



## Central Lancashire Strategic Planning

### Joint Advisory Committee

#### Supplementary Agenda

6. **Biodiversity Net Gain: Outcome of the DLUHC Consultation** (Pages 29 - 44)

Report of the Planning Policy Manager attached.

This page is intentionally left blank

# Agenda Item 6



Report of	Meeting	Date
Chief Executive	Central Lancashire Strategic Planning Joint Advisory Comm	Monday 27 <sup>th</sup> March 2023

## Biodiversity Net Gain: Outcome of the DLUHC Consultation

Is this report confidential?	No
------------------------------	----

Is this decision key?	No
-----------------------	----

### Purpose of the Report

1. To update on the outcome of the consultation on Biodiversity Net Gain (BNG) as introduced by the Environment Act.

### Recommendations

2. To note the contents of the report.

### Reasons for recommendations

3. The report does not require any decisions, it is for information only.

### Other options considered and rejected

4. Not applicable

### Background to the report

5. The consultation on biodiversity net gain (BNG) regulations and implementation was launched in January 2022 and ran for 12 weeks. The consultation covered the 3 main areas:
  - the scope of the Town and Country Planning Act 1990 (TCPA) requirement and proposed exemptions; development within statutory designed sites, and irreplaceable habitats
  - applying BNG to different types of development, including phased development; small sites; NSIPs
  - how mandatory BNG will work for TCPA development and an example biodiversity gain plan

# Agenda Item 6

6. This report provides a summary of the outcome of that consultation and the implications for the regulations which are expected to follow. Each of the three Councils will need to take steps in preparation for BNG coming into force from November 2023.
7. The Government published its response to the Consultation on the 21<sup>st</sup> February 2023, this report presents a summary of those findings.

## **Government response part 1: Defining the scope of the BNG requirement for Town and Country Planning Act 1990 development**

### **Exemptions to Mandatory BNG**

5. The Environment Act 2021 already makes exemptions for permitted development and urgent crown development. The biodiversity metric, subject to its own consultation allows for temporary impacts that can be restored within 2 years to be excluded from calculations. It also gives existing sealed surfaces (such as tarmac or existing buildings) a zero score, meaning that these surfaces are effectively exempted from the percentage gain requirement.

The regulations will make exemptions for:

- development impacting habitat of an area below a 'de minimis' threshold of 25 metres squared, or 5m for linear habitats such as hedgerows
- householder applications
- biodiversity gain sites (where habitats are being enhanced for wildlife)

The government also propose to exempt small scale self-build and custom housebuilding, but in a way that addresses the risks of exempting large sites made up of many custom plots and will keep this under review.

6. Exempt development outside the scope of mandatory net gain still provides opportunity for biodiversity enhancements that could be secured through planning policy and other than where they are covered by the exemptions above, government do not intend to specifically exempt:
  - previously developed land (though some sites will effectively be exempted by a zero-baseline score in the metric)
  - change of use applications (though the majority of types of change of use application will be exempt through the de minimis habitat exemption)
  - temporary applications (though the metric makes allowances for short term habitat loss)
  - developments which would be permitted development but are not on account of their location in Conservation Areas, for example, areas of outstanding natural beauty or national parks, which are subject to some restrictions on permitted development rights (though de minimis and householder exemptions mean we think this will have little effect in practice)

# Agenda Item 6

7. The proposals do not include an exemption for development on statutory designated sites for nature conservation. Instead, the government intends to use the process proposed in the consultation to use policy and guidance to prevent BNG being used as a justification for otherwise unacceptable development on such sites.

## **Irreplaceable habitat**

8. The consultation asked about proposals to:
  - a. Exclude irreplaceable habitat from the quantitative mandatory biodiversity gain objective.
  - b. Include a requirement to submit a version of a biodiversity gain plan for development (or component parts of a development) on irreplaceable habitats to increase proposal transparency.
  - c. Allow the use of the biodiversity metric to calculate the value of enhancements of irreplaceable habitat where there are no negative impacts to irreplaceable habitat.
  - d. Use the powers in BNG legislation to set out a definition of irreplaceable habitat, which would be supported by guidance on interpretation.
  - e. Provide guidance on what constitutes irreplaceable habitat to support the formation of bespoke compensation agreements.
9. The responses received expressed strong agreement with all 5 proposals for irreplaceable habitats (listed above). The Government has responded by providing updated policy and processes which reflect the consultation responses and additional stakeholder engagement undertaken since January 2022.
10. Government propose to use secondary legislation to set out a clear definition of irreplaceable habitats and provide a list of habitat types to be considered irreplaceable.
11. Secondary legislation will also be used to disapply the 10% measurable net gain requirement for irreplaceable habitat, and to apply separate information requirements that can be used by the planning authority in determining the planning application:
  - The biodiversity gain objective is to be replaced with a requirement for appropriate compensation relative to the baseline habitat type. The planning authority must be satisfied that as a minimum, the mitigation or compensation plan meets requirements in relevant policy and guidance, and decisions on planning applications should be made in line with the National Planning Policy Framework (NPPF).
  - Development on irreplaceable habitats, and consequent habitat losses and gains, are to be accounted for, either in a separate section of the biodiversity gain plan template, or a separate report to be submitted to the relevant planning authority alongside the biodiversity gain plan. A separate tab of the metric calculator tool must be completed which documents all irreplaceable habitat onsite. This will ensure losses of, and compensation for, irreplaceable habitat is recorded and communicated clearly.
  - Regulations will state that statutory biodiversity credits must not be used to compensate for residual irreplaceable net losses resulting from development or land use change.

# Agenda Item 6

- Alongside the standard requirement for a biodiversity gain plan, applications involving development on irreplaceable habitat should set out a robust summary statement of reasonable alternatives explored for the development that would avoid the loss of irreplaceable habitats and why they were not feasible

## **Government response part 2: Applying the biodiversity gain objective to different types of development**

### **Phased development and development subject to subsequent applications**

12. For outline planning permissions, or development which is to be permitted in phases, regulations will require additional biodiversity gain information that sets out how biodiversity gain will be achieved across the whole site on a phase-by-phase basis and will also require that such developments should be subject to a condition which requires approval of a biodiversity gain plan prior to commencement of each phase.
13. In the case of variations of planning permissions, subject to further engagement, Government intend to only apply the requirement for a new BNG calculation with a Section 73 applications where the original permission was granted after is noted as being required about what constitutes a change requiring an updated biodiversity gain plan.

### **Small sites and reducing the burdens of the process**

14. Government have confirmed plans to provide a small sites metric for developments which meet its size and absence of priority habitats criteria. They also accept that clear guidance, as well as innovative approaches to automation and digital support, will be critical to ensure that SME developers can engage with BNG positively to deliver greener developments.

### **Implementation Date**

15. Respondents were generally supportive of the November 2023 commencement date; however concerns were raised about how prepared local planning authorities are. To lessen initial burdens and allow a longer period for developers and local planning authorities to adapt and prepare for the high volume for minor applications, the transition period for small sites has been extended until April 2024.

Small sites are defined for the purpose of the BNG exemption as:

- i. For residential: where the number of dwellings to be provided is between one and nine inclusive on a site having an area of less than one hectare, or where the number of dwellings to be provided is not known, a site area of less than 0.5 hectares.
- ii. For non-residential: where the floor space to be created is less than 1,000 square metres OR where the site area is less than one hectare.

Following responses to the consultation asking if there were any additional process simplifications (beyond a metric) that would help reduce the burden for small sites,

# Agenda Item 6

several good suggestions were received which are being explored for implementation, including:

- improved spatial mapping of habitats to guide development to less biodiverse sites (Government hope this could be provided through and alongside Local Nature Recovery Strategies (LNRS))
- a simplified biodiversity gain plan template or process for small developments
- online training and guidance specifically for smaller developments and users of the small site's metric, including references to how gardens and amenity green spaces should usually be recorded and the types of on-site features that could generally help them towards achieving biodiversity gains
- ensuring that the biodiversity unit allocation and statutory biodiversity credits sales mechanisms are fit for use with the small volumes that are likely to be required by smaller developments
- adding clearer outputs to the biodiversity metric tool so that it is easier to see what is needed to achieve BNG (also proposed in the separate consultation on the metric)
- making it clear in planning guidance that, whilst higher net gain percentages may be set in local planning policy, careful consideration should be given to the feasibility of requirements above 10%

## **Nationally Significant Infrastructure Projects (NSIPs)**

3. Government intend to apply BNG for NSIPs without any broad exemptions other than the provision made for development on irreplaceable habitats. Due to the significant scale and complexity of NSIPs, a longer period to prepare for the requirements is identified as being required ( no later than November 2025), and Government will produce a draft biodiversity gain statement for NSIPS later this year.
4. There were concerns raised regarding off-site gains and a portfolio approach for NSIPs, and how this may discourage proper application of the mitigation hierarchy. In response, government has stated there will be no light touch approach for NSIPs and they intend to stipulate that NSIP off-site gains will need to be recorded in a biodiversity gain site register, as is the case for development under the TCPA.
5. The process for the NSIPs will be broadly consistent with the TCPA approach, meaning that developers or scheme promoters will need to prepare a form of biodiversity gain plan and a completed biodiversity metric.
6. The government will also remove the incentive to clear habitats in advance of ecological assessments, by making provision in the biodiversity gain statement for an earlier habitat value to be applied as the baseline where the value of habitats has been recently degraded. Where habitats have been degraded since January 2020, the pre-degradation habitat should be taken as the baseline.
7. Some NSIPs need to include significant areas for environmental mitigation within their project boundaries. Government do not intend to make a distinction for NSIPs between on-site habitats (which are subject to BNG) and any dedicated environmental mitigation areas included in the project boundary. This maintains consistency with the

# Agenda Item 6

approach for TCPA development. Government will consult further on this proposal through the draft biodiversity gain statement.

8. The minimum duration of maintenance for secured off-site biodiversity gains allocated to NSIPs will be specified in biodiversity gain statements. The minimum duration for which biodiversity gains must be secured will initially be set at 30 years. This will help to ensure that the market for biodiversity gains can function fluidly across consenting regimes. The Environment Act 2021 includes a requirement to keep this duration under review, and the minimum duration for NSIPs would be increased in line with any increases to the minimum for TCPA development. This will not apply retrospectively to existing gain sites or developments which have already received consent and would be done with sufficient notice to allow industry to plan for the transition.

## **Compulsory acquisition**

9. Government recognise the concerns raised by some respondents on the negative impact of compulsory acquisition on landowners, and their preference for compulsory acquisition to be used as a last resort for BNG delivery. Government do not intend to make any new provisions for compulsory acquisition.

## **Marine infrastructure**

10. The issues around BNG and marine areas looked at the need for clarity on the relationship between terrestrial/intertidal and marine net gain units. There is a need to also ensure that marine licensing and planning system regimes are aligned to reduce conflict/duplication in the process.

## **Government response part 3: How the mandatory BNG requirement will work for Town and Country Planning Act 1990 development**

### **Biodiversity gain plan**

11. Response were broadly supportive of the proposed content of the biodiversity gain information and biodiversity gain plan, but it was suggested that:
  - more information should be required about future management of biodiversity in the biodiversity gain plan
  - the biodiversity gain information and biodiversity gain plan should make greater reference to existing industry guidance
  - government should use regulations and guidance to clarify the precise information requirements, or provide a checklist of any necessary supporting documents
  - intertidal developments should not be required to demonstrate delivery of on-site habitats, which are not usually ecologically feasible
  - more of the template is labelled as mandatory to reduce the likelihood of plans needing to be resubmitted with additional information
12. Government will aim to address the points above in the final biodiversity gain plan template, and will be requiring that biodiversity gain information (in the form of a BNG Statement) is provided alongside the planning application before a biodiversity gain plan is then submitted and approved prior to commencement of development.



# Agenda Item 6

13. Some respondents raised concerns relating to the proposal that “on-site biodiversity gains should be secured for delivery within 12 months of the development being commenced or, where not possible, before occupation” and questioned whether this was reasonable and achievable for sites such as minerals sites, phased developments, or sites with complex engineering demands.
14. Government will take these observations into account as they draft final guidance wording and intend for this part of the guidance to influence planning authorities’ application of conditions, planning obligations and conservation covenants rather than to be enforced as an inflexible rule itself.

## **Off-site biodiversity gains**

15. Government confirmed it will implement their proposals and provide further guidance on what constitutes appropriate off-site biodiversity gains for a particular development, recognising the need to deliver strategic biodiversity improvements to support the restoration of functional ecosystems but also recognising the value of access to nature near developments for communities.
16. Government will continue to incentivise a preference for on-site gains over off-site gains. There is one exception to this, intertidal developments, for which small on-site enhancements are often inappropriate. Government will also incentivise local off-site provision in strategically significant locations through the biodiversity metric and will keep this position, and the extent that BNG is contributing to off-site nature restoration, under review through their monitoring and evaluation of BNG in practice.

## **Securing sites for more than 30 years**

17. Government intends to commence mandatory BNG with 30 years set as the minimum period for which biodiversity gain sites must be secured. As proposed in the consultation, this will not be reviewed before 2026 so that there is a reasonable amount of information available on the biodiversity gain market and potential impacts of a longer minimum duration.
18. Several respondents wanted to know what would happen after the 30-year period has passed. At the end of a 30-year biodiversity gain agreement, a landowner would likely be able to consider other available incentives to maintain or further enhance the site. Government advise landowners to bear these factors in mind when offering their land for biodiversity gains. It might be possible for the increased biodiversity of the site to be taken as a new baseline and the land re-entered into the BNG market to deliver further habitat enhancements.
19. Additionally, Government will consider the range of suggestions received for how to incentivise retention of biodiversity gains once gain sites’ legal agreements expire. These suggestions included tax incentives, securing longer term management through investment bonds or other financial instruments, allowing sale of new biodiversity units for new enhancements after the initial 30-year legal agreement ends and Staged sales.

## **The market for biodiversity units**

### **Supply of units to the market**

# Agenda Item 6

20. Two thirds of respondents supported the approach to who could supply the market for biodiversity units. As proposed in the consultation, any landowners or managers will be able to create or enhance habitat for the purpose of selling biodiversity units, provided that they are able to meet the requirements of the policy, including additionality and register eligibility requirements, and demonstrate no significant adverse impacts on priority habitats. This includes local authorities, but they cannot direct buyers towards their land in preference over other suppliers to the market unless there are clear ecological justifications for doing so. Suppliers of biodiversity units will be able to sell to developers anywhere in England, provided that the use of those units is appropriate for the development in question and the distance between the development and the off-site habitat is properly accounted for in the biodiversity metric.

## **Allowing developers to sell excess biodiversity units**

21. Government asked whether developers who can exceed the biodiversity gain objective for a given development should be allowed to use or sell the excess biodiversity units as off-site gains for another development. The majority of respondents were supportive, but some did raise the concern that this approach could inadvertently make 10% the maximum gain at a national scale by redistributing any gains above this level.
22. Regulations will allow developers to sell the excess biodiversity units as off-site gains for another development, provided that this excess gain is registered and that there is genuine additionality for the excess units sold. This means that these units should be delivered above and beyond the gains required by the original development to meet the mandatory BNG requirement and to make the development acceptable to the local planning authority. These 'excess' gains must be identified clearly as such in the original development's biodiversity gain plan.

## **Government's role in the market and tax**

23. Government will not develop a centralised trading platform for biodiversity units or facilitate other roles which could be performed by the private sector or other third parties, such as brokering. We will detail in guidance the expectation that funds are held securely so that outcomes are secure in the long-term, but it will be for the buyer, seller, and any other parties to the agreement to agree payment terms. The price of units supplied by the off-site market will be determined through negotiations between the buyer and seller and are likely to vary by habitat type and location. Sellers must ensure that the price is sufficient to cover the costs of creating or enhancing the habitat, any necessary monitoring, and maintaining it for a minimum of 30 years.
24. Work is underway to provide guidance on the tax implications for habitat creation or enhancement. Biodiversity units will be subject to VAT when they are sold.

## **Habitat banking**

### **Creation of habitat banks**

25. As proposed in the consultation, government consider habitat banking will enable delivery of larger, more strategic sites for nature. Habitats created or enhanced after

# Agenda Item 6

30 January 2020 will be eligible for registration and sale of the associated biodiversity gains, provided it meets the other criteria of the biodiversity gain site register. This date is the date that the Environment Bill was re-introduced into Parliament; it has been selected as Government consider it the point at which landowners could be reasonably certain of mandatory BNG being implemented & therefore want to make enhancements before this date ineligible, as they think they are unlikely to have been undertaken for mandatory BNG. Habitat created or enhanced before this date will need to be re-baselined using the statutory biodiversity metric from 30 January 2020 to ensure that only biodiversity units created or enhanced after this date can be sold.

## **Time limit on habitat banks**

26. Regulations will not set a time limit on how long biodiversity units can be banked before they are allocated to a development. A habitat bank would need to be able to record and provide suitable monitoring information to demonstrate that the initial works to create or enhance the habitat had been completed by a given date if they wish to take advantage of the 'advanced creation' function in the metric.
27. The whole land area within a habitat bank need not be secured by a legal agreement for the minimum 30-year period prior to the first sale of units to a developer, although government would not prevent a landowner or manager from doing this if they chose to. When, however, biodiversity units are sold to a developer, the associated parcel of land within the habitat bank would need to be secured by a legal agreement and registered prior to approval of the biodiversity gain plan for the associated development.

## **The biodiversity gain site register**

28. The UK Government will appoint Natural England as the Biodiversity Gain Site Register Operator, responsible for establishing and maintaining the register. The core purpose of the biodiversity gain site register is to record allocations of off-site biodiversity gains to developments and make this information publicly available. The register will not act as a marketplace platform for buying or selling units, nor will it assess the ecological suitability or additionality of proposals. Natural England aim to open the register for new biodiversity gain sites by November 2023. Government will set an achievable determination time for applications to the register in consultation with Natural England. This is likely to be around 6 weeks.
29. Government does not intend to mandate registration of on-site gains on the biodiversity gain site register because this would duplicate information submitted to and held by local planning authorities in planning applications which are already in the public domain. However, they agree that both on-site and off-site information on biodiversity gains should be accessible in one place and so are exploring how on-site information can be extracted from planning permissions and published on the register.
30. It will be the responsibility of local planning authorities or responsible bodies, when creating agreements that secure delivery of biodiversity gains, to assure themselves that the habitat enhancements proposed are achievable. This will happen before registration of a gain site – a binding legal agreement is a pre-requisite to registration. Since landowners will be legally obliged to deliver the outcomes they agree to in the

# Agenda Item 6

legal agreement, it is also in their interest to make sure the planned enhancement is achievable.

31. Government will publish guidance on what LPAs and responsible bodies should take into consideration when creating legal agreements to secure biodiversity gains. This will cover things such as checking that there are no conflicts with other interests on the land (such as shooting or mineral working rights), checking that any necessary permissions have been obtained (such as planning permission, felling licences) and consulting aerodrome safeguarding authorities where applicable.

## **Register eligibility criteria and information requirements**

32. Regulations will refine the proposed eligibility criteria to ensure that the register does not duplicate or conflict with other parts of the process and that the criteria are fit for the purpose of the register.

## **Habitat Management and Monitoring Plan**

33. Regulations will require that habitat management and monitoring information be provided as part of site registration. Habitat management plans must be secured by the legal agreement which secures the gain site.

## **Fees and fines**

34. Government will provide for the register operator to charge a fee for applications. The fee will be set to achieve cost recovery, so that all the register costs are fully covered by application fees and are working with Natural England to determine a reasonable fee and are considering different options including a flat fee or one related to biodiversity gain site size. As a guide, they would expect a fee to be between £100 and £1,000.
35. Government will give the register operator powers to issue financial penalties to help ensure the register contains accurate information. The register operator will have discretion over whether to apply a fine. Fraud legislation may also apply in some cases.

## **Appeals**

36. Government will allow the applicant to appeal where an application for registration of a gain site is refused by the register operator and will set a maximum time after an application is refused within which an appeal must be made. Applicants will also be able to appeal against; the rejection of an application to amend an entry on the register, an amendment the register operator made to information on a gain site on the register, the removal of a gain site from the register, or the rejection of an application to record allocation of habitat enhancements on the register. An applicant who receives a fine from the register operator will also be able to appeal against this. A fee may be charged for appeals, in keeping with the principle of cost recovery.
37. Government does not intend to provide for an appeal process for third parties but will consider options for allowing third parties to contact Natural England to raise concerns about the registration process itself. Information on registered gain sites will be in the

# Agenda Item 6

public domain and the register will detail the relevant enforcement body for each gain site.

## **Additionality**

38. Regulations will implement five proposals which include a statement that mitigation and compensation for protected species and protected sites can be counted within a development's BNG calculation.
39. The consultation document stated that: "at least 10% of the gain should be delivered through separate activities which are not required to mitigate or compensate for protected species impacts". This has been interpreted in different ways. To clarify, this means that at least 10% of the total (110+%) post-development biodiversity score should be from measures which are not undertaken to address impacts on protected species or protected sites (e.g. nutrient mitigation). For example, if a development has a baseline score of 10 biodiversity units and needs to achieve a score of 11 units, at least 1 unit should come from separate activities (such as an onsite habitat or the wider market for biodiversity units).

## **Enhancements in statutory protected sites for nature conservation**

40. Regulations will not be making an exemption for development on statutory sites designated for nature conservation, guidance will follow on the circumstances in which statutory protected sites can be enhanced for BNG and will keep this position under review through policy evaluation.
41. In response to broad support for the proposal, we will state that all habitats in the intertidal zone, including designated features of protected sites, or a short distance (to be confirmed, but no more than 2 kilometres) above the high-water mark, would be eligible for enhancement for BNG. Any compensation that a development is delivering in meeting wider statutory protections may be counted towards that development's BNG. This would be subject to any relevant approvals for the enhancement and only permitted where the proposals do not risk harming designated species or features.

## **Stacking of payments for environmental services**

42. The consultation asked whether payments for biodiversity units should be combined with other payments for environment services from the same parcel of land ('stacking') and government will publish guidance alongside this response on how BNG and nutrient mitigation can be stacked and how they can be combined with other schemes. This first phase of guidance will run until March 2025.
43. Land managers will be able to sell both biodiversity units and nutrient credits from the same nature-based intervention, for example the creation or enhancement of a wetland or a woodland on the same parcel of land. Land managers should not sell credits for other ecosystem services (such as carbon credits) from the same nature-based intervention if they are also selling biodiversity units and/or nutrient credits.
44. Biodiversity units may be generated on top of an existing obligation or grant payment if the land manager is able to further enhance a habitat and can establish a clear and verifiable baseline from what the existing payment or obligation has achieved.

# Agenda Item 6

## **Statutory biodiversity credits**

45. Natural England will sell statutory biodiversity credits on behalf of the Secretary of State. Credit sales will be facilitated by an accessible and user-friendly digital sales platform which is currently being developed and tested. Further guidance on how the need for credits should be determined and demonstrated in developer's gain plans will be published during the transition period to support decision-making by developers and planning authorities. Government aim to minimise the use of statutory biodiversity credits and phase them out once the biodiversity unit market has matured.

## **Credit price**

46. An indicative credit price will be published 6 months in advance of BNG becoming mandatory. The price will be set to be intentionally uncompetitive with the market. We are assessing whether to vary the price by habitat type. The Government review the price at 6-monthly intervals in response to market data once the mandatory requirement is in place. Price changes will be indicated well in advance to allow developers to plan ahead. Government will be providing policy guidance on when a developer will be able to access the credit scheme to ensure that they remain a last resort.

## **Credit investment**

47. As proposed, revenue from credit sales will be invested by Natural England on behalf of Defra's Secretary of State in strategic habitat creation and enhancement projects which deliver long-term environmental benefits and an overall net gain in England.
48. For practical reasons, Government do not propose to make a direct, traceable link between an individual development that has purchased credits and specific sites that have received that investment. For transparency, the Secretary of State will publish an annual report detailing the total payments received by the credit scheme and how those payments have been used. Credit investment will only be used for the purposes set out in the Environment Act 2021.
49. Statutory biodiversity credits can only be sold by the Secretary of State, and it will not be possible for local variations of these to be sold (for example, local tariff schemes) for the purpose of meeting the mandatory requirement.

## **Reporting, evaluation, monitoring and Enforcement**

50. Government recognise the concern raised by some respondents that additional training and capacity will be needed for effective enforcement by all planning authorities. The register operator will not have planning enforcement powers and planning authorities will need to ensure that gains are appropriately secured where necessary to enable effective enforcement. Gains can be secured via planning conditions, planning obligations or conservation covenants (or a combination of these methods). For gains that are secured with conservation covenants, Government expect costs for monitoring and enforcement activities to be reflected in the price of biodiversity units. Regulations will define the threshold for significant on-site gains, which will need to be explicitly secured through the mechanisms set out above, in

# Agenda Item 6

guidance and are currently minded setting a definition according to habitat area and distinctiveness.

51. The planning enforcement regime will be the principal way of enforcing delivery of BNG. Government will review the role of guidance in supporting when enforcement action can be taken, to clarify that a failure to deliver promised environmental enhancements can justify enforcement action at a planning authority's discretion.
52. Government will make it clear that planning authorities should set specific and proportionate monitoring requirements as part of planning conditions and obligations used to secure off-site or significant on-site habitat enhancements.

## **Conservation covenants**

53. Local planning authorities and other eligible organisations can apply to become responsible bodies and use conservation covenants which have been designed for the purpose of securing, and where necessary enforcing, positive (and restrictive) land management obligations. Conservation covenants bind the land which means they will apply to new landowners if the land is sold.
54. Prospective responsible bodies will be able to apply to Defra for designation from early 2023 and successful applicants will be able to create conservation covenants thereafter. Government will publish guidance on what should be included in a conservation covenant or planning obligation which secures biodiversity gains for the purpose of BNG.

## **Earned recognition**

55. Government will continue to explore the potential for earned recognition with stakeholders and monitor practice to establish whether a higher competency or accreditation bar is needed for components of the BNG approach.
56. In response to suggestions from respondents that the independence of ecologists is important, Government will also continue to consider whether reforms are needed to the procurement or regulation of ecological expertise.

## **Local planning authorities (LPAs)**

57. Government announced £4.18 million for LPAs in January 2022 and will be providing further funding of up to £16.71 million for LPAs to prepare for mandatory BNG between now and November 2023. This will be followed by further new burdens funding following commencement of the requirement in November 2023. As set out in the original BNG impact assessment, the Government's assessment remains that there is an additional burden created by the reforms, primarily in the form of demand for additional ecologist and monitoring resources.
58. Government are continuing to provide support through the Planning Advisory Service to local planning authorities to implement biodiversity net gain, and 'understand there is a need for further clarification about how local planning authorities should apply existing BNG policy, in both the NPPF and policies contained in local plans, to set out expected interactions once the mandatory net gain requirement comes into force in

# Agenda Item 6

November 2023. Government plan to consult on any changes required to national policy in due course’.

## **Next Steps**

59. The three Councils are considering how resources can be identified to develop the necessary processes, procedures and habitat data required for the implementation of BNG in November 2023.
60. Existing local Ecology Consultancies have been approached regarding available capacity for supporting the Councils to prepare for BNG and also then in terms of processing the metric assessments and BNG plans etc upon implementation, and LCC are also currently undertaking research as to how they can act to support the Lancashire Authorities on BNG.
61. The immediate steps required are for the Council’s to consider land in their administrative area which may be suitable for offsite BNG investment. A metric calculation and land management (BNG) improvement plan would be required to ensure sites in the borough can be added to the registrar of offsite habitat banks as and when it is made available by the Government.

## **Climate change and air quality**

62. The work noted in this report has an overall positive impact on the Councils Carbon emissions and the wider Climate Emergency and sustainability targets of the Council.
63. The report impacts on the following activities in a positive way although details of specific benefits is to evolve as we prepare for BNG implementation:
  - a. net carbon zero by 2030,
  - b. air quality,
  - c. flooding risks,
  - d. green areas and biodiversity.

## **Equality and diversity**

64. The government has published an EIA along with the consultation. There are no implications at this stage, an EIA will be necessary as we develop local policies and procedures for BNG.

## **Risk**

65. There are no risks at this stage however as the Council prepares for the implementation of BNG through the Planning Function, a risk register will be necessary not least because this will be a statutory duty.

## **Comments of the Statutory Finance Officer**

66. There are no direct financial implications of this report. Clearly this is a developing area and as such New Burdens allocations have been issued but further information needs to come forward before the practical financial impacts upon Local Authorities will be known.

## **Comments of the Monitoring Officer**



# Agenda Item 6

67. The statutory regime under the Environment Act 2021 and proposed regulations are described in the report.

## Background documents

There are no background papers to this report

## Appendices

There are no appendices.

Report Author:	Email:	Telephone:	Date:
Carolyn Williams	c.williams@preston.gov.uk	01772906732	17/3/23

This page is intentionally left blank