

Biodiversity Net Gain (BNG) Protocol

1. Introduction

1.1 Biodiversity net gain (BNG) is an approach to development, and/or land management, that aims to leave the natural environment in a measurably better state than it was beforehand. The Environment Act 2021 requires that all planning permissions granted in England (with a few exemptions) deliver at least 10% biodiversity net gain from November 2023. BNG will be required for small sites¹ from April 2024. BNG must be measured using DEFRA's Statutory Metric (version 4.0² or updated version) and habitats must be secured for at least 30 years. The metric is a Microsoft Excel-based tool and therefore requires Excel to operate.

1.2 Natural England has produced a short, high-level brochure introducing BNG (Attached as Annex 2)

2. Purpose of this protocol

- 2.1 The purpose of this Protocol is to provide guidance for applicants/agents and decision makers on how BNG should be taken into account within development proposals following the enactment of the Environment Act 2021, for both major and minor applications.
- 2.2 This protocol also sets out the Tonbridge and Malling Borough Council's (TMBC) interim policy position on BNG in advance of the adoption of the new Local Plan (anticipated 2026) and forms a material consideration that will be taken into account by decision makers when determining planning applications.

¹ Small sites are defined as:

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

² <https://publications.naturalengland.org.uk/publication/6049804846366720>

3. Context

- 3.1 The Environment Act 2021 makes BNG mandatory for all but small sites and some exemptions from November 2023 and for small sites from April 2024.
- 3.2 The Act sets out the following key components of mandatory biodiversity gain:
- Amends the Town and Country Planning Act 1990 (TCPA);
 - Minimum 10% gain required calculated using the Biodiversity Metric & approval of a biodiversity gain plan;
 - Habitat secured for at least 30 years via planning obligations or conservation covenants;
 - Delivered on-site, off-site or via a new statutory biodiversity credits scheme; and
 - National register for net gain delivery sites.
- 3.3 BNG maintains the mitigation hierarchy of avoid impacts first, then mitigate and only compensate as a last resort. It does not change existing legal protections, so current legal and policy provisions relating to development impacts on the natural environment, including protected sites and species, and priority species and habitats, all need to be considered in relation to habitat loss. A development cannot avoid this requirement by virtue of delivering a net gain. If there are protected species on-site, then these should be approached and managed in the same way as they are currently. BNG and the biodiversity metric calculations would then be additional to this. NE have confirmed that habitat creation required under existing legislation can be included as part of their overall unit calculation but cannot alone get beyond the equivalent of no net loss and have advised that consultants should complete two different metrics - one detailing the 'compensation measures being included only' – to clearly show what has been included but not beyond the equivalent of No Net Loss.
- 3.4 Green Infrastructure (GI) can form part of BNG and the most common GI features are captured within the metric and can contribute towards a BNG outcome. It is for the consenting body (Local Planning Authority) to determine whether or not the proposal is appropriate (ecologically) or not.

4. When BNG applies

- 4.1 Mandatory BNG will apply to major applications submitted after BNG takes effect in November 2023 (or April 2024 for small sites).
- 4.2 Mandatory BNG will also apply to Nationally Significant Infrastructure Projects (NSIPs) (expected in 2025) but not marine development.

Exemptions

- 4.3 The following are exempt from BNG:

- Householder applications
- Small scale self-build or custom housebuilding
- development impacting habitat of an area below a 'de minimis'³ threshold of 25 metres squared (5m x 5m), or 5m for linear habitats such as hedgerows and watercourses and biodiversity gain sites (where habitats are being enhanced for wildlife)
- if the proposal is for a biodiversity gain site
- if the proposal is for a temporary impact that can be restored within 2 years
- if the proposal only relates to existing sealed surfaces e.g. tarmac or buildings).

4.4 Reserved matters applications will not be required to fulfil mandatory BNG if the outline was approved prior to mandatory BNG.

5. How it's measured

5.1 BNG is calculated using the Statutory Metric **INCLUDE LINK WHEN AVAILABLE**, which measures the biodiversity value of habitats in 'biodiversity units' as a proxy for nature.

5.2 The metric can be used to calculate how a development might change the biodiversity value of a site. It can help an applicant/agent design, plan and make land management decisions that better support biodiversity.

5.3 It uses changes in the extent, distinctiveness⁴ and condition of habitats, and compares the biodiversity value of habitats found on a site before and after development to determine if there is a loss or gain in biodiversity.

5.4 There are 4 key factors that underpin this comparison:

- habitat size
- condition
- distinctiveness
- location

5.5 The applicant/agent will be responsible for completing the metric on submission of a planning application, not the Local Planning Authority (LPA).

³ The de minimis threshold applies to the area or length of habitat within a development, not the total development footprint, and the same exemption will apply for small sites. If a development contains less than 25m² of non-priority habitat but 5m or more of linear habitat, or vice-versa, then the exemption will not apply and all habitats would be subject to BNG. If the exemption does apply then there is no requirement to deliver BNG on that site.

⁴ As defined by Natural England in [Biodiversity Metric 4.0 – Technical Appendix 2 – Technical Information](#)

6. Strategic Significance and Spatial Risk multipliers

- 6.1 Spatial Risk and Strategic Significance multipliers form part of the statutory biodiversity metric and assign a numerical score to habitat parcels.
- 6.2 The Spatial Risk multiplier incentivises habitat delivery on or close to the development site and reduces the biodiversity value of habitats delivered further away from the development.
- 6.3 The Strategic Significance multiplier is a score that describes the local significance of the habitat based on its location and the habitat type. Strategic significance helps to incentivise the creation and enhancement of the right habitat in the right place and the scoring gives additional unit value to habitats that are located in preferred locations for biodiversity and other environmental objectives.
- 6.4 The expectation is that Local Nature Recovery Strategy (LNRS) will be used to help inform the Strategic Significance scoring. However, as a LNRS for Kent is not yet in place, the Kent Nature Partnership (KNP) have developed Interim Strategic Significance Guidance [INCLUDE WEB LINK](#) that applicants/agents can use to inform their metric calculations prior to the adoption of the LNRS.

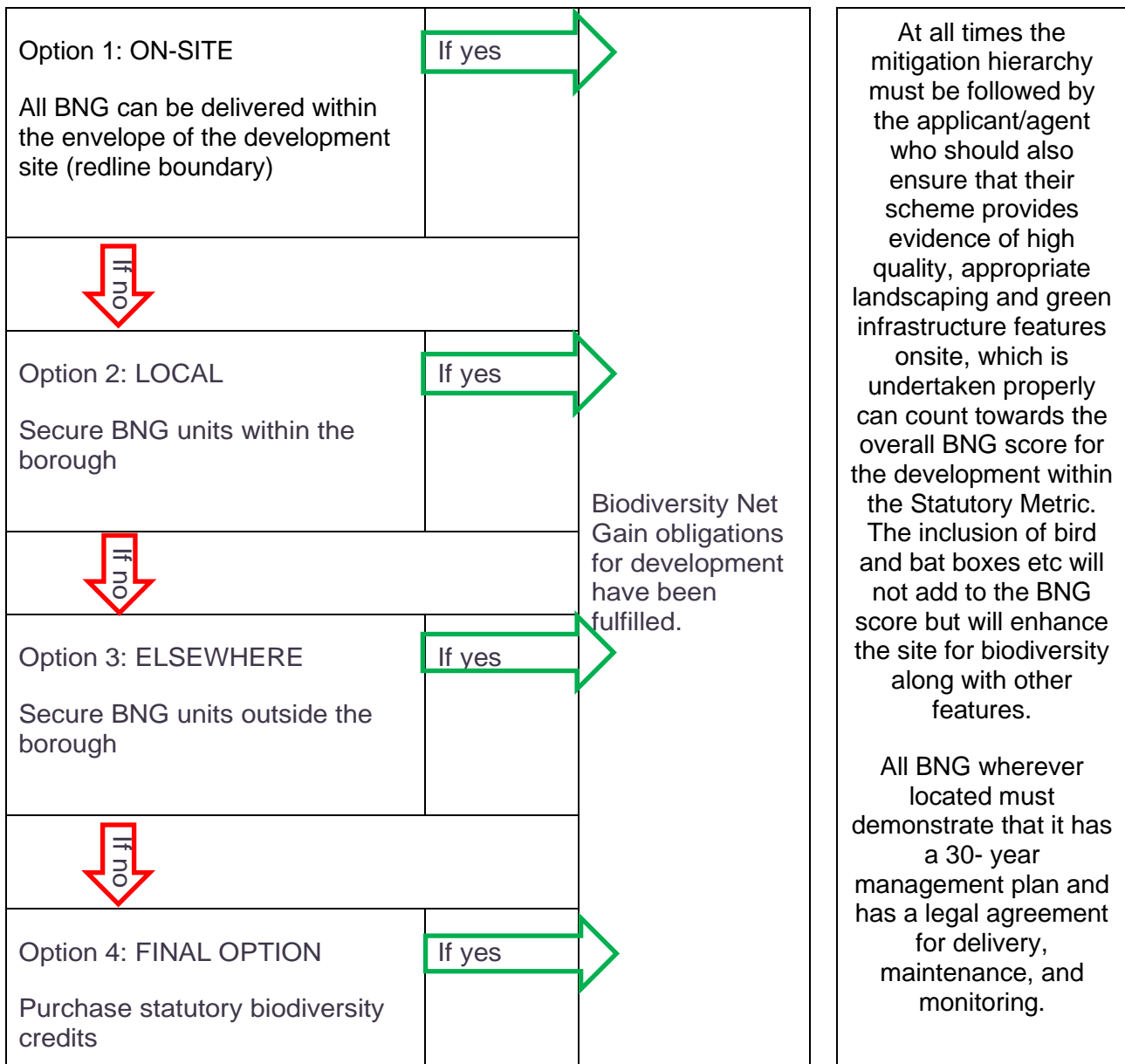
7. Interim Policy approach

- 7.1 TMBC does not currently have an adopted Local Plan policy relating to BNG. Therefore, in addition to the legislative requirements, TMBC has set out an interim policy approach below which will be a material consideration until the new Local Plan is adopted. This establishes TMBC's expectations in relation to BNG and seeks to respond to the requirements of the Environment Act, the National Planning Policy Framework (NPPF), and the biodiversity emergency declared by TMBC in 2019.

Major Sites

- 7.2 From November 2023, all major development shall deliver at least a 10% net gain in biodiversity value. BNG calculations must be undertaken using the DEFRA Statutory Metric and be secured for at least 30 years. Metric assessments should be undertaken by a suitably qualified and/or experience ecologist.
- 7.3 The delivery of BNG onsite is the preferred solution. However, where a development cannot achieve the full BNG requirement either wholly or partly onsite within the application boundary (red line boundary), then the applicant/agent will need to secure local off-site units either on land they own away from the development, or on land where they have bought biodiversity units.
- 7.4 **TMBC expect any off-site units associated with development in the borough to be provided within Tonbridge and Malling prior to consideration of sites outside of the borough. Opportunities for delivery within the borough should**

be explored in the first instance. An applicant/agent should explore the Kent BNG Register to help identify local off-site opportunities.



7.5 To assist an applicant/agent in identifying off-site opportunities, the Kent Wildlife Trust have established a Kent BNG Register **INCLUDE WEB LINK** where landowners can identify local land available for purchase for BNG units. Other habitat banks are available; however, the aim of the Kent BNG Register is to identify local opportunities.

7.6 Natural England have established the national Biodiversity Gains Sites National Register for England to record allocations of off-site biodiversity gains and make this information publicly available. The National Register will not act as a marketplace platform for buying or selling units, **INCLUDE WEB LINK**. It is the responsibility of the

applicant/agent to contact the landowner in question and pursue off-site opportunities not the LPA. Any land used for off-site BNG will need to be registered on the National Register. The responsibility for registering sites on the National Register is the responsibility of the applicant/agent and/or landowner, not the LPA.

- 7.7 If a shortfall in the units required to achieve at least 10% BNG remains, having explored on-site and local off-site options, an applicant/agent can purchase statutory biodiversity credits from government as a last resort. An applicant/agent must provide evidence of how on-site and off-site is not available prior to using this option. The price of these credits are set by DEFRA⁵, and sold on their behalf by Natural England via a credit sales service.
- 7.8 A Habitat Management and Monitoring Plan will be required to be submitted to the LPA, detailing how the post-development biodiversity values of the site and any supporting off-site provision will be secured, managed and monitored for at least 30 years. **INCLUDE LINK TO MONITORING AND MANAGEMENT PLAN TEMPLATE**

7.9 Small sites

- 7.10 From April 2024, all small sites shall deliver at least a 10% net gain in biodiversity value. BNG calculations must be undertaken using the DEFRA small sites metric for onsite gains and the Statutory Metric for off-site gains or where high or very high distinctiveness habitat is involved. Gains will need to be secured for at least 30 years. Metric assessments should be undertaken by a suitably qualified and/or experience ecologist.
- 7.11 Until April 2024, paragraph 179 of the NPPF provides the policy context for BNG on small sites and identifies that opportunities for securing *measurable* net gains for biodiversity should be pursued. A specific percentage gain is not stated in the NPPF, however potential for net gains should still be explored. Applicants/agents may choose to use the small sites metric 4.0⁶ prior to BNG becoming mandatory for small sites to assist in demonstrating *measurable* net gains on-site or the Statutory Metric for off-site gains.

8. What is required, and when?

Biodiversity Net Gain Statement

- 8.1 A BNG Statement must be submitted to the LPA alongside the planning application. A draft template has been prepared by DEFRA which can be found in Appendix 1. **(INCLUDE WEB LINK)**
- 8.2 Applications can only be validated if the Metric is completed correctly and submitted in an Excel format. It must demonstrate that a minimum 10% biodiversity net gain can

⁵ <https://www.gov.uk/guidance/statutory-biodiversity-credit-prices>

⁶ <https://nepubprod.appspot.com/publication/6047259574927360>

be achieved and include the name of the competent person who carried out the assessment and the date on which that assessment was carried out. Natural England have published a [User Guide](#) to help complete the Metric. **TMBC require a working version of the Metric to be submitted in Excel format for officer use, as well as a PDF copy which will be uploaded to the public domain.**

- 8.3 Where an applicant/agent has cleared a site prior to an application, this is known as purposeful degradation. In such instances, a base date for the baseline condition calculation of 30/01/2020 should be taken.

Biodiversity Gain Plan

- 8.4 A Biodiversity Gain Plan must also be submitted to the LPA for approval prior to commencement of the development in accordance with Schedule 14 of the Environment Act⁷. This can be submitted either with the planning application or after the permission is granted but must be approved by the LPA before development has commenced. Kent Ecological Advice Service (EAS) will be providing technical support in the assessment on Biodiversity Gain Plans for the TMBC. A draft template for the Biodiversity Gain Plan prepared by DEFRA can be found in Appendix 2.

INCLUDE WEB LINK TO TEMPLATE.

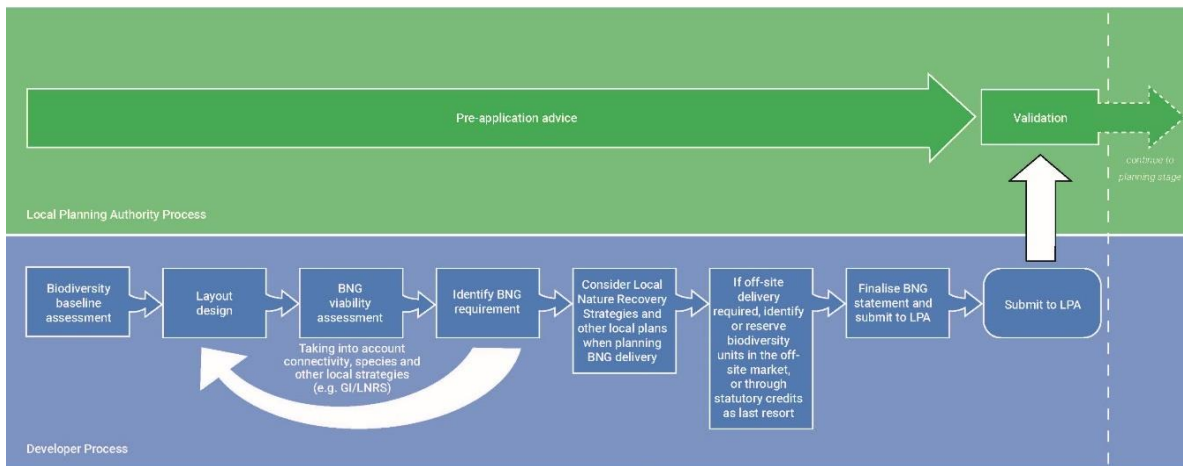
- 8.5 An applicant/agent will need to employ a 'competent person' to conduct the habitat survey and assessments and complete the metric tool.
- 8.6 For outline applications, the metric can be applied on an indicative basis and by adopting a precautionary approach when ascribing habitat condition and distinctiveness values.
- 8.7 It will be the responsibility of the applicant/agent to find a suitable location for off-site BNG delivery. This land will need to be legally secured and managed for the duration of the BNG period. As stated above, TMBC expect any off-site units associated with development in the borough to be provided within Tonbridge and Malling prior to consideration of sites outside of the borough.
- 8.8 Additional biodiversity gain information that sets out how biodiversity gain will be achieved across the whole site on a phase-by-phase basis will be required for outline planning permissions and phased development. Such development will also be required to be subject to a condition, in accordance with Schedule 14 of the Environment Act, which requires approval of a Biodiversity Gain Plan prior to commencement of each phase.
- 8.9 The LPA will need to be satisfied that the metric has been used appropriately. It is the LPA's decision whether the biodiversity net gain information accompanying an application is acceptable and whether to refuse or not on this basis, using the evidence submitted by the applicant, including on any locally distinctive habitats, to

⁷ Environment Act 2021 (legislation.gov.uk)

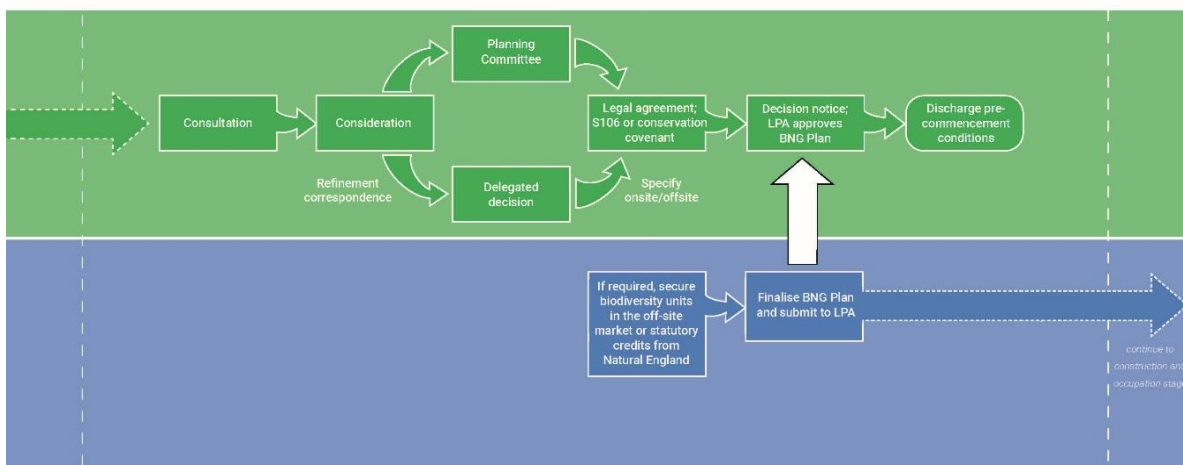
inform that decision. The Kent EAS will be providing ecological advice to TMBC on this matter.

- 8.10 A minimum size for on-site BNG won't be set in legislation and will need to be assessed by LPAs as part of the planning approval process. The minimum viable area for particular habitats will vary depending on the habitats in question. A range of guidance is available on delivering viable biodiversity improvements and best practice (see Section 11).
- 8.11 The [flow diagram](#) below, produced by the Planning Advisory Service (PAS) in collaboration with Future Homes Hub, illustrates how BNG and the planning process interlink. It identifies the key stages and sets out the expectations for both the applicant/agent and the planning department. This diagram is current draft and may be subject to amendment.

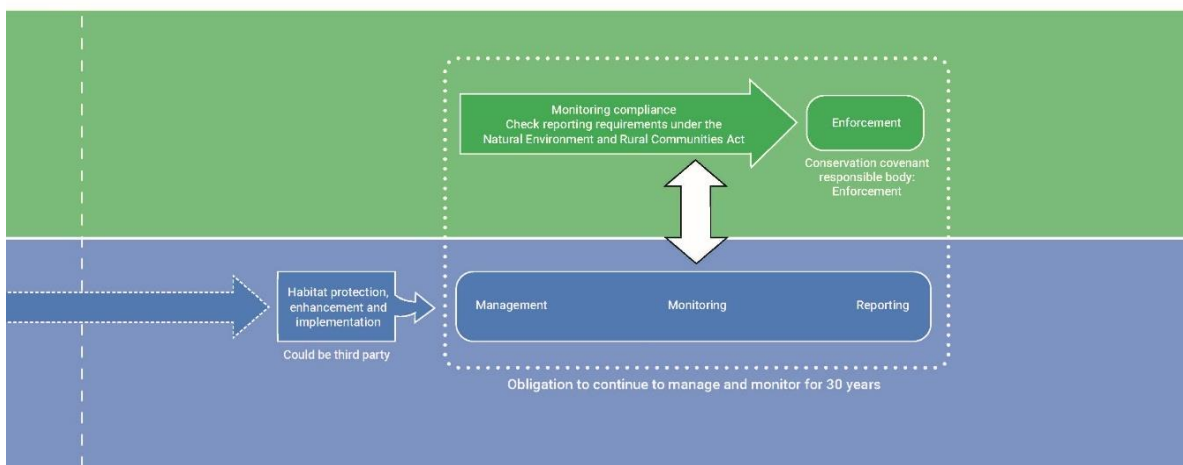
BNG Best Practice Process Flow



PRE-APPLICATION STAGE



PLANNING STAGE



CONSTRUCTION AND OCCUPATION STAGE

9. Monitoring

- 9.1 It's important to be aware that there are two different kinds of monitoring. Habitat monitoring (the actual delivery of the habitat) which sits with the applicant/agent or the person securing the habitat and should be set out in the Biodiversity Gain Plan. Monitoring delivery of BNG sits with the LPA.
- 9.2 Planning authorities will be required to set any specific and proportionate monitoring requirements as part of planning conditions and obligations. A typical monitoring schedule for a project will include reports in years 1, 2, 5, 10, 20 and 30 and will include habitat type, extent, and condition. The frequency and content of these reports will depend on the habitat being created and need to be agreed between the landowner and the Kent EAS. Habitat Management and Monitoring Plans will be checked by Kent EAS. Further guidance on monitoring is expected to be published in Spring 2023.

10. Enforcement

- 10.1 For any potential breaches of the Biodiversity Gain Plan, please contact the Enforcement team at enforcement@tmhc.gov.uk

11. Further information

- 11.1 Guidance and best practice.

<https://cieem.net/resource/biodiversity-net-gain-good-practice-principles-for-development-a-practical-guide/>

<https://cieem.net/resource/biodiversity-net-gain-good-practice-principles-for-development/>

<https://cieem.net/resource/biodiversity-net-gain-case-studies/>

<https://cieem.net/resource/cieem-good-practice-requirements-for-delivering-biodiversity-net-gain-on-and-off-site-july-2021/>

<https://www.bsigroup.com/en-GB/standards/bsi-knowledge/sustainability/the-little-book-of-biodiversity-net-gain/>

Appendix 1 – Draft DEFRA template

Biodiversity Net Gain Statement

Section A: Application information

A1: Details of submission	
Date of submission (update when resubmitted)	
Planning application reference number (if available, may not be available for BNGS submission)	
Relevant Local Planning Authority (if more than one list the one determining the application as lead)	
Site address	
Description of proposed development including any change of use (as stated on the application form)	
A2: Person responsible for BNGS completion or sign off	
Name	
Organisation	
Statement of competency	Relevant qualifications, experience, training, membership of professional bodies (see biodiversity metric User Guide for competency requirements)
Signature	

Section B: Pre-development biodiversity value

B1: Baseline habitat data used to inform metric		
Site plan displaying existing on-site habitats		
Baseline habitat survey report		
Baseline biodiversity metric calculations (full metric or small sites metric)		
Survey date		
Survey constraints		
Please select the local plans or strategies used to inform strategic significance of habitats	Local Plan	Yes/No
	Local Nature Recovery Strategy	Yes/No
	Green Infrastructure	Yes/No
	Landscape Plan	Yes/No
	Spatial Plan	Yes/No

	Network Enhancement and Expansion Zones	Yes/No
	Other	Provide details
Brief description of existing habitat(s) on site (not including irreplaceable habitat)		
Brief description of existing irreplaceable habitat(s) on site (if applicable)		
Total pre-development biodiversity value (in BU):		

Section C: Indicative post-development biodiversity value

C1: Proposed approach to delivering on-site net gain enhancements		
Indicative post-development habitat map or landscape plan (if available at this stage)		
Brief description of proposed strategy to deliver at least a 10% net gain in biodiversity		
Rationale for proposed off-site delivery (if applicable)		
Rationale for proposed use of statutory credits (if applicable)		
Baseline and indicative post-development biodiversity metric calculations (full metric or SSM)		
Total INDICATIVE post-development biodiversity value (in BU):		
C2: Significance of on-site enhancements		
Do you intend for any of your on-site enhancements to be considered as “significant”, and that an appropriate planning condition should be used to secure its long-term management? If so, provide details		
C3: Selling excess biodiversity units		
Do you propose to sell any excess biodiversity units to support delivery of biodiversity net gain on other sites?		Yes/No
If ‘Yes’, give details of the quantity that are likely to be sold and, where possible, information relating to the development to which they will be sold.	[Guide: no more than 250 words]	

Appendix 2 – Draft DEFRA template

Biodiversity Net Gain Plan

Section A: Application information

A1: Details of submission	
Date of submission (update when resubmitted)	
Planning application reference number	
Relevant Local Planning Authority (if more than one, list the Local Planning Authority determining the application as Lead)	
Site address	
Description of proposed development including any change of use (as stated on the application form)	
A2: Person responsible for BNGS completion or sign off	
Name	
Organisation	
Statement of competency	Relevant qualifications, experience, training, membership of professional bodies (see biodiversity metric User Guide for competency requirements)
Signature	

Section B: Supporting documents checklist

B1: Required	
Document	File name (and web link if available)
Completed biodiversity metrics (full or small sites metric)	
Baseline habitat survey report and map	
Post-development habitat map or landscape plan	
B2: Where relevant, may not be necessary for all applications	
Document	File name (and web link if available) or 'N/A' if not applicable
Habitat management and monitoring plan	
Credit receipt references (for biodiversity credits purchased from Natural England)	
Bespoke compensation for:	
Protected species	
Protected sites	

Irreplaceable habitats	
Section 106 agreement	
Covenants or equivalent legal contracts	
B3: Sharing data	
Will you share relevant ecological survey data with: the appropriate Local Environmental Records Centre (LERCs)? another body agreed by the planning authority?	

Section C: On-site pre-development biodiversity value and on-site habitat enhancement

C1: Baseline habitat data used to inform metric		
Survey date		
Survey constraints		
Please select the local plans or strategies used to inform strategic significance of habitats	Local Plan	Yes/No
	Local Nature Recovery Strategy	Yes/No
	Green Infrastructure	Yes/No
	Landscape Plan	Yes/No
	Spatial Plan	Yes/No
	Network Enhancement and Expansion Zones	Yes/No
	Other	Provide details
Brief description of existing habitat(s) on site (not including irreplaceable habitat)		
Brief description of existing irreplaceable habitat(s) on site (if applicable)		
Total pre-development biodiversity value (in BU):		
C2: Adherence to the mitigation hierarchy		
Please set out the steps taken on-site to:		
Avoid impacts to habitats		
Minimise impacts to habitats		
C3: On-site interventions		
Can 10% minimum BNG be delivered on site?	Yes/No	
If No, set out steps taken to try to achieve net gain on site, and provide justification for why this was not possible		

How many off-site biodiversity units are needed to meet the required level of net gain?	
C4: Significance of on-site enhancements	
Do you intend for any of your on-site enhancements to be considered as “significant”, and that an appropriate planning condition should be used to secure its long-term management? If so, provide details	
C5: Selling excess biodiversity units	
Do you propose to sell any excess biodiversity units to support delivery of biodiversity net gain on other sites?	Yes/No
If ‘Yes’, give details of the quantity that are likely to be sold and, where possible, information relating to the development to which they will be sold	[Guide: no more than 250 words]

Section D: Off-site habitat enhancement (if required)

D1: Adherence to the mitigation hierarchy		
Please set out steps taken off-site to:		
Avoid impacts		
Minimise impacts		
D2: Off-site habitat data used to inform metric		
Survey date		
Survey constraints		
Please select the local plans or strategies used to inform strategic significance of habitats	Local Plan	Yes/No
	Local Nature Recovery Strategy	Yes/No
	Green Infrastructure	Yes/No
	Landscape Plan	Yes/No
	Spatial Plan	Yes/No
	Network Enhancement and Expansion Zones	Yes/No
D3: Register reference number(s)		
D4: Securing off-site gains		
Are off-site habitat intervention proposals already secured?	Yes/No	
How have they been secured?		
Total post-development biodiversity value (in BU):		

D5: Risks	
Brief description of risks associated with off-site interventions	
Mitigation measures for risks	
D6: Further habitat intervention	
Are statutory biodiversity credits required?	Yes/ No If Yes, use Section F
How many credits are required?	

Section E: Statutory biodiversity credits (if required)

*Only to be used if on-site or off-site (via purchase of units from registered site) net gain is not available and statutory credits are required

E1: Evidence log to justify the use of statutory credits	
Steps taken to	
Achieve net gain on site	See Section C3
Achieve net gain off site (register search)	
Achieve net gain off site (market search)	
E2: Number of credits	
Number of credits purchased	
E3: Proof of purchase	
Provide link	

Section F: Wider biodiversity net gain obligations

Present on development site? (Yes/No)	F1 Irreplaceable habitat	F2 Designated sites for nature conservation	F3 Protected species
	Yes/ No	Yes/ No	Yes/ No
If Yes, please confirm that you have separately provided the following to the relevant planning authority			
Type and extent on site	Yes/No	Yes/No	Yes/No
Steps taken to avoid and minimise impacts, and justification for any residual impacts	Yes/No	Yes/No	Yes/No

Appropriate bespoke compensation strategy	Yes/No	Yes/No	Yes/No
F4: Net gain legacy			
Briefly describe proposed mechanism for securing long term management and the duration of these agreements Append legal agreement or, if not available at point of submission, letter of confirmation from habitat provider			
F5: Habitat degradation			
Confirmation that, to the best of the applicant's knowledge, any habitat degradation of pre-development habitats since 30 January 2020 has been accounted for in the baseline			
If not, has the action causing degradation been approved by planning permission/s?			
If yes, state the relevant consenting body and reference number			

Section G: Monitoring and reporting

G1: Summary of monitoring requirements	
Provide details of mechanisms to ensure any planning authority monitoring and reporting requirements are satisfied	
G2: Timings	
Years 1 – 5	
Years 6 – 10	
Years 11 – 15	
Years 16 – 20	
Years 21 – 25	
Years 26 – 30	
G3: Monitoring years per habitat type	
Habitat type	Years covered
Habitat type	e.g. 5, 10, 15
Habitat type	
Habitat type	
G4: Responsibilities	

List responsible bodies involved in management and monitoring	
Who outcomes will be shared with	

Section H: Additional information

H1: Limitations and assumptions	
Highlight any additional limitations and assumptions made during the biodiversity net gain process (beyond survey constraints outlined in sections	
H2: Biodiversity net gain good practice. <i>Please note that adherence to the below are not essential to meet the mandatory BNG requirement.</i>	
Does the project adhere to <u>British Standard BS8683</u> ?	Yes/No
Does the project adhere to any additional good practice standards for biodiversity net gain?	
<u>Biodiversity Net Gain Good Practice Principles</u>	Yes/No
Other examples (please add)	Yes/No
Other examples (please add)	Yes/No