



The key grey areas and legal choke points in implementing and managing Biodiversity Net Gain and Nature-Based Solutions in client projects?

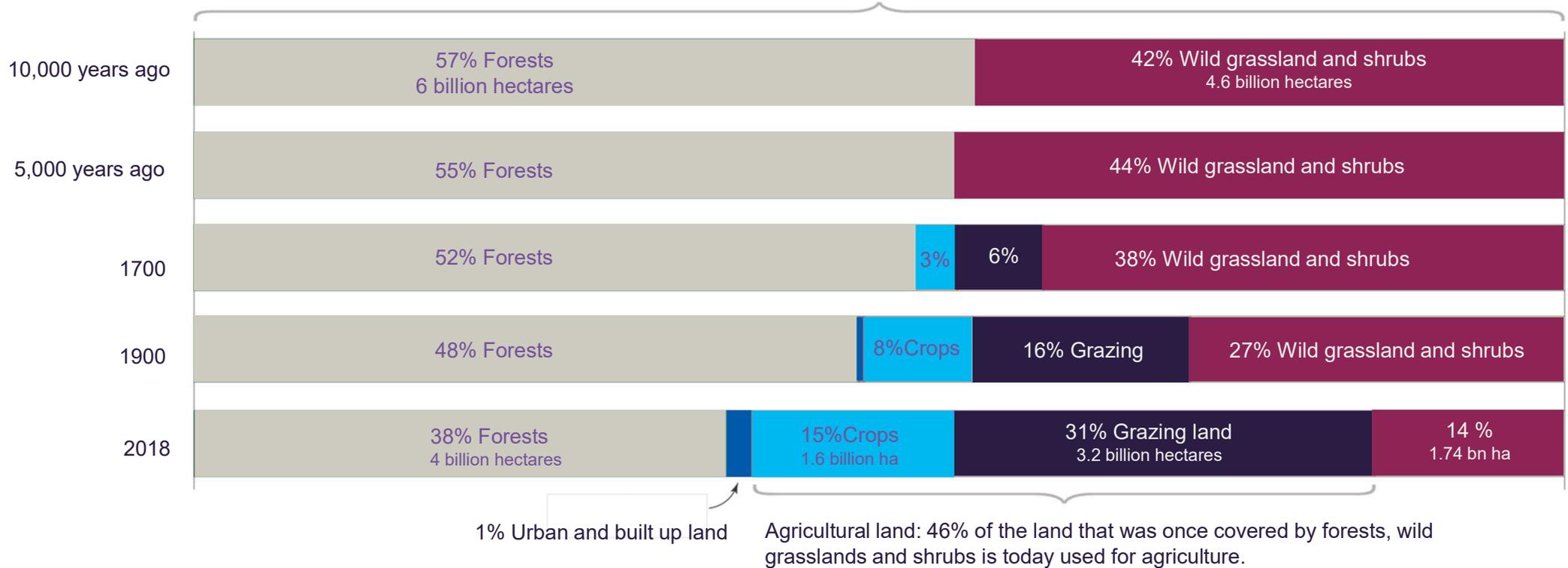
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The Biodiversity Crisis

WHY IS THERE A BIODIVERSITY CRISIS?

10,000 years ago, 10.6 billion hectares - 71% of the earth's land surface - were covered by forests, shrubs, and grasslands. The remaining 29% are covered by deserts, glaciers, rocky terrain and other barren land.



Data: Historical data on forests from Williams (2003) - Deforesting the Earth. Historical data on agriculture from The History Database of Global Environment (HYDE). Modern data from the FAO. OurWorldinData.org - Research and data to make progress against the world's largest problems. Licensed under CC-BY by the authors Hannah Ritchie and Max Roser.

BNG Basics

Mandatory BNG - Basics



Where to deliver BNG



On-structure



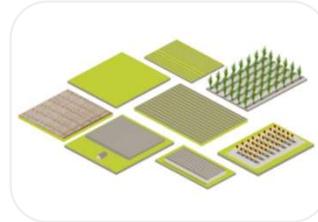
Within red
line



Within blue
line



Offsite (own)



Habitat land
bank



S/State credit



BNG Grey Areas and Choke Points

Application/ Pre-Decision

- Application of the BNG hierarchy by officers
- Setting the planning redline too wide and increasing the baseline
- Agreeing an appropriate site baseline with the LPA
 - landfilled sites pre-restoration
 - sites cleared prior to baseline
- Structuring applications with a view to over-delivering (>10%) and selling/allocating excess



S106 and ConCov

- Timing issues for S106 Agreements (possibly helped now by PAS templates?)
- Conservation covenants – a race to the top or bottom?
 - Enforcement of obligations for breach (hair trigger or too pragmatic?)
 - Third party challenge to Responsible Bodies entering into excessively weak covenants
- Landowner/landlord liability for signing-up – does the provision of financial security negate the need for the freeholder to be party?
- Competence of the party undertaking maintenance
- Monitoring reports – what will happen to the results in practice?



Market Issues

- A lack of familiarity with the concepts: “*The Seller will retain all rights to the soil carbon*” - who owns the rights to future nature markets?
- BNG overages on site sales
- Liability and financial security for 30 years of maintenance costs (as between LL and T)
- Unit buyers very concerned re. reputation of Unit sellers, especially smaller – will they be around and if not...?
- Tax issues



Regulatory Issues

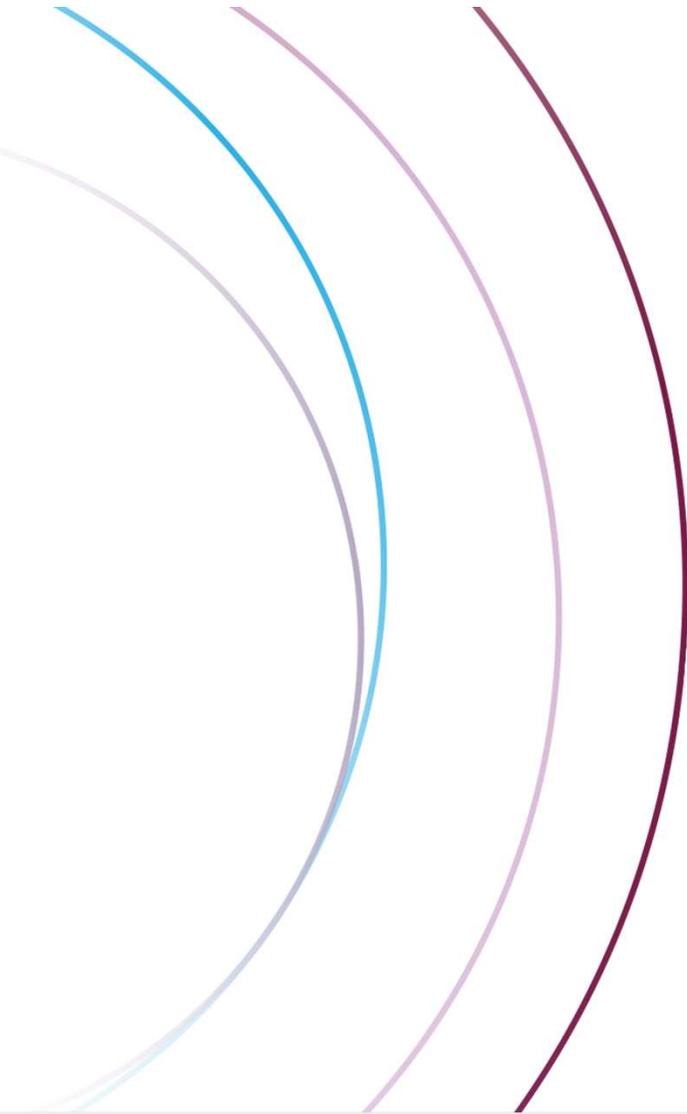
- LPAs requesting S106 agreements for onsite enhancements, but only needed where “significant”
- Similarly some LPAs requesting the offsite solution to be bound by S106 prior to grant of planning permission
- Exemptions – will these change in medium-term?
- Changing LPA boundaries post-decision and the impact of the spatial multiplier – thank goodness for NCAs
- Appeals against refusals (s78 and then s288 TCPA 1990)
- Third party challenges to BG Plan approvals
- CPO – but now see section 13 Guidance on Compulsory Purchase Process



Nature-Based Solutions

NbS

Sustainable practices that leverage nature's processes and ecosystems to address environmental challenges



NbS Issues

- Novelty of solution
 - the difficulty of getting consent/approval when “we’ve not done this before”, “where is the science?”
 - bankability (whether to project financiers, or e.g. plot sales)
- Financial security for total or partial failure (including for negative unintended consequences e.g. offsite flooding)
- Regulation – is there policy to support implementation (e.g. an additional revenue stream)



What's Next?

What's Next for Natural Capital?

Woodland Carbon	Peat Carbon	Nutrient Neutrality	Hedgerow Carbon
Restoring River Bends	Re-wetted peatlands, saltmarshes, and seagrass.	Land management to enable soils to absorb more water	Creating saltmarshes to absorb wave energy
Bundling	Stacking	UK ETS expansion to include nature	International nature markets (restoration or stewardship)

Further (Gowling WLG) Reading



[Conservation Covenant Regime](#)



[The Future of Urban Green Space](#)



[Dasgupta Review](#)



[Environment Bank Podcast](#)



[COP15 Begins](#)



[EIP 2023 \(5 briefings\)](#)



[BNG Guidance – Feb 2023](#)



[Biodiversity at COP27](#)



[UK Nature Markets](#)



[Nature Comes of Age](#)



[Biodiversity Net Gain – 6m to go](#)



[Statutory Biodiversity Duties for Public Bodies](#)



[Growing Need to Protect Biodiversity \(COP28\)](#)



[BNG – Final Pieces of the Jigsaw](#)



[Ecocide – A New Criminal Offence](#)



[BNG Day 2024](#)



[BNG Webinar – 5 Months In](#)



[Nature Interview – Emma Toovey, Environment Bank](#)



[Nature Interview – Sam Sinclair, Biodiversify](#)



[Nature Interview – James Burton, 39 Essex](#)



[Nature Interview – Josephine Bush, NextEnergy](#)



[Nature Interview – Brontie Ansell, Lawyers for Nature](#)



[Nature Interview – Berit Boggild, Mannaz](#)



[Everything you need to know about the TNFD](#)