

## Report to Cabinet

9 June 2022

By the Cabinet Member for Planning and Development

**DECISION REQUIRED**



**Horsham  
District  
Council**

Not Exempt

### **Evidence Resourcing – Biodiversity Net Gain (BNG) in Development**

#### **Executive Summary**

A statutory requirement is being introduced for new development to deliver 10% biodiversity net gain. One mechanism to deliver this requirement will be through Local Plans. In order for the Council to deliver against its environmental priorities, there is an aspiration to exceed the biodiversity net gain target above the national 10% standard.

In order to require biodiversity net gain above the national standard, further evidence is required in order for this to be supported by a Local Plan Inspector. This work requires specialist ecological input. The report therefore seeks an additional budget of up to £20,000 to fund the additional work which is required.

#### **Recommendations**

Cabinet is recommended to:

- i) Recommend to Council that a revenue expenditure budget of £20,000 in Strategic Planning in 2022/2023 be approved to enable the commissioning of consultants to assess the deliverability of a higher % threshold than the statutory 10% biodiversity net gain target.

#### **Reasons for Recommendations**

- i) Additional resourcing is required to provide robust evidence to enable the Council to justify setting a higher biodiversity net gain target in the Local Plan than the statutory 10%. This will ensure that the Council delivers against its high environmental aspirations as set out in the Corporate Strategy.

#### **Background Papers:**

None.

**Wards affected:** All.

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## **Background Information**

### **1 Introduction and Background**

- 1.1 The Environment Act 2021 is introducing a statutory requirement for new development to deliver at least 10% biodiversity net gain (BNG). The Government has indicated that Regulations will follow that will govern the ability of planning authorities to set higher targets than this national standard.
- 1.2 A key priority of the emerging Local Plan is that it delivers development to the highest possible environmental standards. In order for the Council to exceed national biodiversity net gain targets in the Local Plan the Council will require robust evidence to justify this, in order for the Local Plan to be found sound by the Inspector at examination. This report sets out the approaches and anticipated costs required to explore the potential to require the Local Plan to exceed the 10% biodiversity net gain requirement.

### **2 Relevant Council policy**

- 2.1 The preparation of a new Local Plan and the protection of the environment are key priorities set out in the Council's Corporate Plan. The protection of the environment is also a requirement of the current Horsham District Planning Framework (HDPF). In particular, Policy 31 already requires that development proposals contribute to the enhancement of biodiversity.

### **3 Details**

- 3.1 The most recent iteration of the National Planning Policy Framework (NPPF) requires local authorities to set policies which ensure development delivers 'measurable' gains to biodiversity. The Environment Act now enshrines the minimum level to be delivered at 10% over existing levels on the site.
- 3.2 As part of the emerging Local Plan, draft Local Plan policies had been prepared that required the 10% biodiversity net gain. At the time of policy drafting, the Environment Act had not received royal assent, and it was envisaged that the Local Plan would be adopted prior to the secondary regulations on biodiversity net gain taking full effect. At that time there was limited clarity on the final regulatory framework with no certainty that higher levels of net gain could be successfully implemented or enforced.
- 3.3 By virtue of the delay in the Local Plan due to Water Neutrality, together with emerging indications that the Government may allow planning authorities to set a higher threshold than the national 10% standard, it is considered there is now potential to explore the ability to set higher biodiversity net gain threshold in this Local Plan.
- 3.4 In order to meet Local Plan tests of soundness, any increase in the requirement for biodiversity net gain over the national threshold must be evidence based. As part of the ongoing Local Plan preparation process, an ecological assessment of a range

of potential development sites has already been undertaken which indicates that that the delivery of 10% BNG is deliverable on-site with the exception of a small number of very small sites. These would require off-site biodiversity net gain to be delivered if allocated. To date the Council lacks evidence to show that a higher %BNG threshold can readily be delivered and is 'feasible and achievable' in practical terms.

- 3.5 This requires the procurement of a further ecological report to test the ability of potential local plan sites to deliver a range of different BNG thresholds (e.g. 12%, 15%, 20%) to establish what level of provision is practicable. In addition, a 'green call for sites' may be required to identify the potential for local off-site offsetting. The reason for this is that a higher biodiversity net gain thresholds are more likely to require offsite and on-site enhancements to meet the targets.
- 3.6 Further detail on the financial consequences of this work is set out in section 7 under resource consequences.

## **4 Next Steps**

- 4.1 If additional budgetary provision is agreed for the updated evidence base work, the next steps will be to appoint consultants in accordance with the Council's procurement processes and procedures. The outcome of this work would also need to be tested through the overall Local Plan viability assessment to ensure that the level of biodiversity net gains set is financially viable.

## **5 Views of the Policy Development Advisory Group and Outcome of Consultations**

- 5.1 Feedback from discussions at the Planning and Development PDAG meetings has made clear that is a widespread aspiration for Local Plan policies to set as high environmental standards as possible.
- 5.2 The Interim Director of Resources and monitoring officer and procurement have been consulted and their comments and feedback has been incorporated into this report.

## **6 Other Courses of Action Considered but Rejected**

- 6.1 The Council could decide not to explore higher thresholds and instead to apply the statutory minimum 10% BNG threshold to new development in the Local Plan, with higher standards to follow in a later Local Plan once more is understood as to how the Environment Act provisions (and new Levelling Up and Regeneration Bill) are operating in practice. This would remove the need for evidence to justify the setting of a higher threshold in the Local Plan and therefore the need for additional budget. However, this course of action would prevent the Council from setting higher targets for biodiversity net gain in the emerging local plan as there would be no evidence to justify any such policy provision. A decision not to pursue this course of action would also limit the Council's ability to progress the environmental aspects of the Council's corporate plan.

## **7 Resource Consequences**

- 7.1 At present this work has not been programmed within the Strategic Planning budget (as the Local Plan timetable was programmed to be at a more advanced stage than is the case, following the Position Statement on Water Neutrality from Natural England which has delayed plan preparation). The appraisal work requires specialist ecological expertise and therefore cannot be carried out in-house. This work would include assessment of land submitted to the Council as part of a 'green call for sites' which would seek submission of land which is available for biodiversity net gains where on site provision is not possible. In total the additional ecological assessment is estimated to cost up to £30,000.
- 7.3 The Government have recently awarded Local Authorities grant funding to help implement biodiversity net gain. The award to HDC is £10,000. It is proposed this funding be used to fund the 'green call for sites' element of the study. This data will help the Council understand the potential for biodiversity offsetting within the District irrespective of the percentage of biodiversity net gain set in the Local Plan. Therefore whilst the overall cost for the work is estimated at £30,000 the additional budget request is for £20,000.
- 7.3 The Local Plan viability assessment report will also require a further update to take account of the outcome of any increased costs of higher levels of biodiversity net gain. Additional costs are likely to be in the region of £1,500. Budgetary provision for additional viability work has already been programmed with the Strategic Planning use of consultant budget.

## **8 Legal Considerations and Implications**

- 8.1 There are no specific legal implications arising from this report. The Council is already seeking to meet its legal obligations through the preparation of a Local Plan that will be the minimum required 10% biodiversity net gains on new development. Indications are that the regulations which emerge from the Environment Act may allow Local Authorities to seek higher targets. This work would be in accordance with any such provision that is made.

## **9 Risk Assessment**

- 9.1 There are a number of risks associated with this work. These are summarised as follows:
- Whilst the study will investigate to what extent an increase in biodiversity is possible over the 10% minimum, the study may conclude that this is the maximum level possible. Whilst there are benefits in understanding 'the art of the possible' there is a risk that the additional financial outlay will not be able to lead to more aspirational policies than are already drafted.
  - Whilst the Environment Act now has royal assent many of the provisions will be delivered through subsequent regulations which have yet to be finalised. There remains a risk that the final regulations may not allow Local Planning

Authorities (LPAs) to require more than 10% BNG, or if it does, it could also allow site promoters to 'trade' their on-site excess with developments to bring forward an average 10% over the district as a whole. If this is the case, the ability of the council to require higher levels of biodiversity provision will be prevented even if the evidence indicates that this is possible.

- Pilot schemes for BNG elsewhere in the country have shown that in some cases there is a need to balance the ability to deliver high levels of biodiversity net gain with the provision of other community facilities such as sport, play space, allotments. This is both a function of financial viability considerations and the finite size of development parcels to deliver a wide range of different land uses.
- To date, no other local plan has been successful in securing higher levels of BNG in their emerging plans to date – most simply 'encourage' or are preparing Supplementary Planning Documents. This does not mean that this is not possible, but it is clear that the evidence bar to include a higher policy requirement is high.
- The recently published Levelling Up Bill indicates the Government may set national 'development management policies' this introduces uncertainty over the implications of this on the ability for planning authorities to set a different % BNG threshold. The precise implications of this remain unclear and will emerge through further government consultations.

- 9.2 The above risks highlight that as a result of government uncertainties, or as a result of the report findings there is still no guarantee that the Council decides to set a higher threshold than the statutory 10% BNG. If there is no additional evidence to justify this, the Policy would not be found 'sound' by a Local Plan inspector and would be removed.

## **10 Procurement implications**

- 10.1 There are no specific procurement implications arising from this report. In the event that additional resourcing is secured the commissioning of a consultancy to undertake the projects proposed would be carried out in accordance with the Council's Procurement Code.

## **11. Equalities and Human Rights implications / Public Sector Equality Duty**

- 11.1 There are not Human Rights or Equality & Diversity implications arising from this report. The setting of the highest possible biodiversity net gain % threshold will help protect biodiversity for everyone.

## **12 Environmental Implications**

- 12.1 If it is agreed to provide an additional budget for this ecological assessment work, and the outcomes evidence that it is practical and financially viable to require increased levels of biodiversity net gains as a result of development which takes

place in the District, the Local Plan will help deliver environmental improvements which help to protect and enhance key habitats and species in the District.

## **13 Other Considerations**

- 13.1 There are no GDPR, data protection, or Crime and Disorder implications arising from this report.