

CONSULTATION

Response Document



Developing with Nature guidance

(NatureScot)

4 March 2022

Introduction to CIEEM

The Chartered Institute of Ecology and Environmental Management (CIEEM), as the leading membership organisation supporting professional ecologists and environmental managers in the United Kingdom and Ireland, welcomes the opportunity to comment on this consultation.

CIEEM was established in 1991 and has over 6,000 members drawn from local authorities, government agencies, industry, environmental consultancy, teaching/research, and voluntary environmental organisations. The Chartered Institute has led the way in defining and raising the standards of ecological and environmental management practice with regard to biodiversity protection and enhancement. It promotes knowledge sharing through events and publications, skills development through its comprehensive training and development programme and best practice through the dissemination of technical guidance for the profession and related disciplines.

CIEEM is a member of:

- Scottish Environment Link
- Wildlife and Countryside Link
- Northern Ireland Environment Link
- Wales Environment Link
- Environmental Policy Forum
- IUCN – The World Conservation Union
- Professional Associations Research Network
- Society for the Environment
- United Nations Decade on Biodiversity 2011-2020 Network
- Greener UK
- Irish Forum on Natural Capital (working group member)
- National Biodiversity Forum (Ireland)
- The Environmental Science Association of Ireland

CIEEM has approximately 670 members in Scotland who are drawn from across the private consultancy sector, NGOs, government and SNCOs, local authorities, academia and industry. They are practising ecologists and environmental managers, many of whom regularly provide input to and advice on land management for the benefit of protected species and biodiversity in general.

This response was coordinated by Members of our [Scotland Policy Group](#).

We welcome the opportunity to participate in this consultation and we would be happy to provide further information on this topic. Please contact Jason Reeves (CIEEM Head of Policy) at JasonReeves@cieem.net with any queries.

Although this consultation states comments on the draft NPF4 should not be included they are so interlinked that they cannot and should not be considered in isolation. CIEEM has responded to the earlier drafts of NPF4, responding to the Government's Call for Views, the Interim Position Statement as well as the recent Committee Call for evidence; and is finalising a detailed response to the NPF4 consultation.

Once it becomes clear what legal weight and consideration the Developing with Nature guidance will have and once the guidance is finalised with the inclusion of diagrams, photos etc., it is important that it is consulted on again or at least that there is the opportunity for key stakeholders to input on its development. CIEEM will be happy to contribute to future iterations using the vast experience of our members including Local Authority ecologists and planners, members of statutory bodies and ecological consultants, who are bound by a strongly held Code of Professional Conduct, which brings an ethical dimension to their work. We can consult with members that have specific expertise on the different measures in the guidance, and likewise there should be conversations with NGOs that cover the particular habitat/species grouping.

Quite a lot of the points covered below were raised at the LPA event to discuss the emerging NPF4 and Developing with Nature Guidance as outlined in the report¹.

1. The list of measures and features identified in the guidance - are these the appropriate ones, and are there any others that should be included?

The Need for a Strategic and Standardised Approach

The Developing with Nature guidance does provide a standardised approach covering a suite of enhancements for habitats and species. However, in isolation these measures are often already incorporated following the mitigation hierarchy and therefore it does not deliver the ambition that is needed to address the biodiversity and climate crises. The measures need more ambition and rigour.

Biodiversity Net Gain Principles

Biodiversity Net Gain (BNG) is an internationally recognised² and implemented³ stepwise approach to development that leaves biodiversity in a better state than before. This is essential as simply replacing habitat losses from development does not address the decline in area and quality of habitats which has happened over time and resulted in the levels of species loss reported in the State of Nature report⁴.

CIEEM together with the Construction Industry Research and Information Association (CIRIA) and the Institute of Environmental Management and Assessment (IEMA) produced the UK Principles on delivering BNG⁵. These UK principles were developed based on principles developed for the international community by the Business and Biodiversity Offset Programme⁶ and several other sources. Further guidance has now been published to help professionals and UK industry address this

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<https://cieem.net/resource/a-summary-report-from-scottish-lpa-event-to-discuss-the-emerging-npf4-and-developing-with-nature-guidance/>

² IUCN Business and Biodiversity Net Gain.

<https://www.iucn.org/theme/business-andbiodiversity/our-work/business-approaches-and-tools/business-and-biodiversity-net-gain>

³ Germany, USA and Australia have followed net gain principles for up to 40 years.

⁴ <https://www.nature.scot/doc/state-nature-scotland-report-2019>

⁵ CIRIA, CIEEM, IEMA (2016) Biodiversity Net Gain: Good practice principles for development. Available at: <https://cieem.net/resource/biodiversity-net-gain-good-practice-principles-for-development>

⁶ https://www.forest-trends.org/wp-content/uploads/2018/10/The-BBOP-Principles_20181023.pdf

challenge and to achieve 'Net Gain' targets for biodiversity⁷ alongside a British Standard for designing and implementing biodiversity net gain (BS8683)⁸ which principles should be in line with.

To strengthen the Developing with Nature guidance we would like to see the established BNG principles below underpinning positive effects for biodiversity and this Developing with Nature guidance.

Biodiversity Net Gain - Good practice principles for development:

1. Apply the Mitigation Hierarchy
2. Avoid losing biodiversity that cannot be offset by gains elsewhere
3. Be inclusive and equitable
4. Address risks
5. Make a measurable Net Gain contribution
6. Achieve the best outcomes for biodiversity
7. Be additional Principle
8. Create a Net Gain legacy
9. Optimise sustainability
10. Be transparent

RSPB has produced a similar set of BNG principles for consideration.

CIEEM has produced a briefing on 'Biodiversity Net Gain in Scotland'⁹, plus a targeted briefing for Local Planning Authorities¹⁰. This latter briefing was compiled in response to requests from Local Planning Authorities which are delivering net gain mechanisms in their planning guidance and are already receiving applications using BNG metrics already in use as a standard elsewhere.

Mitigation Hierarchy

Applying the mitigation hierarchy is key as listed as the first BNG principle. Throughout the document it needs to be reinforced that the mitigation hierarchy must be followed first, to avoid and mitigate impacts. Any additional enhancements to ensure positive effects need to be truly additional to the mitigation hierarchy. There appear to be only a few mentions in the guidance and no clear definition. In some of the measures what is suggested is in fact mitigation and not enhancement for example measure 23 on drain escapes.

There must be a clear distinction between what is enhancement and what is avoidance, mitigation and compensation so that it can be applied consistently.

Scale

The guidance has one paragraph on 'Determining the scale of enhancements to be delivered' - this essentially leaves it to the LPA to determine what is appropriate in relation to a particular development and puts the resource burden back on the LPA again. In the absence of a metric for

⁷ CIRIA, CIEEM, IEMA (2019) Biodiversity Net Gain: Good practice principles for development, A Practical Guide. Available at: <https://cieem.net/resource/biodiversity-net-gain-good-practice-principles-fordevelopment-apractical-guide>

⁸ British Standards Process for Designing and Implementing Biodiversity Net Gain <https://www.bsigroup.com/en-GB/our-services/events/webinars/2021/bs-8683-process-for-designing-and-implementing-biodiversity-net-gain/>

⁹ CIEEM (2019) Biodiversity Net Gain in Scotland. Available at: <https://cieem.net/resource/biodiversitynetgain-in-scotland-briefing>

¹⁰ CIEEM (2021) Biodiversity Net Gain in Scotland: Briefing Note for Local Planning Authorities. Available at: <https://cieem.net/wp-content/uploads/2021/04/Implementing-BNG-in-Scotland-Apr2021-1.pdf>

determining scale of enhancement, this is going to be an ongoing issue for delivery and will result in inconsistent application of enhancements. The wording in this Developing with Nature guidance and in NPF4 seems largely to still be about encouraging enhancement with no mandatory and specific requirements. Our Local Authority ecologists and environmental planner members believe that they still do not have enough support to really bring about the evidence-based enhancements and net gain to fruition, and that is discouraging. Without a strong government position and legal enforcement on mandatory biodiversity net gain or other consistent measurable tools that could be implemented across Scotland, the Local Planning Authorities will struggle to implement and enforce these biodiversity enhancement measures in Local Development Plans. Without clear high-level support to truly address the biodiversity crisis it will continue to prove difficult to stop challenges from developers.

Thinking beyond Individual Developments and Geographic Focus

A more holistic approach is required with consideration of habitat connectivity - A National Network approach could underpin this. Nature networks are not mentioned at all in this guidance.

There needs to be recognition of the applicability of the measures for different settings and geographical regions. The guidance is very much focussed on urban housing developments, yet in rural areas very different considerations occur. This is where the existence and status of local supplementary guidance needs careful consideration. Enhancements suitable for inner city developments are radically different for rural and island areas. For example, enhancement Measure 12 - Hedgehog highways are not necessarily applicable in rural settings and certainly not for Scottish islands where hedgehogs are invasive.

Specific points on measures

There is also a need to consider approaches to valuing biodiversity measures, to ensure a development is not providing enhancements which may benefit one species, but actually cause declines in others.

Soils and soil management are major omissions in the list of measures in the guidance. The complexity of soils, the services they provide and the ecosystems they support are often not considered in sufficient detail. Maintaining soil functionality to enable biological processes to recover or be reinstated must be covered under mitigation policies and the EIA screening process, however NPF4 and the developing with nature guidance provides an opportunity to require additional improvements in soil function through enhancements.

Water related enhancements there could be more consideration and tie in throughout the guidance.

2. The level of detail provided on each of the individual measures and features – is there adequate information set out to inform understanding of the range of biodiversity measures that can be incorporated in a development?

The use of clear images and examples of the enhancements applied would very much be welcomed. If developers can see images or even videos or where an enhancement has been applied it can really help visualise and recognise the potential.

There is a lot of information but in many places it is quite repetitive meaning the key messages are being lost. We would suggest using bullet points for greater clarity. Using Measure 1 - Plants for Pollinators as an example:

- Choose native plants of local provenance

- Select plants suitable for site conditions (soil, aspect)
- For each area of the site, determine where to use flowering trees, shrubs, climbing plants, wildflower mix, and bulbs for maximum biodiversity benefit.
- Use a diverse mix of plants ensuring that together it results in a long flowering period. Pollen and nectar provision is crucial for pollinators from early spring right through to autumn.
- Consider management and maintenance options and incorporate this in the design stage.

Future management plans are crucial; many new developments are factored out to landscape maintenance companies who may not have knowledge or skills to make informed maintenance decisions to ensure biodiversity benefits. As in the BNG principles stronger requirements for long term maintenance are required. It needs to be very clear that an ongoing management and maintenance plan needs to be put in place for enhancements, with costs and implementation agreed. Better links are needed between the planning stage and development stage to ensure opportunities aren't lost and this could be highlighted much more in the guidance.

The links to websites with further information on the measures is comprehensive, however many of these were not designed with this use in mind and were often compiled as a public engagement tool focussed on what small steps people can undertake in their own gardens. This is radically different to what is needed for the transformational change in planning that we need to see.

Ecological Expertise

There is a real danger that the guidance may lead developers to believe that they do not require specialist ecological input. Paragraph 12 states that the “guidance does not include more specialist measures... that will require expert ecological advice”, however it should recognise that even non-specialist enhancements should be developed with sound ecological advice to be effective. For example, they may select options to enhance biodiversity which will never be achievable on the site or, worse, may have adverse effects. As an example, a developer could put in swift boxes without swifts being in the area or positioned inappropriately or create a couple of leaf piles and say they have delivered a positive effect for biodiversity. There is significant potential for misunderstandings; and poor delivery for biodiversity is likely without ecological input. We discuss this further under Q3 on the need for ecological capacity in Local Authorities.

This guidance should include any regional considerations of habitats and species together with advice on the need to seek professional support to understand the measures' connectivity to local, regional and national networks on habitats. It can not be a substitute for ecological expertise and advice.

3. The clarity and accessibility of the guidance as a means of a) informing project design, and b) decision making on the measures to be included in individual applications?

Status and weighting of guidance

It needs to be very clear how the Developing with Nature guidance sits within NPF4 and what legal weight and consideration it is given. Will it be akin to supplementary planning guidance, carrying weight in the application assessment process, or is it purely advisory?

If it is a material consideration, what level of enforcement can LPAs insist on?

Likewise, early clarification is needed on the ongoing role (if any) of local supplementary guidance. For example, where councils already have biodiversity supplementary guidance how will this relate to the Developing with Nature guidance? There is a lot of variability between councils at present in the provision of supplementary guidance.

The advice on inclusion of appropriate measures is generic and provides no guidance on how to decide what is appropriate, leaving this open to the determination of the planning authorities. Without setting specific requirements, this is likely to mean developers continue in a similar vein. Although we understand the desire to avoid being too prescriptive, there are many advantages to a measurable system for both developers and planning authorities so that expectations are clear.

When LPA resources are stretched, putting the onus on developers to design and implement a measurable net gain, can save time and money.

Success of measures

To ensure desired outcomes, the guidance should be used at the outset and integrated into the design of the development with early discussions with environmental planners and ecological advice and input from authority staff. As per the BNG principles this is likely to achieve the best outcomes for biodiversity, create a net gain legacy and optimise sustainability.

If there is a desire for positive effects for biodiversity not to be prescriptive, how will we ensure net gain is delivered and evidenced? Without a metric and a measurable approach, it weakens what LPAs can insist on. Positive effects for biodiversity needs to be assessed in a tangible, measurable, and consistent way across Scotland. Depending on the status of this guidance, we are likely to be left with a suite of different measures across Scotland, with some LPAs using existing local guidance. The result of this would be that LPAs will be left negotiating with developers over the detail of each and every proposed measure in any development, which is a very time consuming, inefficient and difficult process. There is also a risk of developers not giving the guidance serious consideration dependent on its status and a possible lack of ambition from some developers to go above the minimum.

The key to success is baseline assessment pre-development, mitigation, enhancement, long-term management and monitoring of the success of the enhancement measures, with enforcement properly staffed and resourced to ensure long-term successes.

The measures selected for a development should not just be considered based on their complexity or scale, but also what is most appropriate and will provide the most benefit for habitats and in the surrounding landscape. Biodiversity enhancements through development provide an opportunity for strategic delivery and should not be applied in a piece-meal way that may lead to ill-connected patches or measures. **Therefore, we are concerned that the scoring system is confusing, with measures chosen on complexity or scale rather than the most appropriate measures for delivering the best outcomes for biodiversity.** This presents the risk that non-ecologists and environmental managers will use it to get the best 'score', rather than applying professional judgement and experience to secure the best outcome for biodiversity.

Guidance will need to be regularly reviewed to make sure it is up to date and fits with the planning system. Also, detail is needed on how and whether the measures that are undertaken will be

recorded and their success analysed. Otherwise, NatureScot are proposing guidance with no proposed mechanisms of measuring success. There must be capacity in LPAs to monitor and enforce measures. More discussion is needed on how to ensure long-term success and how to deliver this through the planning process.

Ecological capacity and capability issues

There is a real concern that where LPAs do not have sufficient ecological expertise and capacity non-specialist planning officers are making decisions on whether development proposals are demonstrably better. As mentioned under question 2 this guidance may lead developers to believe that they do not require specialist ecological input. There are resource implications for LPAs, especially on smaller developments, when developers do not typically have ecologists engaged.

Each Local Authority must have, as a bare minimum, ecologists and environmental planners who are adequately resourced and trained. Without in-house ecological expertise in Local Authorities, positive effects for biodiversity cannot be assessed and delivered. In addition, enforcement of measures is key, so this needs to be adequately resourced.

Evidence from RTP1¹¹ shows that planning departments within Local Authorities have seen a 25% reduction in staff since 2009. An assessment by the Association of Local Government Ecologists¹² in 2016 found that there is huge variation across different UK planning authorities in the quality of ecological reports they use to assess development applications. Ecologists and environmental planner posts have been cut back in many Scottish Local Authorities creating enormous difficulties and discrepancies in in-house expertise and experience across Scotland. CIEEM currently has a survey open on ecological expertise and capacity in LPA's in Scotland and we will share the results with you soon.

To implement transformation in Scottish planning there is an urgent need for increased ecological capacity and expertise in local authorities. Appropriate additional funding for Local Authorities must be ring-fenced for this purpose.

¹¹

<https://www.rtpi.org.uk/media/1496/resourcing-the-planning-system-rtpi-scotland-key-trends-and-findings-2019.pdf>

¹²

<https://www.alge.org.uk/wp-content/uploads/sites/15/2021/01/ALGE-Ecological-Report-Fitness-for-Purpose-Full-Report-2016.pdf>

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