

Biodiversity Net Gain Regulations and Implementation

Aldersgate Group written evidence, April 2022

BACKGROUND

1. The Aldersgate Group is an alliance of major businesses, academic institutions, professional institutes, and civil society organisations driving action for a sustainable and competitive economy. Our corporate members, who have a collective turnover in excess of £550bn, believe that ambitious and stable low carbon and environmental policies make clear economic sense for the UK.¹ They have operations across the UK economy and include companies such as Anglian Water, Associated British Ports, Buro Happold, CEMEX, chapmanbdsp, Johnson Matthey, Ramboll, Siemens, SUEZ, Thames Water, Wessex Water and Willmott Dixon. Our membership also includes the environmental organisations RSPB, WWF and Green Alliance.
2. We develop independent policy solutions based on research and the expertise and diversity of our members. Through our broad membership, we advocate change that delivers benefits to an ever-growing spectrum of the economy.
3. Our response to this consultation gives an overview of what we believe to be the key priorities for introducing and implementing the new biodiversity net gain (BNG) regulations. Rather than responding to individual questions in this consultation, we are instead providing a summary of our assessment of the BNG proposals and what we believe to be the key next steps for the Government to take before the scheme is rolled out.

EVIDENCE

4. The Aldersgate Group welcomes the opportunity to contribute to the Government's proposals for a mandatory biodiversity net gain (BNG) policy. **BNG has the potential to create a major new market to drive private investment into ecosystems and biodiversity in England, which could be worth as much as £135m - £274m per year.**² This can help to provide a meaningful contribution towards HMT's target of at least £500 million per annum in private investment for UK nature by 2027, and £1 billion by 2030. This investment will also help to deliver key government targets such as those outlined under the Environment Act (2021) and begin to reverse the decline of nature which has taken place in recent decades in the UK.³ This reversal will be critical to delivering the UK's 6th carbon budget and net zero target.

Overall ambition of the scheme

5. **The Aldersgate Group agrees with the proposals for a minimum of 10% BNG for planning projects, so long as this is clearly set out as the minimum floor and not a cap.** This appears to be a realistic starting point for the scheme while businesses are adjusting and the credits market grows. Once the scheme is underway and there is sufficient evidence to show it has been successful in reversing the decline of nature, we would strongly recommend a consultation to increase the minimum criteria and the ambition of the scheme. This will bring the net gain scheme in line with the scientific evidence base, which states that more than a 10% net gain is required.

¹ Individual recommendations cannot be attributed to any single member and the Aldersgate Group takes full responsibility for the views expressed.

² Eftec, WSP and ABP Mer (February 2021) *Biodiversity Net Gain: Market analysis study*

³ National Biodiversity Network (September 2019) *State of Nature 2019*

6. Currently, the proposals outline the aim for BNG to lead to development “designed in a way that provides benefits to people and nature and reduces its impacts on the wider environment.” **We believe the overarching purpose of BNG should be to first and foremost restore and increase the abundance of nature. It is not currently clear that this primary purpose of BNG is at the core of these proposals.** It is important to note that development which works for people rarely works for nature (outlined further in paragraph 11). The Aldersgate Group would therefore urge the Government to place nature at the core of decision-making for BNG design and implementation, to ensure nature is restored in England following the significant decline which has occurred in recent decades,⁴ through the creation of a new market.
7. **We would recommend an obligation for any enhancements resulting from the BNG scheme to also be in line with the requirements of the *Nature Recovery Network* and *Local Nature Recovery Strategies*.** This would satisfactorily connect BNG to the wider policy environment in which it exists.

Crowding in private sector finance and statutory biodiversity credits

8. **The Aldersgate Group urges that the BNG be used to create a market which crowds in private investment into nature.** To be truly additional and deliver the contribution outlined previously, leveraging substantial private investment into landholdings which are largely private is critical. However, **there is currently a risk that development of the market will be arrested if statutory credits are not priced at a significant premium to avoid them being relied upon too heavily, thus not stimulating the private sector market to develop.** Similarly, if third sector environmental organisations are relied upon too heavily the purchase of credits in the BNG scheme could begin to look like charitable donations, rather than participation in a new market. While non-governmental organisations have played, and should continue to play,⁵ a significant role in the conservation and restoration of nature, it is now time to create a market which incentivises private investment at a much larger scale and delivers high levels of biodiversity restoration. This will need to be largely through the creation of privately held landholding credits – upon which the scheme will rely to scale sufficiently to meet the Government’s nature investment targets.
9. **To address this,** the Aldersgate Group would agree that statutory credits should be uncompetitively priced (as outlined in the proposals). The Group would urge for developers to only be allowed to use the statutory credit scheme as a *last resort*, and for a robust mechanism to be introduced which ensures developers must first attempt to secure credits locally before resorting to purchasing government credits. We would also advise that the Government provide indications of credit demand to signal to private landholders that further non-statutory credits are required. Finally, the statutory credit scheme should have a sunset clause and cease to operate once sufficient local market provided sites are in place. **These measures will ensure that the private sector fully recognises net gain as a market for private investment.**

Onsite vs offsite delivery and irreplaceable habitats

10. **It is vital that BNG is appreciated as *additional* and that developers do not perceive the scheme to justify activity which is not compliant with existing high standards of green design.** The scheme is not meant to replace current requirements for onsite activities such as creating accessible green spaces, or high quality public

⁴ National Biodiversity Network (September 2019) *State of Nature 2019*

⁵ Environmental groups have valuable expertise which can be shared as part of the development of private sector BNG credits.

realm landscaping. **Instead, the Aldersgate Group expects developers to continue to consider quality onsite environmental design as a central part of their plans, without diluting ambition, and use BNG to add *additional* value for the restoration of nature.** When planning authorities are assessing biodiversity gain plans, as required through secondary legislation, the extent to which BNG is additional must be assessed. A particular focus will be required to ensure that developers are not using deliberately nature depleted baselines to calculate BNG requirements.

11. **The Aldersgate Group believes that there is a risk of perverse outcomes if on-site delivery is prioritised for BNG. We would welcome more flexibility to ensure decision-making is driven by an identification of the best outcomes for nature, rather than a desire to deliver multi-functional spaces on-site.** The requirements for human developments, for example with a new housing project (which would require play areas for children, or green spaces for exercise), are often incompatible with nature. In particular, large commercial and logistics development and infrastructure will find it very challenging to deliver on-site BNG. Intentionally increasing the role for off-site provision will be useful to attract private investment into setting up and guaranteeing the funding for off-site areas, which tend to provide better biodiversity and resilience for nature than on-site areas. **We therefore recommend the Government creates a level playing field in which on-site and off-site provisions are treated equally in terms of registration, underwriting of creation and management costs covering both for 30 years, as well as monitoring and reporting, and restorative measures. This will ensure that BNG delivers environmental integrity and additionality in the best possible location for nature.**
12. With regards to irreplaceable habitats, the Aldersgate Group understands from the proposals that there could be occasions when BNG needs to be delivered to make up for development occurring on irreplaceable habitat sites. It must be made clear that this is an extremely rare occurrence. Our belief is that, where possible, irreplaceable habitats sites should be screened out by the planning system as it currently stands through the mitigation hierarchy, and **there should thus only be few instances where developers are building on irreplaceable habitats.** In the rare instances this does occur, we believe an increased ambition for BNG must be achieved. This may require, in practice, an amended metric which is specific to irreplaceable habitats, rather than using the biodiversity metric which applies to other developments.

Arm's length bodies and local authorities

13. **We welcome the commitment to fully fund new burdens placed upon local planning authorities arising from the new mandatory BNG requirement.** Local authorities (LAs), which are already under financial pressure resulting from factors such as the COVID-19 pandemic, will play a critical role in delivering BNG. **Ensuring they are properly resourced will help to ensure the swift and effective rollout of the new scheme.**
14. We also recognise that LAs will need to act under strict rules of governance to avoid the challenges of anti-competitiveness, state aid and conflicts of interest. **We welcome them providing sites under their ownership to deliver BNG credits for developers** as long as transactions are undertaken through a commercial company and that there is no bias towards selection or promotion of local planning authority (LPA) sites in preference to sites provided by other operators. We also welcome that LPAs will no longer be able to charge a tariff.
15. In the *Nature Recovery Green Paper*, the Government outlines plans to change and consolidate the role of Defra's arms length bodies now that the UK has left the

European Union. The Aldersgate Group does not see the review of arm's length bodies to be a priority relative to the other areas of reforms which the Environment Act (2021) targets consultation and the Nature Recovery Green Paper are putting forward. If the Government does move forward with these changes, it will be important to be mindful of how **these plans would affect the role of Natural England in delivering statutory credits for BNG**, and Natural England would need to be sufficiently resourced to manage this effectively. This approach would ensure the development of the BNG market is unimpeded by any changes to Defra's arm's length bodies.

Monitoring, regulating and enforcement

16. **The Aldersgate Group sees the role of monitoring and regulation against progress to be extremely important for delivering BNG.** It is welcome to see awareness of both project-level evaluation as well as policy-level assessments with this regard. We would welcome further ambition from the Government on how it plans to build on this and ensure BNG delivery is properly enforced. We would also welcome a commitment from the Government on monitoring BNG's role in increasing the abundance and quality of biodiversity in England.
17. Adequate monitoring of the impact of BNG will be challenging. At the national level, the baseline knowledge of biodiversity quality is low, which will impede monitoring. As outlined in paragraph 5, we would recommend that a revision upwards to the minimum requirement of 10% occurs when it has been determined that BNG is delivering genuine growth in abundance, resilience and diversity of nature. Understanding whether BNG is delivering its purpose – of creating a market which increases investment into nature and subsequently increases the abundance and quality of nature in England – will require robust monitoring. It is therefore critical that Natural England and other regulators are sufficiently well funded and resourced to monitor progress against this target, and can regulate developers to ensure they are complying with the requirement. Where appropriate standards (such as for stacking and bundling) should be developed and adopted to reduce regulatory costs without reducing compliance.
18. All sites on which BNG is claimed should enjoy the same level of monitoring and reporting, and all BNG referenced in the biodiversity gain plan should be equally guaranteed in terms of location, management plan and funding for 30 years. If there is variation in monitoring and reporting requirements for off-site and on-site projects, or for different types of organisations, it is likely that a two-tier system for BNG delivery will emerge. This will distort the market and result in perverse outcomes for nature recovery. Monitoring and reporting should be underpinned by a robust and adequately resourced regime which truly enforces the delivery of BNG through policing the system.
19. **Regulating and monitoring the new BNG market should also extend to the trading of credits. Currently, the proposals for BNG do not include plans to establish a centralised trading platform, nor for the Government to take on a brokering role between developers and the private sector or other third parties.** We would agree with the Government's identification in the "the market analysis"⁶ published alongside this consultation [that there is a] significant risk that the sale of statutory biodiversity credits by the UK Government could undermine the establishment of the market." However, we would also say that without the Government playing a brokering role, or establishing a brokerage platform, it is likely that many buyers will default to buying statutory credits. **It is therefore important that off-site options are made readily available, ideally through the establishment of**

⁶ Efttec, WSP and ABP Mer (February 2021) *Biodiversity Net Gain: Market analysis study*

a government-led platform or brokerage role to help developers source and identify non-statutory biodiversity credits.

20. Currently the proposals state that the Government does not have plans to set a regulated minimum price, saying “we expect the price for biodiversity units to be agreed between buyers and sellers, and for them to ensure that it is sufficient to cover the costs of creating or enhancing the habitat and maintaining it for a minimum of 30 years.” To ensure biodiversity credits are set at a price which is more than the equivalent of a developer delivering net gain themselves on any piece of land, further clarification about what costs should be taken into consideration when setting the credit price is needed. The price needs to reflect different costs of establishment (e.g. location, geology, types of habitat and management required) as well as market forces. The statutory credit price must also be significantly higher than the price which a market credit may settle on down the line, to ensure a smooth development of the market, competitiveness and increase demand for private credits.
21. **We agree for the proposals for revenue from credit sales to be reinvested into “strategic habitat creation and enhancement which delivers long-term environmental benefits and is aligned with Local Nature Recovery Strategy priorities.”** Funds must be invested into newly created habitats rather than used to support management of existing sites, to truly provide additionality and increase the abundance and resilience of nature.
22. **We are supportive of the role of Habitat Banks⁷ in delivering BNG, and would recommend the Government placing greater emphasis on the role of these over bespoke offsite solutions,** so long as they have a secure funding mechanism and are underpinned by effective contracts from day one. Because Habitat Banks are easier to manage from an administrative perspective, and can add value particularly for rural communities through income streams, they are attractive to the private sector. Using Habitat Banks to deliver off-site BNG can offer market longevity and stability in a cost-effective way which can also contribute to the Nature Recovery Network.

Nationally Significant Infrastructure Projects

23. **We would strongly recommend applying a similar approach to BNG for National Significant Infrastructure Projects (NSIPs) as is currently proposed for other kinds of development.** Current proposals state that nationally significant projects will apply the requirement “no later than 2025”, whereas the town planning route will apply two years after royal assent of the Environment Act (2021) – in other words, November 2023. NSIPs and town planning should require BNG at timescales which are more closely aligned and sooner, and with the same requirements. This will involve including NSIP BNG projects in the same registry as other projects. We would also recommend the preferred option to deliver BNG for NSIPs is through off-site areas such as habitat banks, rather than on-site. As outlined in paragraph 11, on-site green design rarely works for biodiversity and humans simultaneously. Creating off-site projects which are strategically located will deliver greater improvements for nature.
24. At present the consultation document suggests that where it may be the case that an NSIP is unable to deliver a 10% BNG that a modification to lower the percentage requirement may be appropriate. This appears inequitable. **A clarification with regards to what criteria would allow this, and the percentage modification which could be granted, would be welcome.**

⁷ Habitat Banks are large scale, forward-funded habitat creation projects that deliver habitat creation at scale.