require adequate provision to be given to Local Environmental Record Centres and survey teams to help ensure that decisions are based on the best available information to provide a suitable, nationwide baseline of environmental importance locally and nationally.

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	<p>Sufficient incentives, legal backing and penalties <i>should be built into the system to ensure developers and LPAs take biodiversity issues seriously</i></p> <ul style="list-style-type: none"> • <i>Legal framework to ensure biodiversity net gains are retained into the long term – e.g. conservation covenant applied to land.</i> • <i>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.</i> <i>The new Office for Environmental Protection or, for instance, the Environment Agency/Natural England, should have a regulatory role equivalent to Ofsted in which planning authorities would be randomly inspected in terms of how they are delivering on their biodiversity duties.</i> • <i>Apply safeguards / a legally robust approach in the system to ensure pre-application submission sites are not deliberately damaged / left to minimise their pre-development score (or when landowners seek to sell land) – therefore undermining the entire system).</i> • <i>Apply adequate safeguards and clear guidance to ensure robust assessments are taken pre- and post- development to minimise the risk of underestimating biodiversity pre-development and over-stating it post development which would minimise the level of gains required.</i> <p>Require net gains in biodiversity into the long term <i>To match the period of biodiversity loss as a result of development</i></p> <p>Set a realistic / guide price <i>for a unit deficit so that gains into the long term can be secured. This should allow for land purchase and long-term management as a first choice.</i></p> <p>Apply the same level of protection to Local Wildlife Sites as to SSSIs, with adequate funding for their survey and management. <i>Many local wildlife sites (LWS) are as good or are better than SSSIs for biodiversity, but due to the sampling nature by which SSSIs are designated, many LWS that meet SSSI status are not designated as SSSIs. These are left with minimal protection under LWS status alone – meaning areas of priority habitat (where LWS may contain them) may be at risk of development.</i></p>

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	<p>Encourage or require green roofs for all buildings, particularly in urban and commercial areas.</p> <p>Work towards a broader, environmental net gain approach, but without losing or “trading off” with the “biodiversity net gain” requirement; i.e. environmental net gain should be a “biodiversity PLUS” approach. Any attempts to achieve multiple benefits must not dilute specific net gains to biodiversity.</p> <p>A spatial plan – Nature Recovery Network</p> <p>Robust net gain policies and a biodiversity net gain strategy should be included in the form of a spatial plan as an obligation for councils within Local Plans or as supplementary planning documents. LNPs agree that this should be delivered in the form of a ‘Nature Recovery Network’ (NRN) as outlined in the 25 Year Environment Plan. This NRN will provide the baseline dataset of local and national biodiversity information needed for BNG if it is to achieve and sustain the benefits set out in the consultation paper, for both biodiversity and business.</p> <p>These should be developed locally (government funding will be needed) but based on a national framework to ensure consistency - MAGIC layers are frequently wrong, or data is missing. This will enable decisions to be based on high quality, robust spatial environmental information, backed by clear and consistent policy processes and inform carefully designed development to positively contribute to the ecological network.</p>
<p>3. Should there be any specific exemption to any mandatory biodiversity net gain requirement (planning policies on net gain would still apply) for the following types of development? And why?</p> <ol style="list-style-type: none"> House extensions B. small sites C. all brownfield sites D. some brownfield sites (i.e. those listed on 	<p>All major and minor development should demonstrate net biodiversity gain using the metric and applying the mitigation hierarchy. With the exception of the few cases listed above in relation to Q1, all developments should deliver biodiversity net gain, therefore we disagree to any exemptions to the BNG requirement. Any exemptions would undermine the aim of net gain and the 25 Year Environment Plan.</p> <p>a) For house extensions – no. The process could be simplified below a certain threshold size (but not necessarily all householder applications) e.g. through the use of standard conditions and selection from a suite of potential options. Gardens can have a high ecological value, acting as vital wildlife corridors between sporadic areas of green space. For example - net gains could be achieved with clear evidence on-site, or by contribution to a fund. Using the metric should not be necessary at this scale, except in the</p>

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brownfield, or other, land registers)	<p>case of very large extensions and associated works (perhaps above a size limit) – e.g. driveways, hard-standings, outbuildings - or where a simple test may suggest specific habitats are affected - e.g. woodland, streams, etc. .</p> <p>b) Small sites – no. These should not be exempted as they can equally result in a net loss of biodiversity,. Small sites can be important as part of a wider network, providing stepping stone and refuges for wildlife, particularly in an urban setting, and don't directly correlate with biodiversity value. The cumulative effects of lots of small sites should not be overlooked, nor the indirect impact upon adjacent sites or for ecological connectivity. Even small sites (say 0.5 ha) can accommodate several dwellings and exempting them means opportunities for securing biodiversity enhancement would be missed.</p> <p>In addition, exemptions for small sites could lead to perverse behaviour whereby developers could look to take advantage of exemptions (e.g. sub-dividing a large plot into smaller sites to meet the exemption criteria). So there is also a risk that large developments should be divided into smaller plots to avoid costs.</p> <p>c) All brownfield sites - No. .</p> <p>Brownfield sites should still be required to deliver net gains, evidenced using the metric. Brownfield sites are often rich in biodiversity which can be overlooked. Brownfield sites can support notable species and could be classified as a Habitat of Principal Importance under S41 of the NERC Act (open mosaic habitats on previously developed land). Brownfield can also offer good opportunities for enhancements that can be particularly pertinent in urban areas.</p> <p>d) Some brownfield sites - No. Most often, brownfield sites listed on registers have been compiled without an ecological survey to determine their value, therefore it should not be assumed that because they are on the brownfield register that they have no ecological value. As listed in 3c, many of these sites support important species assemblages and are often of higher ecological value than greenfield sites.</p>
4. Are there any other sites that should be granted exemptions, and why? For example, commercial and industrial sites.	<p>No. We believe that biodiversity net gain should be mandated for all development in line with our answer to Q3, above. All major and minor development should demonstrate net biodiversity gain using the metric and applying the mitigation hierarchy.</p> <p>Commercial and industrial sites should not be exempt. Development of commercial and industrial sites are no different – whether or not they are rich in biodiversity to start with, they should</p>

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	<p><i>also result in a net biodiversity gain. Such sites can offer great potential for significant biodiversity gains, often with multiple benefits for business as well as biodiversity, especially in urban environments, e.g. green roofs and sustainable drainage systems (SuDS).</i></p> <p><i>With an exemption, i) the opportunity to provide net gains disappears; and ii) a future change to a land use where net gain is required would then be taking the baseline as the biodiversity in the commercial / industrial site – which would be lower than it would have been without the exemption requiring a net gain for development of the site.</i></p> <p>Major infrastructure projects should also be included. <i>Therefore, applications made under Planning Act 2008 and Transport for Works Act 1992 should be included.</i></p>
<p>5. As an alternative to an exemption, should any sites instead be subject to a simplified biodiversity assessment process?</p>	<p><i>We would advise that for all site the process involved should be as simple as possible to avoid needless delay.</i></p> <p><i>The type of process to be used for different development types and scales could be a matter for the local plan, to ensure that it reflects local circumstances, however the thresholds and methodology would need careful consideration.</i></p> <p><i>It is possible that a simplified version may be helpful for very small sites – e.g. house extensions. For example, perhaps a minimum net gain requirement could be considered (a determined number of units per hectare). (See our answer to Q3a, above).</i></p> <p><i>However, we would need to see further information about this. With the exception of householder applications for extensions, and very small sites perhaps, all other development should be covered and demonstrate biodiversity net gain using the metric.</i></p>
Biodiversity features in scope of net gain policy	
<p>6. Do you agree that the Defra metric should allow for adjustments to reflect important local features such as local sites?</p> <p>Should the Defra metric consider local designations in a different way?</p>	<p><i>We support a Defra metric that takes into consideration local importance and circumstance. Designations require strengthening but this is not critical for Biodiversity Net Gain to be effective.</i></p> <p><i>It is assumed that all sites of statutory status will remain protected from developmental loss and damage, as the consultation stipulates, 'net gain will not weaken existing planning policy protection for Local Sites'.</i></p> <p><i>We envisage that Local Wildlife Sites (LWS) will be incorporated into a coordinating strategy as part of Nature Recovery Networks and their value will be variably weighted according to the habitat they</i></p>

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	<p><i>provide - which should be accurately reflected in the Defra metric. This however, should not then lead to the increase in likelihood of development taking place on LWS.</i></p> <p><i>Many Local Wildlife Sites are as good, or better, than SSSIs for biodiversity, but due to the sampling nature by which SSSIs are designated, many LWS that meet SSSI status are not designated as SSSIs and so are left with minimal protection under LWS status alone. Local sites also play a key role in nature recovery networks. Therefore, local sites may be of national importance and so should be recognised in the same way as SSSIs and treated in the same way as irreplaceable habitats. Where there is an overriding national reason for development on a local site, this should be compensated for outside the metric.</i></p> <p><i>The current proposals suggest that the levels of habitat importance are accounted for in the scoring of the metric, meaning that LWS can, if they wish, apply a high weighting for local sites to ensure development is steered away from them.</i></p> <p><i>We would advocate that the requirements for application of the metric locally are set out clearly to ensure that its use will not lead to any increase in the likelihood of development taking place on LWSs. Also that a net gain should not be "claimed" for any development that destroys part of a Local Wildlife Site.</i></p> <p><i>Guidance on the use of the metric should encourage assessors to give weighting for local sites and designations and for the presence, distribution and condition of priority habitats locally – perhaps via habitat condition and distinctiveness scoring multipliers.</i></p>
How are species treated within a net gain policy?	
<p>7. Should local authorities be required to adopt a robust district level licensing approach for great crested newts, where relevant, by 2020?</p>	<p><i>The NEP is unable at this stage to comment on this question, which we believe is not relevant to the consultation on biodiversity net gain and the updated Defra metric.</i></p> <p><i>Some of the Buckinghamshire Districts are part of the district licensing approach by Nature Space but it is too early to say whether this will result in better outcomes for great crested newts in the long term.</i></p> <p><i>There remain some concerns about the pilot site methodology and therefore we cannot express our full confidence in the scheme at this stage. Furthermore, it may be premature to require such an approach to be adopted universally by 2020, particularly for those LPAs in areas where GCN are not as widespread.</i></p>

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<p>8. For what species is it plausible to use district level or strategic approaches to improve conservation outcomes and streamlining planning processes? Please provide evidence.</p>	<p><i>We believe the biodiversity net gain approach should continue to concentrate on habitats rather than individual specific species.</i></p> <p><i>The habitats provide a proxy for biodiversity gains; and some habitats can be designed to support specific species.</i></p>
<p>Ambitions for wider environmental net gain</p>	
<p>9. Are there wider elements of environmental net gain that could be better incentivised?</p> <p>If so, please specify which, and any benefits that such incentives could provide.</p>	<p><i>We agree in principle that simplifying the process for which environmental net gains can be assessed would be helpful, for example by requiring robust assessment of air and water quality impacts alongside biodiversity and other environmental requirements as part of a streamlined process.</i></p> <p><i>However we would need to see more detailed proposal to be able to comment fully on whether a proposed new system would offer advantages in process and outcome.</i></p> <p><i>In any case, any requirements to all environmental types of gain must be at least as strict as they are currently (e.g. building regulations for water and air).</i></p> <p><i>A fuller, environmental net gain assessment should also take account of the following – to help meet the goals of the Government's 25 Year Environment Plan, and to boost natural capital asset quality and the services and benefits therefore provided by them:</i></p> <ul style="list-style-type: none"> - <i>Carbon storage / reduction (developments to be carbon neutral / zero carbon)</i> - <i>Water quality - ensuring no negative impacts (and ideally positive ones) as a result of development – which could be measured e.g. in terms of reduced abstraction, reducing flooding events, improved river flow and water quality</i> - <i>Water use / efficiency – proper and early planning to ensure no net impacts on abstraction and ideally contribution to natural flow levels</i> - <i>Flood risk</i> - <i>Air quality</i> - <i>Soil health</i> - <i>Biodiversity</i> - <i>Green infrastructure – provision, quality, access, enhancement, benefits provided and connectivity</i> - <i>Provision for waste / waste hierarchy</i>

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	<p>- <i>Energy efficiency and clean provision</i> However, we would urge caution in trying to incorporate so many variables into one measure or process as it could dilute the importance of the individual elements.</p> <p>So while we are encouraged by work towards a broader, environmental net gain approach, we want to ensure this is done without losing, or “trading off” the biodiversity net gain requirement. Environmental net gain should be a “biodiversity plus” approach.</p> <p>However - with any such system, the following issues would need to be fully explored and robustly countered:</p> <ul style="list-style-type: none"> - <u>Units of measurement</u> – what is comparable? Are all aspects weighted the same? Should they all be included in one metric or are there advantages of keeping them separate? - <u>What would net gain mean?</u> E.g. we would <u>not</u> welcome an overall assessment based on combining scores for each type of environmental assessment and averaging out as to whether a net environmental gain has been achieved – in which case some outcomes could be negative for the environment, and some result in positive gains. – i.e. trade-offs <p>We believe net environmental gain should mean a better result for the environment <u>for each and all of the attributes</u> (i.e. no trade-offs – so this should be a “biodiversity gain PLUS” approach)</p> <ul style="list-style-type: none"> - <u>Achievability</u> – e.g. what does “air quality neutral” mean for a development, taking into account building works and use? - <u>Monitoring and reporting</u> – should be required post development at regular intervals to ensure planned gains are achieved, with mechanisms in place if they are not. <p>While ultimately the goal for Government may be to encourage net environmental gain, we believe the initial focus should be on biodiversity, and that all the above issues should be taken into account in the development of any broader scheme.</p> <p>Overall We believe that biodiversity net gain cannot be addressed in isolation from wider environmental concerns such as soil, air and water quality, climate change, noise and the impact of development on connectivity of habitats. These factors are all intimately</p>

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	<p><i>connected and form part of an overall natural capital approach. It may well be that if wider negative impacts are not addressed at the same time, the gains in biodiversity that are initially made are rapidly reversed. We would like to see a robust mechanism for biodiversity net gain developed and evaluated in such a way that it does not preclude a further extension of duty that addresses these wider impacts.</i></p> <p><i>Irrespective of this, we also do not want BNG to be held up, nor would we want to see too many variables that could risk diluting the importance of individual elements. We are prepared to learn from the experience of BNG in developing a broader environmental net gain approach. Any wider approach needs to be simple and again capacity needs to be provided within LPAs.</i></p> <p><i>There are also many other benefits to BNG beyond the environmental scope, which include health, economic growth and productivity, which could be considered as further benefits that such incentives could provide across the whole life course (i.e. cradle to grave). However, any attempts to achieve multiple benefits must not dilute specific benefits to biodiversity.</i></p>
MEASURING BIODIVERSITY	
A biodiversity metric	
10. Is the Defra biodiversity metric an appropriate practical tool for measuring changes to biodiversity as a result of development?	<p><i>Yes, we believe it is a helpful tool, although expertise is still required to apply the tool, interpret what it says, and to negotiate on factors such as protected species, connectivity, indirect impacts on designated sites.</i></p> <p><i>The metric is not the only tool required, therefore. We welcome its continued review and development to create comparability and consistency across the country.</i></p>
11. What improvements, if any, could we most usefully make to the Defra metric?	<p><i>The NEP has been provided with a pre-view of the Defra metric 2.0 and is responding to the relevant metric development teams within Defra and NE accordingly.</i></p> <p><i>However, at a general level, the NEP would like to raise the following points:</i></p> <p><i>Habitat connectivity</i> - <i>is important, but by including this as a measure in the metric - receiving a higher score for being better connected (pre- and post- development)- we are concerned that the result could be a concentration of habitat within “connected” areas and away from other, less connected areas – which would not be in line with the Lawton mantra of more, bigger, better and more joined up habitats. In addition, scoring connectivity as well as habitat risks diluting the habitat-only scoring – which could result in less habitat, albeit possibly better joined-up. This is not in line with Lawton</i></p>

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	<p><i>principles.</i></p> <p>Strategic significance <i>We would welcome the use of a multiplier for strategic significance - but to post-development offsets only, so as to encourage their location in e.g. Biodiversity Opportunity Areas, and not to both the pre- and post- development assessments.</i></p> <p>Condition scoring - mechanism <i>We would welcome a move away from the use of the FEP manual to a more fit-for-purpose method; but clear guidance is needed on scoring methodology for habitat condition assessment.</i></p> <p><i>Condition scoring needs to be sufficiently robust to ensure no perverse outcomes - as can happen using the current “failed criteria” approach with the FEP scoring – for both pre- and post-development. This system means the condition is downgraded if certain attributes are failed, irrespective of whether other factors may mean the habitat is of overall good quality. And as some habitats in the FEP manual include more criteria to assess than others, they effectively have more chances to “fail” and be downgraded. Overall, this can result in undervaluing the original habitat, for example, through the number of failed criteria (rather than the quality of criteria failed), and over-valuing the proposed offset, so while the metric could imply a gain or no net loss, in reality no real biodiversity gain has been achieved.</i></p> <p><i>An alternative to the “attribute failed” scoring method could be one where factors that are considered more important ecologically have a greater impact, rather than each attribute being of equal value.</i></p> <p><i>The FEP manual also does not have condition scoring for several habitats, including semi-improved grassland and scrub.</i></p> <p><i>So – we welcome the move away from FEP specifications but would welcome seeing the details of the new proposed mechanism to be able to comment more fully.</i></p> <p>Scores for condition <i>We would welcome sight of the new condition scoring proposed so we can comment on this and so we can take a decision on this in developing our locally-derived metric.</i></p> <p><i>We must ensure that any value given to a site does not undermine the future potential value or encourage degradation of land to reduce its BNG value for sale or development. Very careful consideration should be given to the condition scoring process.</i></p> <p><i>With that in mind, we do agree, however, that a condition must be part of the habitat creation/management requirements, aiming to</i></p>

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	<p>restore all habitats to 'good' condition as a minimum.</p> <p>Spatial risk <i>The spatial multipliers (habitat connectivity and strategic significance) need to be high enough to provide sufficient incentive to provide biodiversity net gain offsets locally, particularly in areas with high land prices.</i></p> <p><i>However - we think a clear rule to be followed would be preferable to using a multiplier. The NEP advocates that offsets should be located as close as possible to the development; across a country border may be acceptable with local agreement. Otherwise, there is a risk that development takes place at scales in the south east with offsets located where land prices are cheaper, possibly hundreds of miles away.</i></p> <p>Size of impacted site and compensation habitat <i>We agree that there may be differences in size between impacted sites and a compensation habitat – however care must be taken with scoring that perverse outcomes are avoided (e.g. see BBOWT's paper on condition scoring within Defra's 2012 metric, which gives a hypothetical example where 10 hectares of ancient chalk grassland could be replaced with 9.5 hectares of newly-created chalk grassland and legitimately claim no net loss of biodiversity).</i></p> <p>The NEP also wishes to make the following points about the metric:</p> <ul style="list-style-type: none"> • <i><u>Indirect impacts on designated sites</u> are not taken into account in the metric, but should be. Development of a wider, environmental net gain measure should be applied at the landscape scale, in line with Lawton principles, including recognition of landscape-scale designated sites such as AONBs and National Parks.</i> • <i><u>Farmland bird habitat</u> should be included.</i> • <i><u>Temporal risk - time to target condition</u> – should be mostly pre-set based on expert judgement (unless there is clear evidence for exceptions)</i> • <i><u>Hedgerow metric</u> The approach to linear habitats should be kept as simple as possible. The NEP favours retaining the current methodology rather than changing the scoring to a metric method, and believe overall the current methodology gives a better result.</i> • <i><u>Clear guidance</u> The metric, once published, must be supported by good,</i>

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	<p><i>clear guidance and adequate free training provision to ensure that its uptake and use is as intended. This also requires local authorities to be adequately resourced, with sufficient data and ecological expertise.</i></p>
How much gain?	
<p>12. Would a mandatory 10% increase in biodiversity units be the right level of gain to be required?</p>	<p><i>The NEP appreciates that a certain level of risk (that compensation habitats don't reach their target states or take longer to) is already built into the Defra metric – as a temporal risk factor (time to target condition).</i></p> <p><i>However, to account for remaining uncertainties and provide an overall gain for nature, the consultation states that margin of 10% is being proposed to provide a high degree of certainty that overall gains will be achieved, balanced against the need to ensure any costs to developers are proportionate.</i></p> <p><i>The NEP believes 10% is not enough.</i> While this may be a favourable figure for developers, the NEP does not believe it would deliver the level of net gains required to genuinely compensate habitat losses. <u><i>Setting a target of 20% has been shown to be highly achievable - and acceptable to developers.</i></u></p> <p><i>We propose at least a 20% gain on the basis of:</i></p> <ul style="list-style-type: none"> - <i>The Impact Assessment paper accompanying the consultation with evidence that a higher target is needed to achieve net gain;</i> - <i>20% avoids the approach for a minimum gain of one more tree than a 10% gain. This would not be the level of gain required to meet the Government's 25 Year Plan of Nature's Recovery;</i> - <i>A 20% target makes it more likely that biodiversity net gain will contribute to nature's recovery. Significant and continued loss of habitat, decline of species numbers and even species loss in recent decades is regularly reported. If such biodiversity losses are to be reduced or even reversed then a 10% increase in biodiversity units must be regarded as an absolute minimum. A 20% gain would have a greater chance of meeting the Government's promise 'to be the first generation to leave the environment in a better state than we inherited it'.</i> - <i>Setting a target of 20% has been shown to be highly achievable and acceptable to developers, with Lichfield District Council as a prime example along with the Environment Bank securing upwards of 25% increase (gain) in biodiversity units.</i> - <i>Lichfield Borough Council applies this level of gain in a successful scheme and achieves in practice more than a 20%</i>

Question posed in the consultation	NEP's response
	<p><i>gain;</i></p> <ul style="list-style-type: none"> - <i>Provides insurance against the target not being achieved.</i> - <i>Locally, the 20% is in line with our BAP targets for priority habitats enhancement for Bucks and MK.</i> - <i>Locally – Oxford to Cambridge growth arc should be an exemplar of environment provision.</i> <p><i>We would not want to see 10% as an upper limit, but an absolute minimum, so it does not act as a break on ambition. LPAs should be given the discretion to raise the level and any national minimum should not undermine these higher local levels. Yet, consideration needs to be given to the potential for sites to be degraded prior to development.</i></p>
Mitigation hierarchy	
<p>13. In clearly defined circumstances, should developers be allowed to pay through the tariff mechanism without fully exhausting on-site and local compensation opportunities?</p>	<p><i>Yes, provided the following is adhered to:</i></p> <ul style="list-style-type: none"> - <i>Tariff mechanism is applied locally</i> – <i>collected and ring-fenced, designated for habitat creation in the same local authority or county as the impact of development – so the tariff funds local compensation (a nationally-administered and distributed tariff would mean compensation could be in a very different place to the development impact – which could result in net biodiversity losses in some areas and provide benefits to communities not experiencing the losses).</i> - <i>Safeguards are in place</i> <i>to ensure the tariff option does not become a default or preferred option for being easier than seeking on-site mitigation first and following the mitigation hierarchy.</i> - <i>It is of concern that whilst the document states that no existing planning protection for the environment will be weakened and the principle for avoiding harm first will continue, this is not carried through the proposals. The terms “compensation” and “net gain” are used interchangeably when they are clearly not the same. Scenario C illustrated on the infographic in the summary does not fit well with NPPF 175</i> - <i>It will be essential to explicitly mandate the mitigation hierarchy</i>, <i>so that an “avoid first” approach is clear and transparent, reflected in national planning policy and local planning policy and that LPAs require it in practice.</i> <p><i>We recognise that, where there is unavoidable loss, there may be special circumstances where greater biodiversity net gain is achieved by combining off-site tariff contributions from a number of developments to achieve more significant</i></p>

Question posed in the consultation	NEP's response
	<p><i>environmental gains.</i></p> <p>However, we maintain that this should be collected and operated locally to create a pooled fund to realise strategically mapped priorities for off-site compensation at the local scale; and that robust safeguards need to be in place to ensure that this is not seen as an option for buying site degradation.</p> <p>The NEP would welcome seeing further details on this proposal.</p> <p>We believe that developers should only be allowed to pay into a national tariff scheme on the rare occasions where local options really have been exhausted and the development is being held up.</p> <p><i>Regardless of the process by which these decisions are taken it is crucial to ensure it does not become a “loophole”. Therefore, these circumstances need to be clearly defined and the tariff option needs to be made much more expensive.</i></p> <p><i>The model of Habitat Banking provides a successful example of how this can be managed. LNPs would be happy to support the development of landscape scale habitat development through Nature Recovery Networks and the development of habitat banks to provide a viable process for developers in their area to invest in BNG.</i></p>
Spatial preference	
<p>14. Would this be an appropriate approach to directing the location of new habitat?</p>	<p>No – not at a national level.</p> <p><i>The NEP is in favour of a spatial approach to directing the location of new habitat, but this must be done on a local scale in order to identify the most valuable local sites accurately and according to a local plan or strategy.</i></p> <p><i>The NEP agrees that biodiversity units should, as a first priority, be delivered on site, or if not viable, delivered locally according to a local plan or strategy. In this way, the gains and the benefits they provide are located near the losses.</i></p> <p><i>The focus should be on the creation of resilient ecological networks and providing buffers to existing statutory and non-statutory designated sites and priority habitats. In Buckinghamshire and Milton Keynes, habitat creation would focus on Biodiversity Opportunity Areas and Green Infrastructure networks.</i></p> <p>However, if (we expect on rare occasions) compensation is not available locally, we would advocate taking a landscape-scale approach to compensation location. E.g. across landscape areas, local nature partnership areas, or catchment areas. In this way the compensation is taking into account what is needed at the local</p>

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	<p><i>landscape level, and where the communities experiencing biodiversity loss may have an opportunity to benefit from the gains. A properly applied 'spatial hierarchy' approach is supported.</i></p> <p><i>Whilst recognising the importance of focused attention on habitats (e.g. through county 'Biodiversity Opportunity Areas' or 'Conservation Target Areas'), the ordinary also needs protecting before it becomes endangered – such as habitats for the once common water vole, tree sparrow and hedgehog. We believe these decisions should be taken locally based on local knowledge and information.</i></p> <p><i>So -we are in favour of a spatial approach to directing the location of new habitat, but this must be done on a local scale in order to identify the most valuable local sites accurately and according to a local plan or strategy, whilst ensuring consistency of mapping nationally and cross-boundary with a standardised approach. However, the production of this spatial baseline should not delay the implementation of the BNG scheme.</i></p> <p><i>The national habitat inventory is inaccurate in many places and therefore cannot be relied on to provide such a spatial, baseline approach. This would be best undertaken through a mandatory Nature Recovery Network that underpins the Defra Metric and therefore the BNG approach - a requirement for LPAs in local plans or supplementary planning documentation and as stipulated within the 25 Year Environmental Plan.</i></p> <p><i>We also believe that such maps should sit beside existing maps to enhance BNG delivery locally – for example, BOA maps, GI opportunity maps or natural capital opportunity mapping.</i></p> <p><i>Mapping spatially in a standardised system will enable quantitative measures of BNG and show that in equivalent habitat quality. There is need to identify an approach that would be scalable from local to landscape to national and could also be used to show changes in site occupancy for threatened species.</i></p> <p><i>As stated above, where on-site net gain is not possible, or appropriate, tariffs from developers could be used to create a pooled fund to realise strategically-mapped priorities for off-site compensation at a landscape-scale.</i></p> <p><i>However, with such mapping comes responsibility, time and cost to create, maintain, monitor and evaluate. Tariffs will need to cover the costs of this and other administrative costs to deliver the essential baseline information and support. LNPs would be happy to play a core role in supporting the creation of local Nature Recovery Networks through our Local Environmental Record Centres</i></p>

Question posed in the consultation	NEP's response
	<p>and other partner organisations.</p> <p>We would be wary of a national pot in case this became an easier default “norm”. A nationally-administered and distributed tariff would mean compensation could be in a very different place to the development impact – which could result in net biodiversity losses in some areas and provide benefits to communities not experiencing the losses elsewhere.</p> <p>See also our answer to Q10. The spatial multipliers (habitat connectivity and strategic significance) need to be high enough to provide sufficient incentive to provide biodiversity net gain offsets locally, particularly in areas with high land prices.</p> <p>“Local plan or strategy” – we would welcome further clarification as to what is included and what is meant by this term. We have assumed this would mean not only LPA plans and strategies, but also those of Local Nature Partnerships covering the area, for example.</p>
Assessment of habitat type and condition	
<p>15. How could biodiversity assessments be made more robust without adding to burdens for developers of planning authorities?</p>	<p>There needs to be a consistent approach to habitat mapping (i.e. either UKHab or Phase 1 habitat assessment), which should be carried out/overseen by the local authority.</p> <p>Greater support for local environmental records centres would help – these hold much of the information requirements and. If appropriately resourced, could do more.</p> <p>Centralised guidance on standards on what is acceptable and recommended practice for biodiversity reporting to enable a more transparent and good practice approach to ecological survey reporting. This would help raise the standard and make scorings more robust.</p> <p>While we welcome and recognise the need for further development of remote sensing but, at the present time, verifiable site surveying and assessment needs to be relied upon. Local planning authorities need to be confident to uphold standards for site assessment so that communities can be satisfied that existing biodiversity is being properly recognised.</p> <p>Technology is providing a suite of methods by which to undertake ecological surveys and can enable us to secure robust habitat data with reduced cost burdens. However, ground truthing still remains crucial to ensure identification of specific habitat types where the presence of specific species is required, of which a consistent approach needs to be chosen and carried out/overseen by the LPA.</p> <p>A survey methodology needs to be established that is robust, transparent and independent, as well as able to withstand scrutiny.</p>

Question posed in the consultation	NEP's response
	<p><i>Once the NRN is established with baseline data, this should provide high value information to LPAs that they can source and utilise. To maintain a high accuracy of habitat condition data, however, requires resource to be invested in Local Environmental Records Centre to help collate, store and interpret, with updates to be undertaken every 5 years, along with any monitoring undertaken as part of the BNG process.</i></p> <p><i>Furthermore, any financial burdens on LPAs should be included in the calculation of BNG investment - as well as the costs of employing an ecologist to support their delivery needs.</i></p>
Baseline	
<p>16. Should a baseline map of broad habitats be developed?</p>	<p><i>Yes. These should include local data with the resolution/ground truthing consistently applied and properly resourced.</i></p> <p><i>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.</i></p> <p><i>We would support a national picture of better habitats data to chart national progress, although a method for assessing habitat condition would need to be incorporated; as would a method for determining which baseline to use in the case of changes in habitat over time (e.g. arable to grassland / scrub).</i></p> <p><i>The usefulness of a baseline map depends on the level of granularity and layers of information available upon which to make comparisons and take decisions.</i></p> <p><i>We agree in principle that this would also be a very viable way of determining any cases of suspected habitat degradation, and therefore should reduce deliberate habitat degradation or destruction. Yet, planning powers would need to be changed to allow this and a very good baseline will be needed to ensure that it can be used as robust evidence.</i></p>
<p>17. Should this be applied, as a minimum baseline, to:</p> <ul style="list-style-type: none"> a) Net gain calculations for all developments b) Net gain calculations in cases of suspected intentional habitat degradation? 	<p><i>Yes, a baseline of 2017 should avoid deliberate land degradation before the mandatory net gain policy would come into effect.</i></p> <p><i>However, care would be needed as to applying the baseline maps at the local level.</i> <i>For example, in the case where an arable field that over time develops into wildlife-rich grassland and on which development is then applied for – when would the baseline be taken? Using the 2017 baseline would under-value the biodiversity that exists prior to development and therefore lower the gains required.</i></p> <p><i>It may be that the baseline map would give a broad, national</i></p>

Question posed in the consultation	NEP's response
	<p><i>picture, but that locally, the use of a baseline depends on the level of information available to make comparisons and take decisions.</i></p> <p><i>Perhaps the 2017 baseline and the point at which an application is made should both be referred to, so the appropriate baseline (that with higher biodiversity value) is used.</i></p> <p><i>Potentially, the “peak wildlife condition” of the land based on records data for the site could be taken as the baseline where available.</i></p>
18. What other measures might reduce the risk of incentivising intentional habitat degradation?	<p><i>We welcome additional measures to reduce the risk of intentional habitat degradation, and penalties to those who do this.</i></p> <p><i>Evidence of intentional habitat degradation should be penalised to such an extent that this is not seen as a viable option. A strong national and local government position, with precedent set by test cases, might strengthen this position.</i></p> <p><i>Yet, more robust application of the current wildlife legislation would be necessary, it is very difficult to prosecute under the existing legislation and it is not normally a priority for police time, given the other demands on their resources.</i></p>
19. How can the risks of penalising landowners making legitimate land use change decisions before deciding to sell their land for development be mitigated?	<p><i>See answer to Q17 for ideas on when the baseline could be taken.</i></p> <p><i>One of our Partners is a consultee for Agricultural Environmental Impact Assessments. Unfortunately, this system has its limitations. We understand that a lack of recorded evidence, change of land ownership or contractual arrangements, not knowing what has previously been present or has developed, can lead to biodiversity loss or degradation. This might be unintentional though, in some cases, land use change has been paramount and the loss of biodiversity an accepted consequence.</i></p> <p><i>We recommend that Defra continues to work with the farming and forestry sector and other stakeholders to develop systems and incentives to manage and protect biodiversity.</i></p> <p><i>Both regulation and satisfactory environmental land management schemes are required.</i> <i>Landowners need greater encouragement and support to value and protect biodiversity on the land they manage.</i></p>
DELIVERING BIODIVERSITY OUTCOMES	
How should biodiversity priorities be identified?	
20. The provision of compensatory habitats	a) <i>Yes. For this purpose, the NEP is of the view that habitat</i>

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<p>would need to be guided by habitat opportunity maps. At what scale should these maps be developed?</p> <p>a) Locally (e.g. LA or NCA)</p> <p>b) Nationally (i.e. England) as a national framework to be refined, updated and amended locally</p>	<p><i>opportunity maps should be created locally for use locally. Local habitat mapping enables detailed recognition of local habitat areas and specific locations which may, for example, be found in valley systems within wider landscapes. Local mapping helps local communities to value their important local habitats.</i></p> <p><i>Local record centres need adequate resources to ensure habitat mapping is kept up to date.</i></p> <p>b) National maps can be prepared as it's important to consider cross-border opportunity areas and national priorities - but <i>spending of offsetting tariffs should be local where possible.</i></p> <p><i>See also our response to Q14, above:</i></p> <p><i>LNPs are in favour of a spatial approach to directing the location of new habitat, but this must be done on a local scale in order to identify the most valuable local sites accurately and according to a local plan or strategy, whilst ensuring consistency of mapping nationally and cross-boundary with a standardised approach.</i></p> <p><i>We need to be able to reflect on local importance as well as national importance and be able to monitor the effective application of the BNG mechanism both locally and nationally.</i></p> <p><i>However, the production of this spatial baseline should not delay the implementation of the BNG scheme.</i></p> <p><i>The national habitat inventory is inaccurate in many places and therefore cannot be relied on to provide such a spatial, baseline approach. This would be best undertaken through a mandatory Nature Recovery Network that underpins the Defra Metric and therefore the BNG approach - a requirement for LPAs in local plans or supplementary planning documentation and as stipulated within the 25 Year Environmental Plan.</i></p> <p><i>We also believe that such maps should sit beside existing maps to enhance BNG delivery locally – for example, BOA maps, GI opportunity maps or natural capital opportunity mapping. For example, many areas already have maps showing Biodiversity Opportunity Areas. These could be incorporated into a national level system that shows all local opportunity areas as well as strategic, national opportunity areas.</i></p> <p><i>Mapping spatially in a standardised system will enable quantitative measures of BNG and show that in equivalent habitat quality. There is need to identify an approach that would be scalable from local to</i></p>

Question posed in the consultation	NEP's response
	<p><i>landscape to national and could also be used to show changes in site occupancy for threatened species.</i></p> <p><i>As stated above, where on-site net gain is not possible, or appropriate, tariffs from developers could be used to create a pooled fund to realise strategically mapped priorities for off-site compensation at a landscape-scale.</i></p> <p><i>However, with such mapping comes responsibility, time and cost to create, maintain, monitor and evaluate. Tariffs will need to cover the costs of this and other administrative costs to deliver the essential baseline information and support.</i></p> <p><i>LNPs would be happy to play a core role in supporting the creation of local Nature Recovery Networks through our Local Environmental Record Centres and other partner organisations.</i></p>
<p>21. What other measures should be considered to identify biodiversity and natural capital priorities?</p>	<p>Natural capital opportunity mapping would be helpful to identify natural capital priorities.</p> <p>Any biodiversity aspect of this could be used in conjunction with, and to supplement, existing maps such as those of BOAs.</p> <p><i>Whilst all natural capital resources are important, stakeholders will be able to identify priority actions. For example, improving water quality and reducing use will benefit the Chilterns aquifer which supplies water for our internationally important chalk streams and is regionally important for public drinking water.</i></p> <p><i>Priority species and any associated projects might help inform priorities. For example, Duke of Burgundy Butterfly and Water Vole projects are already informing habitat management within the Chilterns.</i></p> <p><i>We and other LNPs would welcome the opportunity to play a key role in identifying such priorities for their areas. We would therefore be eager to engage with Defra and develop further, however this is too much to consider within this response and development of these shouldn't hold up the implementation of the BNG mechanism.</i></p>
Provision of compensatory habitats	
<p>22. Would mandating net gain through the planning system be enough to stimulate the growth of a market for biodiversity units?</p>	<p><i>Yes, we believe it would.</i></p> <p><i>However – the system would need appropriate safeguards to prevent fraud.</i></p> <p><i>In addition, one of our partners has noted concern with the suggestion that developers might be able to trade surplus</i></p>

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	<p>biodiversity units. Similar examples of market trading in the past (e.g. milk quotas) have had detrimental effects on new entrants and innovation. Surplus units should be traded/allocated by independent bodies. Likewise, a system of accreditation of unit providers might have benefits but may also narrow the base of providers and exclude a wide range of landowners, e.g. farmers and foresters.</p> <p>Tariff levels would have to be set at levels high enough to resource both the purchase of units and administration of the chosen system to oversee the offset unit provider(s) – contracts, monitoring etc.</p>
<p>23. What further measures would help to ensure that the market provides:</p> <p>a) Sufficient biodiversity units for development?</p> <p>b) Cost-effective biodiversity units?</p>	<p><i>“Cost-effective” biodiversity units is a concerning term as it implies units of biodiversity should cheap. Yet - an effective system should ensure gains are actually delivered.</i></p> <p>a) To ensure sufficient supply of units, we would welcome a scheme, much like the one we are developing for Buckinghamshire and Milton Keynes, which:</p> <ul style="list-style-type: none"> - Follows the mitigation hierarchy to avoid in the first instance, and achieve biodiversity net gain on site; and - Only where this is not possible, pay a tariff (based on the cost of offsets locally for the number of units of biodiversity loss) into a local fund that is ring-fenced specifically for habitat creation or enhancement. - This fund could assess bids from providers of biodiversity offset units locally and direct funding to those which show the intention to manage permanently and where criteria specified locally to determine priorities and value for money includes achieving high quality and lasting habitat for wildlife. - In addition, clear guidance, local advice and ‘marketing’ to a wide base of potential providers is also needed – focusing, for example, on land managers and land owners within habitat opportunity areas (e.g. BOAs– see 20 above). <p>b) A robust and fully funded system of monitoring, potentially linked to a form of payment by results, might ensure good value units are provided.</p> <p>On the basis of our own work locally, we would suggest:</p> <ul style="list-style-type: none"> - A local fund should be administered locally, with a representative panel of experts and broader interests to help make decisions about prioritising funding to local biodiversity projects offering units of gain according to a set of transparent criteria. - Favouring permanent gains in the first instance through

Question posed in the consultation	NEP's response
	<p><i>land purchase to secure long-lasting biodiversity gains - although the quality of the gain, land area, delivery, number of units and security of gain and its location according to appropriate maps (e.g. BOAs, natural capital opportunity mapping) would be other factors.</i></p> <ul style="list-style-type: none"> - Appropriate governance in place for the decisions of the panel, so it can be held to account – e.g. LPAs hold the fund and its panel to account via a transparent annual reporting mechanism; - The report would include information on the amounts received via s106 agreements due to losses in the locality, and gains made as a result of the fund and its panel awarding monies for appropriate compensation schemes. - Accountable body – for land purchase – s106 monies would be granted to the organisation responsible for purchase. For landowner agreements – this would need to be concluded locally depending on structural arrangements, but could be between the Fund and the landowner or the original LPA and the landowner, with Fund oversight. - The system would need support with resources to help administer, monitor gains into the long-term, and a form of redress where gains are not delivered.
Legacy	
<p>24. Should there be a minimum duration for the maintenance of created or enhanced habitats?</p>	<p>Yes. As outlined in the consultation document at page 26, “...the aim should be that any compensation or mitigation for habitat loss should last for the duration of a development or be established on a permanent basis”.</p> <p><i>Permanent gains are required so that losses in biodiversity as a result of permanent development are matched in time to biodiversity gains, and so that development does not, over time, for example via changes in land use, result in biodiversity losses.</i></p> <p><i>The aim for a permanent gain should apply to both the gains made on-site and to those in a compensatory offset.</i></p>
<p>25. If so what should the minimum duration be?</p> <p>a) less than 25 years b) 25-30 years c) longer than 25-30 years d) Permanent</p>	<p>The NEP strongly advocates that the compensation should be permanent. The management / maintenance would need to match this.</p> <p><i>Only when permanent gains are not feasible then long-term gains, longer than 25-30 years, should be the minimum – with the potential for covenants to be legally binding as a mechanism to safeguard land allocated for BNG.</i></p> <p><i>We would welcome direct discussions on this point.</i></p>

Question posed in the consultation	NEP's response
26. Would conservation covenants be useful for securing long term benefits from biodiversity net gain or reducing process and legal costs?	<p>Yes, we support a full exploration of this option and different models considered.</p> <p><i>Such covenants, applied to compensatory habitats, would provide long-term assurance that the habitat will be maintained to the standard required to protect the land and the gains on it.</i></p> <p><i>Such covenants should be applied to both on-site compensatory habitats as well as to off-site compensatory habitats.</i></p> <p><i>There may be more than one model to cover all offset-providing proposals.</i></p>
27. What safeguards might be needed in the implementation of conservation covenants?	<p><i>The covenants must be legally binding, be registered and sample-checked with a mechanism for redress for unachieved gains.</i></p> <p><i>We agree that a mechanism is needed to ensure the covenant stays with the land if land ownership is changed.</i></p> <p><i>Agreed management plans and regular surveys must also be secured.</i></p>
Calculating and collecting the tariff	
28. Does this proposal range for tariff costs fit with the principles set out in this section?	<p><i>Based on preliminary work undertaken by our partners, the proposed tariff range (£9k - £15k per biodiversity unit) seems too low – and lower than the cost our partners consider to be the cost of delivery. Land costs, contractor and management rates in the south east are more expensive than elsewhere in the country.</i></p> <p><i>Taking into account the various options for the minimum duration of gain (Q25), the tariff range between a less-than-25 year agreement and that of a “permanent” agreement - including long-term, good quality management and monitoring - would be considerable, and far more than £9k - £15k per unit.</i></p> <p><i>At this level, some potential delivery partners would be priced out of the market – e.g. NGOs offering potential for permanent gains would not receive a realistic price for creating and maintaining sites permanently.</i></p> <p><i>Tariffs and unit biodiversity costs should be set at a more realistic, higher level, to allow adequate funding for longer-term offsets. We agree with the principle that any tariff should cover the costs of both the replacement and maintenance of habitats, the long-term delivery and monitoring costs</i></p> <p><i>NB - If offered nationally, the tariff price risks undercutting local</i></p>

Question posed in the consultation	NEP's response
	<p><i>schemes and opportunities for local habitat creation which would take account of local land values (which can differ widely across the country).</i></p> <p><i>It must also be stressed that a tariff (or similar method) should only be used where evidence has shown that the earlier stages of the mitigation hierarchy have been followed.</i></p>
<p>29. Would this proposed range for tariff costs provide opportunities or cost effective habitat banks and compensation providers to compete.</p>	<p><i>The NEP does not believe so, no.</i></p> <p><i>See answer to Q28 – on the basis of our initial research, the tariff level suggested is far too low to allow for funding for longer term offsets, or that which provides permanent gains through land purchase and long-term maintenance; and also seems lower than that which is needed realistically to establish gains even to 30 years.</i></p> <p><i>Tariffs set at this level therefore risk pricing some offset providers, such as NGOs, out of the market, taking their many potential unit gains with them.</i></p> <p><i>We would welcome also being taken into account the potential for the existence of tariffs to result in higher land prices in areas of strategic biodiversity importance such as biodiversity opportunity areas. This could make land suitable for biodiversity offsetting more expensive to purchase for offset providers.</i></p>
<p>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 into account.</p>	<p><i>It is not clear how the proposed tariff rates to the evidence referred to in the Impact assessment or the report produced for the National Trust, RSPB and The Wildlife Trusts, "Assessing the costs of environmental land management in the UK".</i></p> <p><i>We anticipate that the net biodiversity gain tariff price should cover the following costs:</i></p> <ul style="list-style-type: none"> - <i>Land purchase – to create an offset</i> - <i>Set-up cost (including legal costs covering contractual arrangements)</i> - <i>Creation costs - replacing lost habitats; delivering the gain and maintaining these habitats for the lifetime of the development</i> - <i>Maintenance costs - ongoing monitoring costs of the scheme</i> - <i>Seeking new projects and providers (brokering)</i> <p><i>The tariff would need to take account of variation across the country in costs, and would need to be reviewed over time to take account of changes in costs, labour, equipment and insurances.</i></p> <p><i>We agree also that the tariff price should provide an incentive to retain habitat on-site and limit local habitat losses, and seek net</i></p>

Question posed in the consultation	NEP's response
	<p><i>gain through use of local habitat creation schemes. We would welcome clarity over how the tariff would operate with land purchase v conservation covenants.</i></p> <p><i>And we would welcome confirmation that all tariffs collected would be ring-fenced for biodiversity net gain.</i></p> <p><i>The consultation states that the proposed tariff rate of £9k - £15k per biodiversity unit is based on "existing costings for habitat creation and estimates for administrative costs".</i></p> <p><i>However – it is not clear whether this includes set-up (legal) costs, or ongoing maintenance cost into the long-term, which together could increase the unit tariff significantly.</i></p> <p><i>The amount should also encourage land purchase – for permanent gains – where possible and include brokering, which would again increase the unit cost significantly. We would welcome further information about the costs analysis undertaken to come up with the £9k - £15k estimate.</i></p> <p><i>Per our answer to Q28 and Q29, we therefore conclude that, on the basis of our initial research, the tariff level suggested is far too low to allow for funding for longer term offsets, or that which provides permanent gains through land purchase and long-term maintenance; and also seems lower than that which is needed realistically to establish gains even to 30 years.</i></p>
How a tariff could be collected and spent	
<p>31. How should the tariff revenue be collected?</p> <p>A) Locally (e.g. through a local authority)</p> <p>B) Nationally (e.g. through Natural England or another national body)</p> <p>C) Other (please specify)</p>	<p><i>We support local collection of the tariff, for example via s106 agreements and the involvement of Local Nature Partnerships in determining where to locate offsets according to local priorities.</i></p> <p><i>Only if local collection this is not possible (e.g. where local authorities or Local Nature Partnership do not have a system in place – which seems unlikely) would we support national collection, and again, only then if the monies were collected nationally but earmarked for local spend within the county in which they were derived, and spent according to local decisions according to biodiversity priorities.</i></p>
<p>32. How should the tariff revenue be spent?</p> <p>a) Locally (e.g. through a local authority)</p> <p>b) Nationally (e.g. through Natural</p>	<p>a) <i>Yes. We support the spend of the revenue locally, and as close as possible to where development occurs, to minimise the loss of habitats locally, and to provide the benefits of biodiversity gain near to the point of loss.</i></p> <p>b) <i>No. If the scheme were national there is a risk this would not happen.</i></p>

Question posed in the consultation	NEP's response
<p>England or another body)</p> <p>c) Through a blended model, allowing spending at both levels</p>	<p><i>It is also worth noting that it is not necessarily the local authority that always offers the best mechanism for administering the funds locally. Local Nature Partnerships or environmental trusts might be better placed to administer such revenues and offer a degree of independence from the planning system.</i></p> <p>c) <i>We would urge caution on this. A blended model could result in tensions between the amount spent locally vs nationally. The NEP believes the gain should be located as close as possible to the area of loss.</i></p>
<p>33. If tariff revenue is collected and spent nationally, should spending prioritise areas which have contributed the most through biodiversity net gain tariff payments?</p>	<p>We do not support a national model (see answers to Qs 31 and 32).</p> <p><i>If a national model was selected, however, we would support locating net gains to the areas of greatest tariff payments as these would be the areas with the greatest impacts of development.</i></p> <p><i>Locating biodiversity offsets to those areas, and within them, to biodiversity priority areas (e.g. biodiversity opportunity areas), would ensure that the areas of greatest impacts of development do not become local "biodiversity deserts" due to development and a concentration of biodiversity loss.</i></p> <p><i>However we also see the need to reflect national biodiversity priorities so believe this possibility will need to be handled carefully to ensure local priorities are met and so that gains are located in as close proximity as possible to the point of loss.</i></p>
Impact on Local Authorities	
<p>34. What further measures will help to prevent burdens on local authorities increasing?</p>	<p><i>One option to ease burdens on local authorities would be to formally delegate decisions about location of offsets, by agreement, from LPAs to Local Nature Partnerships or an equivalent.</i></p> <p><i>In terms of offering habitat compensation brokering and advice, the NEP would suggest investment in local authority ecologist teams, to provide the advice, which should also ensure that the mitigation hierarchy is followed in all cases.</i></p> <p><i>In general we advocate a simple system that can be integrated into LPA operations and which captures all development at minimal expense.</i></p> <p><i>The tariff should include provision for all administrative, implementation, monitoring and enforcement costs.</i></p> <p><i>Clear guidance on the mechanism is needed to facilitate and build support for delivery of the system.</i></p>

Question posed in the consultation	NEP's response
<p>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)?</p>	<p><i>This is a difficult area on which the NEP would need to seek further engagement with local authority partners.</i></p> <p><i>It would be useful to look at the ways in which CIL and s106 have been delivered on an administrative basis to inform how net gain could operate.</i></p>
<p>36. Would you, as a planning authority stakeholder, prefer any net gain tariff revenue to be paid through:</p> <ol style="list-style-type: none"> Local authority administration A nationally-managed funding scheme (which could then reinvest in local habitat schemes best aligned with national strategic environmental priorities)? 	<p><i>We would prefer to see net gain tariffs administered locally and in line with local habitat schemes which should be aligned already with national strategic environment priorities – e.g. biodiversity opportunity areas habitat opportunity areas or equivalent.</i></p> <p><i>It is not necessarily the local authority that always offers the best mechanism for administering the funds locally.</i></p> <p><i>Local Nature Partnerships or environmental trusts might be better placed to determine where to locate offset monies, on the basis of local priorities and expertise, to administer such revenues - and offer a degree of independence from the planning system.</i></p>
Impact on developers	
<p>37. How could the proposed net gain process be improved for developers?</p>	<p><i>We do not have a view on this, although the process should work for the developer working at all scales.</i></p> <p><i>We are also concerned by the sentence on page 10 “The government will only mandate biodiversity net gain if it is satisfied that it will deliver benefits for development, including greater certainty and process cost savings”.</i></p> <p><i>Whilst we envisage this proposal achieving this, and speeding up the planning system, the primary goal of mandating BNG must be to halt and reverse the decline in biodiversity and to enhance and increase our natural capital to the benefit of all.</i></p> <p><i>We believe that the commitments of Biodiversity 2020 and the 25 Year Environment Plan are unlikely to be achieved without biodiversity net gain <u>being mandated</u> for all development, including for major infrastructure.</i></p>

Question posed in the consultation	NEP's response
	<p><i>We believe such a scheme can deliver greater benefits for development and greater certainty, as the scheme would be operable across the country. Process cost savings should result in time.</i></p>
<p>38. What other steps, considerations or processes in environmental planning could be integrated with a net gain approach?</p>	<p><i>We believe it is important to ensure that biodiversity net gain should be strived for.</i></p> <p><i>If other factors are brought in, e.g. CO2 emissions, flood management, etc., we would be cautious about possible trade-offs – achieving gains on environmental issues should not be as a result of trade-offs with biodiversity net gains.</i></p>
<p>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?</p>	<p><i>The NEP does not have a view on this.</i></p>
<p>Implementation of mandatory biodiversity net gain</p>	
<p>40. Do you agree that the proposal for staggered transitional arrangements would help to ensure smooth implementation of biodiversity net gain policy?</p>	<p><i>We agree an orderly transition is required but that the policy should be implemented as soon as practicable.</i></p>
<p>Right of appeal</p>	
<p>41. Would the existing dispute resolution process provide the best way to overcome any disagreement over whether net gain is achieved?</p>	<p><i>Successful use of the existing Planning Appeals system would depend on the training and support provided to Planning Inspectors to enable them to have the capacity and expertise to deal with appeals.</i></p> <p><i>This includes consideration of biodiversity factors that fall outside the metric but which are relevant to the planning decision. For example, consideration of impacts on important species and habitats must still be considered to determine planning decisions.</i></p> <p><i>The current planning appeal process is somewhat time consuming</i></p>

Question posed in the consultation	NEP's response
	<p><i>and there may be potential for a separate appeal process that deals solely with the application of the new scheme. This would also start to develop some "case law" and consistency, which would then aid future decisions.</i></p> <p><i>However, this could be costly and planning inspectors must be adequately qualified to enable them to have the capacity and expertise to deal with appeals and therefore be best-placed to assess whether the metric and tariff have been appropriately applied. Yet we do not think that consideration of this should hold up any progress on initiating the BNG scheme.</i></p>
<p>42. Would an additional arbitration or approval process be necessary? If so, please specify why.</p>	<p><i>See above.</i></p>
MONITORING AND EVALUATION	
Quality assurance	
<p>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?</p>	<p><i>The NEP welcomes the inclusion in the proposed scheme of monitoring of the quality of delivery on the ground and measures to ensure that outcomes are achieved (pg 44), including the use of best practice principles and accreditation for those undertaking the assessments.</i></p> <p><i>We also support the establishment of insurance or recourse mechanisms for post-development habitat in case it is cleared, degraded or ineffectively managed, or used by more than one offset development.</i></p> <p><i>We also very much welcome the use of open access data and digital processes in a standardised format - but a note of caution:</i></p> <ul style="list-style-type: none"> • <i>The role of local environmental records centres in collecting and providing the data should be considered, including the resources that will be needed for them to do so effectively;</i> • <i>Area-wide surveying – we believe this would require improvements in satellite and remote sensing habitat development to ensure their robustness - but would welcome investment in this area as in future this could very much assist with monitoring of delivery.</i> <p><i>In addition, the NEP would suggest:</i></p> <ul style="list-style-type: none"> • <i>Regular monitoring of offset sites and quality of delivery against the agreed management plan by qualified</i>

Question posed in the consultation	NEP's response
	<p><i>(accredited) ecologists operating the scheme locally;</i></p> <ul style="list-style-type: none"> • Spot checks / more regular monitoring for sites of concern; • Records should be kept locally of the number of offset units required, found and under management, and the number of biodiversity unit gains that have been sourced, with a report produced annually (see answer to Q44). • Having comprehensive habitat and biological records across the country is essential. Concern has been raised that, in some instances, sites have been allowed to deteriorate prior to the initial ecological assessment so that the inherent biodiversity value (number of units) is minimised. Robust habitat mapping will help to minimise this issue. <i>Over recent years, county resources have been stretched, putting pressure on county records centres. Possibly, a percentage of any funds raised from the metric/offsetting system should be allocated to maintaining and improving biological records and their availability across the country.</i> • If the Local Authority commissioned ecological reports (rather than the developer, although financed by the developer) this could result in a more independent assessment rather than relying on consultant reports commissioned by developers.
44. Should local authorities be required to provide information about habitat losses and gains?	<p>Yes.</p> <p><i>So that the system can run robustly, and for transparency and accountability purposes, the NEP advocates that there should be a register held of biodiversity units.</i></p> <p>The following information should be provided and reported on, available publicly, and at least annually:</p> <ul style="list-style-type: none"> • <i>Number of biodiversity units of loss due to proposed development which have been recognised through s106 agreements during the period, and which require offsite-offsets (promised gains);</i> • <i>Area, extent and location of losses and type and quality of habitat lost</i> • <i>Number of biodiversity units of loss which have been matched with offset sites – i.e. number of units of potential gain which have been identified and matched to units of loss;</i>

Question posed in the consultation	NEP's response
	<ul style="list-style-type: none"> • <i>Number of units of offset biodiversity gains which have been started – i.e. for which i) a management plan has been completed and ii) works have started.</i> • <i>Area and location of secured gains; types and extent of habitat promised via offsets.</i> • <i>Progress / outcomes compared with i) targets for individual offset sites; ii) in relation to particular habitats and species; iii) local nature recovery networks/ national nature recovery networks.</i> <p><i>This provides accountability and transparency and may not need to fall in the laps of the local authorities, but could be delivered collaboratively, possibly by LNPs if sufficiently resourced to do so.</i></p>
45. What technological or other innovative mechanisms could facilitate the delivery and monitoring of biodiversity net gain?	<p><i>Easily-accessible and up-dateable online system for the register, delivery and monitoring of biodiversity units.</i></p> <p><i>Improvements in technology and expertise of using remote sensing to identify quality, as well as extent and type, of habitats.</i></p>

Next steps

Overall, this consultation is welcomed overall and the system is very much needed.

This is a significant opportunity to help improve on the substantial losses we have seen in our biodiversity over recent decades. Without mandating this approach, any biodiversity net gain mechanism is unlikely to be effective. The benefits of a mandatory system are clear – and include greater transparency, clarity and certainty (a level playing field for developers), accountability on the part of developers, better outcomes for biodiversity and sufficient investment to make a transformational change around biodiversity restoration.

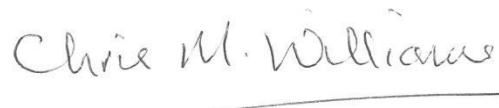
The 10% net gains proposed are not ambitious enough, with evidence from voluntary uptake that 20% is more than achievable, with most achieving considerably more. BNG should be delivered first and then over time other asset classes can be introduced.

We wholly advocate for adequate resourcing and additional capacity to be provided for all stages of the BNG process, including administration, ecological expertise, strategy development, implementation and monitoring.

To ensure transparency and accountability, we also need a requirement of responsibility for annual reporting in each region to monitor overall net gain (or loss) across the country and facilitate the sharing of best practice.

We would welcome an opportunity to comment on a more detailed proposal after this consultation and offer the support and engagement of the NEP, alongside other Local Nature Partnerships, in the next stages.

Signed

A handwritten signature in cursive script that reads "Chris M. Williams". The signature is written in black ink and is positioned above a thin horizontal line that serves as a baseline for the signature.

Chris Williams

Chair, Buckinghamshire and Milton Keynes Natural Environment Partnership