

Response to the Consultation on the Defra Net Gain Proposals From Local Nature Partnerships across England

Introduction

As this is a collective response from Local Nature Partnerships across England we will confine it to key issues on which we have (1) a collective view and (2) relevant experience. We have therefore focused on answering the consultation questions that meet these two requirements and so not all questions have been answered in this response. We urge Defra to review, just as strongly, those responses from individual LNPs where questions here have not received comment.

Local Nature Partnerships

Local Nature Partnerships (LNPs) are partnerships of a broad range of influential organisations, businesses and people, from a range of sectors, charged by government with the task of bringing about improvements in their local natural environment in England. To achieve this, they are expected to ensure that consideration for the environment is put right at the heart of local decision-making.

LNPs originated in a vision set out in the UK Government's 2011 'Natural Environment White Paper', which identified the need to take greater account of the value of the environment when strategic decisions are made that affect people and the local economy.

LNPs have been cited as part of the implementation of the Government's 25 Year Environment Plan (25 YEP) through the development of Local Natural Capital Plans. LNPs are developing Local Natural Capital Plans to ensure optimal use and development of natural capital at sufficient scale to maximise investment opportunities and ensure biodiversity gains. Many LNPs are actively involved with implementation and strategic oversight of net gain policies in their areas and see great potential for further engagement. LNPs support the development and clear identification of Nature Recovery Networks (NRN) as a vehicle for maximising biodiversity gain and ensuring effective connectivity and scale. It would be helpful if the proposals for Biodiversity Net Gain (BNG) are integrated clearly with the proposals for the NRNs.

Opportunities from mandatory Biodiversity Net Gain

LNPs see 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 to BNG 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 and sustainable placemaking combined with high quality 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. Included in this, a baseline

Nature Recovery Network (NRN) – as mentioned in the 25 Year Environmental Plan – should be developed and made accessible to Local Planning Authorities (LPA) and consultees.

Whilst the mandating of BNG is a big step in the right direction for environmental conservation (if applied correctly), we also see this as the starting point of establishing a better, more cohesive framework of policies, strategies and legislation that are all aligned and clearly acknowledge the value nature provides our people, our economy and our way of life. This must be recognised throughout the decision-making process and contribute to the universal call to action made by the UN Sustainable Development Goals (SDGs).

Biodiversity net gain – and working towards environmental net gain in line with the 25 Year Environment Plan – presents the Government with a time-critical opportunity to ensure that all departments understand fully the natural capital concept, the benefits to all by applying it, and to embed it within their policies and practices. It should not be seen in isolation. With cross-departmental commitment from HM Treasury, alongside Defra, MHCLG, DfT and all other departments, we wish to see the aligning of policy and law to strive towards gains in biodiversity while optimising the benefits of nature for everyone.

Overarching Concerns

The Local Nature Partnerships fear that this new policy may be treated as a charter to build anywhere without adequate consideration of the mitigation hierarchy. Therefore, it is critical that a change is made within the policy to deter that scenario; ‘net gain *should seek* firstly to avoid and mitigate against avoidable damage’ should be changed to a ‘*must seek*’ requirement.

It is not clear from the consultation at what timescale the mandatory increase should be judged to have been achieved. The timescale need to reflect the complexity of the habitat being created, the effort required, and the time needed to reach the required standard and maintain it for the long-term. We would value further clarity on how this will be monitored. Habitats change significantly over time depending on management and presence or absence of herbivores, so judgement of BNG needs to be recognised as an approximate science. Human management also requires ongoing funding that must be adequately factored into any BNG mechanism to ensure projects are fully resourced to achieve desired outcomes.

There are further concerns about the level of skills and training required across the country to implement these proposals. If implemented effectively and cohesively it should create a more streamlined approach for Local Planning Authorities (LPAs). It is likely that extra capacity would be needed, depending on the role that could be played third party brokers..

Whilst the proposals do state that BNG will not weaken existing protections for irreplaceable habitat, we emphasise that some biodiversity losses cannot be compensated for in the short term however well designed or funded the compensation scheme is. Therefore net gain mechanisms are not an effective alternative solution.

Consultation Questions and Responses

What development should be in scope of a net gain policy?

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

LNPs believe that mandating the net gain proposals will ensure much 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 system. Net gain principles are important to support delivery of housing targets without eroding environmental resilience or undermining the 25 YEP's ambitions to restore nature. 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.

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 and Local Planning Authorities (LPAs) with surety as to their obligations and expectations with regard to 'biodiversity net gains' as set out in the National Planning Policy Framework 2018 (NPPF).

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. 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.

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, or other payment mechanisms where tariffs are inappropriate, that factor in adequate support to LPAs and Local Environmental Record Centres.

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

There are a wide range of actions the government can take to support such delivery, but collectively, we have focused on a small number of suggestions, with further ideas being presented within consultation responses from partner organisations.

a) A Spatial Plan – Nature Recovery Network

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.

These should be developed locally (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 will inform carefully designed development to positively contribute to the ecological network.

b) National Infrastructure

All major and minor development should demonstrate BNG using the metric and applying the mitigation hierarchy. Any applications made under Planning Act 2008 and Transport for Works Act 1992 should be included. Therefore, we need to ensure major national infrastructure projects are also covered by the mandatory requirements outlined in this proposal e.g. High Speed Two and other railway infrastructure.

c) Adequate resource and training

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, brokers, 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.

Robust monitoring will require a formal strategy to be developed and a baseline of data from which to monitor. 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.

Free training should be provided to LPAs, their infrastructure teams, developers, house builders, planning consultants and other delivery partners to ensure they all understand and implement the BNG process correctly and effectively. This should be delivered for free through accredited local 'champions' or alternative methods.

Local Nature Partnerships are ideally placed to contribute to strategic and consistent approach to BNG across their area as they already bring together all relevant partners such as LAs, NGOs and landowners.

d) Incentivisation and legal backing

A legal framework needs to be established that ensures biodiversity net gains are retained into the long term – e.g. conservation covenants applied to land. Furthermore, there are inevitably risks associated with such a mechanism, so a legally robust approach needs to be set up to ensure that sites are not deliberately damaged to reduce their BNG value either at planning application stage or when landowners seek to sell land, therefore undermining the entire net gain system. Incentives (among other

methods) 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.

Natural England, the Environment Agency, or the proposed Office for Environmental Protection, for instance, 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.

3. Should there be any specific exemptions to any mandatory biodiversity net gain requirement (planning policies on net gain would still apply) for the following types of development? And why?

With the exception of the few cases listed above in relation to Q1, all developments should deliver BNG, 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.

a. House extensions

For household extensions and permitted developments below a certain threshold size (but not necessarily all householder applications) the process could be significantly simplified, e.g. through the use of standard conditions and selection from a suite of potential options.

Due to the mixed views of our partnerships, we feel a specific exemption for house extensions, as well as other forms of permitted development, need to be thoroughly reviewed to evaluate the impact, both positively and negatively, of the inclusion or exemption that they could have on the delivery of BNG.

Gardens can have a high ecological value, acting as vital wildlife corridors between sporadic areas of green space. We have already witnessed dramatic declines in urban wildlife due to the paving of gardens for driveways for example.

b. Small sites

No. Small sites can be important as part of a wider network, providing stepping stones and refuges for wildlife, particularly in an urban setting and do not 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. There is also a risk that large developments could be divided into smaller plots to avoid costs.

c. All brownfield sites

No. 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.

d. Some brownfield sites (e.g. those listed on brownfield, or other, land registers)

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.

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

No. Commercial and industrial sites should not be exempt. 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).

There has also been concern raised by members of the partnership regarding the potential exemptions of 'permitted development'.

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

LNPs advise that for all sites the process involved should be as simple as possible to avoid needless delay and it needs to be proportionate. 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.

Biodiversity features in scope of net gain policy

6. Do you agree that the Defra metric should allow for adjustments to reflect important local features such as local sites? Should the Defra metric consider local designations in a different way?

We support a Defra metric that takes into consideration local importance and circumstance as well as working effectively in both the rural and urban landscapes. Designations require strengthening but this is not critical for BNG to be effective. It is assumed that all sites of statutory and non-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*'.

LNPs envisage that Local Wildlife Sites (LWS) will be incorporated into a coordinating strategy as part of NRNs and their value will be variably weighted according to the habitats they support 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.

How are species treated within a net gain policy?

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

We support the principles of district level licencing and a requirement for all local authorities to adopt a robust licensing approach would be desirable, provided they are given sufficient capacity and if the pilot sites successfully demonstrate net gain.

Any district level licensing scheme must be informed by robust, local, up-to-date evidence which should be provided through properly resourced and supported Local Record Centres.

However, 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. We await evaluation of the NatureSpace Partnership initiative to shed light on the value of the district level licensing approach for the species.

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

No comment.

Ambitions for wider net gain

9. Are there wider elements of environmental net gain that could be better incentivised? If so, please specify which, and any benefits that such incentives could provide.

LNPs 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 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 over time.

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.

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 and the ability to achieve clear net gains.

A biodiversity metric

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

Yes. LNPs believe the Defra metric is a useful tool and welcome the ongoing development of a clear metric which is widely used to create comparability and consistency across the country – version 2.0. In the new version we would like to see a clearer emphasis on the value of irreplaceable habitat, which should be totally protected, and more weight given to the quality and quantity of new habitat created. Locally derived metrics that allow for local variations in habitat quality and rarity/distinctiveness, etc, would also be useful to ensuring that the delivery of net gain in biodiversity is characteristic of the local area and makes a meaningful contribution to the landscape. They also need to ensure effectiveness across both urban and rural landscapes.

Furthermore, the current metric, being based on hectareage of habitat, does not adequately value freshwater habitats such as ponds, which are particularly important at the landscape scale; they have been shown to contribute as much to regional biodiversity as rivers or lakes.

A standard national metric such as this will ensure consistency for both developers and local planning authorities alike. Yet, this is merely a tool to support measurement of biodiversity net gain and therefore it must be adequately scrutinised to ensure that the tool cannot, or is not, being abused through the input of incorrect or unrealistic data. In the same manner, expertise is required to apply the tool and interpret accordingly, requiring adequate resource and training to be provided – the direct training of local ‘champions’ could be a mechanism by which further training can be delivered efficiently and effectively across the country.

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

The metric, once published, must be supported by good, 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.

There are concerns among the partnerships with regard to condition scoring and the potential for restoration. 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 and we would welcome involvement in this thought process to help relay the mixed views of the partnerships and their members.

With that in mind, we do agree however, that condition must be part of the habitat creation/management requirements, aiming to restore all habitats to ‘good’ condition as a minimum.

With regards to including species within the metric, we appreciate the complexity involved and not all LNPs agree as to whether species should be included. Therefore, we would like to be involved in the development of any later species metrics – and would urge that development of these shouldn’t hold up the implementation of the BNG mechanism.

Habitat connectivity is extremely important, but by including this as a measure in the metric – receiving a higher score for being better connected – 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. Scoring connectivity as well as habitat also risks diluting the habitat-only scoring – which could result in less habitat, albeit possibly better joined-up.

How much ‘gain’?

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

LNPs feel that 10% is a favourable figure for developers, but we do not feel 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, with Lichfield District Council as a prime example along with the Environment Bank securing upwards of 25% increase (gain) in biodiversity units. By taking a more ambitious approach it is more likely that BNG will effectively contribute to nature’s recovery and the goals of the 25 Year Environment Plan.

We would not want to see it 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.

NB: This question has not sought agreement from the Greater Manchester Natural Capital Group and therefore the Greater Manchester Local Nature Partnership cannot fully endorse this response to question 12.

Mitigation hierarchy

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

It is 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 in 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. Also, the example of the system used in Warwickshire, Coventry and Solihull relates to no net loss and not to net gain.

It will be essential to explicitly mandate the mitigation hierarchy so that an ‘avoid first’ approach is clear and transparent. Yet, we accept there will be many situations where on-site mitigation is not possible or is very limited, so this mechanism may be needed.

The mitigation hierarchy should define the circumstances by which this is acceptable, with on-site and local opportunities exhausted first. Such tariffs from developers could be used to create a pooled fund to realise strategically mapped priorities for off-site compensation at a landscape-scale. 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. Local delivery is key.

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.

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.

Spatial preference

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

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. However, the production of this spatial baseline should not delay the implementation of the BNG scheme.

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. We also believe that such maps can sit alongside existing maps to enhance BNG delivery locally – for example, Biodiversity Opportunity Area maps, green infrastructure opportunity maps or natural capital opportunity mapping.

Mapping spatially in a standardised system will enable quantitative measures of BNG and show that in equivalent habitat quality. There is a 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.

As stated above, where on-site net gain is not possible, or appropriate, tariffs or other funding mechanisms such as the purchase of conservation credits by developers could be used to create a pooled fund to realise strategically mapped priorities for off-site compensation at a landscape-scale.

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 and other partner organisations.

Assessment of habitat type and condition

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

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.

A survey methodology needs to be established that is robust, transparent and independent, as well as able to withstand scrutiny. 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 Record Centres 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.

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.

Baseline

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

Yes. These should include local data with the resolution/ground truthing consistently applied and properly resourced. 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.

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. 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.

There is also an issue around lack of funding for Local Environmental Records Centres, who are key to ensuring that data is collected, collated and checked to ensure that it is robust.

17. Should this be applied, as a minimum baseline, to:

- a. net gain calculations for all development?
- b. net gain calculations in cases of suspected intentional habitat degradation?

Yes.

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

There should be a type of penalty, or high uplift for land that has been intentionally degraded prior to sale or planning permission. There will need to be a time period during which the deliberate habitat degradation will have to have taken place.

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.

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

See above, question 18.

How should biodiversity priorities be identified?

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

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

As reflected in question 14, LNPs feel biodiversity priorities should be guided at both the 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. 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.

This opportunity mapping will require additional resources for both the statutory sector (Natural England, Local Authorities, etc), and the voluntary sector (including Local Environmental Records Centres) who hold much of the expertise and data.

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

There are many other considerations that should be investigated to identify biodiversity and natural capital priorities, along with the statement provided in question 9. The LNPs 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.

Provision of compensatory habitats

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

We urge great caution when considering the creation of a biodiversity "market" and "cost-effective units" as stated in question 23. We request that Defra review responses from the individual LNPs to expand their views on both this question and that of question 23.

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

- a. Sufficient biodiversity units for development?**
- b. Cost-effective biodiversity units?**

As above.

Legacy

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

Yes. As outlined in the consultation document on 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".

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

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

There are mixed views among the partnerships regarding the minimum duration. Ideally habitats should be maintained in perpetuity, with the potential for covenants to be legally binding as a mechanism to safeguard land allocated for BNG. However, a review of potential situations where this cannot be achieved should be undertaken and due consideration given to such scenarios. The LNP would welcome direct discussion regarding this. It must also be born in mind that habitats naturally change and evolve over time so the biodiversity objectives and assessment criteria for each site should be flexible.

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

Yes. We support a full exploration of this option and different models considered.

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

The covenants must be legally binding, be registered and sample-checked with a mechanism for redress for unachieved gains. As per question 18, more robust application of the current wildlife legislation

would be necessary. These, or other models, will require adequate resource to draft in a robust manner to ensure fully implemented and avoid legal loopholes and issues with changes in land ownership.

Tariff rate

For all questions under this section (**28 – 30**) we feel that further investigation is needed to adequately explore the proposed tariff range and thus put forward a national LNP consensus. We therefore would be eager to work with Defra to shape this proposed range with our broad partners.

However, we do agree with the principle that any tariff should cover the costs of both the replacement and maintenance of habitats, and the delivery and monitoring costs. 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.

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

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

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

How a tariff could be collected and spent

31. How should the tariff revenue be collected?

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

Any tariff revenue should be collected as locally as possible, as part of the planning application process, similar to Section 106 agreements and the Community Infrastructure Levy (CIL) (if appropriate) and tie in with these existing mechanisms. This would support a more consistent approach. Yet, a cost of administration would need to be considered in any BNG calculation.

32. How should the tariff revenue be spent?

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

Any tariff revenue should be collected and spent as locally as possible. Although a blended model, in exceptional circumstances, following agreed principles may support the investment in large-scale national biodiversity enhancement projects.

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

Spending should reflect national biodiversity priorities if spent nationally rather than where has contributed the most in payments. However, those areas which have contributed the most need to be recognised accordingly for their biodiversity losses.

Impact on Local Authorities

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

Adequate resourcing will be necessary and should be drawn from the system to support the background administration and the professional expertise required to ensure that the maximum biodiversity benefits are achieved, particularly LPA ecologist teams.

The initial set-up of the BNG mechanism will take time and effort, but once established, given clear guidance and support from government, this should lead to smoother, quicker processing within LPAs. One option to ease burdens on local authorities could be to formally delegate decisions about location of offsets, by agreement, from LPAs to Local Nature Partnerships or an equivalent body – for example, the availability of sufficient baseline ecological habitat data and the spatial mapping.

Lead in time is likely to be required to assist the upskilling and administration preparation of LPAs. However, we appreciated that this may lead to a short-term increase in planning applications where developers seek to "avoid" the mandatory net gain approach.

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)?

This is a difficult area that LNPs would need to seek further engagement with their local authority partners on. It would be useful to look at the ways in which s106 has been delivered on an administrative basis to inform how net gain could operate.

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

- a. local authority administration?**
- b. a nationally managed funding scheme (which could then reinvest in local habitat schemes best aligned with national strategic environmental priorities)?**

See previous answers.

Impact on developers

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

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". 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.

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 and sustainable placemaking combined with high quality biodiversity enhancements.

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

As per question 9. We would be cautious about possible trade-offs – achieving gains on environmental issues should not be as a result of trade-offs with BNG.

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

No comment.

Implementation of mandatory biodiversity net gain

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

We agree an orderly transition is required but that the policy should be implemented as soon as practicable.

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

The current planning appeal process is somewhat time consuming 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. 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. We do not think that consideration of this should hold up any progress on initiating the BNG scheme.

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

See above.

Quality assurance

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?

We advise that Defra thoroughly review the individual responses from the LNP family to reflect on all the ideas to mitigate the issues they feel pertinent and what they consider should be taken into account as there are many ideas that we feel are better represented individually to ensure we maintain a collective viewpoint.

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

We need to ensure that the system can run robustly. We therefore recommend that there is a requirement of responsibility for annual reporting (available publicly) from each region to monitor

overall net gain (or loss), within the context of the BNG scheme. This should contribute to a country-wide view of progress and facilitate the sharing of best practice. This provides accountability and transparency and may not need to be the direct responsibility of local authorities, but could be delivered collaboratively, possibly by LNPs if sufficiently resourced to do so. Members of our LNP family have provided information on the kinds of topics that should be reported on.

There have also been useful suggestions for a register to be held of biodiversity units.

45. What technological or other innovative mechanisms could facilitate the delivery and monitoring of biodiversity net gain?

No comment. See question 43.

Summary

In summary, this consultation is welcomed overall and 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 and the benefits of a mandatory system in planning include; clarity, certainty, attraction of investors to capitalise habitat banks, 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 attaining considerably more. BNG should be delivered first and then over time other asset classes can be introduced. Careful consideration needs to be given between the balance of offsite and onsite delivery.

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 facilitated the sharing of best practice.

The national collective of LNPs has a wealth of expertise within its ranks and therefore we have the capacity to advise, where appropriate, specific elements of the proposal. We would welcome an opportunity to comment on a more detailed proposal after this consultation and offer the support and engagement of the Local Nature Partnerships in the next stages.

Date: Friday, 08 February 2019

Signed:

Bedfordshire Local Nature Partnership
Birmingham and Black Country Local Nature Partnership
Buckinghamshire & Milton Keynes Natural Environment Partnership
Cumbria Local Nature Partnership
Devon Local Nature Partnership
Dorset Local Nature Partnership
Gloucestershire Local Nature Partnership
Greater Manchester Local Nature Partnership
Hull & East Yorkshire Local Nature Partnership
Kent Local Nature Partnership
The Marches Nature Partnership (a working partnership of **Shropshire, Telford & Wrekin** Local Nature Partnership and **Herefordshire** Local Nature Partnership)
Morecambe Bay Local Nature Partnership
Nature Connected (the **Liverpool City Region** Local Nature Partnership)
Northamptonshire Local Nature Partnership
North East Nature Partnership
Northern Upland Chain Local Nature Partnership
North Yorkshire and York Local Nature Partnership
Pennine Prospects (the **South Pennines** Local Nature Partnership)
South Yorkshire Local Nature Partnership
Surrey Local Nature Partnership
Sussex Local Nature Partnership
Tees Valley Nature Partnership
Trust for **Oxfordshire's** Environment
Warwickshire, Coventry and Solihull Local Nature Partnership
West of England Nature Partnership
Wild Anglia CIC (the Local Nature Partnership for **Norfolk** and **Suffolk**)
Worcestershire Local Nature Partnership

All signatories listed have approved this response via their own governance process.