



## Report to Cabinet

<b>Date:</b>	<b>12 July 2022</b>
<b>Title:</b>	<b>Biodiversity Net Gain</b>
<b>Cabinet Member(s):</b>	Cllr Peter Strachan; Cllr Gareth Williams
<b>Contact officer:</b>	Ian Thompson Corporate Director Planning, Growth and Sustainability <a href="mailto:ian.Thompson@buckinghamshire.gov.uk">ian.Thompson@buckinghamshire.gov.uk</a> Report authors: David Sutherland and Simon Meecham
<b>Ward(s) affected:</b>	All
<b>Recommendations:</b>	<b>AGREE to adopt the Biodiversity Net Gain Supplementary Planning Document</b>

***NOTE that the proposed biodiversity net gain scheme will be bought back for consideration later in the year following the publication of guidance and secondary regulations.***

**Reason for decision:** To adopt the Supplementary Planning Document to provide guidance to planning applicants and to aid the decision making of the council on Biodiversity Net Gain.

### **1. Executive summary**

- 1.1 This report provides an overview of the new requirement to provide biodiversity net gain as part of the planning system and presents the Biodiversity Net Gain Supplementary Planning Document for adoption. The report highlights that the proposal to run a Buckinghamshire Council biodiversity net gain scheme is currently paused pending publication of government guidance. Subject to the guidance this scheme will be brought back for consideration later in the year.

- 1.2 The Environment Act 2021 has introduced a new mandatory requirement for biodiversity net gain in the planning system, to ensure that all new developments increase biodiversity by a minimum of 10%, with this requirement coming into effect from late 2023. The aspiration for achieving biodiversity net gain is also set out in the National Planning Policy Framework and in our adopted Local Development Plans. The Supplementary Planning Document being put forward for adoption by the Council, as part of this report, explains how biodiversity net gain can be achieved in Buckinghamshire.
- 1.3 In addition, the Council has also been developing a Biodiversity Net Gain scheme that aims provide a one-stop shop for developers, enabling them to discharge their offsite biodiversity net gain obligations through financial contributions. By potentially offering a locally operated scheme to provide net gain offsets, the Council is aiming to help ensure that biodiversity net gain offsets would support habitat creation and restoration on a strategic scale within Buckinghamshire. However, this scheme will not be available until further clarification is provided by the government through the publication of detailed guidance on the implementation of Biodiversity Net Gain by Local Authorities. Whilst work will continue to develop the proposed scheme, this will be brought back to Cabinet separately after taking into account government guidance once published.
- 1.4 The attached supplementary planning document can be adopted at this time without the above scheme being in place. This is on the basis that the supplementary planning document provides guidance to underpin that biodiversity net gain should be achieved within a development site; and that offsetting is only an option if it can be demonstrated that any redesign of an application cannot meet the net gain within the site, in full. The Supplementary Planning Document indicates that in the event of an offsite net gain being required, developers have the option of using a third-party biodiversity net gain offset provider or finding a bespoke offset site themselves. It notes that the option of the Buckinghamshire Council off-setting scheme is not currently available.

## **2. Content of report**

### **National and local policy context.**

- 2.1 Biodiversity net gain is one of the key commitments set out in the Government's 25 Year Environment Plan. The Environment Act has integrated the requirement to deliver biodiversity net gain by development into the planning system. The Environment Act sets out the following key components of mandatory biodiversity gain:

- Amendment of Town & Country Planning Act (TCPA).

- Requirement for a minimum 10% gain calculated using the Biodiversity Metric & approval of a biodiversity gain plan.
- Habitat is required to be secured for at least 30 years via planning obligations or conservation covenants.
- Delivered on-site, off-site or via a new government statutory biodiversity credits scheme (although this would be a last resort option); and
- The setting up of a national register for net gain delivery sites.

2.2 The biodiversity net gain requirements of the Act will become mandatory in November 2023, which has given local authorities a two-year transition window within which to implement net gain within the planning system. The supplementary planning document aids this implementation.

2.3 Biodiversity net gain requirements will supplement, but not replace or undermine, existing protections for protected sites and species or irreplaceable habitats. Indeed, critical to the understanding of the process is that a mitigation hierarchy must be followed. This requires that all possible avoidance, mitigation, and gains in biodiversity are made onsite first. Opportunities for compensation for losses of biodiversity and a net gain in biodiversity only taking place offsite if they cannot be designed into the planning application onsite. Any off-site provision is the last resort to achieve net gain.

2.4 Biodiversity net gain also links to another statutory requirement on local authorities under the Environment Act 2021 - the production of Local Nature Recovery Strategies that will set local biodiversity priorities and will spatially guide and direct where biodiversity net gain offsets will be strategically located at local level. Buckinghamshire was chosen to be one of five pilot areas within the Country to trial the production of Local Nature Recovery Strategies and submitted a draft prototype to Defra in June 2021.

2.5 Biodiversity net gain policies have been incorporated into the adopted local plans and core strategies within Buckinghamshire and as such the local policy framework now exists county-wide. To provide clarity and a clear process for developers, the biodiversity net gain supplementary planning document has been drafted, incorporating changes made following public consultation between 19 February 2021 and 19 March 2021. If adopted, it will become the first county-wide supplementary planning document for Buckinghamshire Council.

2.6 Whilst biodiversity net gain will become a legislative mandatory requirement later next year local authorities are still being encouraged to bring forward locally specific biodiversity net gain policies for the following reasons:



- If a local policy is in place before biodiversity net gain becomes mandatory, it allows the authority to implement biodiversity net gain prior to the legislative requirements and also prevents the situation where applicants rush to get planning permission without any net gain before the requirement is mandatory. The council has biodiversity policies within the Local Development Documents covering all its planning areas. These policies can be used to ensure biodiversity considerations are included within planning applications; however, the policies do not state a percentage requirement for net gain. The requirement for 10% net gain will only become mandatory with the implementation of the requirement by the Environment Act, in November 2023.
- A locally specific policy allows the local authority to set what strategies they require developers to take into account in delivering BNG (Biodiversity Net Gain), e.g. Local Nature Recovery Strategies (LNRS), for example in targeting offsite BNG delivery. This will help ensure that the right habitats are provided in the right places.

### Summary of how biodiversity net gain offsetting schemes operate

- 2.7 Demonstrating BNG requires an approach to measuring biodiversity. The impact of a development on biodiversity is calculated using a standardised “biodiversity metric”. Mandatory biodiversity net gain will require use of the latest version of the metric, the current version of which is Biodiversity Metric 3.1. The impact is expressed in biodiversity units, based mainly on the type (the distinctiveness), condition and extent of the habitats affected. Developers should ensure that potential negative impacts on biodiversity (losses), predicted through applying the metric, are either
- avoided in the first place,
  - or are otherwise minimised / mitigated,
  - compensated for *on the development site* through careful design.
- 2.8 After all efforts on-site to avoid, mitigate and compensate for any loss in biodiversity have been exhausted, and the results of the biodiversity accounting metric still show that the development is likely to result in a loss (i.e. fewer units of biodiversity post-development compared with pre-development), then to achieve an overall net biodiversity gain as a result of the development, finding biodiversity units off-site, or “**offsetting**”, will be required.
- 2.9 Offsetting means delivering a number of biodiversity units on land outside of the application area so that an overall net biodiversity gain is achieved as a result of the development. Offsetting can result from either creating new habitat or

restoring/enhancing existing, degraded habitat. Importantly, offset sites must reflect the habitat that is being lost and deliver 'like for like' habitats or 'like for better' habitats.

2.10 Where offset sites are required, the developer has a choice:

- they can source and provide their own bespoke offset site,
- or they can obtain an offset site via a third-party provider.
- If a shortfall in units required to achieve BNG remains, having explored the onsite and local offsite options, a developer will be able to purchase statutory biodiversity credits from the government as a last resort

### **What's the role of Local Authorities in delivering biodiversity net gain**

2.11 The local authorities' regulatory statutory duty with regard to biodiversity net gain relates to its policy making role in respect of planning as well as how this links into the local nature recovery strategy. In addition, ecologists will evaluate the biodiversity net gain information accompanying a planning application (completed net gain metric and net gain plan) and provide advice to the planning authority whether this is acceptable or not on this basis. Any requirement for offsite net gain provision would be secured via a S106 agreement.

2.12 Furthermore, the Environment Act has introduced an enhanced duty that requires each local authority to consider the actions it can take to conserve and enhance biodiversity, consistent with the proper exercise of all of its functions, and then take those actions. This enhanced duty will include the requirement of local planning authorities to report on the actions they have taken to deliver biodiversity net gain and the results of that action.

2.13 Whilst not a statutory duty, a local authority also has the potential to enter into the market for providing offsite biodiversity units to developers. It is in this respect where work has been undertaken in terms of how a potential Buckinghamshire Council scheme would operate.

### **Buckinghamshire Council Biodiversity Net Gain Scheme ("the Scheme")**

2.14 Buckinghamshire Council has been developing a biodiversity net gain scheme ("the Scheme") in consultation with the Bucks and Milton Keynes Natural Environment Partnership (NEP) and with support and advice from Warwickshire County Council, who have been operating a similar biodiversity net gain scheme since 2012. The Scheme is being designed to provide a one-stop-shop for developers, to provide them with the option to fulfil their offsite biodiversity net gain obligations through a financial contribution to the council, secured via S106 agreements.

- 2.15 The local authority would then identify appropriate offset sites for suitable habitat creation in accordance with the strategic priorities set out in the Local Nature Recovery Strategy and then secure the relevant agreements regarding delivery of these offset sites. As part of the work undertaken during the recent pilot Local Nature Recovery Strategy, extensive mapping work was undertaken that identified priority offset areas for net gains in terms of most appropriate locations for particular habitats.
- 2.16 However, this scheme will not be available until further clarification is provided on how local delivery of biodiversity net gain will work in practice via the publication of detailed guidance and secondary legislation by the government. Pending this clarification, expected later this year, work will continue to develop the proposed scheme and how it would work and associated financial assurance. It is anticipated that the Scheme would be brought back to cabinet for consideration of approval separately later in the year.
- 2.17 In the meantime, the Supplementary Planning Document is able to be adopted. Any requirement for offsite biodiversity net gain provision would be secured via a S106 agreement. The only implication being is that developers will not have the option of paying a financial contribution to the Local Authority to enable them to fulfil their obligation. As such they would need to source any offset requirements via a third-party biodiversity net gain provider or by providing a bespoke offset site themselves.

### **3. Other options considered**

- 3.1 Regarding the Supplementary Planning Document, the alternative option is to not adopt as there is no legal requirement to provide specific guidance on the topic, albeit a forthcoming Supplementary Planning Document is referenced in Buckinghamshire Local Plans.
- 3.2 Biodiversity net gain is a relatively new concept and adopting the Supplementary Planning Document would clearly help developers and the public understand the requirements of the associated policies and will support the planning application and appraisal processes. Indeed, local authorities are being positively encouraged by Natural England to adopt local biodiversity net gain guidance ahead of any national requirement.

### **4. Legal and financial implications**

- 4.1 The Supplementary Planning Document has been prepared in accordance with the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended). The relevant regulations relating to the consultation process are explained below.

- 4.2 Regulation 12: Regulation 12(a) requires the Council to produce a consultation statement before the adoption of the SPD. This must set out who was consulted in preparing the document; a summary of the main issues raised by those individuals and organisations who responded, and how those issues have been addressed in final version of the SPD. This document is the 'Consultation Statement' for the adopted SPD for the purposes of Regulation 12(a). This is attached as Appendix 2.
- 4.3 Regulation 12(b) requires the Council to publish the documents (including a 'consultation statement') for a minimum four-week period, to specify the date when responses should be received, and identify the address to which responses should be sent. The consultation statement that accompanied the consultation draft Supplementary Planning Document set out that information.
- 4.4 Regulation 13: Regulation 13 stipulates that any person may make representations about the Supplementary Planning Document and that the representations must be made by the end of the consultation date referred to in Regulation 12. The consultation statement that accompanied the consultation draft Supplementary Planning Document set out that requirement.
- 4.5 The creation of Supplementary Planning Documents relating to biodiversity net gain is being encouraged by Natural England. The operation of local authorities as offset providers and brokers is permitted under the Environment Act 2021 and the current biodiversity net gain consultation indicates that this is the direction of travel.
- 4.6 Financial implications – The government acknowledges that the introduction of biodiversity net gain into the planning system will place a new burden on local authorities in terms of resourcing requirements. As such the government has indicated that it will fund local authorities for this new burden. A small initial new burdens payment has been paid to allow authorities to start to prepare (Bucks Council received £24k, which we used to fund staffing costs last year) and full details of new burdens funding are expected to be announced this summer. In the interim the Council has identified £200k from earmarked reserves to forward fund to the Biodiversity net gain Officers required, in advance of the new burden funding This is done 'at risk' of the New Burden funding being less than the £200k we have set aside.
- 4.7 MTFP implications: Once the new burden funding is confirmed, this will need to be reflected in MTFP to highlight that the new funding will cover the ongoing staffing requirements. New burdens funding is issued initially as a one-off grant, and then is 'rolled up' into the Local Government Settlement on an ongoing basis e.g., we receive a new burden grant of £150k; the following year this will be incorporated into our LG Settlement. The adjustment in MTFP would show the staffing costs offset by the new burden grant and then corporately via the LG Settlement. The additional staffing, therefore, will not be a pressure on the Council's base budget.

## 5. Corporate implications

5.1 *This section will need to include the relevant corporate plan priority relating to this report and refer to any other implication that need to be taken into account such as:*

- *Property* – It should be noted that we may be considering Buckinghamshire Council’s own land holdings as potential offset sites as part of the Council run net gain scheme that is under development.
- *HR* – specialist staff will be employed to run the proposed biodiversity net gain scheme. As this is a new commitment for local planning authorities, New Burdens payments will be forthcoming from Government to support our staff costs.
- *Climate change* - This report is directly related to Buckinghamshire Council’s key priority of improving our environment, notably addressing climate change, improving our environment and creating economic opportunities for clean growth.
- *Sustainability* – This system would support long term biodiversity priorities for the area, as set out in the NEP’s Biodiversity Action Plan 2030.
- *Equality* – The 2010 Equality Act outlines the provisions of the Public Sector Equalities Duty which requires Public Bodies to have due regard to the need to:
  - i. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010
  - ii. Advance equality of opportunity between people from different groups
  - iii. Foster good relations between people from different groups

Officers have paid due regard to the aims of the Equalities Act 2010 throughout the consideration and preparation of this SPD. This review has indicated no adverse impact on any of the specified equality groups. Officers will continue to keep this matter under review to ensure no adverse impacts arise.
- *Data* - data generated as part of the Scheme will be subject to GDPR; and Data Protection Impact Assessments will be carried out at the earliest opportunity.
- *Value for money* –. New burdens funding will also be provided by the government to help local authorities implement this new duty. However, it is not clear what level of funding will be provided and for how long.

## **6. Local councillors & community boards consultation & views**

- 6.1 A summary of the Supplementary Planning Document public consultation can be found in Appendix 2.
- 6.2 The development of the biodiversity net gain Supplementary Planning Document and scheme has been discussed with the Cabinet Member for Planning and Regeneration, as well as the Cabinet Member for Climate Change and Environment. Extensive consultation has been held with partner organisations in the Buckinghamshire and Milton Keynes Natural Environmental Partnership (NEP).

## **7. Communication, engagement & further consultation**

- 7.1 Upon approval, Supplementary Planning Document will be launched through press releases, social media posts and events. Our website will include new content on the scheme.

## **8. Next steps and review**

- 8.1 The Supplementary Planning Document will be adopted and made available to developers and the public via our website. The Supplementary Planning Document will note that the option for a developer to fulfil their offsite biodiversity net gain obligations through a financial contribution to the council, secured via S106 agreements is not currently available. The developer would need to source any offsets requirements via a third-party biodiversity net gain provider or by providing a bespoke offset site themselves.
- 8.2 The work to develop a specific Buckinghamshire Council next gain scheme will continue and this will be brought back to Corporate Management Team and Cabinet separately after taking into account government guidance and secondary regulations once published and having gone through associated financial assurance.

## **9. Background papers**

- 9.1 **Appendix 1 - Biodiversity net gain Supplementary Planning Document**
- 9.2 **Appendix 2 - Supplementary Planning Document consultation statement**

## **10. Your questions and views (for key decisions)**

- 10.1 If you have any questions about the matters contained in this report, please contact the author of this report. If you have any views that you would like the cabinet member to consider, please inform the democratic services team. This can be done by telephone [01296 382343 ] or email [ [democracy@buckinghamshire.gov.uk](mailto:democracy@buckinghamshire.gov.uk) ]