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Also submitted online

6th February 2019

Dear DEFRA Net Gain Consultation Team

CPRE Sussex response to the DEFRA Net Gain Consultation Proposals 2018

This is the formal response of the Sussex branch of the Campaign to Protect Rural England (CPRE Sussex) to the above consultation. CPRE Sussex works to promote the beauty, tranquillity and diversity of the Sussex countryside by encouraging the sustainable use of land and other natural resources in town and country. We encourage appropriate and sustainable land use, farming, woodland and biodiversity policies and practice to improve the well-being of rural communities. We represent around 2,000 CPRE members in Sussex who love the countryside.

We support and have contributed to the full national response to this consultation from the Campaign to Protect Rural England. There are a few issues where we would like to provide additional context from our county and we have therefore decided to submit a response to sit alongside that of the national charity.

We welcome the broad direction behind this consultation and the principle of setting in law a requirement for biodiversity net gain in new developments. This comes at a time when research such as the recent State of Nature Report shows a decline in species surveyed of 60% and insect declines of 65-70%. This particular proposal will, of course, only have a limited contribution to addressing those issues, but it still has an important part to play in helping our threatened wildlife and biodiversity.

The document states (pg22) that 'not all development is delivering measurable improvements'. This is true, and it is our experience that very few developments are currently doing so.

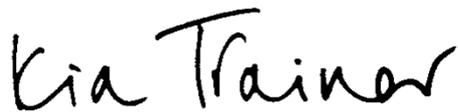
As always, the devil is in the detail, but as a concept we are pleased to give it our support. However, we believe it will only succeed if certain principles are applied. These are outlined below.

- **The DEFRA Metric:** Much of this proposal relies on the effectiveness of the DEFRA metric for measuring both baseline data and net gain levels required. We agree that there needs to be a common approach but it is clear from the consultation document that this is a 'work in progress'. We support the approach suggested that the metric should evolve in the light of practical experience so that we achieve a valid measure of net gain which is transparent and relevant to what we are trying to achieve. i.e. genuine and lasting gains in biodiversity and habitat. The development of the metric needs to ensure that a much wider range of species are considered, not just legally protected species, and that it achieves a wider landscape perspective.
- **Approaches to delivering net gain:** We are concerned that there seems to be an acceptance (pg23) that irreplaceable habitats may be damaged in development activities. Although the document talks about 'last resort' compensation schemes, there needs to be stronger protection for certain habitats. We do not want a regime that allows serious environmental damage as long as compensation is paid. The process needs to consider the impact on peripheral wildlife species which may be dependent on the land in question, such as the importance of hunting habitat for mammals, birds of prey etc. Small, isolated areas of protection are not self-sustainable.
- **Developments where there are no opportunities for net gain: use of tariffs** We are concerned about the concept of using tariffs or purchase of units where no opportunities for gain are apparent. There is a real danger that such a system may be seen as an easy way of buying out the responsibilities of net gain. In practice there will be some environmental gains that can be achieved in almost any location, such as built-in bird and bat boxes and probably some limited planting. It is potentially too easy for developers to claim that nothing can be done on a particular site and buy their way out of their responsibilities. Any net gain that can be achieved must be a requirement. *Please see our answers to Questions 13, 22 23, 31, 32,33.*
- **Biodiversity/ecological assessments:** A major issue here is 'who does these assessments'? We do not believe we can leave developers to do them, as often happens now, without some form of objective quality control/verification. Similarly, as the document states, most planning authorities do not have their own ecologists. There needs to be a scheme for approving ecologists as having the necessary understanding of the metrics and to be of an independent status. Transparency for all parties relies on the data being correctly collected and the metrics correctly applied. *Please see our answers to Questions 2,6,15,43.*
- **Partnership Working:** This proposal is a wonderful opportunity to establish a high quality approach to biodiversity in local planning through partnership arrangements. These would include the planning authority, the developer/builder but also national, regional and local environmental organisations who have huge knowledge and expertise. Whilst we appreciate the desire not to introduce unnecessary delays into the process, such partnerships are a very transparent and valuable way to acquire information, knowledge and expertise about a specific location. Use of partnerships will also be seen by local people and all interested parties as a clear and transparent approach to baseline and net gain assessments. *Please see our answers to Questions 14,17,20,21,26,27,31,32,43,44.*
- **Protected Species:** Biodiversity gain is not just about protected species. There are many declining and 'at risk' species that do not have statutory protection but which need to be given very high profile in any net gain process. There are also many more common species which may become endangered if we do not protect and enhance 'everyday' natural habitats. This is not just about great crested newts!

- **Monitoring of Net Gain:** It is essential, if this process is to succeed, and be seen to succeed, that a strong, independent monitoring process is in place. Without this, net gain is in danger of becoming a box-ticking exercise rather than a meaningful process of enhancing biodiversity and habitat. The monitoring also needs to take place over an extended period to demonstrate that the net gain is a sustainable one. If net gain is not sustained then a process needs to be in place to enable further action to be taken to restore a net gain. *Please see our answers to Questions 24, 25, 26, 27, 43, 44.*
- **Measures that will contribute to net gain:** To assist the parties to achieve a net gain in biodiversity, it will be important to provide practical advice to set out the type of measures needed to be put in place, which will have to be part of the initial planning process. CPRE Sussex is about to launch a document to help with this aspect. It has been produced in conjunction with RSPB (South East) and Sussex Wildlife Trust and we plan to use this locally in the first instance to encourage planning authorities and developers towards a net gain culture. A copy is attached for information.

Our detailed response, as submitted online, can be found below. We hope that you find our comments constructive and useful.

Yours sincerely,

A handwritten signature in black ink that reads "Kia Trainor". The signature is written in a cursive, slightly informal style.

Kia Trainor
Director, CPRE Sussex

CPRE Sussex response to the DEFRA Net Gain Consultation Proposals 2018

Q1 -We support net gain requirements for all types of developments, within the Town and Country Planning Act. This is the only approach that can deliver a meaningful overall net gain.

Q2 The process will require sound baseline measurement and long-term monitoring, achieved by independent assessments and with significant penalties for non-compliance. The Government must resource the collation and collection of data on species, habitats, landscape ecology interactions, and wider natural capital at a local level to support planning and decision making over useful time-periods, not just a single season 'snapshot.'

Q3 We oppose exemptions from any of the stated categories here. Even house extensions can easily incorporate built-in nesting boxes, bat boxes etc that will make a real difference. Small sites can also have an impact on biodiversity and in connectivity of habitat so these should be included. There are huge potential gains on brownfield sites, where the baseline may be low. There are also sites designated as brownfield that retain some green infrastructure and may be important for wildlife habitats. We would support a simplified process for house extensions and other permitted development not requiring land take (see Q5.)

Q4 No. Once we introduce exemptions we lose an important part of the overall message that development must be sustainable and create habitat.

Q5 A simplified process may be sensible and acceptable for small developments such as house extensions but needs to still be effective, transparent and relevant, and make full use of data from other organisations.

Q6. The metric does need to allow for important local features and local designations. We acknowledge the importance of having one system of measurement, in the interests of transparency, but it needs to be flexible enough to take account of significant local variations and features, especially for smaller scale application. We stress the importance of having independent assessment of baseline data and application of variations for local features, rather than leaving this to developers and planning authorities, who may well have a vested interest. Establishing higher levels of protection for local sites would be helpful in this process.

Q7 We support the robust licensing for local authorities in relation to great crested newts. However, we find the focus on great crested newts here is a little unhelpful. Although a valuable and protected species, there are many other protected and/or endangered species of equal importance and all need to be safeguarded in the policy. The simplistic view that protected species can be managed by relocation, as if often the case with great crested newts, is not necessarily a viable approach. Please see also our response to Q 22.

Q8 It is difficult to provide absolute evidence for the effectiveness of district or strategic level approaches. Sustainability of species is determined not just by small scale activity but by much wider landscape-scale considerations. We have an unhelpful and inconsistent system which protects certain species but still leaves a wide range of endangered or at risk species legally unprotected, even where their habitat may be protected. There needs to be a regular review of all 'at risk' species and they all should be subject to special consideration at district level and strategic planning.

Q9. A net gain process which takes an integrated approach to enhancing delivery of a range of ecosystem services rather than biodiversity alone has the potential to demonstrate greater value for money from funds invested.

Q10. There is little experience of the use of the DEFRA biodiversity metric. In the absence of any better system of measurement, we believe this is a sensible place to start but we also welcome the suggestion that the metric would be improved and refined on the basis of greater evidence of its effectiveness or otherwise.

Q12. No doubt developers may want to reduce this figure of 10% as far as they can. It is difficult to set a correct figure, although we would prefer a figure of 20% as a minimum. This would need to be reviewed in the light of experience.

Q13: No, this is not helpful and could allow developers to escape their responsibilities. We need net gain to be a fully established principle that is accepted in development situations. Simply paying up without fully exhausting the on-site options will damage the credibility of the whole policy. Whilst we are sure that some tariff mechanism is necessary and there may well be cases where improving a different (nearby) habitat may be a sensible way forward, it is in the use or potential abuse of the tariff system that the whole concept may be devalued. The rules for compensatory tariffs need to be very clearly set out and applied in a transparent way. Where a tariff approach is appropriate, there may be cases where a regional or national scheme could benefit. (NB regional benefits are not mentioned here, only national ones).

Q14. The spatial strategy needs more complete data in order to assess its suitability as a tool. However what matters here and throughout the scheme is having an approach to how this is managed, preferably through local partnership arrangements involving expertise from a range of organisations with knowledge that goes well beyond that of developers and planning authorities.

Q15. We believe these should be as independent as possible. Can we rely on assessments financed by developers, or even by planning authorities? Assessors/ecologists appointed from an independent registered panel would be more transparent. Otherwise, interested parties may need to have the right to produce their own independent assessment where, say, a developer's report is contested. That could introduce lengthy delays into the process which may be avoidable if assessments are essentially independent, albeit funded by developers.

Q16 Habitat maps can have a valuable role here. A register of national mapping which is continually updated would be a valuable tool. At present such mapping is done by a range of national and local organisations and it would be of great help if these sources were brought together in one place.

Q17 Such maps cannot, however, provide the complete baseline data. Much of this mapping is large scale and local habitat assessments are needed for most developments. There are many other good sources of baseline data that must be accessed, such as Biodiversity Record Centres and local wildlife groups. This applies whether or not there is an issue of intentional degradation.

Q18 It is helpful that the document raises the very real concern that landowners could deliberately degrade land before selling to developers. We are aware that this activity already takes place, such as recently in the area near Pagham Harbour in West Sussex, and will be much more attractive to landowners in a net gain process. We must have financial penalties at a level that make this an

unattractive option. There is a need for data to significantly predate the date of land sale so it will be clear if degradation has occurred. Another form of apparent degradation which we have experienced is where assessments are carried out at the wrong time of year to suggest an absence of certain species, for example, bat surveys in November and wildfowl surveys in the height of summer. It is important that proper assessments take into account historical data for an appropriate time period.

Q19 This can be achieved through transparency of process, and once again through independent assessments combined with validated historical data. There would be an onus on landowners to demonstrate that there had not been degradation in an appropriate time period. Any change of use during the period would need to be justified. The onus of proof should be on the landowner. In the case of Pagham Harbour, we have observed that a landowner changed land use from cropping to fallow and used bird scaring devices, and then used that change to show that protected Brent geese were not active on the land and it was not part of their functional habitat. If intentional degradation is clearly taking place it should be the subject of legal action against the landowner in a statutory scheme.

Q20 Habitat opportunity maps can play a key part in this process. However, as stated in Q 16, 17, these maps need to be drawn from a range of sources, both at national and local levels. If we are seeking to compensate for loss of a local habitat in a particular development, locally-based mapping and other sources of data will be essential. National mapping is necessarily limited by considerations of scale and local habitat features may well be omitted. Again, what may be important is to draw all these sources of information together before decisions are taken.

Q21 There is some recognition here that there are valuable sources of biodiversity data available outside of what is held by local authorities which needs to be part of any consultation process. Biodiversity Record Centres are a good example. This type of data collection must be a requisite part of assessing the baseline for net gain calculations. Identification of priorities is a more difficult challenge. There will be national priorities identified by Natural England but national environmental charities and organisations will also have an important input to discussions about priorities. We also need to avoid the assumption that priorities are always about special and protected habitats. If we do not give some priority to 'normal' habitats, we will put many other species into the at risk category.

Q22 We are opposed to the generation of an open market for biodiversity credits. The proposal in this section for so called 'surplus credits' to be created and traded is of concern. The consultation refers (Q 12) to a minimum net gain of 10%. There is a danger that this is seen as a maximum rather than a minimum. A net gain above the agreed figure is a bonus that should be seen as 'normal'. If we start trying to trade surplus units, this will encourage a loss of transparency and goodwill in the whole scheme. It suggests that one site could suffer a loss of biodiversity which is paid for by credits from another site. This approach would not be welcome. We have experience of a superficial approach to compensatory habitats, for example in Whitehawk Hill Nature Reserve, Brighton, where great crested newts were relocated even though the relocation site was itself under threat of development.

Q23 All aspects of compensatory units should be part of consideration by the type of partnership mentioned in Q14 above. It cannot be left to developers and planning authorities if it is to be a respected and transparent process. Such an approach may also remove environmental benefits created by local groups

Q24 If this process is to be meaningful, it is essential that there is a clear and measurable legacy of net gain outcomes. Otherwise it can become a box-ticking exercise which will not be able to demonstrate a

lasting impact on biodiversity. We have to demonstrate that there was a real net gain achieved by the measures put in place. Therefore there must be an on-going monitoring and management process as part of the statutory policy. A minimum period would be helpful as long as it is a substantial one. Where net gain is not sustained, there must be a responsibility to take further measures.

Q25 We support minimum periods and longer-term responsibilities. Permanent improvements would be ideal, but in reality this is probably not a viable approach. The period might vary according to the nature of the net gain identified. In general a period of 25 to 30 years + may be a good standard.

Q26 Conservation covenants could be valuable. The question is who are the parties to the covenants? There should be a longer-term expectation on developers and planning authorities to manage the legacy. This can be done through delegation to local wildlife or other groups where possible.

Q27 Funding has to be made available to covenanted groups to assist them in implementing proper management plans. The onus on developers and planning authorities has to extend through the period of the management plan.

Q31 Collection of tariff revenue can be managed through local authorities or nationally as long as it is done in an open and transparent manner. We have already mentioned the value of partnership working with other local and national organisations, and that is essential in relation to collection of tariffs and decisions on spending.

Q32 This highlights a major concern about the whole proposal. It is not acceptable for this aspect to be a 'cosy agreement' between developers and planning authorities. Neither of these parties may be in the best position to take decisions on how to spend the money. As already stated in Q 31 and elsewhere, we need a wider partnership approach to the whole process. This would be based on a formal agreement between these parties plus local and national environmental bodies who may be in a better position to identify the priorities. It could also link to the role of Local Nature Partnerships, albeit in a more slimmed down version. This would help such decisions to be accepted as genuinely in the interests of the environment, and not just an agreement between parties with vested interests i.e. developers who want to develop as cheaply as possible and planning authorities who need to meet often unrealistic housing targets. We are concerned by national press and local experience that Natural England is underfunded and no longer impartial and often not meeting its duties in terms of protecting the natural environment.

Q33 Not necessarily. The national approach to priorities should not be slanted towards areas of higher development pressures automatically. We would hope that the initial focus for tariff spending would be in the local area to the development in question. This should include consideration of the areas adjacent to a development, which we know are invariably degraded as a result of the impact of the activities of residents. There would need to be tight criteria for if or when any tariffs were transferred to national bodies.

Q40 A staggered transition may be a sensible approach, especially if combined with piloting of aspects such as local partnership agreements and independent assessment.

Q41 We accept the need for an appeal process over any dispute about net gain achievement. The best mechanism needs careful consideration and may be better handled outside of the planning appeal mechanisms. We would hope that, with a partnership working approach, as specified above, these appeals would be limited.

Q43 Monitoring of biodiversity gain needs to be carried out in a transparent way. We have already suggested the use of independent ecologists at all stages. There needs also to be an agreed target of gain (ie what biodiversity gains would be expected on each site given the measures agreed at the initial stage). Again, the input of other bodies as part of a local partnership would assist in establishing a transparent process. On-going ecological assessments at a defined period for the duration of the agreed period are essential.

Q44 Yes, local authorities should be required to provide information about habitat losses or gains, but as per our answer to Q 43, we feel strongly that this information should be gathered from a range of sources within a local partnership. Only local groups will have the full detail of other peripheral activities to support wildlife, which may not be apparent to someone carrying out a standard site assessment.

Q45 Data obtained by means of remote sensing platforms, including manned or unmanned aerial vehicles (UAV) and, perhaps satellites too, may be able to facilitate the delivery and monitoring of biodiversity net gain, particularly when combined with field surveys. (See *C J Rhodes, P Henrys, GM Siriwardena, M J Whittington, L R Norton: The relative value of field survey and remote sensing for biodiversity assessments. Methods in Ecology and Evolution 6 (2015) 772-781.*)