

High priorities for the launch of Biodiversity Net Gain

Supporting Government in the Rollout of Mandatory BNG Policy

Biodiversity Net Gain (BNG) is an unprecedented opportunity to channel private finance into nature at scale and deliver meaningful ecological outcomes in England, not only mitigating harm from property development, but making an additional positive contribution to the local environment.

The government has been rightly ambitious to develop this policy, and the resulting market potential is substantial, estimated to be worth between £135 million and £274 million annually.¹

BNG offers potential benefits not only for the environment, but also for local communities, government, and the wider economy. With these potential benefits of BNG in reach, it is vital that the policy is implemented successfully. BNG is viewed as a highly ambitious policy, and many interested parties – both domestic and international – are watching to see how these many opportunities can be realised.

A group of experts leading on the development of BNG projects and investment in BNG projects across England – spanning ecology, land use, academia, finance, and local government – has formed to support the rollout of BNG, but also highlight that its success hinges on several factors yet to be addressed. These relate to the robust supply of, and demand for, BNG units and building capacity within the market.

On request, the Green Finance Institute convened these stakeholders (see [Working Group Participants](#)) to prepare this briefing note that calls to attention five high and immediate priorities for government to address to ensure the success of the newly launched BNG market.

As part of this Working Group, the Green Finance Institute has also noted several medium-term priorities and concerns, including supportive improvements to the Biodiversity Metric. For brevity, we have not included these in this document, but will provide more detail on these in the coming months.

If you have any questions or comments on this work, or would like to be involved in further discussions, please contact us at hive@gfi.green.

Estimated benefits of BNG

BNG is set to bring significant benefits, both economic and ecological for the environment, communities and the private sector.

The scheme is expected to create 5,428 hectares of habitat and avoid 9,644 hectares of habitat damage each year. The estimated economic benefits of BNG-induced habitat creation and avoided habitat loss, contributing to a total estimated benefit of £11.4 billion.²

In addition to these benefits, many anticipate that BNG will boost jobs creation, increase tax revenues and improve public access to greenspace. For example, 85% of Local Planning Authorities (LPAs) expect to require additional staff for planning, implementation and monitoring of BNG projects, leading to more green jobs across the country.³

**£11.4
bn** The estimated economic benefits of BNG-induced habitat creation and avoided habitat loss

1. [Blog: 'What landowners can do now to gear up for the biodiversity net gain market'](#); Burke, Natural England, gov.uk website, 2023
2. [Impact Assessment: Biodiversity Net Gain and local nature recovery strategies](#); Defra, 2019
3. [Survey of Local Planning Authorities and their ability to deliver biodiversity net gain in England](#); Snell and Oxford, ALGE, 2022.

Immediate Priorities for BNG



A level playing field between onsite and offsite BNG provision



Greater resourcing for Local Authorities



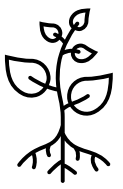
Clarity over tax and accounting treatment of BNG agreements



Stronger governance over monitoring & maintenance burden



Clarity over the use of S106 agreements and conservation covenants



1. A level playing field between onsite and offsite BNG provision

Essential for: Enabling Demand

Description: Developers can meet their 10% BNG requirement through onsite environmental improvements, and this is encouraged through the [BNG Mitigation Hierarchy](#). However, less stringent requirements for these onsite improvements pose a systematic risk of non-delivery of BNG. It is estimated that a substantial proportion of the BNG market will be delivered via onsite solutions. As a result, there are concerns that this will not deliver robust ecological outcomes.

In particular:

- Developers are currently not required to register their onsite BNG units on the national register (as with offsite BNG units) or any equivalent register for transparency and monitoring purposes.
- Developers are not required to evidence the provision of maintenance funds for their onsite habitats over 30 years.
- While developers are legally required to secure significant onsite gains, this does not apply to existing habitats, which are likely to degrade unless actively managed. The guidance gives discretion to LPAs to include this in legal agreements, but this will likely be subject to negotiation.
- LPAs have been given limited enforceability of onsite BNG for over 30 years. They are instructed to only act if failure to deliver onsite BNG causes “serious harm to a local public amenity.”⁴ It is considered unlikely that they will take punitive measures at this high threshold.

Potential Solutions for Government to Explore:

- Create a register for onsite BNG units with clear governance and monitoring mechanisms or require onsite providers to register with the existing national BNG register.
- Make a condition of the development’s consent that maintenance and monitoring funding is clearly evidenced for 30 years.
- Include maintenance of existing onsite habitats within legal agreements.
- Formally review LPA enforcement mechanisms for delivery of onsite biodiversity gains.

⁴ [Exploring the ecological outcomes of mandatory biodiversity net gain using evidence from early-adopter jurisdictions in England](#), zu Ermgassen, S.O.S.E., Marsh, S., Ryland, K., Church, E., Marsh, R. and Bull, J.W., *Conservation Letters*, 14(6), p.e12820, 2021.

2. Greater resourcing for Local Authorities



Essential for: Building Capacity

Description: Local Authorities play several roles in the BNG market, including the LPA's assessment of developers' plans to meet BNG requirements. Local Authorities also can play a vital role in demonstrating the demand for offsite units, giving confidence to BNG unit suppliers. However, there are concerns around Local Authorities' limited capacity, support and resources to meet these varied roles, as well as the lack of oversight and standards that are being set by central Government.

In particular:

- Most LPAs do not have the required expertise or capacity to assess BNG applications. For example, around 60% are estimated to not have the necessary in-house experience to meet expected applications.⁵ There are concerns of a skills shortage due to a large demand for ecologists.
- BNG delivery requires input from various teams within local government – such as legal teams, project managers and landscape teams. However, many do not have the requisite expertise or capacity to feed into BNG delivery, and those charged with BNG delivery are unsure of where else to access this input.
- Much of the regulation around BNG allows Local Authorities to set their own standards and processes, but many are unclear on how to proceed and do not have enough capacity to develop these without precedent or guidance.
- LPAs are required to return planning applications within an eight-week period, lest they forfeit the application fee. The cost of submitting a BNG application is also fixed, regardless of a site's complexity or size.

Potential Solutions for Government to Explore:

We welcome the news that funding to LPAs is expected imminently from central Government's new burdens assessment. In addition, we recommend the following:

- Create standardised policy procedures and documents for Local Authorities.
- Support a Community of Practice of Local Authorities to enable peer-to-peer learning on BNG delivery, including further resource to the Planning Advisory Service (PAS) that is currently offering such support.
- Create a capacity-building facility to offer technical assistance to Local Authorities on more technical issues, working with existing organisations that offer training services.
- Commit to a review of Local Authorities' delivery of BNG within the next two years, including funding provided to LPAs, application processes, and workforce planning.

⁵ *The State of No Net Loss/Net Gain and Biodiversity Offsetting Policy in English Local Planning Authorities: Full Report*. Robertson, M., LPA Survey Report, 2021



3. Clarity over tax and accounting treatment of BNG agreements

Essential for: Enabling Supply

Description: Landowners signing up to legally binding BNG agreements have several tax and accounting considerations. There is currently a wide range of estimates regarding landowners' potential tax bills, which casts doubts over the economic sustainability of these agreements and discourages landowners from participating. We understand that this consideration is already captured as part of [HMRC's 2023 consultation](#) and wish to highlight the importance of this work.

In particular:

Landowners (including farmers, charities, and private companies) are unsure on the treatment of:

- Income from BNG unit sales – including whether the income is taxable to corporation or income tax, whether it is recognized on receipt or deferred over the 30-year period, how staged payments are treated, and how treatments change when the landowner is selling the units directly or leasing land to a habitat bank provider.
- Expenses relating to the agreement – if income is taxed on receipt, whether expenses are deductible, and if so against what – as there could be no further income over the 30-year period.
- Land used to deliver BNG – including the availability of reliefs for Inheritance Tax (Agricultural and Business Property Relief) and Capital Gains Tax (Holdover and Rollover Relief).

Potential Solutions for Government to Explore:

- Clarify tax and accounting treatments for BNG with an update to UK tax policy, in line with [HMRC's 2023 consultation](#) on environmental land management and ecosystem service markets.
- Once this clarity is given, provide clear guidance for distinct types of landowners – including charities and farmers – to help embed understanding of new tax policy.

4. Stronger governance over monitoring & maintenance



Essential for: Enabling Supply & Building Capacity

Description: Effective maintenance and monitoring of BNG habitats is fundamental to realising the ecological opportunities that BNG offers, especially for units sold ahead of habitat establishment. However, there are concerns that the system lacks sufficient governance to meet this requirement, for delivery of both onsite and offsite BNG.⁶

In particular:

- Anecdotally, habitats are being submitted for onsite BNG calculations that the developer has no control or possession over, which affects the legal feasibility of the monitoring and maintenance burden – such as for residential gardens and hedges.
- Onsite BNG providers are not required to evidence the existence of monitoring and maintenance funds (*See Priority No.1*).
- Offsite BNG deliverers can lack an understanding on the level of funding to set aside for monitoring and maintenance over the 30-year period, posing a risk for units to be sold at an unviable price or mismanagement of funds.
- LPAs and Responsible Bodies are unsure of what is an acceptable cost to build in for their own monitoring and compliance burden over 30 years, especially with upfront payments that are intended to cover the entire 30-year period.

Potential Solutions for Government to Explore:

- Review the rules for what land is made eligible to be included in BNG calculations – particularly regarding areas of land that the BNG provider has no legal enforceability over the 30-year period.
- Provide clear guidance to LPAs, Responsible Bodies, onsite and offsite BNG providers on credible structures for maintenance and monitoring funds, and appropriate financial modelling over the 30-year period.



6. [Achieving biodiversity net gain by addressing governance gaps underpinning ecological compensation policies](#), Rampling, E.E., zu Ermgassen, S.O.S.E., Hawkins, I. and Bull, J.W., Conservation Biology, p.e14198, 2023.

5. Clarity over the use of S106 agreements and conservation covenants



Essential for: Enabling Supply & Building Capacity

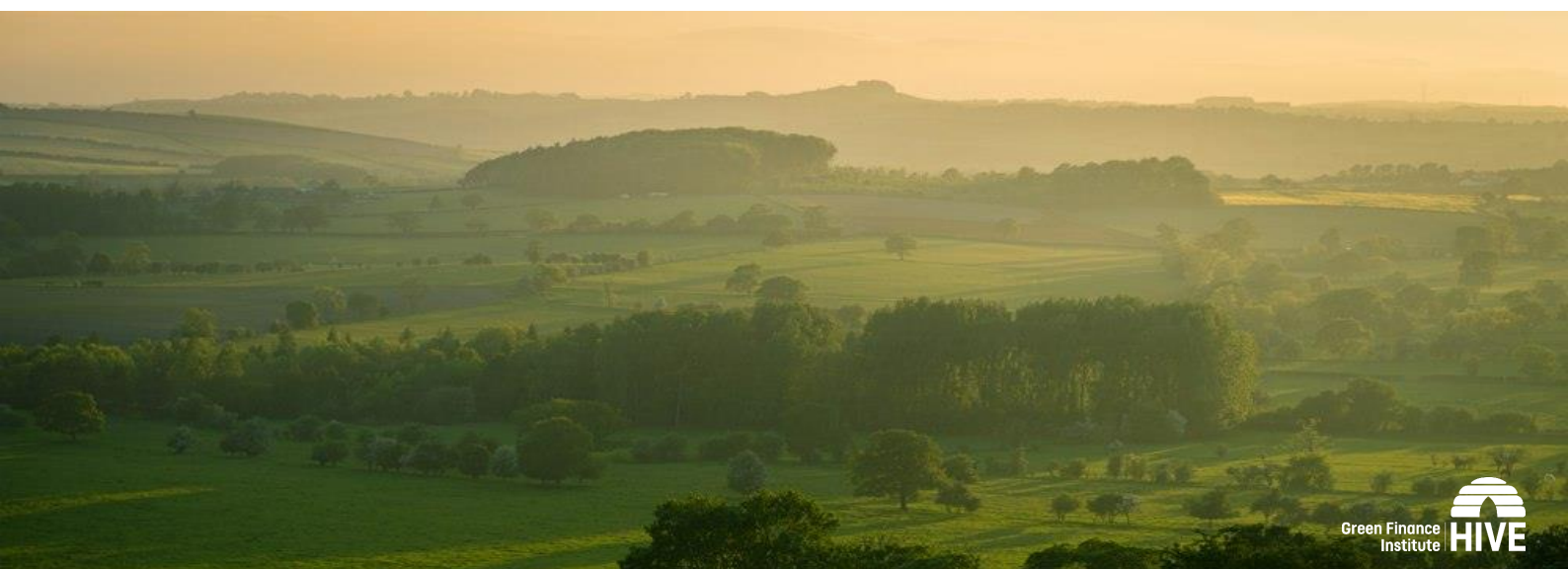
Description: Landowners are required to sign either a Section 106 Agreement with a Local Authority or a conservation covenant with a Responsible Body to legally bind their land for BNG delivery over 30 years. However, there is much uncertainty on both sides as to how these are used robustly, which prevents landowners from proceeding.

In particular:

- There is no visibility or oversight of the content of S106 agreements or conservation covenants for BNG purposes. There are no templates and very few public examples of agreements that have been drafted or signed.
- In the case where there is either a willing LPA or a Responsible Body, both parties often must draft the agreement with no precedent, standards, or template to work from. This is expensive, lengthy and inefficient, discouraging most parties and inhibiting the development of the market.
- Conservation covenants are signed with Responsible Bodies, but there is currently a lack of Responsible Bodies available to be counterparty to such agreements. Often the only choice for an offsite BNG provider is S106 with their LPA, but in many areas of the country the LPA has no expertise of drafting S106 for BNG purposes.

Potential Solutions for Government to Explore:

- Create minimum standards across S106 agreements that LPAs and landowners are required to observe.
- Provide standardized contract templates for both S106 and conservation covenants, made available with case studies showing where minimum standards are met, and flexibility can be offered to the landowner.
- Provide guidance on how landowners can approach LPAs and Responsible Bodies.
- Create or identify a common Responsible Body of last resort in the case where there is no local Responsible Body present, and a review of the incentives offered for organisations to become Responsible Bodies.
- Provide guidance on how conservation covenants and S106 agreements can be used to secure offsite BNG, including cross-boundary sales.





Conclusion

BNG has the potential to be a key part of England's nature recovery strategy and serve as a model example for other countries to effectively reduce the negative impacts of property development and channel additional private finance into nature. It may serve as a model example for further ecosystem service markets, within the UK and abroad. As with any ambitious undertaking of this scale, more work will be needed to ensure that the multitude of opportunities can be fully realised.

This Group is committed to helping the Government with the rollout of mandatory BNG policy and offers itself in an advisory capacity. Further work of this Group, led by the Green Finance Institute, will provide greater detail on solutions recommended in this document, including medium-term priorities and biodiversity metric improvements. We look forward to working closely with central government, alongside wider stakeholders across ecology, land use, development, finance, academia, local government, and community.

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