

Planning Policy Executive Advisory Panel 24 March 2022

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| Report Title | Consultation on Biodiversity Net Gain Regulations and Implementation |
| Report Author | Sue Bateman, Senior Planning Officer, sue.bateman@northnorthants.gov.uk and Andra Stopforth, Principal Planning Officer Andra.stopforth@northnorthants.gov.uk |
| Executive Member | Councillor David Brackenbury – Executive Member for Growth and Regeneration |

List of Appendices

Appendix A - Summary process diagram for proposals as they would apply to Town and Country Planning Act development

Appendix B – Draft response to Consultation on Biodiversity Net Gain Regulations and Implementation

1. Purpose of Report

- 1.1. To raise awareness of the implications of biodiversity net gain and for the Advisory Panel to provide feedback to inform a council response to the consultation on biodiversity net gain regulations and implementation.

2. Executive Summary

- 2.1. The report sets out details of the current consultation from the Department for Environment Food & Rural Affairs (DEFRA) on proposals for how biodiversity net gain will work in practice. Feedback from the consultation is intended to shape developing legislation, processes and guidance. This will help ensure the requirement for mandatory biodiversity net gain delivers positive outcomes for nature, improves the process for developers, and creates better places for local communities.
- 2.2. A draft response to the consultation is provided and the Panel's views are sought to assist in providing a council response to the consultation.
- 2.3. The report also sets out some of the potential implications for the council of the introduction of biodiversity net gain.

3. Recommendations

- 3.1. It is recommended that the Panel consider the report and provide any feedback on the draft response in Appendix B to enable the Executive Member for Growth and Regeneration in consultation with the Executive Director of Place and Economy to submit a response to the consultation on biodiversity net gain regulations and implementation by 5 April 2022.
- 3.2. *(Reason for Recommendations – to provide a response on behalf of North Northamptonshire Council to help shape developing legislation, processes and guidance)*
- 3.3. *(Alternative Options Considered – the council is not required to respond to the consultation so could choose not to respond, however it is important as a council we have an opportunity to feed our views back to help shape the secondary legislation, policy and delivery plans to ensure that they are practical and deliverable.)*

4. Report Background

- 4.1. The Environment Act 2021 passed into UK law in November 2021. It sets out legislation to protect and enhance our environment for future generations. This included measures to clean up the country's air, restore natural habitats, increase biodiversity, reduce waste and make better use of our resources. These changes will be driven by new legally binding environmental targets enforced by a new independent Office for Environmental Protection (OEP) which will hold government and public bodies to account on their environmental obligations.
- 4.2. A key requirement of the Act is to ensure that developments deliver at least a 10% increase in biodiversity. The current consultation from DEFRA relates to the practical and legal implementation details of this new biodiversity net gain requirement for development. The Act sets out the framework for biodiversity net gain requirements but leaves some detail to be provided through secondary legislation, policy and guidance. The Environment Act's biodiversity net gain provisions apply:
 - for development for which planning permission is granted under the Town and Country Planning Act 1990
 - for Nationally Significant Infrastructure Projects consented under the Planning Act 2008
- 4.3. Biodiversity net gain is an approach to development which means that habitats for wildlife must be left in a measurably better state than they were in before the development. Achieving biodiversity net gain means that natural habitats will be extended or improved as part of a development or project. Development

will be designed in a way that provides benefits to people and nature and reduces its impacts on the wider environment. Mandating biodiversity net gain through the Environment Act is intended to establish a consistent set of requirements and necessary exemptions which give developers clarity as to how they can meet their net gain obligations.

4.4. Mandatory biodiversity net gain policy and processes will fundamentally change the way that habitat losses are considered as part of development. There is currently uncertainty in practice about what biodiversity net gain means, the responses to this consultation will shape the secondary legislation, policy and delivery plans which will deliver the Environment Act's aims.

4.5. Mandatory biodiversity net gain is not the only policy being developed to meet the ambitions set out in the Government's 25 Year Environment Plan. It is helpful to consider wider policy proposals and planning reforms when considering the implications of biodiversity net gain. The most relevant of these policies are outlined below:

- **conservation covenants** – a new voluntary, and standalone legal mechanism that can secure long term conservation management obligations on land to secure habitat enhancements for biodiversity gain.
- **Environmental Land Management Schemes (ELMS)** – an agri-environment scheme which will work alongside mandatory biodiversity net gain as another source of income to enhance biodiversity and the wider environment.
- **Environmental Net Gain** – means building on biodiversity net gain and going further to achieve increases in the capacity of affected natural capital to deliver ecosystem services and make a scheme's wider impacts on natural capital positive.
- **Local Nature Recovery Strategies** – are locally produced spatial planning frameworks for nature, informed by national maps and priorities. Each strategy will, for the area it covers, agree priorities for nature's recovery, map the most valuable existing areas for nature and map specific proposals for creating or improving habitat for nature and wider environmental goals.
- **Nature Recovery Network** – an expanded, improved and connected network of places for nature that is rich in wildlife and more resilient to climate change.
- **Species abundance target** - an additional legally binding target on species abundance for 2030 to halt the decline of nature. Creating new and better habitats through biodiversity net gain will contribute towards limiting biodiversity loss and accelerating its recovery, thereby supporting the meeting of the new species abundance target.
- **Species conservation strategies and protected site strategies** - are designed to provide a more strategic approach to the complex challenge of protecting and restoring species and habitats. The Act places a duty on planning authorities to cooperate with Natural England, and other planning authorities and public bodies, in the establishment and operation of the strategies.

- **Strengthened biodiversity duty** - Public authorities subject to the duty, including planning authorities, will need to report on how they are considering and enhancing biodiversity. For planning authorities, this must include references to their delivery and support of biodiversity net gain. Public bodies might wish to enhance habitat on their own land in response to this duty and, should this require funding, they may sell the generated 'biodiversity units' to fund the enhancement.
- **Planning reforms** - The Planning for the Future White Paper published in August 2020 proposed wider reforms to the planning system and was clear that any reformed planning system will have improving biodiversity as a core objective.

5. Issues and Choices

- 5.1. The consultation from DEFRA opened on 11 January 2022 and closes on 5 April 2022. There is a consultation document which is supported by an impact assessment, market analysis study and a financial & economic appraisal for major infrastructure projects. In addition to inviting comments on the consultation document targeted stakeholder engagement will take place including on the biodiversity metric. Consultation questions within the document are split into three parts, each of which covers several themes:
- 1) defining the scope of the biodiversity net gain requirement for Town and Country Planning Act 1990 development
 - Exemptions
 - development within statutory designated sites for nature conservation
 - irreplaceable habitat
 - 2) applying the biodiversity gain objective to different types of development
 - phased development and development subject to subsequent applications
 - small sites
 - Nationally Significant Infrastructure Projects (NSIPs)
 - 3) how the mandatory biodiversity net gain requirement will work for Town and Country Planning Act 1990 development
 - biodiversity gain plan
 - off-site biodiversity gains
 - the market for biodiversity units
 - habitat banking
 - the biodiversity gain site register
 - additionality
 - statutory biodiversity credits
 - reporting, evaluation, and monitoring
- 5.2. Suggested responses to the consultation questions are set out Appendix B. Members are invited to provide any feedback on these to enable the Executive Member for Growth and Regeneration in consultation with the Executive

Director of Place and Economy to submit a response to the consultation by 5 April 2022. Key implications of the consultation are discussed below.

- 5.3. As a local planning authority, the sections relating to delivering and evaluating development proposals that require planning permission are of particular interest. The mandatory requirement is to achieve at least a 10% biodiversity net gain increase from the pre-development biodiversity value. The requirement is framed as a pre-commencement condition, meaning that the biodiversity gain condition must be discharged before development can begin.
- 5.4. To discharge the condition, the planning authority must approve the development's biodiversity gain plan. This biodiversity gain plan approval must take place before development starts. However, it is proposed to require applicants for planning permission to include biodiversity gain information with their application. This biodiversity gain information can help aid decision-making by providing planning authorities, and consultees, with an understanding of how proposed development intends to meet the biodiversity gain objective. A summary of how the process is intended to apply is included as Appendix A.
- 5.5. It is currently intended that mandatory 10% biodiversity net gain will commence two years after royal assent of the Act, so in November 2023. The National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG) already encourage net gains and it is sought by Policy 4 of the North Northamptonshire Joint Core Strategy. This means that this authority can already ask for biodiversity net gain as part of development proposals. There is however at this current time no specific local target or agreed method of measuring it.
- 5.6. Mandatory net gain will be implemented through the planning system. Developers will be required to demonstrate that they will deliver a minimum 10% net gain of biodiversity units for area-based habitats and any relevant linear habitats (hedgerows, lines of trees, and watercourses). The 10% will be a mandatory requirement but should not be viewed as a cap on the aspirations of developers that want to voluntarily go further or for local planning authorities seeking a higher aspiration through policies.
- 5.7. The biodiversity gains and losses of a development will be measured in 'biodiversity units', using a metric which uses habitats as a proxy for biodiversity and calculates units by taking account of the type, extent and condition of habitats. Natural England has recently published a biodiversity metric (known as [Biodiversity Metric 3.0](#)) which, subject to further consultation and any further updates, is expected to be the metric specified for mandatory biodiversity net gain.
- 5.8. Biodiversity net gain complements and works with the biodiversity mitigation hierarchy set out in the National Planning Policy Framework paragraph 180a. To achieve net gain in a way that is consistent with the mitigation hierarchy and reflecting the 'spatial hierarchy' preference for local enhancements, developers should follow these steps in order:

1. aim to avoid or reduce biodiversity impacts through site selection and layout
 2. enhance and restore biodiversity on-site
 3. create or enhance off-site habitats, either on their own land or by purchasing biodiversity units on the market, and
 4. as a last resort to prevent undue delays, purchase statutory biodiversity credits from the UK Government where they can demonstrate that they are unable to achieve biodiversity net gain through the available on-site and off-site options.
- 5.9. The UK Government published a biodiversity net gain impact assessment in 2019 which outlined their analysis of the costs and benefits. This recognised that implementing mandatory biodiversity net gain will place additional demands on local authority resources. The UK Government has committed to fully fund new burdens placed upon planning authorities arising from the new mandatory biodiversity net gain requirement.
- 5.10. As part of the press release relating to this consultation a new funding pot of over £4 million was announced to help local planning authorities to prepare for biodiversity net gain. The funding is intended to help authorities expand ecological resource and upskill ecologist teams. To date it has not been announced how this funding might be distributed or when. It has also been suggested that government funding in addition to this might be required to support the full implications for local authorities. Again, there is currently no further information on this.
- 5.11. Ecological support for planning applications is currently provided through a joint service available to both the North and West Northamptonshire Councils. The service is hosted by NNC but both Council's pay to use it. Assessing the required biodiversity metric and biodiversity plans to ensure they are robust would provide additional demands upon the service for which there is no current capacity.
- 5.12. Where it is not possible to avoid negative impacts and mitigate impacts on-site, developers will be able to create or enhance habitat off-site. The establishment of a market for purchasing biodiversity units will ensure that a supply of off-site biodiversity units is available to developments that need them. Landowners or managers who can create or enhance habitat to the required standards on their land will be able to sell the resulting biodiversity units to developers. Intermediaries such as brokers may facilitate these transactions.
- 5.13. Market analysis estimated that the introduction of mandatory biodiversity net gain would generate annual demand for around 6,200 off-site biodiversity units with a market value in the region of £135 million. It concluded that the market has the potential to meet demand for off-site biodiversity gains. However, shortages of supply are a risk in the early years of the market and for highly urban areas, islands, and some habitat types. The consultation document expects that most instances of local shortages are likely to be alleviated by allowing development to use biodiversity units purchased from outside of the local area.

- 5.14. Policy and guidance will encourage off-site biodiversity gains to be delivered locally to the development site, which is incentivised by the biodiversity metric's spatial risk multiplier. Where the available local opportunities for off-site habitat creation or enhancement are insufficient for developers to meet their net gain requirements, off-site delivery outside of the local area will be allowed.
- 5.15. Spatial nature strategies, such as Local Nature Recovery Strategies, should be used to target delivery of off-site biodiversity gains, and habitat delivery in strategic areas will be incentivised by the biodiversity metric's strategic significance score.
- 5.16. In determining whether to grant permission or approve the plan, whether the developer has adequately considered the on-site and local off-site options before looking further afield may be a relevant consideration.
- 5.17. To count towards a development's net gain requirement, off-site biodiversity gains will need to be secured through a conservation covenant or planning obligation and registered prior to final approval of the biodiversity gain plan. The Environment Act states that biodiversity gain sites (off site) must be maintained for at least 30 years after the completion of the works to create or enhance the habitat.
- 5.18. Any landowners or managers will be able to create or enhance habitat for the purpose of selling biodiversity units, provided that they are able to meet the requirements of the policy, including additionality and register eligibility requirements, and demonstrate no significant adverse impacts on protected and priority habitats.
- 5.19. Suppliers of biodiversity units will be able to sell to developers anywhere in England, provided that the use of those units is appropriate for the development in question and the distance between the development and the off-site habitat is properly accounted for in the biodiversity metric.
- 5.20. Planning authorities will be able to sell biodiversity units from their own land or act as a broker for third party units. Where planning authorities choose to participate in the market, they will be expected to manage any associated conflicts of interest and will need to comply with the same rules and requirements that apply to other biodiversity unit suppliers.
- 5.21. Biodiversity net gain will not enable planning authorities to direct developers to purchase biodiversity units from them in preference to other market suppliers that are able to deliver equivalent or better outcomes in relation to the requirements of the policy. Planning authorities will not be able to charge developers a general tariff for delivery of off-site gains which is not associated with specific gain sites that are registered and allocated to the development in question.
- 5.22. The price for biodiversity units is expected to be agreed between buyers and sellers, and for them to ensure that it is sufficient to cover the costs of creating

or enhancing the habitat and maintaining it for a minimum of 30 years. It will also be for the buyer, seller, and any other parties to the agreement to agree payment terms, for example whether there would be one lump-sum payment, staged payments, or payment by results. The market analysis accompanying the consultation used estimates of £20K - £25K per biodiversity unit. This cost however is likely to vary dependent on habitat type and location. Some suggestions are that a figure of £30K+ might be more realistic in this part of the country.

- 5.23. A choice of local options for buying biodiversity units would provide the most benefits to the local environment and the local community as well as offering suitable options to facilitate development. Officers have started to have some initial discussions with potential providers. In order to ensure projects have the greatest benefit it would be preferable to have these identified through the Nature Recovery Strategy as soon as practical. These provide the opportunity to identify landscape scale creation or restoration projects.
- 5.24. The government has consulted on requirements for Nature Recovery Strategies, but, at present, there are no final decisions on the content or timing. It is likely that the responsibility to produce them will rest with local authorities. This council will be well placed to commence work on a strategy for the area as considerable work has already taken place on Habitat Opportunity Mapping with the Local Nature Partnership. Work has also started on a Natural Capital Investment Plan for Northamptonshire and Peterborough which will feed into this process. Additional resources are however likely to be needed to undertake this important piece of work.
- 5.25. The council will also need to decide as a landowner whether we want to sell biodiversity units. In order to do this a net gain assessment would be needed of relevant council owned land with a view to creating a land bank. This could offer a good opportunity to deliver offsets locally where they would be of most benefit to residents, and it would be able to deal with small offsets. This would, however, involve a significant amount of work including identifying a potential cost per unit, but it could generate much needed funding for council parks for example as well as boosting the delivery of local projects.

6. Next Steps

- 6.1. Following feedback on the draft responses to the consultation the Executive Member for Growth and Regeneration in consultation with the Executive Director of Place and Economy will agree a response to submit to the consultation on biodiversity net gain regulations and implementation by 5 April 2022.
- 6.2. Further discussion will be necessary on some of the potential implications for the authority of the introduction of biodiversity net gain and these will be brought back to the advisory panel or Executive as appropriate.

7. Implications (including financial implications)

7.1. Resources and Financial

- 7.1.1. There are no direct financial or resource implications as a result of submitting a response to the consultation. There will however be implications as a result of the introduction of biodiversity net gain.
- 7.1.2. Additional ecological resource will be required to support the determination of planning applications. The biodiversity metric is only a tool to aid decision making. It requires ecological evaluation and advise alongside it. Development management officers will also have additional implications to consider within their reports to assess the suitability of applications and the discharge of pre-commencement conditions. Additional training is likely to be necessary to support this. There are also monitoring requirements which need to be set as planning conditions or obligations. Failure to deliver outcomes may result in the need for the authority to undertake enforcement action. In addition, there are requirements to publish Biodiversity Reports every 5 years. The government has indicated that this extra burden will be funded, but there are no details as of yet as to what level of funding the council might receive and when.
- 7.1.3. The production of Nature Recovery Strategies is a requirement of The Environment Act 2021. DEFRA will appoint a responsible authority for each area to lead its preparation. This is likely to be the local authority. These will establish priorities and map proposals for nature recovery. They will therefore be important in identifying local opportunities for biodiversity net gain. The ambition is that they are created using genuine local collaboration with a partnership of organisations and individuals working closely with each responsible authority. Whilst a great deal of evidence gathering has already taken place in Northamptonshire in partnership with local stakeholders, production of a Nature Recovery Strategy will also require additional resource.
- 7.1.4. Should the council wish to consider selling biodiversity units as a landowner a project would need to be initiated to identify the potential and then deliver and manage the units for 30 years. If units were provided on land managed by the council, then there would be implications for grounds maintenance teams. The full cost of administering the scheme and providing staff and equipment is expected to be able to be covered in the pricing of the units.
- 7.1.5. The current Biodiversity Supplementary Planning Document will require updating to reflect biodiversity net gain. To ensure that biodiversity net gain is seen as part of the wider need for environmental net gain a natural capital or environmental net gain Supplementary Planning Document is also proposed. These are already identified within the Planning Policy work programme but will require resource to progress.

7.2. Legal and Governance

- 7.2.1. The Environment Act 2021 places new duties and responsibilities on the council. Biodiversity net gain will become a mandatory part of the planning process, which as a planning authority the council must implement.
- 7.2.2. The Act strengthens the biodiversity duty. Public authorities subject to the duty, including planning authorities, will need to report on how they are considering and enhancing biodiversity. For planning authorities, this must include references to their delivery and support of biodiversity net gain.

7.3. Relevant Policies and Plans

- 7.3.1. A key commitment of the corporate plan is for a '*green, sustainable environment. Taking a lead on improving the green environment making the area more sustainable for generations to come*'. Biodiversity net gain is an important mechanism for improving the natural environment. There are opportunities for the authority to show clear leadership for the environment, by the production of the Nature Recovery Strategy, Supplementary Planning Documents and selling biodiversity credits.
- 7.3.2. The North Northants Joint Core Strategy already includes a requirement to seek a biodiversity net gain through Policy 4. The review of this plan through the preparation of the North Northants Strategic Plan provides a significant opportunity to strengthen this approach. This is addressed in the Scope and Issues consultation which is due to commence in March.

7.4. Risk

- 7.4.1. There are no significant risks relating to responding to the consultation, however the response of local authorities should help to shape the secondary legislation, policy and delivery plans to ensure that they are practical and deliverable.
- 7.4.2. The Environment Act 2021 places new duties on the authority, failure to undertake these duties appropriately would risk reputational damage. Given that there will be reporting requirements to the Office for Environmental Protection (OEP), there may be further consequences.
- 7.4.3. In order to ensure that the council undertakes its duties suitable resources will need to be made available. This will be considered as part of the ongoing staffing structure and resources review across the authority.
- 7.4.4. Failure to deliver the Nature Recovery Strategy in a timely manner may lead to non-priority projects being used to deliver biodiversity net gain. If there are not sufficient local opportunities to deliver net gain, identified net gain will need to be delivered outside of the local area. This would lead to reduced benefits to the local environment and local communities.

7.5. Consultation

7.5.1. This report has been prepared with collaboration of officers across the authority. Any subsequent work undertaken to address biodiversity net gain would be subject to consultation with stakeholders in accordance with corporate guidelines. Consultation on supplementary planning documents would be in accordance with the council's Statement of Community Involvement (SCI)

7.6. Consideration by Scrutiny

7.6.1. There is no identified need for wider consideration by scrutiny although should members of the Scrutiny Commission request it to go into the work programme, they can do so.

7.7. Equality Implications

7.7.1. There are no identified equality implications of responding to the consultation.

7.7.2. Any future proposals or policies put forward to respond to biodiversity net gain would be accompanied by an Equality Screening Assessment to provide evidence that the impact of the proposal on equality groups has been considered.

7.8. Climate Impact

7.8.1. Delivering biodiversity net gain will provide key positive impacts in respect of climate change. Habitat restoration and creation can for example assist with carbon sequestration through tree planting or natural flood risk management. Should the council decide to operate a land bank and sell biodiversity credits this would provide opportunities for the organisation to reduce its own carbon footprint.

7.9. Community Impact

7.9.1. Biodiversity net gain provides opportunities for greater access to the natural environment and all the benefits that this provides. This includes improved health and well-being and opportunities for community engagement.

7.10. Crime and Disorder Impact

7.10.1. There are no identified impacts in relation to crime and disorder in the area.

8. Background Papers

8.1. [The Environment Act 2021](#)

8.2. [Consultation on Biodiversity Net Gain Regulations and Implementation](#)

8.3. [Biodiversity Metric 3.0](#)

- 8.4. [Biodiversity Supplementary Planning Document](#) for Northamptonshire, August 2015
- 8.5. [North Northamptonshire Joint Core Strategy](#)
- 8.6. [National Planning Policy Framework](#)
- 8.7. [National Planning Practice Guidance](#)