Response ID ANON-HV3G-3FUZ-Z

Submitted to Biodiversity net gain for nationally significant infrastructure projects
Submitted on 2025-07-10 17:04:07

Using and sharing your information

Confidentiality Question

1 Would you like your response to be confidential?

No

If yes, please explain::

Your details

2 What is your name?

Name:
Andrew Rylah

3 What is your email address?

Email:
-

4 What is your organisation?

Organisation:
Landscape Institute

Biodiversity gain objective

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

Disagree (please state what additional information you think is required and explain why)

If disagree, please state what additional information you think is required, and explain why:

Our concern here is that in later descriptions, a Biodiversity Gain Plan can be subject to future approvals. This gives uncertainty.

If other, please explain::

Irreplaceable habitat

6 Do you agree that the proposed model text provides sufficient information on irreplaceable habitat?

Not Answered

If disagree, please explain::

If other, please explain::

Calculating BNG

7 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?

Not Answered

If disagree, please state what additional information is required, and explain why:

If you selected other, please explain:

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

Yes (please state what additional guidance you think is required, and explain why)

If yes, please explain::

We agree with the points made in the proposed updates, namely in relation to an NSIP crossing local authority boundaries. In this instance the benefits of physically linked BNG which increases connectivity and / or reduces fragmentation should be made.

Also, we agree that guidance on dealing with associated development outside the main development site is required. This should be based on examples where the associated development definition in DCOs is wide as well as those where it is limited in nature. It should also cover situations where the DCO does not distinguish between the works constituting an NSIP and those which are associated development, such as the Yorkshire GREEN DCO as described in the ExA Recommendation (para 7.4.5).

If other, please explain::

The pre-development biodiversity value

9 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?

Agree

If disagree, please state the circumstances when habitats should be excluded from the pre-development biodiversity value and why:

If other, please explain::

Agree. We consider that there should be more of a disincentive for proposed development taking place on a registered biodiversity net gain site or on an off-site gain site. We agree that the projected biodiversity should be used in these circumstances. But the concomitant effect of planting for BNG for one project then extinguishing that biodiversity, which may have developed over a number of years in order to develop another NSIP should be avoided. See also the comments in response to Q11 regarding the importance the Secretary of State attributed to the timing of delivery of BNG in the Yorkshire GREEN decision letter.

This goes to the heart of our later comments under Q12 on the desirability of a biodiversity and landscape-led masterplan approach for co-located NSIPs.

10 Do you agree that the proposed model text provides sufficient information on:a) what the pre-development biodiversity value consists of?

Not Answered

If disagree, please state what additional information you think is required, and explain why:

If other, please explain::

11 Do you agree that the proposed model text provides sufficient information on:b) the relevant date for calculating the pre-development biodiversity value?

Not Answered

If disagree, please please state what additional information you think is required, and explain why:

If other, please explain::

Delivering BNG

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

Disagree (please state what additional information you think is required, and explain why)

If disagree, please state what additional information you think is required, and explain why:

For land which has been compulsorily acquired for the proposed development and remains in the applicant's, undertaker's or operator's ownership, the maintenance should be in perpetuity and stated as such, not limited to 30 years from the date of habitat creation or enhancement. See also the Secretary of State's confirmation of the secured commitment to management in perpetuity for the Lower Thames Crossing project as set out in their decision letter, (para 390).

For land not in the control of the applicant / undertaker / operator, we agree that it must be maintained for at least 30 years.

However, our concerns for both are over the monitoring of this over the 30 year+ period and what controls the local planning authority will have for enforcement if appropriate maintenance is not delivered or in the case of large-scale plant failure. It is essential that the management / maintenance plan is sufficiently detailed and is secured. It may be appropriate for Secretaries of State to give weight to planning performance agreements (PPA), where the cost (or some of) the ongoing cost of the monitoring is funded by the developer.

If other, please explain::

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

Not Answered

If disagree, please state what additional information you think is required, and explain why:

If other, please explain::

Temporary use of land

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

Yes (please explain why a different policy is required and what this should be)

If yes, please explain explain why a different policy is required and what this should be:

Land subject to temporary use does need to be treated differently for the reasons set out ie because landowners may not be willing to restrict land for 30+ years. However, this cannot be a carte blanche to exclude all land subject to temporary use because of the way in which 'temporary' can be considered in DCOs. For example, we consider that temporary use such as for accommodation areas for large build structures such as nuclear power stations, which would be in existence for many years should be included in the BNG requirement. Whereas land required eg just for a construction access over a much shorter construction period could be excluded from the BNG calculations. This might also apply to construction and laydown areas because they are in existence for a fixed and limited length of time. However, any exclusion would need to be dependent on a robust reinstatement requirement in the DCO, with which Examining Authorities and Secretaries of State would need to be satisfied.

If other, please explain::

Considerations for the delivery of biodiversity gains

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

Disagree (please state what additional information you think is required, and explain why)

If disagree, state what additional information you think is required, and explain why:

Amend the text (paragraph 1): 'Applicants may also create or enhance habitats as part of the development to meet other obligations or policies (such as green infrastructure, protected sites and species mitigation and compensation, and sustainable drainage).'

To: 'Applicants should also create or enhance habitats as part of the development to meet other obligations or policies (such as green infrastructure, landscape and visual effects, protected sites and species mitigation and compensation, and sustainable drainage). Applicants should adopt a multi-functional approach to the way in which, and location where BNG is delivered.'
(See South Downs NP).

This is because opportunities to deliver multiple benefits should always be explored and incorporated where possible. This forms part of the good design tests set out in the various National Policy Statements and referenced in the Planning Inspectorate's advice page on good design for NSIPS Nationally Significant Infrastructure Projects: Advice on Good Design - GOV.UK
(https://www.gov.uk/guidance/nationally-significant-infrastructure-projects-advice-on-good-design)

In terms of opportunities for enhancement, we consider that the locations and timeframes must be specified and secured. One reason is because the Secretary of State ascribed a lower weight for the contribution of green infrastructure and biodiversity in the planning balance in their decision letter on the Yorkshire Green Energy Enablement Project (Yorkshire GREEN) project
(https://nsip-documents.planninginspectorate.gov.uk/published-documents/EN020024-001431-Yorkshire%20Green%20-%20Decision%20Letter%20%5bsigned%5d
para 4.28 to 4.30) because of the time that it would take to establish the BNG. We are also very mindful of the resource constraints on the local planning authorities in terms of any role in post-consent approvals and monitoring and enforcement.

If other, please explain::

Evidence for submission, and decision making

16 Do you agree that the proposed model text provides sufficient information on the following:a) Evidence for submission?

Not Answered

If disagree, please state what additional information you think is required, and explain why:

If other, please explain::

17 Do you agree that the proposed model text provides sufficient information on the following:b) Decision making?

Disagree (please state what additional information you think is required, and explain why)

If disagree, please state what additional information you think is required, and explain why:

There seems to be words missing from the final paragraph under 'Decision making'. We suggest it should read: '… if there are requirements in the development consent order securing it will be implemented, maintained and monitored.'

We consider that the Biodiversity Gain Plan information requirements should also cover:

 a statement that DCO requirements must not be subject to further approvals. Therefore, it would not be sufficient for outline Biodiversity Gain Plans to be submitted and secured in the DCO and then be subject to approval by others. There would need to be agreement from all relevant parties to the plan at the time of making the order.
 A statement about co-location of NSIPs and the need, when NSIPs are juxtaposed, for a masterplanning approach to BNG, which should adopt a landscape-led approach adopting a multi-functional green infrastructure objective. This is very important to ensure that BNG for one NSIP is not then removed because of the land requirements for another nearby proposed development.
 More of an opportunity-led approach to delivering biodiversity networks and reducing fragmentation.
 Specific mention of proposed development with linear elements and the opportunities with that type of proposed development to enhance the biodiversity networks as well as just the biodiversity net gain.
 A statement about where flexibility is required such as for limits of deviation (LoD) and extent of adverse construction effects on biodiversity. An explanation of how that flexibility is addressed in the Biodiversity Gain Plan and how the final BNG will be subsequently agreed.
 A statement about timing of the delivery of the BNG.

We disagree that the arrangements for maintenance and monitoring of significant off-site habitat enhancement can be left for post-consent approvals by local planning authorities. We consider that this must be set out in some way in documents which are secured in the order or eg. by way of a signed S106 agreement.

If other, please explain::

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

Disagree (please state what alternative you think would be more appropriate and why)

If disagree, please state what alternative you think would be more appropriate and why:

We acknowledge that there will be circumstances where it is necessary for post-consent approvals – eg. for dealing with limits of deviation etc. However, we feel it must be for specific exceptions, not that there is a presumption that Biodiversity gain plans can always be in draft form for future consenting when DCOs are made. This could become onerous for local planning authorities and very complicated for development with linear elements as they would often pass through more than one local authority area.

If other, please explain::

Supporting evidence

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

Not Answered

If yes, please provide the evidence you think should be considered and explain why:

If other, please explain::

Overarching questions

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

Yes (please explain how and why you think the proposals needs amending, and for which NSIP type(s))

If yes, please explain how and why you think the proposals needs amending, and for which NSIP type(s):

There need to be statements relevant to NSIPs which contains linear elements. We do not consider that linear elements of projects should be entirely exempt from BNG, even though most of the Order limits will be reinstated to their original state in many cases. But we do consider that linear elements of projects could be subject to a different approach because of the inclusion in the Order limits for limits of deviation – meaning not all the land included would be affected. There is no easy way to calculate this as it will differ for different types of linear infrastructure. We see linear projects as particularly appropriate for demonstrating environment positive multi-functional outputs in terms of BNG, landscape and visual and green infrastructure.

We would like to see commentary regarding a landscape-led masterplanning approach where NSIPs would be co-located.

If other, please explain::

21 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)?

Not Answered

If yes, please explain and provide evidence where possible:

If other, please explain:

22 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?

Yes (please explain)

If yes, please explain :

Local planning authority should be in the plural ie local planning authorities as NSIPs which include linear elements often pass through more than one local authority area.

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

Not Answered

If yes, please state what additional guidance you think is required, and explain why:

If you chose Other, please explain:

Consultee Feedback on the Online Survey

24 Overall, how satisfied are you with our online consultation tool? Please give us any comments you have on the tool, including suggestions on how we could improve it.

Satisfied