

# FAREHAM

## BOROUGH COUNCIL

### Report to the Executive for Decision 03 April 2023

<b>Portfolio:</b>	Planning and Development
<b>Subject:</b>	<b>Biodiversity Net Gain – Supplementary Planning Document</b>
<b>Report of:</b>	Director of Planning and Regeneration
<b>Corporate Priorities:</b>	Protect and Enhance the Environment Strong, Safe, Inclusive and Healthy Communities Leisure Opportunities for Health and Fun Dynamic, Prudent and Progressive Council

#### **Purpose:**

To seek approval to consult on a Biodiversity Net Gain Supplementary Planning Document – setting out the Council's approach to securing and implementing Biodiversity Net Gain in line with Policy NE2 in the emerging Fareham Borough Local Plan 2037.

#### **Executive summary:**

Biodiversity Net Gain (BNG) is a relatively new concept for development proposals that aims to leave the natural environment in a measurably better state than it was before the development took place.

The concept first appeared in the National Planning Policy Framework (NPPF) in 2012 and has been included and strengthened within subsequent reviews. The emerging Fareham Local Plan 2037, which is reaching the end of the examination process and will soon be before Council for adoption, contains Policy NE2 Biodiversity Net Gain with which states that '*development of one or more dwellings or a new commercial/leisure building should provide at least 10% net gains for biodiversity from the existing baseline value of the site*'.

The Biodiversity Net Gain SPD will provide supplementary planning guidance to developers, planning applicants and borough residents as to how the Council will implement policy NE2 with regards to relevant planning applications in Fareham.

The document sets out the core concepts of BNG and the associated 'Biodiversity Metrics' and provides additional details as to the steps applicants need to take to submit the correct information alongside their planning applications. It also provides guidance on meeting the BNG requirements, and possible solutions when encountering issues in achieving BNG.

**Recommendation:**

It is recommended that the Executive:

- (a) approves the Draft Biodiversity Net Gain Supplementary Planning Document, as set out at Appendix A to the report, for public consultation; and
- (b) delegates authority to the Director of Planning and Regeneration, following consultation with the Executive Member for Planning and Development, to make any minor amendments to the document following consideration by the Executive, prior to the consultation.

**Reason:**

To consult on a Biodiversity Net Gain SPD which sets out the approach taken to BNG in the Borough.

**Cost of proposals:**

It is not considered that there are any cost implications to the Council in undertaking the consultation on the draft Biodiversity Net Gain SPD.

The introduction of BNG is a new policy area linked to new legislation and national planning guidance, for which the Council will receive new burdens funding.

**Appendices:**

A: Draft Biodiversity Net Gain Supplementary Planning Document

B: Strategic Environmental Assessment Screening Report

**Background papers:** None

**Reference papers:** Fareham Borough Council Local Plan 2037

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### Executive Briefing Paper

<b>Date:</b>	03 April 2023
<b>Subject:</b>	Biodiversity Net Gain – Supplementary Planning Document
<b>Briefing by:</b>	Director of Planning and Regeneration
<b>Portfolio:</b>	Planning and Development

#### INTRODUCTION

1. Supplementary Planning Documents (SPD) provide guidance on policies set out in a Local Plan, such as site-specific information, or specific matters such as how to deal with the Biodiversity Net Gain (BNG) requirement. They are a material consideration in planning decisions and are important in helping to shape development.
2. The emerging Fareham Local Plan 2037, which is reaching the end of the examination process, contains Policy NE2 Biodiversity Net Gain. This policy states that *‘development of one or more dwellings or a new commercial/leisure building should provide at least 10% net gains for biodiversity from the existing baseline value of the site’* and that these net gains *‘should be maintained for a minimum of 30 years’*.
3. In order for the policy to be implemented successfully, further guidance is required to explain to developers, planning applicants and borough residents which developments in Fareham will need to provide 10% minimum BNG and which developments the policy would not apply to. Further guidance is also required to explain the expectations of the Council as to where and how qualifying development should provide BNG and how it is to be secured, managed and monitored for the minimum period required.

#### LEGAL AND POLICY FRAMEWORK

4. Policy NE2 Biodiversity Net Gain in the emerging Fareham Local Plan 2037 is based upon three key pieces of legislation, national policy and guidance. Firstly, paragraph 179b in the National Planning Policy Framework (NPPF) states that Local Plans should *‘promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species; and identify and pursue opportunities for securing measurable net gains for biodiversity’*.
5. Secondly, the Environment Act 2021 sets out that secondary legislation will introduce new provisions into the Town and Country Planning Act 1990 where planning permission, for qualifying development, will be subject to a deemed condition requiring biodiversity net gain to be delivered and maintained for a minimum period of 30 years. This requirement is anticipated to take effect in November 2023. The Government consulted on the draft BNG regulations in 2022 and published the consultation

responses in February 2023<sup>1</sup>, which provides an indication of what might be forthcoming in those regulations. When the new legislation is enacted, it will be a material consideration in the determination of planning decisions and therefore, it is important to attempt to align this SPD with how the legislation and guidance may be written.

6. Additionally, the commitments within the Government's 25 Year Environment Plan and the guidance contained within the National Planning Practice Guidance, the Good Practice Principles for Development produced by the Chartered Institute of Ecology and Environmental Management as well as the responses from Natural England to the various stages of the formulation of the Fareham Local Plan 2037 have also formed the basis and justification for Policy NE2.

## **KEY CONTENT OF THE SPD**

7. The overall purpose of the Biodiversity Net Gain SPD is to enable developers and planning applicants to understand how Policy NE2 Biodiversity Net Gain will apply to planning applications in Fareham.

### Timescale for applying the policy

8. As soon as the Local Plan is adopted, the policy will apply to many future planning decisions. The SPD states that where applications for outline planning permission have been granted by the Council before the adoption of the SPD, their reserved matters applications will not require a BNG Plan in order to be valid. However, applications for outline planning permission that have been submitted, but not yet been determined at the point the SPD is adopted, will be required to provide BNG in line with Policy NE2 and the SPD.

### Planning Application Submission: Provision of a Biodiversity Gain Plan

9. The SPD details that a Biodiversity Gain Plan should be included with relevant planning applications. A Biodiversity Gain Plan should include;
  - Quantification of the pre and post development biodiversity value of the site using either the DEFRA biodiversity metric or, if appropriate, the Small Sites Biodiversity Metric.
  - Detailed pre- and post-development plan of habitats on site showing habitat types and a condition assessment.
  - Justification that any habitat being created is suitable for the area taking into account local biodiversity priorities, opportunities and targets identified through mechanisms such as Local Ecological network Mapping and future Local Nature Recovery Strategies.
  - Information on financial costs to clearly show how BNG will be implemented, managed, and monitored for a minimum of 30-years with timescales for audit reporting back to the Council

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<sup>1</sup> [Government response and summary of responses - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/biodiversity-net-gain)

10. The SPD also describes the process of assessing BNG provision through using the appropriate Defra Biodiversity Metric. This metric is the tool that is to be used by applicants to assess the pre-development baseline biodiversity value of a site and to assess the post development baseline biodiversity value of a site alongside any offsite biodiversity value that may be required; ensuring that a 10% minimum BNG is attained.
11. It is envisaged that the BNG requirement will be agreed at the outline planning permission stage, and will be a condition of that application. However, if there has been a change in the BNG Plan that was approved at the outline stage and what is submitted at reserved matters stage, this may warrant a reassessment of BNG provision to ensure 10% minimum BNG is still being achieved. The SPD states that the Council will determine this on a case-by-case basis.

#### Sequential Approach to delivering BNG

12. One of the most valuable considerations for BNG is where the net gain should be provided. There are opportunities to attempt to direct planning applicants to provide the net gain, which could amount to new tree planting, new hedgerow creation or wildflower meadows. The SPD therefore stipulates that BNG should be provided following a sequential approach:
  - 1) Onsite in the first instance.
  - 2) A combination of partial onsite and offsite or total offsite solutions within the borough.
  - 3) Complete offsite provision within the borough.
  - 4) Complete offsite provision outside of the borough within the subregion.
13. The SPD is clear and explains why this geographical hierarchy should be adhered to and that BNG outside of the Borough is only acceptable where it is shown that there are no opportunities for BNG provision in the Borough. However, it is worth noting that the Government are devising the BNG approach as a national concept with a national scheme through which applicants could purchase Statutory Biodiversity Credits. This is not available yet but it might be the case the applicant presents a development with these national credits in due course.
14. Where it has been shown that a development cannot provide BNG onsite either completely or partially, the SPD indicates that it is the applicant's responsibility to find a suitable location for the delivery of off-site BNG. To assist in this, Officers have begun to identify 'BNG opportunities' on Council owned land where BNG improvements could be made. These opportunities could be located across the Borough and include a variety of projects, such as tree planting or wildflower meadow creation. These solutions would provide benefits to residents of the Borough who already use or enjoy these open spaces, as well as enable applicants to meet the requirements of Policy NE2. It is also possible that these opportunities could be used by applicants in other Local Authorities, such as Portsmouth or Gosport, where the availability of BNG opportunities may be limited. This piece of work is being undertaken as a Council as landowner, not as a planning authority. Therefore, the approach whereby the Council might offer BNG opportunities on its own land will be subject to separate approval at a future Executive Council meeting.

15. The SPD explains that depending on whether BNG is to be provided onsite or offsite, planning conditions or a legal agreement may be used to secure BNG.

#### Management and Monitoring of BNG

16. The SPD also provides guidance on the management and monitoring arrangements of BNG provision, stating that regardless of whether the BNG is provided onsite or offsite, BNG that is being provided needs to be maintained and monitored for a minimum period of 30 years in line with Policy NE2. This is proposed to be secured through planning conditions or a legal agreement as appropriate.

#### Exemptions to Policy NE2

17. The SPD sets out and justifies which planning applications or types of development Policy NE2 does not apply to. These include:
- Any development defined as Permitted Development by the Town and Country Planning (General Permitted Development) (England) Order 2015 or,
  - Householder Development such as extensions, alterations, outbuildings within the curtilage of a residential dwelling.
18. The emerging Local Plan, in paragraph 9.33, referred to instances where an exemption to policy NE2 for brownfield sites might apply in certain circumstances, which was in line with the Government's published approach when it was written. However, the Government has since changed its position on this, based on the fact that brownfield sites can have high biodiversity value so excluding them from the BNG requirement could lead to significant biodiversity losses. The SPD recognises this change in government position, which will be reflected in future secondary legislation or national guidance, and therefore encourages applicants of brownfield sites to comply with policy NE2 and provide a minimum of 10% BNG.
19. In addition, in line with the latest Government thinking on future regulations, the SPD explains why Policy NE2 will not apply to development impacting habitat of an area below a 'de minimis' threshold of 25 metres squared, or 5m for linear habitats such as hedgerows.

#### **NEXT STEPS - CONSULTATION**

20. It is proposed to undertake public consultation on the draft SPD in line with the statutory requirements set out in the relevant planning regulations. A six week consultation will take place from mid-April to late May.
21. It is proposed that the consultation is publicised on the Council's website and emails and letters are sent to all statutory consultees and other relevant individuals and organisations on the Council's Planning Strategy consultation database.
22. Following the public consultation, the Council will consider responses before moving forwards towards adoption of the SPD.

## **CONCLUSION**

23. It is recommended, for the reasons set out in the above paragraphs, that the Executive approves the draft Biodiversity Net Gain SPD for public consultation and delegates authority to the Director of Planning and Regeneration, following consultation with the Executive Member for Planning and Development, to make any appropriate amendments to the document following consideration by the Executive, prior to the consultation.

### **Enquiries:**

For further information on this report please contact Gayle Wootton, Head of Planning Strategy and Economic Development. (Tel. 01329 824328)