

# Biodiversity Net Gain

## Planning Policy Committee, Thursday, 21 September 2023

Report of: Planning Policy Specialist & Development Management

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Purpose: For decision

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Publication status: Open

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Wards affected: All

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### Executive summary:

The Government has introduced a requirement for certain types of development to deliver through the planning system a minimum 10% Biodiversity Net Gain (BNG) from November 2023. A high-level summary of the concept and the associated technical, training and staffing requirements in the planning department is presented in this report.

It also updates Members on the implications for the Council and immediate / longer term expectations in terms of service delivery and future work programmes. It considers this from the perspectives of planning development management, infrastructure, monitoring and planning policy teams.

The introduction of BNG provides potential for the Council to use corporate assets to enter into the commercial marketplace for securing biodiversity credits but this aspect of BNG is not addressed in this report. This potential will be explored by Council officers and subject to future reporting.

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### This report supports the Council's priority of:

- Building a better Council
- Creating the homes, infrastructure and environment we need
- Becoming a greener, more sustainable District

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## **Recommendations to Committee:**

- A. Members note the report and the Chief Planning Officer be authorised to undertake the further work necessary to embed BNG within the Local Planning Authority and associated support services;
- B. the basic 10% BNG requirement from November 2023 onwards be adopted until further work can be undertaken to develop a robust evidence base on biodiversity;
- C. Members note the requirement for monitoring of BNG statistics, BNG legal agreements and BNG planning conditions and the resourcing implications; and
- D. Members note the need to consider staff cost charging schedules for all aspects of BNG related work, particularly administration and monitoring and the intention of the Chief Planning Officer to bring a report back to this Committee on the matter in November 2023.

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## **Reason for recommendations:**

The implications of introducing BNG are significant across services within the Local Planning Authority and associated supporting services. As a statutory requirement for the Council and as a responsible body, it is important that the Council is fully prepared to process planning applications on its introduction in November 2023 and that the relevant policy, monitoring and legal frameworks are in place to support this function.

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### **1 Biodiversity Net Gain – An Introduction**

- 1.1 Biodiversity is the variety of plant and animal life in a particular habitat or place, and a high level of biodiversity is usually considered to be important and desirable.
- 1.2 Biodiversity Net Gain (BNG) is an approach to development that leaves biodiversity in a measurably better state than before the development took place. Currently, although certain sites are protected, there are limited mechanisms to value, maintain, enhance or create wider habitats. As a result, habitats continue to be lost to development, reducing nature's ability to connect and thrive. In the future, most developments will need to deliver a minimum 10% BNG. BNG is additional to existing habitat and species protection, BNG aims to create new habitat as well as enhance existing habitats, ensuring the ecological connectivity they provide for wildlife is retained and improved.

- 1.3 The Government's 25 Year Environment Plan set the aspiration to mainstream BNG in the planning system. This has been delivered under the Environment Act 2021, whereby all planning permission granted in England (with a few exceptions, including small sites) will have to deliver at least 10% BNG from November 2023. The precise date in November is yet to be confirmed. BNG will be required for small sites from April 2024.
- 1.4 BNG will be measured using DEFRA's biodiversity metric and enhanced or compensatory habitats providing BNG policy compliance for individual planning applications will need to be secured for at least 30 years. The BNG requirement will only apply on a mandatory basis to those applications submitted after BNG takes effect in November 2023 (major applications) or April 2024 (minor applications). However, individual applicants for planning permission can choose to make their applications BNG compliant before the requirement becomes mandatory.
- 1.5 The Environment Act 2021 amended the Town and Country Planning Act (TCPA) and set out the key components to mandatory BNG referred to in this report.
- 1.6 A fundamental concept within BNG is the mitigation hierarchy. This provides that environmental harm resulting from a development should be avoided, adequately mitigated, or, as a last resort, compensated for. BNG mitigation and compensation should preferably be achieved on the development site. Off site mitigation is a last resort and, where used, should be in close proximity to the development site. Overall mitigation and compensation can be achieved through a combination of on- and off-site measures.
- 1.7 The use of the term biodiversity credits is exclusively used to refer to the Government's statutory credit scheme (scheme of last resort).
- 1.8 A well-illustrated summary of BNG principles prepared by Natural England can be found at:

[https://naturalengland.blog.gov.uk/wp-content/uploads/sites/183/2022/04/BNG-Brochure\\_Final\\_Compressed-002.pdf](https://naturalengland.blog.gov.uk/wp-content/uploads/sites/183/2022/04/BNG-Brochure_Final_Compressed-002.pdf)

while the mechanisms for BNG delivery are summarised in the Natural England graphic below (taken from that summary document):

### ON-SITE (UNITS)



Delivered through habitat creation/enhancement via landscaping/green infrastructure

### OFF-SITE (UNITS)



Delivered off-site through habitat creation/enhancement, including via habitat banks, with public and private landowners

### STATUTORY CREDITS\*



Delivered through large-scale habitat projects delivering high value habitats which can also provide long-term nature-based solutions

\*Credits will be made available for purchase in the future. They are intended for use only where BNG cannot be delivered on-site or off-site via the market, as a last resort.

## Biodiversity Metric

- 1.9 The Biodiversity Metric provides the means to assess changes in biodiversity value (losses or gains) brought about by development or changes in land management. DEFRA have produced this tool based on a habitat-based approach to assess biodiversity loss and gain which is summarised in the graphic below. They have also produced a calculator to help with the assessment process. The latest version of the Metric is Biodiversity Metric 4.0, which is likely to form the basis of statutory metric. A Small Sites Metric for use on smaller development sites is also available.

## Calculating the value of habitats

BNG is measured using the Biodiversity Metric. This tool should be used by a competent person, normally an ecologist. It uses changes in the extent and quality of habitats as a proxy for nature and compares the habitat found on a site before and after development. Four key factors underpin this comparison: habitat size; condition; distinctiveness; and location.



### HABITAT SIZE

How large or small is the habitat?



### HABITAT CONDITION

How well is the habitat functioning, compared to one in full working order?



### HABITAT DISTINCTIVENESS

Is the habitat of particular ecological importance?



### STRATEGIC SIGNIFICANCE

Is the habitat a local priority or located in a priority area for habitat creation/enhancement?

## BNG Site Register

- 1.10 DEFRA and Natural England are developing a BNG site register. The register will be administered by Natural England, but the registration process does not involve any checks of the ecological suitability of the site. That role will need to be performed by the local planning authority.
- 1.11 So far as is known at present, all application sites where there is biodiversity enhancement and all off-site biodiversity compensation schemes will be part of the register.

## 2 Implications for the Council

### Local Authority Requirements

- 2.1 The Planning Advisory Service (PAS) provides the following summary of requirements for local authorities as a result of the introduction of BNG:
  - Process and determine planning applications to ensure they meet the legislative requirements, including an accompanying BNG statement;
  - Assess and approve biodiversity gain plans BNG submissions with planning applications to ensure they meet legislative requirements;
  - Secure on-site BNG enhancement or off-site compensation measures through planning conditions, or through Section 106 planning obligations (s106) through legal agreements linked to the grant of planning permission for offsite BNG delivery;

- Monitor compliance with planning conditions and s106 agreements in relation to BNG over the 30-year statutory monitoring period and enforce when necessary; and
  - Report on BNG delivery and plans in their authority area’.
- 2.2 These requirements will impact on the workloads of the Development Management, CIL/S106, Policy and Legal teams within the Council.

### **Key Work Areas for Embedding BNG within the Local Authority**

- 2.3 The Planning Advisory Service (PAS) suggest there are seven key areas of activity for local authorities, namely:
- Embed BNG as corporate priority
  - Develop place-making principles around BNG
  - Develop local strategy and evidence
  - Embed in Local Plans
  - Establish Development Management arrangements
  - Deliver schemes
  - Monitor and report progress.
- 2.4 TDC officers across the services are working together to develop a full action plan to embed BNG requirements within the Council’s strategies, policies and functions. It is important that the Council fully understands its new responsibilities and ensures that appropriate mechanisms are in place. Members will be kept up-to-date on progress with embedding BNG and the any resourcing and financial impacts of this new requirement.

## **3 BNG and Planning Policy**

### **BNG Policy Framework**

- 3.1 The concept of BNG is not totally new to the planning service given the existing policy requirements in the National Planning Policy Framework (NPPF, 2023, paragraphs 174(d), 179(b) and 180(d)). The National Planning Practice Guidance (NPPG) provides further explanation of how biodiversity gains should be delivered. However, the Environment Act 2021 has elevated the requirement to a statutory footing, with the mandatory 10% minimum BNG requirement being gradually introduced from November 2023.
- 3.2 The adopted 2008 Tandridge Local Plan requires the ‘maintenance, enhancement, restoration and if possible, expansion of biodiversity’ from development proposals (Policy CSP17). Similar to the NPPF, the latter element has been elevated to a mandatory requirement for the majority of development applications.

## **Implications for policy**

- 3.3 In the short term, the following tasks are considered essential preparation for the introduction of BNG in November:
- Review Local Plan and SPDs to check the fit with the legislative BNG requirements. As part of this exercise, establish policy and legal requirements.
  - Set out and formalise the Council's overall local BNG approach. This should include consideration of the BNG spatial hierarchy (i.e. on site, off-site including potential locations and then credits) and how 'strategic significance' and 'spatial risk' will be applied under the Biodiversity Metric.
  - Update the Council's web pages to provide information on BNG within the District.
- 3.4 Over the medium to long term, a biodiversity evidence base will need to be established, which provides a reasonably up-to-date understanding of the quality and quantity of habitats in the district. This will provide the baseline against which biodiversity gain can be measured. This exercise will be able to draw on the work being done for the Local Nature Recovery Strategy (LNRS), which is currently under preparation by Surrey County Council.
- 3.5 It will be necessary to consider how BNG will be woven into planning policy, as well as wider corporate strategies and policies. BNG should be incorporated into work on topics, such as:
- Addressing the climate emergency declared in the District
  - Place making and infrastructure planning, considering how the District's natural environment should look, what the natural environment can deliver for local people and how integrating nature positive solutions in development can deliver multiple benefits
  - Integrating with work being undertaken on the Nature Recovery Network (NRN) and LNRS.
- 3.6 Any new Local Plan will need to detail the local policy requirements for BNG. There may also be the option to prepare supplementary guidance, which can provide supporting detail for developers and landowners needing to comply with BNG. Topics to be addressed within the Local Plan or supplementary guidance will be set out in subsequent reports to this Committee. This will include consideration of whether to request more than the mandatory minimum 10% BNG which will need to be underpinned by robust evidence base.

3.7 There is also an option for BNG to be addressed within neighbourhood plans, although no guidance has been published to date as to form this might take.

#### **4. BNG and Development Management**

4.1 As set out above, BNG will not apply to all applications. Exemptions from BNG requirements are:

- householder applications
- small scale self-build and custom housebuilding
- development impacting habitat of an area below a 'de minimis' threshold of 25 metres squared, or 5m for linear habitats such as hedgerows and watercourses [NOTE Defra have confirmed (9 August 2023) that this is 25 square metres (5m x 5m = 25 sqm)]
- biodiversity gain sites (where habitats are being enhanced for wildlife).

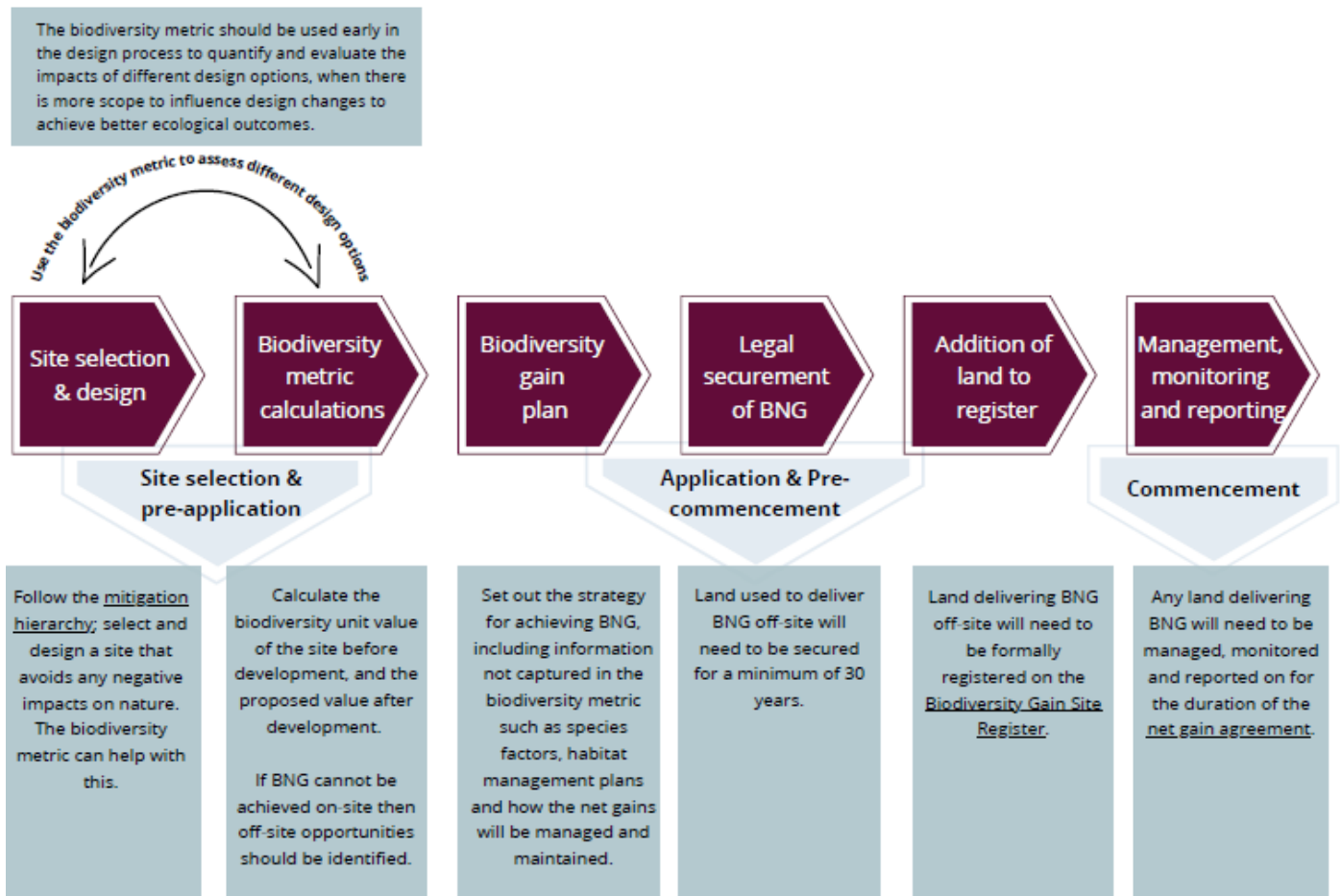
4.2 When BNG becomes mandatory for major application from November 2023 (actual date still to be specified) and for minor applications from April 2024 there are significant implications for Development Management workloads. The estimate for this District Council is that some 50 major applications per year, and some 250 minor applications per year, will need to be assessed for BNG compliance. This has implications right across the Development Management Service and elsewhere within the Local Planning Authority's services, including CIL/Section 106 Monitoring. Other council services that support the LPA (Legal and finance) will also be impacted.

4.3 The Government's previous BNG consultation has recognised that it is important for planning authorities to know what is being proposed for BNG early in the planning process. This is particularly relevant to Development Management staff. It is expected that the secondary legislation will require developers to provide certain biodiversity gain information as a BNG Statement alongside the application for planning permission. The information will be sought through pre-app processes wherever possible. This information will likely include:

- the pre-development biodiversity value,
- steps taken to minimise adverse biodiversity impacts
- the proposed approach to enhancing biodiversity on-site, and
- any proposed off-site biodiversity enhancements (including the use of credits) that have been planned or arranged for the development.



- 4.4 The full biodiversity gain plan will be submitted either with the planning application or after the permission is granted, but before development has commenced.
- 4.5 The following BNG Process Diagram prepared by Natural England identifies key stages in the BNG process including interaction with local planning authorities not only at pre-application and application determination stages but also in the Monitoring stages referred to at Section 5 below:



4.6 The following are key implications for the Development Management Service:

4.6.1 **Validation of planning applications:** central government will be making changes to validation requirements to take account of the introduction of mandatory BNG. With the majority of applications now being submitted electronically via the Planning Portal, it will be for applicants to ensure their application submissions are BNG compliant in the first instance. Validation officers will though still need to make the initial assessment whether planning applications are BNG compliant in terms of the BNG information they contain, whether those applications come through the Planning Portal or as hard copies. This will require additional training between now and 1<sup>st</sup> November.

4.6.2 **Development Management Officers:** officer will need to understand the objectives of BNG and the procedural steps to achieving those objectives. Key considerations will be understanding the concept of the BNG metric and its application in a 'real' application context and how to evaluate the BNG information provided with an application (see paragraph 4.3 above). That information will then need to be translated into the requirements of planning conditions and S106 Agreement obligations.

4.6.3 The Planning Advisory Service has also published a 'process map' for delivery of BNG which is attached as Appendix A and can be accessed at:

<https://futurehomes.org.uk/biodiversity-net-gain-mapping-out-the-process>

This will be the process during the pre-application consultation stage, consideration and determination of an application stage, and post-decision stage that Development Management officers will now need to be familiar with. Officers and elected members will also need to become familiar with the whole new BNG terminology.

4.6.4 The assessment of BNG information and how applicants are proposing to meet their BNG obligations will have to be critically evaluated as part of the determination of planning applications. This will mean Development Management officers acquiring new skill sets. There will also be a requirement for changes to Development Management pro-formas, new planning condition templates specifically for BNG and new ground of refusal templates when applicants fail to meet either District Council or national BNG policy requirements.

4.6.5 The nationally set BNG Metric (which will be subject to change from time to time) is complicated to use in BNG assessment of individual application sites. Planning authorities are recognising that the complexities of evaluating BNG planning applications requires input from experienced ecologists to assist Development Management officers in evaluating planning applications for BNG compliance when submitted. A key part of this process will be to evaluate the potential suitability of on-site and off-site habitats to achieve the national policy requirement of 110% BNG. Following on from here, there will be a need to ensure that the minimum 110% biodiversity net gain set by national government policy can be achieved by implementing the biodiversity enhancement measures which a developer will propose be carried out on an application site or by compensatory measures offsite (receptor sites). The on-site enhancement measures will be submitted for the District Council's approval through the requirements of planning conditions. The off-site compensation measures will, if the receptor site is not owned and controlled by the developer, be submitted for the District Council's approval through obligations in a Section 106 agreement.

- 4.6.6 Once the enhancement and/or compensation measures are approved, the developer will need to ensure they are implemented within satisfactory timescales allowing for seasonality. The District Council will have the responsibility for ensuring satisfactory implementation of enhancement and compensation measures through site surveys and assessments over the 30-year BNG monitoring period from implementation of those measures. This too is seen as a role for ecologists.
- 4.6.7 The District Council will also have the responsibility for enforcing non-compliance with BNG planning conditions and Section 106 obligations. Enforcing compliance of planning conditions can be done through the breach of condition notice procedure. However, enforcement of non-compliance with Section 106 obligations requires legal action for breach of contract. This is potentially more onerous in terms of Legal staff time and more expensive than serving a breach of condition notice.
- 4.6.8 The Chief Planning Officer having determined the certain need for specialist ecological advice for the policy, development management and monitoring aspects of BNG has recruited a temporary Ecology Officer. This officer will be on a 12 month contract and will commence work for the District Council in early October. The options for then having in post a permanent Ecology Officer, including a shared service with other nearby district councils, will continue to be evaluated so there is continuity of specialist ecological advice. The initial costs of the temporary post will be defrayed from the £26k DEFRA grant for preparing for BNG that the Council has already received.
- 4.6.9 **Planning Enforcement:** there is a lack of clarity around the implications for the Council's planning enforcement function following the implementation of BNG. Any retrospective planning application made to regularise unauthorised development will need to be compliant with national policy if it falls within a category of development to which BNG applies had the application been made as a prospective application before unauthorised development occurred. The problem that arises is that the pre-development biodiversity value of a site will not have been established using the Biodiversity Metric such that a policy compliant 110% BNG could be demonstrated as being achievable. This is a matter on which there needs to be a nationally consistent approach and that requires guidance from DLUHC.

## **5. BNG and monitoring and charging schedules**

- 5.1 BNG will impose significant additional workstreams for the Council's Planning Service Monitoring function over the 30 year monitoring period for each separate scheme, including:
- Monitoring to ensure compliance with national BNG policy of all on-site biodiversity enhancement measures on planning application sites or on other land in the same developer's ownership and control, including biannual site assessments by the Council's Ecology Officer

- Monitoring to ensure compliance with national BNG policy over a 30-year period of all off-site biodiversity compensation measures on other land, including biannual site assessments by the Council's Ecology Officer
- Recording all areas where BNG enhancement or compensation measures are being carried out on District Council's digitised mapping system (or GIS) so that the relevant parts of these sites for achieving BNG can be safeguarded from development in perpetuity
- Recording all areas where BNG enhancement or compensation measures are being carried out for the purposes of demonstrating the Council's compliance with national BNG policy
- Recording all areas where BNG enhancement or compensation measures are being carried out for the purposes of inputting to the national BNG Site Register data base to be administered by Natural England
- Ensuring compliance with S106 obligations relating to on-site and off-site BNG enhancement or compensation measures, including:
  - On-site enhancement scheme approvals
  - Off-site compensation scheme approvals
  - Administering approval of developer nominees/management companies to implement and maintain on-site and off-site BNG measures
  - Administering approval of expert ecologist to be employed by developers/nominees/management companies
  - Administering approval of Biodiversity on-site and off-site certificates of completion of BNG measures
  - Administering payments from the Biodiversity Offsetting Contribution made by a developer to nominees or management companies (currently £25,000 to £35,000 per Biodiversity Unit according to information from Surrey Wildlife Trust)
  - Administering any underspend of Biodiversity Offsetting Contribution by way of clawback by a developer.

5.2 The administration of all aspects of BNG arising from Section 106 obligations will also involve the Council's Legal Services team in issuing any necessary approvals.

- 5.3 There will be additional workstreams for the Council's Finance Team. The Council's costs for 30 years of monitoring S106 obligations relation to BNG will be significant sums (for major planning applications six figure sums might be expected). These monitoring fees will have to be ring-fenced and the Council will need to be able to demonstrate how the fees have been applied in the interest of transparency.
- 5.4 The budgetary implications of becoming a BNG compliant planning authority for the District Council will be significant. The Council can recover its reasonable staffing and other costs from developers arising from monitoring and administering individual BNG schemes. All the financial implications for the Council of monitoring BNG compliance need to be considered in more detail before mandatory BNG provisions come into force. There is scope given the significant additional costs for developers of complying with national BNG policy for challenges to be made to any costs recovery the Council may seek. To counter this, the Council needs to have adopted standard charging schedules for monitoring costs of compliance which are transparent with respect to how the charges have been set. It is proposed that a further report be brought to the November Planning Policy Committee seeking approval to standard charging schedules.

## **Key implications**

### **Comments of the Chief Finance Officer**

In respect of managing, monitoring and reporting on BNG, the assumption is that costs will ultimately be met from developers. As set out in paragraph 5.4, above, further work is necessary to ensure that robust financial and management arrangements are in place, and that charging schedules are set out to recover the cost from developers. This work will be undertaken by a working group of officers including Planning and Finance and the intention is to report back to the November Committee cycle.

In addition, the Council is likely to incur BNG costs as a developer of Council Houses. The impact of this will vary significantly on a site-by-site basis and it is therefore not possible to quantify in general terms. The cost of BNG to proposed developments will be reported to Housing Committee.

Officers will work to assess the opportunity for using Council land to secure biodiversity offsetting credits.

### **Comments of the Head of Legal Services**

Noting the recommendations put forward in this report will ensure the Council complies with its statutory and regulatory obligations arising from the Natural Environment and Rural Communities Act 2006 and the Town and Country Planning Act 1990 as amended by the Environment Act 2021.

## **Equality**

There are no equalities implications as a result of this report.

## **Climate change**

There are no significant environmental / sustainability implications associated with this report. However, it should be noted that the delivery of BNG offers an opportunity to help address climate change and this should be considered in work going forward.

## **Appendices**

Appendix A - BNG Best Practice Process Flow

## **Background papers**

None