

DECISION TAKER: Councillor Jackie Porter – Cabinet Member for Place and Local Plan

REPORT TITLE: BIODIVERSITY NET GAIN - TECHNICAL ADVICE NOTE

5 JUNE 2023

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WARD(S): ALL

## PURPOSE

This report presents interim technical guidance on how Biodiversity Net Gain (BNG) should be applied by Winchester City Council in the assessment of relevant planning applications.

BNG is an approach to development that aims to leave the natural environment in a measurably better state than it was beforehand. BNG is currently voluntary under National Planning Policy, but it will become mandatory for developers to deliver under the Environment Act in November 2023. This TAN allows the council to clearly apply the BNG in a constructive, consistent manner that fits in with national guidance on what is expected when BNG becomes mandatory.

The Technical Advice Note (TAN) sets out procedures to follow when applicants apply for planning permission under the Town and Country Planning Act (1990) with outcomes including a measurable 10% uplift in biodiversity on applicable sites in line with Natural England guidance.

## RECOMMENDATIONS:

1. That the Biodiversity Net Gain Technical Advice Note is approved as interim guidance in respect of the assessment of relevant planning applications by the Council as local planning authority.

IMPLICATIONS:1 COUNCIL PLAN OUTCOME

- 1.1 Tackling the Climate Emergency and Creating a Greener District identifies an outcome to achieve that “Our district’s natural habitats are safeguarded and enhanced”. To do this the council needs to:
- a) Agree a local plan which delivers low carbon homes, increased biodiversity and 20 minute neighbourhoods.
  - b) Continue to implement our Biodiversity Action Plan.
- 1.2 This TAN fits in with the Carbon Neutrality Action Plan (CNAP), the Biodiversity Action Plan (BAP) and the Tree Strategy which have been developed in response to Winchester City Council’s declaration of a climate emergency.
- 1.3 The BAP’s principals and policies are reinforced in this TAN, and the TAN offers guidance on procedures that will lead to the delivery of enhancement of BAP habitats and consequently improvements for BAP species.

2 FINANCIAL IMPLICATIONS

- 2.1 Until BNG becomes mandatory for developers to deliver as part of the Environment Act in November 2023, the TAN provides interim guidance for developers, applicants and planners that is reinforced elsewhere in other legislation including the Natural Environment and Rural Communities Act, 2006 (NERC Act) and paragraph 179 of Government NPPF policy.
- 2.2 An amendment to the original NERC Act section 40 duty, provided for in the Environment Act 2021, extends the biodiversity duty on public authorities to include the enhancement of biodiversity alongside conservation by way of “the general biodiversity objective”.
- 2.3 The actions recommended in the TAN will be the responsibility of the planning officers and Natural Environment & Recreation Team (NERT) officers to deliver and will be undertaken within existing staffing allocation. No additional budget is requested in relation to this report requesting the adoption of this TAN. It is the responsibility of the developer to deliver BNG and for WCC officers to assess associated documents of relevant applications.
- 2.4 Defra funding for new burden has been received by WCC previously (2021/22) with £10k for the setting-up and preparation for mandatory BNG for developers to deliver as part of the Environment Act in November 2023. Further funds have been applied for by WCC for retrospective payment for preparation for BNG 2022/23.
- 2.5 When BNG becomes mandatory for developers to deliver under the Environment Act in November 2023 there will be an increase in workload that will fall with NERT and planning officers. Although outside of the scope of this

TAN, there will be the need to review resource for the assessment and implementation of BNG as part of a planning application.

### 3 LEGAL AND PROCUREMENT IMPLICATIONS

3.1 When BNG becomes mandatory in November 2023, we will need to assess how BNG delivery is monitored and enforced effectively. Advice is expected to come as part of secondary legislation from the Secretary of State following the passing of the Environment Act 2021.

3.2 There are no procurement implications as a direct result of this report.

### 4 CONSULTATION AND COMMUNICATION

4.1 Internal consultation has been undertaken with the Planning, NERT, Strategic Planning, Housing and Estates teams and council officers have been part of Hampshire “round table” groups discussing the implementation of BNG.

4.2 Local private developers have been approached for comments on the draft TAN and this has informed the draft document.

4.3 The Cabinet Member for Climate Emergency has been consulted on this TAN.

### 5 ENVIRONMENTAL CONSIDERATIONS

5.1 The BNG TAN outlines how developers can achieve the stated improvement in the level of biodiversity on their project or schemes. Details of BNG provision are found in Natural England guidance on the .GOV website. This TAN assists council planning officers in the assessment of BNG documents for relevant applications and developers or applicants to follow the procedures to leave their site in a better condition in terms of biodiversity than it was in before the commencement of the project.

5.2 Biodiversity enhancements can offer subsequent improvements to air quality and assist in the battle against climate change. For example, tree planting can provide additional filtration of pollution caused by vehicle exhausts and also offer localised shading and reduction of urban heating.

5.3 Ecosystem services directly and indirectly affect human wellbeing. Benefits including carbon storage, biodiversity, clean air, water storage and purification and recreation provision can all be delivered via the implementation of BNG – based on the TAN. Environmental assets as a whole provide benefits that enhance economic performance, offer new opportunities for investment and employment, and improve living standards and quality of life. Ecosystem services contribute to economic welfare through generations of income and wellbeing, and through prevention of damages that inflict costs on society.

### 6 PUBLIC SECTOR EQUALITY DUTY

- 6.1 An EqlA has been completed and is included as appendix 2 to this report and has highlighted no areas of concern. The report states that BNG will enhance biodiversity for the benefit of all and the TAN allows the council to clearly apply the BNG in a constructive, consistent manner that fits in with national guidance on what is expected when BNG becomes mandatory.

## 7 RISK MANAGEMENT

The risk management assessment below aligns with the council's Risk Management Policy and approval of this TAN (and subsequent use by officers) will not affect the council's ability to achieve its objectives or outcomes, rather with the mitigation identified, it will assist the council in delivering its objectives.

<b>Risk</b>	<b>Mitigation</b>	<b>Opportunities</b>
<u>Financial Exposure</u> Funding not available for future additional burden.	This TAN offers advice to planners and developers on how to deliver BNG and if approved by committee this will be delivered within the current staff resource.	Potential for "New Burden" funding from Defra in the future once BNG becomes mandatory.
Exposure to challenge The TAN could be questioned as this is a voluntary scheme.	Consultation and communication to promote the benefits of using the TAN	
Innovation		
<u>Reputation</u> Without the ability to use the TAN, the council cannot effectively enforce delivery of BNG and is left behind other local authorities in the assessment and subsequent delivery and implementation of BNG.	The TAN offers guidance on how developers can deliver BNG.	Our Greener Faster aims can be delivered via BNG.
<u>Achievement of outcome</u> BNG not delivered on development schemes and in fact leads to an increased loss	The TAN links directly to the national mandatory BNG proposals so is achievable and in-line with guidance.	Introduction of the TAN at this stage forms part of the preparation for the introduction of mandatory BNG in November.
Property		
Community Support Communities could oppose planning	The purpose of the TAN is to assist developers in	

<p>application for development that does not include BNG.</p> <p>Communities could question the council for not promoting BNG in development as this is counter to its Greener Faster enhanced focus.</p>	<p>satisfying requirements.</p> <p>BNG</p>	
<p><u>Timescales</u></p> <p>The commencement of mandatory BNG has already been delayed with delays in the passing of the Environment Act due to Covid-19. Further delays would result in WCC missing opportunities to deliver BNG.</p>	<p>The TAN sets out how WCC can deliver BNG in the interim period – prior to November 2023.</p>	<p>Increased BNG delivery can be delivered in advance of this becoming mandatory.</p>
<p><u>Project capacity</u></p> <p>Insufficient capacity to deliver training on the TAN to planning officers.</p>	<p>Training has been scheduled and forms part of current NERT staff resource workplan.</p>	
<p>Other</p>		

## 8 OTHER KEY ISSUES

- 8.1 There is the option of providing BNG “offsite” and the council will need to consider its own landholding assets and how these could offer opportunity for BNG, either for its own development or to offer private developers. This is outside of the remit of this TAN, but will need to be considered as BNG evolves and the market develops with the delivery of natural capital.

## 9 SUPPORTING INFORMATION:

- 9.1 Government NPPF policy, 2021 (paragraph 174) confirms the need to *contribute to and enhance the natural and local environment and provide net gains* for biodiversity and this has been used as a policy basis for developers to deliver BNG up to this point. The use of the Defra metric, and the stipulation of a measurable 10% gain are introduced in the TAN as preparation for mandatory BNG in November 2023 under the Environment Act.

- 9.2 The Local Plan includes Policy CP16 which states that “The Local Planning Authority will support development which maintains, protects and enhances biodiversity across the District, delivering a net gain in biodiversity.” This TAN prepares both council officers and developers for the incoming legislative requirement under the Environment Act which will demand measurable (achieved utilising the Defra metric) BNG of a minimum of 10%.
- 9.3 The TAN introduces BNG, explains why it is important and how it reflects existing legislation and practice in assessing and delivering biodiversity gains as part of a planning application.
- 9.4 The TAN describes the need for BNG in the assessment of planning applications (in line with Natural England guidance):
- Householder applications do not apply.
  - Residential developments of 1 – 9 dwellings do apply and the latest version of the Defra Small Sites Metric should be used. [*Note: NE have now decided to delay the requirement for the use of the Defra Small Metrics Metric until April 2024*].
  - Residential developments of 10+ dwellings do apply and the latest version of the full Defra Metric should be used.
- 9.5 The TAN briefly explains the use of the Defra metric as a tool to achieve measurable BNG and lists what is required to accompany a planning application to satisfy the local authority in assessing BNG:
- Biodiversity Gain Plan.
  - Completed Defra Metric.
  - Habitat Plan pre - development, and post – development.
- 9.6 BNG has been considered in planning applications up to this point, but is not mandatory and to date has not had a detailed framework to operate under. BNG will become mandatory for developers to deliver under the Environment Act in November 2023. Therefore this guidance now offers the developer more standardisation on how to approach the calculation, design, implementation, delivery and monitoring of BNG into a project and assessment of relevant planning applications by officers.
- 10 OTHER OPTIONS CONSIDERED AND REJECTED
- 10.1 Defra have encouraged local authorities to begin preparations for BNG in anticipation of the coming into force of the relevant provisions of the Environment Act 2021 and so the option of doing nothing has been discounted as it would leave the council unprepared for a change in planning requirements.

- 10.2 The council could formulate its own policy on BNG which could differ in detailed effect from the Natural England guidance. For instance, council policy could state that applicable developments achieve a higher level of measurable BNG than 10%. However, it is considered to be more appropriate for developers and the council if our TAN (and policy) is in line with national standards and guidance. This question was discussed amongst neighbouring Hampshire local authorities and the consensus was to aim to be as consistent with each authority as possible, as well as with national standards.

BACKGROUND DOCUMENTS:-

[National Planning Policy Framework 2021](#)

[Natural Environment and Rural Communities Act 2006](#)

[Defra Guidance 2023](#)

APPENDICES:

Appendix 1. Biodiversity Net Gain Technical Advice Note – April 2023 draft

Appendix 2. Equality Impact Assessment – BNG TAN April 2023