

FAREHAM

BOROUGH COUNCIL

Report to the Executive for Decision 03 July 2023

Portfolio:	Policy and Resources
Subject:	Biodiversity Net Gain – Projects on Council owned land
Report of:	Director of Planning and Regeneration
Corporate Priorities:	Protect and Enhance the Environment Strong, Safe, Inclusive and Healthy Communities Leisure Opportunities for Health and Fun Dynamic, Prudent and Progressive Council

Purpose:

To consider the provision of Biodiversity Net Gain projects on land owned and maintained by Fareham Borough Council.

Executive summary:

The recently adopted Fareham Local Plan 2037 Policy NE2 sets out a requirement for new development to provide, as a minimum, 10% biodiversity net gain. It is recognised the challenges which some applicants, particularly small to medium developers and the Council's own development schemes, may face in achieving this and this report proposes a solution in which the Council develops a series of Biodiversity Net Gain projects on its land to enable the permission of suitable, sustainable development whilst securing valued biodiversity improvements within the borough.

Recommendation:

It is recommended that the Executive agrees:

- (a) to the principle of using the Council's land assets for the creation of Biodiversity Net Gain (BNG) Units through the delivery of a range of habitat related projects;
- (b) that, following consultation with the Executive Member for Policy & Resources, authority be delegated to the Director of Planning and Regeneration to agree an annual programme of Council sites to be used for the purposes of securing Biodiversity Net Gain Units; and

(c) that, following consultation with the Executive Member for Policy & Resources, authority be delegated to the Director of Planning and Regeneration to enter into unilateral undertakings given by the Council as landowner to the Local Planning Authority to commit Council owned land for a minimum period of 30 years for the purposes of securing Biodiversity Net Gain projects.

Reason:

To ensure the implementation of the Fareham Local Plan 2037 via the delivery of off-site Biodiversity Net Gain units on Council land and to realise commercial opportunities on Council assets.

Cost of proposals:

The cost of the proposals will be met from existing budgets. If the Council permits the provision of BNG Units, all future related costs will be allocated and recharged on a full cost recovery basis as detailed in paragraph 32, Table 1 of the Executive Briefing Paper to the planning applicant.

There will be no additional costs to the Council and over the medium to longer term there may be efficiencies related to the management and maintenance of the Council's land.

Appendices: **A: Map of Fareham BNG Projects**

B: BNG Projects Process

Background papers: **None**

Reference papers: **Fareham Borough Council Local Plan 2037**
Draft Biodiversity Net Gain Supplementary Planning Document

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Executive Briefing Paper

Date:	03 July 2023
Subject:	Biodiversity Net Gain - Projects on Council owned land
Briefing by:	Director of Planning and Regeneration
Portfolio:	Policy and Resources

INTRODUCTION

1. This report outlines the requirement for new development to provide a 10% Biodiversity Net Gain in accordance with Policy NE2 of the Fareham Local Plan 2037 and seeks Executive approval to implement a solution to enable development whilst securing valued Biodiversity Net Gain within the Borough. This would be achieved through the utilisation of Council land for the creation of Biodiversity Units which would be used to support both private and public sector development.
2. The report has been written to reflect current government guidance and legislation. The Council will continue to monitor emerging information and will ensure procedures are updated to take any new guidance and legislation into account.

BACKGROUND

Planning Strategy and Development Management

3. The Council's Corporate Strategy recognises the importance of protecting and enhancing the Borough's natural environment. In line with this, the Fareham Local Plan, adopted in April 2023 contains Policy NE2 Biodiversity Net Gain (BNG). 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'*.

4. In addition, the Council has recently consulted on a draft BNG Supplementary Planning Document. This provides further guidance and advice on how to implement Policy NE2.

5. Policy NE2 Biodiversity Net Gain in the Fareham Local Plan 2037 is based upon the following Government legislation, national policy and guidance.
6. 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'.
7. The Environment Act 2021 sets out a requirement that planning permission, for qualifying development, will be subject to a deemed condition requiring biodiversity net gain of at least 10% to be delivered and maintained for a minimum period of 30 years. This is referred to as mandatory BNG.
8. The Government has advised that these mandatory provisions will come into force at some point in November 2023 for large sites. They also advised a delay on the introduction of mandatory BNG for small sites until April 2024 and Nationally Significant Infrastructure Projects (NSIPs) until November 2025.
9. BNG will be measured using a metric issued by DEFRA. The most recent metric issued is Metric 4.0. The metric is based on assessing habitat against set criteria to establish the unit value of a site. It can be used to:
 - assess the baseline condition of a site;
 - assess biodiversity net gains or losses through the development process;
 - test different proposals for BNG - such as creating or enhancing habitat on-site or off-site;
 - calculate the value of habitats created for off-site BNG.
10. It is expected that statutory instruments, regulations, and guidance for mandatory BNG will be issued in the near future for large sites.
11. In advance of the introduction of mandatory BNG, Local Plan Policy NE2 already requires the provision of BNG for one or more new dwellings or new commercial/leisure buildings. This requirement is referred to as non-mandatory BNG.
12. The Council has a number of live planning applications which will now need to address the requirements of Policy NE2. Many of these outstanding applications may require off-site solutions as the provision of BNG on site is challenging for the smaller sites in question. It is therefore important that off-site BNG solutions are identified and available within an appropriate timeframe to ensure housing (and other) delivery is not adversely impacted.
13. The draft SPD sets out the off-site solutions which could be available to provide off-site BNG. These include meeting the BNG requirement on other suitable land the developer/applicant own themselves or purchasing equivalent BNG units from other

landowners. This means the BNG requirement for the development is calculated and the relevant number of appropriate units are purchased to secure BNG improvements on the off-site land.

Biodiversity Net Gain Projects

14. In order to address the requirements of Policy NE2 and provide a solution for the provision of off-site BNG, it is proposed that the Council utilise Council owned land to provide sites for the delivery of BNG projects.
15. The types of projects that have potential to be delivered on Council owned land could include:
 - creating a wildflower meadow;
 - improving under-storey planting beneath existing woodland;
 - additional woodland planting;
 - orchard creation; and
 - grassland enhancement.
16. The projects on Council owned land would be selected and refined with ecological supported provided by the Hampshire County Council Ecologist.
17. This proposal would realise value from otherwise 'sensitive' Council land alongside providing both a long-term sustainable solution to the provision of off-site units for both mandatory and non-mandatory BNG. In the short term it would ensure there was an effective solution for applicants and developers who have outstanding applications and require off-site solutions in order for permission to be issued.
18. Aside from third party developers/applicants this proposal would support the delivery of Council projects for housing and commercial schemes such as Daedalus. The provision of off-site BNG is likely to be required to support both these Council programmes.

Potential Opportunity Sites and the Site Selection Process

19. Fareham Council officers have worked closely with an ecologist from Hampshire County Council to consider Council sites which may be suitable to support BNG projects.
20. A total of 382 sites were initially reviewed. A scoping exercise was undertaken to identify sites with the most potential to support the creation of BNG units. These sites would provide a broad spread of locations across the Borough.
21. From this list of potential opportunity sites, further due diligence and detailed scoping will be undertaken to identify a small number of sites on which to undertake the first BNG projects in the Borough.
22. The number of sites required to deliver the first BNG projects will be determined in conjunction with the Development Management and Asset Management Services. This will be based on the likely number of BNG units required and the geographical

spread of the development sites across the borough. A key principle of BNG, where units are provided off site, is proximity to the development site and this will also help to determine which Council sites may be selected to deliver BNG. Officers will seek to select the most appropriate sites to serve the greatest number of developments. Officers will also seek to ensure the sites initially selected are fully utilised before considering using more.

23. Appendix A provides a map which includes both the potential Council land available for BNG provision and the current live planning applications which may require off-site BNG. This spatial distribution will inform the first sites which could come forward to deliver off-site BNG.

24. Prior to being committed a due diligence process will be run by the Asset Management Service to ensure that they can legally be used for BNG and the specific projects proposed. This will also consider if the sites could be used for a highly value alternative. This is however unlikely as most are protected open spaces.

Implementation: Phase One Non-Mandatory BNG

25. The implementation of this project would be in two phases with Phase One relating to non-mandatory BNG.

26. It is proposed that the Council introduce an Off-Site BNG Contribution for all applications which require off-site BNG where the applicants do not have a solution available. This would help to meet the needs for smaller sites and developers who require off-site BNG provision but cannot deliver it independently. It enables a simple solution to support smaller scale development.

27. This contribution would be secured at point of planning permission and would be payable at the point of implementation. The contribution required would be based on the cost of providing the required BNG units (or part thereof) for the scheme to meet the necessary off-site provision.

28. The contribution would then fund the delivery of the required number of BNG units on Council-owned land. Appendix B provides a process chart for the delivery and implementation of Phase One.

Implementation: Phase Two Mandatory BNG

29. Phase Two will be based on the introduction of mandatory BNG through secondary legislation. Currently it is not clear what the detailed implementation requirements will be. Officers are monitoring the situation and will design an appropriate process to meet the mandatory scheme when this is released.

30. In the interim, Phase One would ensure that the requirements of Local Plan Policy NE2 are able to be met. The Council can continue to both support development and ensure planning permissions can be granted with limited delay.

Unit Costing

31. It is intended to set a standard contribution cost based on the costs of delivering, monitoring and maintaining the BNG units for the required 30-year timeframe. This contribution would seek to recover all the costs associated with the BNG unit.
32. The contribution cost would ensure the recovery of costs incurred to the Council in providing, maintaining and monitoring the BNG projects. There would be no element of profit within the costing as this is not permitted under current government guidelines. Table 1 below shows the costs which the contribution calculation would be based upon. Clearly, this is an important aspect of the project as the Council do not want there to be a shortfall and effectively be funding projects. Estimated costings will be kept under review.

Table 1: BNG Costs Calculation

Design Costs
Council Staff
Consultant Ecologist
Delivery Costs
Council Staff
Consultant Ecologist
Contractors
Materials
Equipment
30-Year Management & Maintenance Costs
Council Staff
Contingencies/replacement planting
Equipment
30 Year Monitoring Costs
Council Staff
Consultant Ecologist
Contingencies
Additional Council Costs
Legal Fees
Community consultation/ engagement & information
Finance and accounting
Project Management & Planning
Reporting

Monitoring Framework

33. To ensure robust monitoring is in place, a database would be set up to record both the Council BNG sites and any planning permission issued with a BNG Contribution payment attached.

34. The Council sites would be mapped with baseline information included as below:

- Site boundary
- Address
- Details of potential BNG projects

35. As a site is bought forward for BNG delivery, a more detailed baseline site assessment and BNG project plan would be developed. The GIS database would then be updated to include:

- BNG units available
- Lifetime of the BNG unit
- Details of the specific BNG projects identified

36. Each project will be subject to a 30-year maintenance and monitoring plan to ensure the ongoing delivery of the BNG to meet the requirements of Policy NE2, and will be the responsibility of the Council, as landowner, to deliver. This will be undertaken in conjunction with advice from HCC Ecology and with results included within the database.

37. Planning permissions will be monitored and mapped within the same dataset. When a planning permission is granted that includes a requirement for off-site BNG, the site would be entered into a GIS database and mapped with relevant details attached. These details are likely to include as a minimum:

- Permission reference
- Site boundary
- Address
- Date permission issued / expiry date
- BNG unit requirement to be provided
- BNG habitat type of provision required
- Expiry date of BNG requirement

38. If a permission expires without being implemented, it would be removed from the database. This process would allow the Council to be informed by likely requirements and ensure projects are identified to meet the relevant need.

39. The Council intends to report on BNG provision through the Authority Monitoring Report. This would include annual updates on:

- the BNG contributions secured;
- the BNG contributions collected;
- the BNG units delivered; and
- the headline results of the monitoring condition surveys of the BNG habitats.

40. BNG requires habitats are secured for at least 30 years, which means they must be managed and monitored over this time period. As such, ensuring a robust audit trail and monitoring system is essential. This is addressed in the design of the monitoring for Phase One Implementation detailed above.

41. Beyond Phase One (i.e. mandatory BNG), details of the requirements and mechanisms for management and monitoring have not yet been issued by the government.
42. Guidance suggests that Natural England are developing a standard management and monitoring plan template. It is expected that this requirement will form part of the forthcoming regulations.
43. It is recognised that this work may require additional Council resources. The Government has committed to funding all new burdens on local authorities arising from the Environment Act. DEFRA is working with DLUHC in this respect, and it is expected that announcements regarding the requirement and resourcing of this new burden will be made ahead of the national implementation of mandatory BNG in November 2023.
44. Officers are monitoring the situation to ensure any and all potential funding is applied for in a timely manner.

Council Led Projects: Fareham Housing and Daedalus

45. It is intended to identify land to support the requirement for off-site BNG for Fareham Housing. The Council's Planning Strategy and Housing Delivery Services have liaised to understand the delivery trajectory of Council-owned sites allocated in the Fareham Local Plan 2037.
46. The Council's Planning Strategy and Asset Management Services have also liaised to understand the quantum of development being brought forward at Daedalus, which has a Strategic Employment Allocation in the Local Plan 2037. Officers have been working with Asset Management and the Streetscene Services to identify land within the Council's ownership which could be used to provide BNG opportunities which can be safeguarded to support the delivery of development at Daedalus.

Legal Implications

Phase One: Non-Mandatory BNG

47. Under Phase One the Council as landowner and supplier of land for Biodiversity Net Gain would provide a unilateral undertaking under section 106 of the Town and Country Planning Act 1990 (to the Council as Local Planning Authority).
48. This would provide a commitment to managing the identified land for the purposes of BNG for a minimum period of 30 years. This planning obligation gives certainty to developers and the Council (as Local Planning Authority) that the land in question can be relied upon for Biodiversity Net Gain and that it will be maintained for a minimum period of 30 years. A S106 agreement unilateral undertaking would be required for each parcel of land the Council wishes to use for the provision of off-site BNG units related to the BNG off-site contribution.
49. The individual planning contributions would be secured separately via the development management process.

Phase Two: Mandatory BNG

50. Secondary legislation and government guidance is yet to be released. This will provide the details on the legal framework for mandatory BNG. Council Officers will monitor the situation as it evolves and develop the process for Phase Two to meet the necessary requirements.
51. There may also be opportunities for the sale of BNG units to developers with schemes in adjoining boroughs.

Financial Implications

52. The projects would be delivered on Council land, which is currently maintained and managed from existing Council budgets. As BNG projects are delivered, both the cost of the project itself and the ongoing maintenance and management would be covered by the contribution secured. This could have efficiencies for the wider Council budget in relation to longer term open space management.
53. The proposal would also ensure there is a cost-effective solution for off-site BNG available for Council led schemes at Daedalus and Fareham Housing.

Climate Change Considerations

54. The BNG projects could have the potential to contribute to wider Council objectives related to carbon capture, reduction and offsetting. This is in recognition of the Council's commitment to becoming carbon neutral in its operations by 2030. The amount of carbon captured and therefore potentially available for carbon offsetting is subject to final details and the scope of the projects. Ongoing work across the relevant council departments will be maintained to ensure the benefits of carbon capture and storage are realised and appropriately reported
55. By their very nature the BNG projects also have the potential to contribute to more general climate change mitigation and adaptation, such as reducing surface water runoff during heavy rainfall events thus minimising flood risk and by creating more resilient landscapes and ecological networks which are able to withstand and adapt to increased seasonal variability associated with a changing climate.

CONCLUSION

56. It is recommended, for the reasons set out in this Executive Briefing Paper, that the Executive approves the implementation of Biodiversity Net Gain projects on land owned and maintained by Fareham Borough Council.

Enquiries: For further information on this report please contact Kirstin Clow, Interim Head of Planning Strategy (Tel. 01329 824328).