

# Biodiversity unit and nutrient credit stacking: What we know

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Landowners and occupiers will be able to stack biodiversity net gain alongside nutrient mitigation measures and other environmental payments on the same land.

Biodiversity net gain (BNG) requires that the effect on biodiversity of a new development is quantified, and the natural habitat is enhanced and left in a measurably better state.

Confirmation that stacking will be allowed has come alongside limited guidance on BNG, with many questions still to be answered.

This is despite developers having a legal obligation to achieve a minimum 10% BNG on their sites from November this year.

See also: [Sussex farm weighs pros and cons of biodiversity pilot scheme](#)



## **TFA warns of delays to ELM scheme rollout this summer**

BNG forms part of the planning process for new housing, industrial and commercial developments.

In many cases developers will look for nearby land on which to meet their BNG obligations, paying farmers to carry this out under long-term agreements, expected to be at least 30 years.

In turn, BNG units can be offered to developers by landowners, long-term leaseholders, farming tenants and others carrying out habitat creation or enhancements.

### **Sales to multiple buyers**

Where biodiversity units and nutrient credits are stacked on the same piece of land they can be sold to the same or different developers, provided the eligibility criteria for each market are met, says Defra.

Nutrient credits are needed to offset the increased levels of phosphate and nitrogen brought about by developments. The provision of this mitigation is increasingly becoming a requirement in the planning process.

Defra has also confirmed that land receiving Basic Payment Scheme income can be used to sell biodiversity units and nutrient credits, as can land in the Sustainable Farming Incentive, Countryside Stewardship, Environmental Stewardship and Local Nature Recovery.

However, the BNG aspect must provide additional habitat enhancements to those already in place through other commitments.

Biodiversity units and nutrient credits can also be sold from land used to sell carbon credits if the habitat is further enhanced and this does not impact the carbon value.

## Clarity needed over land status

What happens to the status of the land at the end of a 30-year BNG agreement term remains unclear. There is an expectation by many farm advisers that it will be protected in some way.

Where it has been permanent grassland for more than 10 years, it would in any case need an environmental impact assessment before ploughing would be allowed.

Where a development site achieves more than its committed BNG units, developers will be able to sell those excess units or use them for another project. Mark Russell, head of Carter Jonas' Cambridge rural department, says it will be important to cover this in the initial development land deal so that the landowner can benefit from it too.

Local authorities have an obligation to devise local nature recovery strategies. Anthony Weston of Complete Land Management suggests that looking at these will help guide landowners as to where local authorities want to see BNG cash invested.

He also advises that before signing up to provide BNG, landowners might want to investigate the type of development with which their credits will be associated.

## What else has been confirmed

### Small sites

The requirement for a 10% biodiversity net gain (BNG) uplift on small sites is delayed until April 2024. Small sites are defined as one to nine homes on a site smaller than 1ha or, where the number of homes is unknown, on a site smaller than 0.5ha.

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This also applies to non-residential sites where the floor space to be created is less than 1,000sq m or where the site is smaller than 1ha. This could be advantageous for some farm developments and diversifications.

For farmers and landowners thinking of applying for planning consent, this gives a window in which to do so before the minimum BNG 10% uplift becomes a legal requirement, Mark Russell points out.

“Planning consents normally have a life of three years so effectively there will be a four-year window for small sites,” he says.

## Exemptions

Permitted development projects and self-build homes are exempt from having to provide a 10% BNG uplift. Existing buildings and sites on sealed surfaces such as tarmac and concrete are also exempt.

## BNG register

This will be operated by Natural England and will be public. This will not act as a marketing platform but merely register new BNG sites from November 2023.

Hugh Townsend at Townsend Chartered Surveyors says: “Sites will need to be registered, probably within six weeks of a sale, and it will need to be shown there is a legally binding agreement in place and that the works or enhancements proposed will achieve the net gain proposed.”

Further guidance is to be published on the creation of legal agreements. “Habitat management and monitoring plans will also need to be registered and be shown to be secured by the legal agreement, for which Natural England will be publishing a template,” says Mr Townsend.

Biodiversity gains can be secured by planning conditions, planning obligations, conservation covenants, or a combination of these.

## BNG market

The BNG market will be a national one – local planning authorities will not be able to insist BNG is delivered in their own planning area.

BNG payments to landowners will be subject to VAT.

## Measuring biodiversity

This is done through a Defra metric, currently Metric 3.1. A new version, Metric 4, will be issued before November.



## Nationally Significant Infrastructure Projects (NSIPs)

These include energy, transport, water, waste water and waste developments and are subject to fast-track planning. NSIPs have until November 2025 before they must provide the 10% BNG uplift.

These projects have compulsory purchase powers. Defra has said it would prefer mutual agreement to be reached for land on which to offset BNG obligations, but many advisers are sceptical that this will be the case.

## What remains unknown

### Tax

It has been confirmed that payments to landowners for BNG will be subject to VAT, but confirmation is urgently needed on the income, inheritance and capital gains tax treatment of the BNG regime. Defra has said only that work is under way to provide guidance on this.

### Security of funds

Defra's response to the public consultation on BNG mentions only that guidance will be issued on its the expectation that funds are held securely so that outcomes are secure in the long-term.

Most advisers expect full payment up front for the 30-year commitment in order to mitigate the risk for the person providing the credits and habitat enhancement.

## Monitoring and enforcement

This will be carried out by local authorities but the protocols and charges have not been set out, says Peter Cole of Ceres Property.

Charges are likely to vary between authorities, he says, adding also that Natural England (NE) has not yet set out the penalties for mistakes or purposeful breaches of BNG commitments.

## Fees

There will be a fee to register, with Defra and NE considering options including a flat fee or one related to biodiversity gain site size. As a guide, a fee of between £100 and £1,000 has been suggested.

Advisers say landowners need to take this, and other charges and potential penalties, into account when setting BNG unit prices.

## Case study: Tim Coates

Oxfordshire farmer Tim Coates is also co-founder and chief customer officer of Oxbury Bank.

He sees the most recent announcements, and especially the stacking guidance, as helpful and potentially positive for land values and income from land.

“It’s very context- and site-specific,” says Mr Coates, who is also director of his local farmer cluster Landscape Recovery pilot. “But the range of opportunities afforded by all of the natural capital markets now appearing suggests only a good effect on farm incomes and land values.

Farmers are providing eco-system services now but are not being paid for a lot of it.

“Land could even be valued more highly, especially with the opportunity to stack confirmed and the ability to produce on the same land,” he says, also suggesting that the market could see the development of “hope value” for BNG.

Landowners should assess the likely demand for BNG by looking at the local plan in their areas and for nearby authorities, he suggests.

Mr Coates has established agroforestry on own 800ha farm and has 5ha in the government’s English Woodland Creation Offer scheme, with a view to selling carbon credits from it.

In future he will be able to offer enhanced grassland for BNG on the woodland perimeter, as its proximity to the woodland means it offers higher distinctiveness for BNG.

## BNG questions?

Do you have a question on BNG? Send it in and FW will put it to the experts email [suzie.horne@markallengroup.com](mailto:suzie.horne@markallengroup.com) or write to *Farmers Weekly*, Quadrant House, The Quadrant, Sutton, Surrey, SM2 5AS.