

## Biodiversity Net Gain (BNG)

### Interim policy position statement

#### 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 major development<sup>1</sup> in England (with a few exemptions) deliver at least 10% biodiversity net gain from 12th February 2024. BNG will be required for small sites<sup>2</sup> from 2nd April 2024. BNG must be measured using the relevant DEFRA [Statutory Metric](#) and habitats must be secured for at least 30 years. The metric is a Microsoft Excel-based tool and therefore requires Excel to operate. 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. Guidance for developers and land managers is [available here](#).

#### 2. Purpose of this Interim policy position statement

- 2.1 The purpose of this interim policy position statement is to provide guidance for applicants/agents and decision makers on how BNG will be taken into account within development proposals by the council following the enactment of the Environment Act 2021, for both major and small site<sup>2</sup> applications.

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<sup>1</sup> The Town and Country Planning Act defines major development as:

- a) the winning and working of minerals or the use of land for mineral-working deposits;
- b) waste development;
- c) the provision of dwellinghouses where—
  - (i) the number of dwellinghouses to be provided is 10 or more; or
  - (ii) the development is to be carried out on a site having an area of 0.5 hectares or more and it is not known whether the development falls within sub-paragraph (c)(i);
- d) the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or
- e) development carried out on a site having an area of 1 hectare or more;

<sup>2</sup> The Town and Country Planning Act defines small sites 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.

- 2.2 This protocol also sets out 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.

### 3. Context

- 3.1 The Environment Act 2021 makes BNG mandatory for all major sites from 12th February 2024 (within some minor exemptions) and for all small sites<sup>2</sup> from 2nd April 2024.
- 3.2 BNG seeks to maintain the mitigation hierarchy of avoidance, then mitigation and only then compensation. 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.
- 3.3 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 (LPA)) to determine whether or not the proposal is appropriate (ecologically) or not.

### 4. Planning Practice Guidance

- 4.1 The draft [Biodiversity Net Gain Planning Practice Guidance](#) provides information and guidance to both applicants and decision takers including on:
- Which planning permissions are in the scope and which are exempt from biodiversity net gain;
  - How the biodiversity net gain objective of 10% gain is calculated;
  - What information an applicant should submit as part of a planning application;
  - How biodiversity net gain is taken into account in decision making; and
  - What is the Biodiversity Gain Plan, what must be included and the process of submitting it.

### 5. How is BNG measured

- 5.1 BNG is calculated using the [Statutory Metric](#) which measures the biodiversity value of habitats in 'biodiversity units' as a proxy for nature.

- 5.2 The metric is 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 The applicant/agent will be responsible for completing the metric on submission of a planning application, not the LPA.

## **6. Strategic Significance and Spatial Risk multipliers**

- 6.1 Strategic Significance and Spatial Risk 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 Kent and Medway Local Nature Recovery Strategy (LNRS) will be used to help inform the Strategic Significance scoring. However, as the LNRS is not yet adopted, the Kent Nature Partnership (KNP) have developed [Interim Strategic Significance Guidance](#) that applicants/agents should use to inform their metric calculations prior to the adoption of the LNRS.

## **7. Interim policy approach**

- 7.1 The council does not currently have an adopted Local Plan policy relating to BNG. Therefore, the council 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), Planning Practice Guidance and the biodiversity emergency declared by TMBC in 2019.

### **Interim policy position**

- 7.2 The following policy position will apply for all non-exempt major development in the borough from 12th February 2024 and for all non-exempt small sites<sup>2</sup> from 2nd April 2024.

All relevant new developments are required to provide a minimum of 10% biodiversity net gain and submit a Biodiversity Gain Plan. Biodiversity net gain must
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be calculated using the relevant Statutory biodiversity metric and be secured for a minimum of 30 years after the development is completed.

Biodiversity net gain should follow the Biodiversity Gain Hierarchy and be delivered:

- a) On-site in the first instance.
- b) Off-site delivery will only be considered where it can be demonstrated to the council that, after following the mitigation hierarchy, all reasonable opportunities to achieve net gains on-site have been exhausted.
- c) Where it is necessary to deliver biodiversity net gain off-site, the council will expect delivery on sites within the borough to be fully explored prior to considering delivery on sites outside the local planning authority boundary.
- d) Off-site delivery should focus on areas of strategic significance having regard to the Kent and Medway Local Nature Recovery Strategy.
- e) Only where delivery on-site and off-site have been fully explored and evidenced to the satisfaction of the council, will the use of statutory credits be supported.

- 7.3 A minimum size for on-site BNG is not 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.
- 7.4 To assist in identifying off-site opportunities, applicant/agents are encouraged to explore the [Kent BNG Register](#) where landowners are able to 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. It is the responsibility of the applicant/agent to contact the relevant landowner and pursue off-site opportunities, not the LPA.
- 7.5 Natural England have established the Biodiversity Gain Site Register for England to record off-site biodiversity gains. The National Register will not act as a marketplace platform for buying or selling units. Any land used for off-site BNG must 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.
- 7.6 If a shortfall in the units required to achieve at least 10% BNG remains, having explored on-site and off-site options, an applicant/agent can purchase statutory biodiversity credits from government as a last resort. The price of these credits are set by DEFRA<sup>3</sup>, and sold on their behalf by Natural England via a credit sales service. Before the LPA approves the use of statutory credits, the applicant/agent will need to show the LPA both of the following pieces of evidence: The developer has considered additional on-site BNG and can provide reasoning showing why this is not

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<sup>3</sup> <https://www.gov.uk/guidance/statutory-biodiversity-credit-prices>

possible; and the developer has approached 3 local or national suppliers, habitat banks or trading websites and can show evidence that no off-site options are available in England. Evidence would include, for example, correspondence, emails, or a PDF download showing a marketplace search.

- 7.7 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. Natural England have developed a [Habitat Management and Monitoring Plan Template](#). Applicants are encouraged use this template in submissions.

### Small sites

- 7.8 From 2nd April 2024, all small sites<sup>2</sup> will also be required to 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.
- 7.9 Until 2nd April 2024, paragraph 186 of the NPPF provides the policy context for BNG on small sites<sup>2</sup> 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 4.0<sup>4</sup> prior to BNG becoming mandatory for small sites<sup>2</sup> to assist in demonstrating *measurable* net gains on-site or the Statutory Metric for off-site gains.

## 8. Biodiversity Gain Plan

- 8.1 A Biodiversity Gain Plan must be submitted to the LPA for approval prior to commencement of the development in accordance with Schedule 14 of the Environment Act<sup>5</sup>. This can be submitted either with the planning application or after the permission is granted but must be approved by the LPA before development can commence. Kent Ecological Advice Service (EAS) will be providing technical support in the assessment on Biodiversity Gain Plans for the council. DEFRA have produced a [Biodiversity gain plan template](#). Applicants are encouraged to use this template in their submissions.

## 9. Enforcement

- 9.1 For any potential breaches of the Biodiversity Gain Plan, please contact the Enforcement team at [planning.enforcement@tmhc.gov.uk](mailto:planning.enforcement@tmhc.gov.uk)

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<sup>4</sup> <https://nepubprod.appspot.com/publication/6047259574927360>

<sup>5</sup> Environment Act 2021 (legislation.gov.uk)

## 10. Further information

10.1 In addition to the links provided within the document, further guidance and best practice can be below.

[Understanding biodiversity net gain - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/understanding-biodiversity-net-gain)

<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/>