

Biodiversity net gain for Nationally Significant Infrastructure projects

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From growing start-ups to major electricity generators, grid and infrastructure developers and energy suppliers, our members are driving change across power, heat, transport and flexibility.

We provide a collective voice for the sector working with governments, regulators, charities and other organisations to provide crucial insight that shapes policy, offers solutions and promotes best practice.

Our broad view across the whole system supports evidence-based positions which are not tied to particular technologies, and are focused on delivering strategic benefits for people, businesses and the economy.

We champion initiatives such as our Vulnerability Commitment, which pushes suppliers to go beyond regulation to support customers with additional needs, and TIDE, the industry's drive for greater inclusion and diversity. Through our Young Energy Professionals Forum, we support the development of future leaders.

We are equally committed to our team and are proud to be recognised as a 'Gold' Investors in People employer.

Executive Summary

The proposed wording for Biodiversity Net Gain requirements for Nationally Significant Infrastructure Projects is broadly welcomed by Energy UK members. However, there are concerns about how liner projects such as network infrastructure will be treated under these requirements. The new off-site options for BNG will also open further possibilities that will need additional consideration.

If you would like to discuss this response in further detail with Energy UK and its members, we would welcome further engagement.

Chris Friedler

Policy Manager (Environment and Planning)

chris.friedler@energy-uk.org.uk

Question 1: Would you like your response to be confidential?

No.

Question 2: Do you agree that the proposed model text provides sufficient information on the biodiversity gain objective?

Yes. The objectives of the BNG text are sufficiently straightforward. However, key issues around this are defining the area subject to the BNG assessment (it should relate to the area subject to development rather than the full extent of Order Limits), and the role of other policies in influencing these proposed BNG statements.

Further details are required on how the requirements for BNG in the NSIP regime will work in relation to the proposed Environmental Delivery Plans proposed in the Planning and Infrastructure Bill, and whether there is sufficient alignment of the two. Energy UK's view is that a much stronger approach is needed to reduce overlap and resourcing between the two goals, especially given that BNG proposed in this consultation document can also now take place off-site in a similar banner to the proposed EDPs. The section on not applying the new rules retrospectively to existing developments is welcome.

The role of BNG and MNG requires further clarifying for projects that are across both terrestrial and marine ecosystems. Hybrid developments may require their own set of guidance.

On introducing biodiversity net gain statements, while Energy UK supports these, its success is likely to be reliant on how it works in relation to the National Policy Statements. Given these are already highly extensive for different energy technologies, additional guidance from these BNG statements may put this in competition with the many other areas the Secretary of State must consider. The more streamlined and flexible the guidance is for a site-by-site basis, the more likely it is these principles can be implemented adequately whilst providing best results for nature and communities.

Wider reforms to environmental policies, such as the government's proposed move to Environmental Outcome Reports (which Energy UK does not support) and Habitats Regulation reform must be aligned to the BNG changes proposed in this consultation. The mitigation hierarchy must be in line with the potential for off-site mitigation, with a clear steer for on-site mitigation where appropriate.

Energy UK agrees that there should be 10% mandatory BNG for NSIPs. These should be fixed to 10% in line with the statutory requirement under the Environment Act 2021. This regulatory certainty is important to developers. It should be clarified that whilst 10% is the legal requirement, anything over the 10% requirement is at the developer's discretion, rather than at the discretion of other stakeholders in the process. This could avoid delays in potentially significant cost increases associated

with local negotiations with assorted stakeholders over the delivery of higher BNG requirements. Some local councils already require NSIP projects to provide BNG exceeding the 10% target, in some cases many times over this. This creates great difficulty for developers, as anticipating these requirements for each local council creates additional risk and uncertainty for projects, and undercuts the certainty of a standardised national goal. 'At least' 10% BNG, as proposed in the current wording, adds to this ambiguity. As above, clarity should be given that 10% is the requirement for developers to meet, with any additional gains beyond this not required as part of the planning process and at the developer's discretion.

Question 3: Do you agree that the proposed model text provides sufficient information on irreplaceable habitat?

Yes. Signposting to stricter definitions of irreplaceable habitat elsewhere would be useful for developers. Having very clearly demonstrable criteria for irreplaceable habitat that is linked to these BNG statements will help ensure that this habitat is more easily identified and the examination process is smoother.

Although not classified as irreplaceable habitats, there is interlinkage in approach with the Open Mosaic Habitats approach set out in Section 4 of [the consultation on Improving the implementation of Biodiversity Net Gain for minor, medium and brownfield development consultation](#). This could be applied for NSIP projects, and has member support. Specifically, the areas of reviewing the metric habitat definition, condition assessment criteria and guidance to assist with the correct identification and classification of Open Mosaic Habitat, as well as allowing alternative habitat delivery for the loss of Open Mosaic Habitat are of interest to members.

Question 4: Do you agree that the proposed model text, alongside the statutory metric user guide, provides sufficient detail on the process for calculating biodiversity net gain?

Yes. Whilst out of scope of the consultation question, there are still issues around the criteria on 10% BNG on watercourse biodiversity in cases where the development has no direct impact on the watercourse. Under the current system, the 10% target is required to apply purely based on river proximity, not based on the impact of the development itself. Whilst environmental impact mitigation of watercourses is supported by Energy UK members, this should be in relation to the impact of the actual development. Therefore, the way the uplift around BNG is mandated in development should be re-examined. An alternative could be for developments to pay into a catchment fund to mitigate impact on the river as a whole, rather than a specific section of the river that is within the development area.

Transitional arrangements should be introduced each time the statutory metric is updated so as not to delay a DCO application which is close to submission or currently being included in an Examination. Furthermore, the BNG metric should be

used to measure the impacted area rather than the full extent of the Order Limits to avoid over-estimation.

Question 5: Do you think any additional guidance is required in the statutory metric user guide to clarify how it should be applied for NSIPs?

Additional guidance is required in respect of linear projects, such as pipelines and electricity cables, the impact of which is largely temporary in nature and affect multiple Local Planning Authority areas.

For linear projects, (such as pipeline corridors for thermal generation fuel supply, and the onshore export cables for offshore wind farms), these require a different and more flexible BNG regime. This is because these projects have more expensive pathways to deliver biodiversity gains. Unlike other types of development where the costs of biodiversity enhancement are largely borne by developers and landowners, costs associated with linear NSIP projects may fall on the consumer. To keep these projects proportional and fair, these projects should have tailored requirements and flexibility around BNG. There should be a distinction where temporary works impacts have or have not been mitigated.

Further clarification for where a scheme crosses multiple local planning authority boundaries would also be welcome. NSIPs can deliver off-site biodiversity gains in any of the local planning authorities the scheme is in without incurring a spatial risk multiplier penalty. Clarification across the English/Welsh and the English/Scottish border would also be welcome, especially for linear projects such as the above. On the latter, if the BNG metric was recognised by the devolved administrations in relation to cross-border NSIP projects, and that similar flexibilities could be applied to these cross-border projects, this would do much to alleviate concerns.

Question 6: Do you agree with the proposal that all habitats within the development site boundary (i.e. the order limits) must be included in the pre-development biodiversity value?

Disagree. It is questionable whether the BNG Assessment should be based on all habitats within the Order Limits when only part of the area within the Order Limits will be subject to development. BNG requirements should be based only on habitats which are physically impacted by the development. NSIPs' order limits may encompass large areas where the impact is temporary (such as laydown). Or this may occur where impact on the existing habitat is minimal, such as areas requiring minor works, or over existing pipework. Order limits cover the inclusion of all areas allowing the delivery of the DCO, but are not developed with BNG in mind. Allowing DCO projects to clearly define separate BNG spatial limits to minimise additional BNG costs, works and timescales would be support by Energy UK, which come with an additional cost from an environmental impact perspective. Natural England should review, with industry, how BNG is applied within the boundaries of renewable energy sites.

Question 7: Do you agree that the proposed model text provides sufficient information on:

- a) **what the pre-development biodiversity value consists of?**
- b) **the relevant date for calculating the pre-development biodiversity value?**

Partially agree, please refer to the response to Question 6. Further streamlining in places would be conducive to efficient implementation. Further information on off-site mitigation may also be useful, including in relation to proposed EDPs. This could also include further parameters for scope and scale of off-site measures, and how these may impact local communities.

Energy UK is supportive of measures to avoid the deliberate degradation of existing habitats to reduce the pre-development biodiversity value. This does necessitate however a strong and clear definition of 'deliberate degradation'. Sites should not be unnecessarily penalised for on-site work which is necessary in relation to maintenance and safety requirements. Where sites are able to demonstrate that they have improved existing habitats relative to the baseline date, such as increasing the extent of a hedgerow or woodland habitat, they should not be penalised by requiring a 10% BNG improvement over the improved area, particularly where this habitat remains unaffected by the development.

Question 8: Do you agree that the proposed model text provides sufficient information on delivering biodiversity net gain on-site, off-site and using credits?

The role of off-site mitigation under BNG needs connecting to a range of environmental policies and laws that operate around an assumption of on-site mitigation. It may be necessary to review other policies to make sure laws are not conflicting and posing a risk to off-site mitigation.

Compulsory acquisition is an area where the Energy UK membership have had contrasting views. The restrictions on compulsory acquisition are a source of concern for much of the Energy UK membership. The inability to use compulsory acquisition powers may result in the inability to use the land identified within the Biodiversity Net Gain Statement at pre-application phase for surveys. This could generate significant delays to the programme as a result of the need to make a change to the DCO. Limiting compulsory acquisition for BNG is not aligned to recent DCO decisions (such as the [Bramford to Twinstead reinforcement project](#)), as well as the National Policy Statements. EN-5 (both the 2023 and the draft updated versions), applicants may seek the compulsory acquisition of land. NSIPs must not be restricted in seeking compulsory acquisition, as this is important to deliverability. Given compulsory powers are already considered a last resort, and are already outlined in National Policy Statements, further restrictive wording is not required. As an alternative, full details of the BNG proposals could be provided following DCO award, at detailed design stage and once the area impacted by the development is known.

At DCO submission stage, a BNG approach statement forming an outline strategy could be submitted.

Some land may be difficult to access for surveys at the time of submission due to pending Compulsory Purchase Orders. Developers may therefore need to use high-level BNG assessments earlier on and may not have access to the land needed. Flexibility of timings for surveys of supplementary land (such as that for cabling and access) should be given guidance. In that same guidance, the BNG baseline target should be confirmed after the decision is made on the DCO, but prior to the start of construction.

Energy UK disagrees on the maintenance for 30 years. Tying this closer to the development's lifetime is likely more appropriate, especially if a development has a shorter lifecycle than 30 years. The level of maintenance required for different mitigations may vary significantly, which should also be factored in. Contingency factors need to be added in for when damage occurs which is beyond the developer's control, for example natural disasters that temporarily or irrevocably damage the biodiversity of the site, or longer-term climate impacts and how these are adapted to.

Having reference to a full and comprehensive list of mitigation measures in detail, that developers can refer to from these BNG statements, would provide both additional clarity and an improved vision of mitigations for these sites.

Efforts should be taken to ensure offsite BNG should not be disadvantaged. The flexibility of on- and off-site BNG is appreciated, there are risks of these approaches not being on a level playing field. Spatial risk factors being incorporated into the assessment for off-site gain may be a concern.

Question 9: Do you agree that the proposed model text provides sufficient guidance on how to determine what counts as a significant on-site enhancement?

No. The consultation document text states that '*The Examining Authority and Secretary of State should determine what counts as a significant enhancement on a case-by-case basis*'. Further information on what constitutes a 'significant enhancement' needs to be provided from the outset, and prior to implementation of the BNG requirements.

Question 10: Do you think there needs to be a bespoke policy on delivering BNG where land is temporarily used for construction of NSIP schemes?

Yes. Land which is temporarily impacted and restored to its former condition should not be subject to BNG. This is in line with the sister consultation '*Improving the implementation of Biodiversity for minor, medium and brownfield development*', as it introduces exemptions for temporary planning permissions. The current definition of

temporary habitat loss as under two years is unrealistic for most NSIPs. Linear NSIPs (such as cables or pipelines) will have a construction timeline of under two years, but with a recoverability of habitats over two years. The requirement to provide BNG in such cases is a major source of concern for members, requiring such land (usually agricultural fields) to be subject to a minimum of 30 years restrictive covenants that will require off-site management from developers and restrict its use by the landowners.

Laydown can constitute a substantial percentage of the land included within the order limits for NSIP projects the use of which would vary over the life of a project. As noted in the response to Question 6, where impacts are temporary and it can reasonably be foreseen or ensured through other approaches that the impacted habitat would recover quickly on that land after cessation of the laydown activity, excluding this land from the 10% BNG requirement would be supported. This would be recognising that returning the land to the pre-laydown state would remain a requirement. Such an approach could consider more clearly defining what impacts could be defined as temporary, such as whether a three-month laydown requirement would be expected to have a much more limited impact than a four-year laydown requirement.

Question 11: Do you agree that the proposed model text provides sufficient information on the wider considerations for delivering biodiversity gains?

Implementation of the mitigation hierarchy here is strongly supported. Further information about how this would impact decisions around on-site and off-site decisions for BNG would be useful for developers, however.

The sentence '*biodiversity net gain does not change or replace existing environmental obligations*' is noted in the consultation document. This does raise further questions around how other initiatives will work around BNG, and Energy UK is concerned about the risk of duplication and crossover of multiple policy areas in this space. Longer term, it may be beneficial to examine the crossover of multiple initiatives and how they can be better aligned with future developments, in particular the considerations currently in the Planning and Infrastructure Bill. On this point, that also includes the role of Natural England, and ensuring that Natural England has sufficient resourcing and efficiency to enable these, initiatives will be critical to success implementation.

Energy UK could not reach an aligned industry position on the intertidal zone at the present time. However, clear distinction and coordination between BNG and Marine Net Gain was consistently highlighted. Energy UK may well return to policy on the intertidal zone in future in an effort to reach an aligned member position.

Question 12: Do you agree that the proposed model text provides sufficient information on the following:

- a) Evidence for submission?

b) Decision making?

No. Please also refer to responses to earlier questions. Linear projects where a significant area of land is required is not well covered by the proposed model text. On timescales, a detailed BNG evidence plan should be provided in the DCO application submission phase when the plans are in outline form. Providing information at this early stage introduces additional burden to the developer in terms of the amount of survey and information that must be submitted in support of the application, which is directly in conflict with proposals to streamline consents. A detailed BNG could be provided post submission, especially if it is not possible to use CA powers to acquire land.

Question 13: Do you agree with the proposal to allow updated biodiversity gain plans to be submitted to the relevant local planning authority for approval after consent is granted?

Disagree. Decision-making on BNG plans should remain with the Secretary of State, with developers available to update plans as required on a case-by-case basis. Changing the body tasked with decision-making part way through the process is likely to lead to additional work and delays which increase risk and cost for projects. This issue may be yet more acute for linear projects which crossover several LPA boundaries

Greater flexibility should be provided on BNG start dates. Renewable energy development can experience investment and construction challenges in the current climate, ranging from supply chain challenges to changing grid connection dates. This external environment is outside of the developer's control and might impact BNG commencement dates. Greater flexibility is therefore needed in relation to the BNG start dates before the 'delayed works' penalty occurs. This is mitigated on NSIP projects due to their life expectancy, and because Habitat Management Plans are tied to the duration of the consent, meaning that a 30-year maintenance period can easily be achieved. In many cases it will be far in excess of 30 years, with solar sites having a 45-year life expectancy.

Question 15: Do you think the policy proposals and model text for the biodiversity gain statements outlined in this consultation need amending for any specific NSIP type?

Yes, especially in the case of linear projects (which will have different characteristics). NSIP projects will have different requirements, with different habitats and mitigations will be required at site, so the main focus should require a range of flexible site to site regardless. This may be an area that requires monitoring in future due to different practises of off-site mitigation. If different categories of NSIP projects tend to certain patterns of off-site mitigation, this guidance may require future updating.

Question 16: Do you think there are any NSIP types or circumstances that should have different requirements or remain in a voluntary regime (noting this would continue to exclude them from buying registered off-site biodiversity gains and statutory biodiversity credits)?

Yes. This applies especially to linear projects, as highlighted in the response to Question 5. If there were any larger changes brought in from particular NSIPs or policy circumstances however, these would need to be reviewed with industry to ensure a level playing field.

Question 17: Do you have any additional comments on the draft biodiversity gain statement or on the next steps that are not covered by the previous questions?

An additional consideration should be a mechanism for extraordinary circumstances affecting BNG delivery. Given that there are increasing risks to habitat delivery, including through climate change, extreme weather and an increased risk of pathogens. This means that best practise ecological decisions today in relation to a 30-year mandated BNG area may look different in 20 years' time. Therefore, a mechanism for exemptions in exceptional circumstances should be drawn up, allowing developers not to be held liable if BNG is not delivered due to exceptional circumstances. This would also recognise that developers are operating in good faith to achieve successful habitat delivery and BNG.

Question 18: Do you think there are any other topics that should be covered in BNG guidance for NSIPs?

Yes. The consultation section 'Outside the scope of biodiversity net gain for NSIPs' states that *'We do not intend to apply the BNG requirement to applications for changes to development consent orders that were not subject to mandatory BNG (i.e. where the relevant earlier development consent order application was submitted or granted before the BNG implementation date for NSIPs). This is to ensure BNG is not retrospectively applied to developments, which can be difficult to calculate and implement'*.

Energy UK would be inclined to support this position, recognising that NSIPs are often subject to both material and non-material changes as the detailed design is finalised. However, further clarity on the bounds which would be placed around this is required. For instance, if a DCO was varied to extend the order limits or increase the size of the development, would the BNG exemption carry over in full? Energy UK would support a position where extensions to an existing DCO submitted prior to mandatory BNG remain exempt from BNG unless the extended development was of such a size that it would, if implemented in isolation, be considered development requiring a DCO. In such a situation, members would support the BNG requirement being applied to the extended area only.