

Nutrient Neutrality Freestanding Mitigation Sites Selection Criteria

Introduction

This guidance explains how Westmorland and Furness Council will assess applications for legal agreements to secure mitigation sites that propose to trade Nutrient Neutrality Credits. This guidance will be kept under constant review and will be subject to periodic updates to take account of emerging the consensus on good practice.

Criteria

- Are all documents submitted and correct
- Is the proposed change acceptable in the location
- For NN, is the site upstream of known development areas and relevant WWTW and how far does it contribute to sub catchment need
- How does it relate to and support the Local Nature Recovery Strategy
- How does it contribute to wider nature recovery
- Confidence about delivery potential of BNG units or NN credits
- Scale of the credit or unit yield
- Availability and times
- Is some or all of the land currently allocated for mitigation for a development
- Is the site within or adjacent a designated nature conservation site that could be negatively impacted by potential land use ('leakage' under Principle 2 of the Nature Markets Principles)
- Potential/ limitations re BNG/ NN Stacking
- Acceptance of costs of agreement monitoring
- The nutrient assessment should be completed by a competent person

Our approach

Stacking

Biodiversity net gain and nutrient neutrality credits can be stacked. Stacking is when different benefits on a piece of land are sold as separate units of trade or credits. We will only consider applications where stacked credits demonstrate additionality. Additionality means that the environmental outcomes paid for must be additional to those that would have reasonably been expected to be produced without the cash flow generated through the unit sale. This works on two levels:

The outcomes to be delivered must not be already be required as the result of a legal or other obligation e.g. an agri-environment scheme.

If delivering more than one outcome on the same piece of land the stacked benefit must be additional i.e. it must assume as its baseline value the predicted outcome of the credit/unit that lies below it in the stack.

For example, a landowner creates a wetland on their land to provide nutrient neutrality mitigation. In order for the same piece of land to also be eligible for the BNG market, the landowner would need to undertake additional work to improve the distinctiveness and/or condition of the wetland without compromising its ability to deliver the agreed nutrient neutrality mitigation. The biodiversity units generated through this additional intervention would be eligible for sale. In other words, the baseline used to measure the number of biodiversity units delivered the habitat state, in terms of distinctiveness and condition, that would be the minimum required to establish the nutrient neutrality credit.

Required evidence

Applicants are required to submit information to the council to evidence how they will comply with the requirements of this assessment framework. Westmorland and Furness Council will only enter into legal agreements which are judged to be in compliance with our assessment framework. Further information on the requirements for applicants are set out in the table below.

We will continue to update this guidance regularly. Applications must accord with the latest version of the guidance.

Stage 1 – Initial Review

Requirement	Guidance Note	Evidence Required	Key References
Site location	Detailed site location to be provided.	Particulars of site location to be included in the application form. Site boundary must be provided in georeferenced data format e.g. .shp or .gpkg.	Not applicable.
Applicant to demonstrate legal control over land	Information on form of legal control over the land. Details of any leasehold agreement or tenancy agreement or any other contract that enables the applicant to deliver BNG on the land for a minimum of 30 years.	The following should be enclosed with the application: <ul style="list-style-type: none"> • Land Registry Title deed and plan of the land boundary from owner. • Charges register of title and plan. • Copy of Leasehold Agreement (if applicable). 	Not applicable.
Landowner consent to enter a section 106 agreement	Landowner consent is needed to enter into the legal agreement to secure the enhancement,	The following should be enclosed with the application:	Not applicable

Requirement	Guidance Note	Evidence Required	Key References
Landowner consent to enter a section 106 agreement (continued)	maintenance and monitoring of habitats present on the land. Please see above.	<ul style="list-style-type: none"> • Written consent from owner to broker to act on their behalf (if applicable). • Information on who will be signatory to the agreement. 	Not applicable
Consideration of co-benefits	Proposals should demonstrate a positive impact on local community and where possible engage with local stakeholders to design projects that contribute to wider nature recovery goals.	Details of effect of proposals on any current tenancy agreements associated with the land should be detailed within the application form.	Not applicable
Scheme will not cause conflict with existing designations, licences or legal agreements	Proposals should provide evidence with respect to current environmental designations relating to the land e.g. presence of Sites of Special Scientific Interest (SSSI). If environmental designations are present then confirmation that the appropriate consents are in place with the corresponding regulating body to enable the scheme to take place.	<ul style="list-style-type: none"> • Mapping showing site and designations to be provided as part of ecological report. • Details of any known conflicts and that reasonable checks have been undertaken should be detailed in the application form 	Magic maps

Requirement	Guidance Note	Evidence Required	Key References
<p>Scheme will not cause conflict with existing designations, licences or legal agreements (continued)</p>	<p>Proposals to provide details of other designations/licences/legal agreements pertaining to the land in question such as agri-environmental agreements, common land, public rights of way, grants of planning permission, shooting rights, felling licences, aerodrome safeguarding considerations.</p>	<p>Please see above.</p>	<p>Please see above.</p>
<p>Adequate ecological baseline</p>	<p>Proposals should be accompanied by a full ecological assessment of the site by a suitably experienced ecologist.</p> <p>Habitat mapping must follow UKHab and all condition assessments should be supplied. The ecological assessment should inform completion of the current version of the statutory biodiversity metric.</p> <p>All habitat parcels must be individually referenced on habitat maps and in the metric. The same referencing system is to be</p>	<ul style="list-style-type: none"> • The application must be accompanied by an ecological report(s) which present a full ecological assessment of the site. • Appropriate evidence should be provided that the ecological assessments, report and biodiversity metric have been produced by a competent assessor. 	<ul style="list-style-type: none"> • Chartered Institute of Ecology and Environmental Management • UK Habitat Classification System • River Condition Assessment • Botanical Society of Britain and Ireland (BSBI) Field Identification Skills Certificate (FISC)

Requirement	Guidance Note	Evidence Required	Key References
<p>Adequate ecological baseline (continued)</p>	<p>used throughout the lifetime of the habitat bank.</p> <p>Ecological reports must consider the presence of protected and priority species and how they might be affected by the proposals.</p> <p>All ecological assessors must outline their competency with respect to BNG and any associated qualifications (e.g. River Corridor Assessment) in line with established guidance.</p>	<p>Please see above.</p>	<p>Please see above.</p>
<p>Realistic and achievable uplift in biodiversity value</p>	<p>The proposed uplift in biodiversity units should be demonstrated through the latest version of the statutory biodiversity metric.</p> <p>Proposals must be realistic and achievable in accordance with the principles set out in the statutory biodiversity metric user guide. It is highly recommended that applicants do not target habitat creation measures that are unrealistic or carry a high degree of risk.</p>	<p>Ecological report which clearly outlines why the proposed habitat creation/enhancement measures are appropriate to the site and accord with the biodiversity metric principles.</p> <p>Supporting evidence e.g. soil testing should be provided where appropriate.</p>	<p>Not applicable</p>

Requirement	Guidance Note	Evidence Required	Key References
<p>Realistic and achievable uplift in biodiversity value (continued)</p>	<p>Under the current BNG regime habitats can be further enhanced at the end of the 30 year period and site secured for a further term to deliver the resulting uplift. A staged approach to achieving higher condition/ distinctiveness habitats is therefore recommended.</p> <p>It is expected that applicants will provide a written statement outlining how they have ensured that their habitat enhancement/creation measures are realistic and achievable on the land in the 30 year timeframe.</p>	<p>Please see above</p>	<p>Not applicable</p>
<p>Assessment of other constraints</p>	<p>Proposals should provide evidence that environmental constraints to the proposed habitat enhancement/creation activities have been fully investigated and, if necessary, mitigated in the proposals.</p> <p>The following constraints should be considered (this is not an exhaustive list):</p>	<p>Ecological and/or other reports should include the following where appropriate (not an exhaustive list):</p>	<ul style="list-style-type: none"> • Soil sampling for habitat recreation and restoration (TIN035) • Flood risk assessments

Requirement	Guidance Note	Evidence Required	Key References
<p>Assessment of other constraints (continued)</p>	<ul style="list-style-type: none"> • Soil chemistry: High levels of nitrogen and phosphorous have the potential to constrain proposals for habitats such as meadows where restricted nutrient levels are important to provide the right conditions for development species-rich swards. • Assessment of site hydrology: Existing site hydrology has the potential to constrain proposals for habitats such as wetlands, which rely on impeded drainage. Flooding has the potential to place habitat/creation/enhancement schemes at risk. 	<ul style="list-style-type: none"> • Soil testing results e.g. following Natural England TIN035. • Hydrological or flood risk assessment. • Archaeological assessment. • Contaminated land assessment. • Assessment of infrastructure requirements. 	<p>Please see above.</p>

Requirement	Guidance Note	Evidence Required	Key References
Assessment of other constraints (continued)	<ul style="list-style-type: none"> • Landscape and archaeology: Landscape and archaeological features have the potential to constrain proposals, especially where ground works or significant changes in vegetation cover (e.g. grassland to woodland) are proposed. • Contamination: Land contamination has potential to constrain proposals in terms of habitat viability and also in terms of effects on water quality and waste disposal. • Access and infrastructure: Lack of infrastructure such as fencing or access tracks has the potential to constrain proposals that require machinery access and/or livestock. 	Please see above.	Please see above.
Habitat enhancements/creation measures must be additional	Proposals should provide clear information on whether any stacking of ecosystem service credits is proposed e.g.	The application form/ecological report must contain the following information:	<ul style="list-style-type: none"> • Nature Market Principles

Requirement	Guidance Note	Evidence Required	Key References
<p>Habitat enhancements/creation measures must be additional (continued)</p>	<p>biodiversity units and nutrient neutrality credits.</p> <p>Clear evidence should be provided of additionality for any stacking proposals.</p> <p>Where land is under an agri-environmental agreement clear evidence should be presented to demonstrate the habitat enhancement/creation measures that would result in marketable BNG units would be additional to the outcomes of the agreement.</p>	<ul style="list-style-type: none"> • Confirmation of intent to stack credits from different nature market and details of the markets. • Confirmation of additionality for stacked proposals. 	<ul style="list-style-type: none"> • Stacking and bundling in the finance of nature markets
<p>Schemes should contribute to recognised nature recovery plans, targets and principles</p>	<p>Proposals should provide clear evidence that recognised nature recovery principles, plans and targets have been taken into account as part of scheme design. Schemes should:</p> <ul style="list-style-type: none"> • Aim to deliver the measures set out within the Local Nature Recovery Strategy (LNRS) wherever possible. 	<p>Ecological reports to provide detailed confirmation that the LNRS and other plans and principles have been taken into account.</p>	<ul style="list-style-type: none"> • Local Nature Recovery Strategy • UK Environmental Improvement Plan • Biodiversity Net Gain: Good Practice Principles for Development. CIEEM

Requirement	Guidance Note	Evidence Required	Key References
<p>Schemes should contribute to recognised nature recovery plans, targets and principles (continued)</p>	<ul style="list-style-type: none"> • Aim to contribute to Environmental Improvement Plan objectives by targeting ‘wildlife rich’ habitats wherever possible. • Aim to accord with Chartered Institute of Ecology and Environmental Management (CIEEM) Biodiversity Net Gain Good Practice Principles. 	<p>Please see above.</p>	<p>Please see above.</p>
<p>Strategic significance and spatial risk</p>	<p>Proposals should utilise the latest version of Westmorland and Furness Council’s strategic significance guidance when completing the biodiversity metric.</p> <p>Proposals should explain whether they intend to restrict unit sales in anyway e.g. preference given to local requirements.</p>	<p>The ecological report and statutory biodiversity metric must clearly demonstrate they have followed the latest guidance on Strategic Significance.</p> <p>Proposals must confirm which geographical markets they will target within the application form.</p>	<ul style="list-style-type: none"> • Statutory Biodiversity Metric User Guide • Westmorland and Furness Council Strategic Significance Guidance

Requirement	Guidance Note	Evidence Required	Key References
<p>No conflict with irreplaceable habitats</p>	<p>Proposals will need to demonstrate that the extent and condition of any irreplaceable habitat(s) occurring onsite or within the zone of influence of the proposed habitat creation/enhancement works is maintained or enhanced.</p>	<p>Ecological reports and completed biodiversity metric must demonstrate no conflict with irreplaceable habitats.</p>	<p>Irreplaceable habitat - GOV.UK</p>
<p>Habitat management and monitoring plan</p>	<p>Proposals must be accompanied by a detailed management plan setting out the following (not an exhaustive list):</p> <ul style="list-style-type: none"> • Aims and objectives • Habitat and condition targets • Detailed monitoring strategy • Monitoring strategy <p>We request that all management plans follow the Natural England HMMP template and incorporate all applicable items on the accompanying checklist.</p>	<p>An appropriately detailed Habitat Management and Monitoring Plan (HMMP) must be submitted with all applications.</p>	<p>Natural England Habitat Management and Monitoring Plan template</p>
<p>Agreement to share biological records</p>	<p>Applicant must agree to submit all biological records from the habitat bank to Cumbria Biodiversity Data Centre (CBDC).</p>	<p>Applicant must indicate on the application form that they are willing to share all biological data with CBDC.</p>	<p>Cumbria Biodiversity Data Centre</p>

Requirement	Guidance Note	Evidence Required	Key References
<p>Agreement to share biological records (continued)</p>	<p>Records to be submitted by applicant and include habitat mapping, monitoring data and species records. HMMP must indicate when records would be submitted.</p> <p>Sharing of biological data will help to monitor implementation of the Cumbria LNRS.</p>	<p>Spatial data must be provided in georeferenced data format e.g. .shp or .gpkg</p>	<p>Please see above</p>

Stage 2 – Legal Agreement

Requirement	Guidance Note	Evidence Required	Key References
Costed habitat management and monitoring plan	HMMP updated to include accurate costings for proposed management and monitoring activities	All detailed applications must provide a costed HMMP	Not applicable
Roles and responsibilities	<p>Applicants must indicate who will be responsible for:</p> <ul style="list-style-type: none"> • Enhancing and/or creating the habitats set out in the biodiversity metric and HMMP; • Maintaining and managing the habitats set out in the biodiversity metric and HMMP; and • Monitoring the habitats set out in the biodiversity metric and HMMP. <p>All parties to outline their competence to undertake such activities and provide experience and examples of similar activities undertaken previously.</p>	<p>The legal agreement template must be populated with the appropriate roles and responsibilities details.</p> <p>The costed HMMP must outline the competency of all parties involved in carrying out habitat enhancement, creation, management and monitoring.</p>	<p>BS 8683:2021 Process for designing and implementing Biodiversity Net Gain. Specification</p> <p>See ecological competencies above (for monitoring)</p>

Requirement	Guidance Note	Evidence Required	Key References
<p>Cash flow and funding</p>	<p>Provision of appropriate information to enable confidence in funding model for initial capital works and subsequent management of the habitats.</p>	<p>Financial information to demonstrate that capital costs can be met and sufficient funds in place to manage and monitor the land for 30-year period to be included in a written statement.</p>	<p>Not applicable.</p>
<p>Sales recording and accounting</p>	<p>Applicants must provide details of any phasing of biodiversity unit sales and include a plan showing spatial plan showing how where the phase areas are located within the habitat bank.</p> <p>Applicants must also provide detailed procedures for:</p> <ul style="list-style-type: none"> • Recording sales. • Entering allocations on the on the national biodiversity gain sites register. • Reporting sales and allocations to the council. <p>Applicants to indicate at what spatial scales they intend to sell units with reference to the spatial risk scores set out in the latest</p>	<p>Processes and procedures for Recording sales, Entering allocations on the on the national biodiversity gain sites register and reporting sales and allocations to the council.</p> <p>Details of any phasing of unit sales to be set out in a written statement.</p> <p>Spatial plan of phasing to be provided, if planned.</p>	<ul style="list-style-type: none"> • Sell biodiversity units as a land manager - GOV.UK • National Biodiversity Gain Sites Register

Requirement	Guidance Note	Evidence Required	Key References
Sales recording and accounting (continued)	version of the Statutory Biodiversity Metric and accompanying User Guide.	Please see above	Please see above
Agreement to monitoring fee	Applicants must pay the council the agreed monitoring fee in full on signing of the legal agreement.	Not applicable	Not applicable
Permission to enter land	Applicants must indicate consent that Westmorland and Furness Council staff can enter land to carry out spot checks with 24 hours notice.	Legal agreement	Not applicable
Agreement on breach of management	Applicants must agree an appropriate method for dealing with a breach of the HMMP. May include use of step-in rights or agreement to a bond for larger schemes.	Legal agreement	Not applicable