



Biodiversity Net Gain for NSIPs
Consultation
Defra Seacole Building
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London
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Our ref: BNG Consultation 2025
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Dear Sir/Madam,

**Response of East Suffolk Council to the Department for Environment, Food, and Rural Affairs
Consultation on Biodiversity Net Gain for Nationally Significant Infrastructure Projects**

East Suffolk Council (ESC) welcomes the opportunity to comment on this consultation on Biodiversity Net Gain (BNG) for Nationally Significant Infrastructure Projects (NSIPs). ESC has extensive experience with NSIPs, including experience with projects that have committed to delivering biodiversity net gain under existing voluntary arrangements. ESC also has a high level of in-house ecological expertise, with our Principal Ecologist, who also has experience of the Development Consent Order (DCO) process, contributing technical knowledge to assist in the preparation of this consultation response.

ESC has set out its responses to the consultation questions in the attached Appendix A, but first wishes to highlight its particular concern about the consultation's proposal to allow NSIP developers to deliver off-site biodiversity gains in any of the local planning authorities' areas the development's order limits span, without incurring a spatial risk multiplier penalty. ESC is concerned that, particularly for linear schemes, this proposal could lead to enhancements being delivered significant distances from where the impacts of the scheme are felt. ESC considers it essential that measures are put in place to ensure that enhancements are delivered locally to where habitat loss has occurred, ensuring fair compensation is secured.

Additionally, ESC wishes to highlight that this consultation is happening alongside the progression of the Planning and Infrastructure Bill through Parliament. The BNG for NSIPs consultation is open for eight weeks, ending in late July. At the same time, the Planning and Infrastructure Bill has progressed significantly in those eight weeks, particularly in respect of proposed amendments to the Bill. The Bill is being brought forward by the Ministry of Housing, Communities, and Local Government, and the BNG for NSIPs consultation is brought forward by the Department for Environment, Food and Rural Affairs. ESC recognises that these are different departmental

initiatives, but nonetheless this consultation makes several references to statutory pre-application consultation, an element of the DCO regime which is proposed to be removed by the Planning and Infrastructure Bill. It is imperative that the biodiversity gain statements that this consultation is seeking views on are aligned with the proposals of the Planning and Infrastructure Bill to prevent confusion and delays to the delivery of the infrastructure required by the Clean Power Action Plan, at the scale and pace required.

If you would like to discuss any of the above responses further, please do not hesitate to contact me using the details above.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Martyn Fulcher', with a stylized, cursive script.

Martyn Fulcher MRTPI

Head of Energy Planning and Coastal Management
East Suffolk Council

Appendix A – Consultation Questions

Confidentiality Question

- 1. Would you like your response to be confidential?**

No

Biodiversity gain objective

- 2. Do you agree that the proposed model text provides sufficient information on the biodiversity gain objective?**

Agree – ESC has no concerns regarding the proposed wording of the ‘Biodiversity gain objective’ section of the biodiversity gain statement model text and considers that it provides sufficient information on the biodiversity gain objective.

Irreplaceable Habitat

- 3. Do you agree that the proposed model text provides sufficient information on irreplaceable habitat?**

Agree – ESC has no concerns regarding the proposed wording of the ‘Irreplaceable habitat’ section of the biodiversity gain statement model text and considers that it provides sufficient information on the application of the biodiversity gain objective where there is irreplaceable habitat on-site.

Calculating BNG

- 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?**

Agree – ESC welcomes the commitment provided in the consultation to making amendments to the statutory biodiversity metric user guide to clarify its application when a scheme crosses multiple local planning authority boundaries, and when a scheme includes associated development sites. Provided that this commitment is realised, ESC is satisfied that the ‘Calculating BNG’ section of the proposed biodiversity gain statement model text, alongside the statutory metric user guide, provides sufficient detail on the process for calculating biodiversity net gain. ESC does, however, note that it disagrees with the proposals for the application of the statutory biodiversity metric where a scheme crosses multiple local planning authority boundaries, as detailed in its response to question 5 below.

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

Yes – The guidance committed to in the consultation, and referenced in ESC’s response to question 4 above, is welcomed by ESC. ESC does, however, note that it has concerns about the proposals to amend the statutory biodiversity metric guidance to allow NSIP developers to deliver off-site biodiversity gains in any of the local planning authorities’ areas the development’s order limits span, without incurring a spatial risk multiplier penalty. ESC is concerned that, particularly for linear schemes that span multiple local planning authorities’ areas, there are no measures proposed to ensure that enhancements are not concentrated in one local planning authority (potentially where the enhancements are easiest or most cost effective to deliver), and are instead distributed, at least to some extent, across all of the local planning authorities proposed to host the development. This would be particularly apparent for schemes within multiple local planning authorities that are geographically separate (for example, the Sea Link grid reinforcement scheme, which affects terrestrial biodiversity in Suffolk and Kent), where enhancements could be wholly delivered in one local planning authority area for impacts felt in multiple areas, detrimentally affecting the other(s).

Whilst ESC acknowledges that this more flexible approach could help developers to deliver enhancements in a more strategic manner, ESC considers it essential that measures are put in place to ensure that the environments directly impacted by the development are properly compensated. ESC proposes that a requirement for biodiversity net gain to be delivered proportionately across the host local planning authorities according to the extent of habitat loss suffered within each authority’s boundaries would be appropriate. ESC considers, however, that, to ensure that developers are provided with a degree of flexibility to allow strategic biodiversity outcomes to be achieved, it could be appropriate for individual projects to be permitted to reach agreement with the host local planning authorities to deviate from this approach where this would help to deliver significant strategic biodiversity gains.

The pre-development biodiversity value

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?

Broadly agree – Whilst ESC agrees that, in most circumstances, it would be appropriate for all habitats within the order limits to be included in the pre-development biodiversity value, it is worth noting one particular circumstance where ESC considers an alternative approach may be more suitable. ESC suggests consideration of potential BNG exemptions or exclusions where habitats have been preserved through Horizontal Directional Drilling (HDD). While there is planned to be no physical disturbance, these areas will still fall within the red line boundary and therefore must be included in the statutory BNG metric calculation (albeit to be shown as retained), which results in a potentially large number of BNG units and may subsequently present feasibility challenges. This

consideration is separate to any consideration of ecological matters in relation to how far beneath or above a habitat works need to be to have no effect on it.

ESC highlights that the nature of NSIP development often differs from that of development under the Town and Country Planning Act 1990, which is not reflected in the consultation document. It is common for NSIPs to include extensive linear (such as overhead pylon routes) or underground elements (such as underground electricity cables). The consultation material does not account for this and presumes that all permanent land within the site boundary needs to be considered as part of calculating the pre-development biodiversity value.

Although ESC recognises that the order limits provide the simplest approach to defining the boundary for the calculation of the pre-development biodiversity value whilst ensuring consistency with the current treatment of BNG for TCPA developments, ESC wishes to highlight one specific example of a situation that requires consideration.

ESC is currently determining a TCPA application for HDD as an alternative to open-cut trenching for part of the length of onshore cable works which were consented as part of an offshore windfarm DCO. Whilst the DCO consented an open-cut approach for the length of the cable route, on reviewing the ecological impact and mitigation measures at a part of the route which passed through a river, the developer decided that an HDD approach would lessen the impacts on this particularly sensitive habitat. Additionally, this approach would also allow the retention of several trees within a small wooded area which would have otherwise been felled. The HDD launch and exit compounds have been located within low value environments, as defined by the Statutory Biodiversity Metric, and have been assessed as being in a poor condition. BNG is a material consideration for this application as a major TCPA application separate from but within the order limits of the DCO. In this case the launch compounds were considered relevant to consideration for BNG, although as the restoration of the environment to its original condition within two years of the HDD works being commenced is considered to be achievable, it is considered that the application fulfilled the *de minimis* exemption. The works below the surface, which constitutes the majority of the development site area, would not result in any net-loss of habitat. Under the proposed regime, this would have had to form part of the overall calculation for the provision of a 10% net gain regardless of whether the *de minimis* threshold had been met. Whilst noting the use and suitability of HDD does depend on numerous factors, financial viability, ESC would not wish to see developers being discouraged from utilising this approach due to the enhanced BNG requirements. Aside for the launch and exit compounds, which should continue to be relevant to BNG requirements as they have the potential to result in loss of habitat, it is considered that the length of the sub-terranean works should be discounted from consideration as part of the pre-development biodiversity of the entire order limits.

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

a. What the pre-development biodiversity value consists of?

Agree – ESC considers that the proposed wording of the ‘The pre-development biodiversity value’ section of the biodiversity gain statement model text provides sufficient information on what the pre-development biodiversity value consists of.

b. The relevant date for calculating the pre-development biodiversity value?

Broadly agree – ESC welcomes the proposal for an earlier date to be used for the calculation of the pre-development biodiversity value in order to discourage deliberate degradation of existing habitats, but considers that further guidance in relation to other circumstances that would justify the use of an earlier date would be useful to assist the developer, the Planning Inspectorate, and the local planning authority during pre-application discussions.

Delivering BNG

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

Broadly agree – ESC notes the consultation’s proposal for developers to be permitted to deliver enhancements on-site and off-site in the first instance, with the purchase of statutory biodiversity credits used only as a last resort. Under the proposed arrangements, developers will not need to demonstrate that they have exhausted on-site options before using off-site land. On-site and off-site delivery are treated equally in the hierarchy, with statutory credits still available as a last resort. This approach differs from the approach used for Town and Country Planning Act 1990 applications, where biodiversity net gain must be delivered on-site in the first instance, before using off-site gains.

ESC recognises the variety of NSIP developments and that a one-size-fits all approach to BNG will therefore not work. For some types of developments, it is easier to deliver on-site BNG than other types of development. Solar is a clear example where on-site BNG can and has been delivered at levels well in excess of the proposed mandatory 10%. For other schemes, delivering on-site BNG is more challenging.

The current proposal is to allow gains to be delivered on-site or off-site in the first instance, in combination with allowing enhancements to be delivered in any of the local planning authorities that the scheme’s order limits span without incurring a spatial risk multiplier penalty. This could result in BNG being delivered a considerable distance from the habitats directly affected by the development. Additionally, the district of East Suffolk is one of the largest by geographical area in England. As a result, particularly in our district, under the current proposals, off-site enhancements

could be delivered and concentrated great distances from the order limits, even in instances where the development is wholly located within a single local planning authority's boundary. ESC wishes to emphasise the importance of local BNG delivery to ensure that the environments that have experienced habitat loss as a result of the development are appropriately compensated.

ESC acknowledges that the proposals could help to prevent developers using compulsory acquisition powers to expand the development boundary in order to facilitate the delivery of on-site gains. ESC also appreciates that the relatively small amount of land typically retained by NSIP developers post-construction is likely to make the delivery of high quality, strategic on-site gains challenging. Therefore, ESC does not disagree with the proposals to allow on-site or off-site biodiversity net gain in the first instance.

ESC considers it essential that communications around this topic are carefully managed by developers. Community understanding around the requirement to deliver BNG and the potential reasons for a preference for on-site or off-site delivery is essential, and responsibility for that lies with project promoters. ESC therefore suggests that guidance for developers is produced in relation to effectively communicating with the community, including providing justification for their choice of on-site or off-site delivery.

The consultation states that “non-significant on-site enhancements do not need a legal agreement to secure their maintenance”, but “it is expected that their biodiversity value will remain at approximately the same or higher value over 30 years”. ESC is concerned about how this expectation would be realised in practice, and considers that a stricter requirement should be placed on developers to secure the maintenance of non-significant on-site enhancements, rather than relying on developers' good-will. ESC also notes that ‘all off-site biodiversity gain will be appropriately secured with a legal agreement...to ensure the gains are maintained for at least 30 years, as this is a requirement for biodiversity gain sites to be registered’. This requirement applies to *all* off-site gains, irrespective of their significance, so ESC questions why the maintenance of non-significant on-site enhancements for 30 years is exempt from the requirement to be secured through a legal agreement.

ESC also notes that the Overarching National Policy Statement for Energy (EN-1) states in Paragraph 5.4.44 that ‘biodiversity net gain should generally be maintained for a minimum period of 30 years, or for the lifetime of the project, if longer’. In contrast, the proposed biodiversity gain statement model text provided in the consultation states that ‘significant on-site enhancements must be maintained for at least 30 years from the completion of the habitat creation or enhancement works’. ESC considers that, in order to ensure alignment with the current wording of National Policy Statement EN-1, the wording of the model text could be made clearer, as follows:

‘Significant on-site enhancements must be maintained for at least 30 years from the completion of the habitat creation or enhancement works, or for the lifetime of the project, if longer’

ESC considers that this consistency is particularly important given that the consultation states that the biodiversity gain statements for each NSIP type will be incorporated into the relevant National Policy Statement when they are next reviewed.

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

Broadly agree, subject to the publication of more guidance. ESC acknowledges that the proposed wording of the 'Delivering BNG' section of the biodiversity gain statement model text provides a non-exhaustive list of criteria that would qualify on-site enhancements as significant. However, ESC considers that, as proposed in the consultation, it would be useful for further guidance to be provided to assist the Examining Authority and Secretary of State in determining what counts as a significant enhancement, particularly given they will be needing to make such judgements on a case-by-case basis, with no precedents to assist them during the early stages of the implementation of mandatory biodiversity net gain for NSIPs. ESC considers that the provision of sector-specific examples of 'significant' on-site enhancements within the biodiversity gain statements for each NSIP type, as referenced in the consultation, would also be useful.

Temporary use of land

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

No – ESC acknowledges the potential challenges that could be faced by developers when attempting to secure biodiversity gains on temporary land take due to landowners' possible reluctance to restrict the use of their land for at least 30 years. However, ESC notes that although this temporary land would be included in the pre-development biodiversity value, there is no requirement for any enhancements to be delivered on the temporary land itself – these could be delivered elsewhere within the order limits, or, under the current proposals, off-site. ESC therefore considers that, although a bespoke policy could be formulated that would alleviate some concerns regarding the delivery of biodiversity gains on temporary land, the temporary land take should not be wholly excluded from the calculation of the pre-development biodiversity value. If a decision is made to introduce a bespoke policy, ESC would appreciate a consultation being conducted to gather views on its specific detail.

Considerations for the delivery of biodiversity gains

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

Disagree – ESC considers that the proposed wording of the 'Considerations for the delivery of biodiversity gains' section of the biodiversity gain statement model text broadly provides sufficient information on the wider considerations for delivering biodiversity gains. However, ESC is concerned

with the proposals to allow NSIP developers to deliver off-site biodiversity gains in any local planning authority area the scheme's order limits span, without incurring a spatial risk multiplier penalty. Further details on ESC's concerns about this proposal are set out in its response to question 5.

Evidence for submission, and decision making

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

a. Evidence for submission?

Agree – ESC welcomes the proposed biodiversity gain statement model text encouraging applicants to share the indicative biodiversity net gain requirement and biodiversity gain plan with relevant consultees as part of the pre-application consultation. ESC also strongly supports the proposed model text encouraging applicants to engage to engaging with stakeholders (including the Planning Inspectorate, the relevant local planning authority, Natural England, and where relevant the Environment Agency and Forestry Commission) as early as possible. However, ESC would note that, during the pre-application consultation stage, gaining access to land to conduct baseline surveys may prove challenging for project promoters, limiting the accuracy, and therefore usefulness, of this early estimate of the biodiversity net gain requirement, and early draft of the biodiversity gain plan. Whilst ESC absolutely welcomes the expectation for engagement and an open approach from applicants, communications from the promoter around this would need to be carefully considered to ensure that local communities do not perceive early plans as commitments, as requirements and therefore plans will inevitably evolve as further survey data becomes available. ESC considers that developing guidance for developers in relation to this could be beneficial.

ESC also notes that the model text states that applicants “should” share their indicative biodiversity net gain requirement and proposed plan with relevant consultees, and are “encouraged” to engage with stakeholders as early as possible. ESC considers that this wording does not go far enough, and stronger language should be used to *require* applicants to engage.

ESC also wishes to note that consideration will need to be given to how the wording of the proposed model text could be amended, should the proposed removal of statutory consultation as part of the Planning and Infrastructure Bill go ahead.

b. Decision making?

Agree – ESC wishes to note, however, an apparent discrepancy between the ‘Evidence for submission’ and ‘Decision making’ sections of the biodiversity gain statement model text presented in the consultation. The ‘Evidence for submission’ section states that “requirements should ensure that all or most of the biodiversity units required to meet the biodiversity gain objective are secured before the development (or a phase of development) is commenced”. This is not reflected in the ‘Decision making’ section of the model text, which states that “The Secretary of State can consider

the biodiversity gain objective as met if there are requirements in the development consent order securing it will be.” This suggests that the Secretary of State could grant development consent where the requirement to meet the biodiversity gain objective does not commit the developer to specific timescales for securing the required biodiversity units. ESC considers that the model text should be amended so that the Secretary of State can only consider the biodiversity gain objective as met if the requirements ensure that the biodiversity units are secured before the development (or a phase of development) has commenced.

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?

Agree – ESC agrees with the proposal to allow updated biodiversity gain plans to be submitted to the relevant local planning authority post-consent, particularly due to concerns raised in ESC’s response to question 12a above in relation to difficulties obtaining all of the necessary survey data to develop an accurate biodiversity gain plan at the application stage. However, ESC considers that the model text should require the applicant to identify any information contained within the biodiversity gain plan that is absent or may not be wholly accurate, and provide sufficient explanation and justification for why this is the case. This should help to ensure that applicants adopt an open approach, providing as much information as is reasonably practicable at the application stage, but making clear where situations (such as difficulties accessing land) have hindered the provision of accurate information, meaning that the biodiversity gain plan will likely need to be amended and submitted for approval post-consent.

Supporting evidence

14. Do you have any evidence for us to consider as part of our final impact assessment on implementing BNG for NSIPs?

No.

Overarching questions

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?

No.

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)?

No.

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?

ESC has no further comments on the draft biodiversity gain statement or on the next steps.

Guidance

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

As stated in its response to question 4 above, ESC welcomes the commitment provided in the consultation to making updates to the statutory biodiversity metric user guide to clarify its application when a scheme crosses multiple local planning authority boundaries, and when a scheme includes associated development sites.

ESC also considers, as noted in its response to question 7b above, that guidance on circumstances that would justify the use of an earlier date for calculation of the pre-development biodiversity value may be useful, to assist the developer, the Planning Inspectorate, and the local planning authority during pre-application discussions.

ESC noted in its response to question 8 above that further guidance for developers on effectively communicating their BNG proposals with the community would be useful. Developers should be expected to provide sufficient justification for their choice of off-site or on-site delivery, helping to facilitate greater community understanding of BNG and the associated decision-making process for project promoters.

ESC stated in its response to question 9 above that further guidance, including sector-specific examples, to assist the Examining Authority and Secretary of State in determining what counts as a significant enhancement would be useful.

ESC noted, in response to question 12a, its concerns in relation to the accuracy of an indicative biodiversity gain requirement and biodiversity gain plan during the pre-application consultation stage. Whilst ESC welcomes the expectation for engagement and an open approach from applicants, ESC considers that some guidance for applicants in relation to effectively communicating the infancy of their plans would be beneficial, to ensure that these plans are not communicated as commitments, as these could later be scaled back in light of further survey data becoming available which reduces the extent of enhancements required.

The documents state that local authorities will not receive dedicated funding to support their roles in NSIP-related BNG work and are expected to recover costs through Planning Performance Agreements with developers. It is essential that local planning authorities, and other statutory bodies as appropriate, are properly resourced for the increased workload this will generate. Guidance on how to ensure costs incurred can be fully recovered, including how BNG-related work can be suitably incorporated into Planning Performance Agreements, and how to secure ongoing monitoring and enforcement costs for gains secured via legal/section 106 agreements, would therefore be useful.

It is also essential to clearly define the local authority's role in the discharge and enforcement of BNG requirements, a key element for local authorities to plan future resourcing. For NSIPs that cross multiple local authority boundaries, responsibility for reviewing and discharging BNG-related requirements will require discussion and agreement between the affected authorities during pre-application discussions. One option is for a "lead authority" model to be adopted, with one LPA taking the formal role as discharging authority, potentially in consultation with others including relevant conservation bodies, to be secured by Requirement in the Development Consent Order.