

## **Planning and Transport Policy Sub-Committee**

Decision Date – 14 February 2024

Key Decision - Yes

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### **Adoption of the Somerset Biodiversity Net Gain Guidance Note**

Executive Member(s): Councillor Dixie Darch, Lead Member for Environment and Climate Change and Councillor Ros Wyke, Lead Member for Economic Development, Planning and Assets

Local Member(s) and Division: Relevant across Somerset

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### **Summary / Background**

1. A national mandatory requirement for developments granted planning permission to achieve Biodiversity Net Gain (BNG) came into effect on 12 February 2024 for larger sites. Developers are now required to deliver a BNG of at least 10%. The Council as Local Planning Authority (LPA) must consider developer BNG proposals through the planning process. The Guidance Note sets out important information for how BNG will be implemented in Somerset and the processes involved.
2. The requirement to demonstrate and deliver at least 10% BNG and the core processes involved in doing so are set nationally and are mandatory for most development proposals seeking planning permission in England unless explicitly exempted by the Biodiversity Gain Requirements (Exemptions) Regulations 2024. However, there are limited areas where the requirement can be tailored to local circumstances. This document provides guidance and advice on calculating and delivering BNG in a Somerset context. It aims to ensure a consistent and efficient approach aligned to local policy context, by making clear the requirements and processes in Somerset.
3. The Guidance Note includes local BNG validation requirements which go beyond the national statutory minimum information required to be submitted alongside

planning applications. This is necessary to ensure that the LPA can reasonably establish whether the statutory BNG requirement is capable of being successfully discharged post-permission.

4. The report summarises the national context and justifies the local guidance and requirements, provides feedback from previous consultation on the draft guidance note and explains how the final Guidance Note has been amended in response. The report recommends adoption of the Guidance Note as a material planning consideration, delegation of responsibility for approval of future updates, and adoption of the validation requirements as addendums to the LPA's existing adopted local validation checklists.

## **Recommendations**

5. The Planning and Transport Policy Sub-Committee of the Executive agrees:
  - a. To adopt the Somerset BNG Guidance Note as a material planning consideration in the preparation of pre-application advice, assessing planning applications and any other development management purposes.
  - b. To delegate approval of future updates to the Guidance Note as follows:
    - i). Minor amendments including textual and visual changes and enhancements to be delegated to the Executive Director for Climate and Place in consultation with the Lead Member for Environment and Climate Change and the Lead Member for Economic Development, Planning and Assets.
    - ii). Updates relating to changes in national Government legislation and guidance, or the need to reference or update reference to other local or national evidence or strategy documents, or other changes which would not necessitate further public consultation to be delegated to the Executive Director for Climate and Place in consultation with the Lead Member for Environment and Climate Change and the Lead Member for Economic Development, Planning and Assets.
    - iii). More significant or substantive updates beyond those listed above to be brought back to this sub-committee for approval.

- c. To adopt the local BNG validation requirements as an addendum to existing adopted local validation checklists for each of the Local Planning Authority's planning areas and functions (north, south, east, west and minerals and waste) until such time as these are updated and the requirements can be fully integrated.

### **Reasons for recommendations**

1. To enable local guidance produced in relation to Biodiversity Net Gain (BNG) to be taken into account as a material planning consideration in the determination of relevant planning applications within Somerset.
2. To ensure that the local BNG guidance is able to be updated and amended as necessary and reasonable through delegated authority, reflecting its iterative nature and potential for change in response to issues raised through early implementation.
3. To comply with the national policy / guidance that any local validation requirements in relation to planning applications be included within an adopted and up-to-date local validation checklist.

### **Other options considered**

4. BNG is a statutory national requirement which is non-negotiable. The Council does not have a choice as to whether or not to bring it in, in Somerset. It would be possible for BNG to be implemented without publishing or adopting local guidance. However, this may be seen as inconsistent with the Council's duties under the NERC Act 2006, to take such actions it considers appropriate in the proper exercising of its functions to conserve and enhance biodiversity. The Guidance Note is produced to be consistent with existing, adopted plans, policies and objectives of the Council and wider area and links in to emerging plans such as the Local Nature Recovery Strategy. If the Council chooses not to publish or adopt such a Guidance Note, there would be a greater risk of BNG failing to deliver for nature recovery in Somerset. The Guidance Note makes clear reference to the importance of taking a holistic approach to BNG, maximising wider benefits and opportunities. Without such guidance, 'siloes' approaches may be taken on related issues where collectively they might deliver greater nature and community benefit at reduced financial and land costs.

Without clear local guidance, it is highly likely that BNG considerations would become a 'sticking point' through the planning system. The guidance helps to clarify considerations and expectations in this regard to avoid such situations.

### **Links to Council Plan and Medium-Term Financial Plan**

5. BNG clearly responds to the corporate priority to build a greener, more sustainable Somerset. This priority explains that addressing the climate and ecological emergencies will be at the heart of the Council's decision making. In particular, BNG will help to ensure healthy ecosystems, but if utilised effectively to deliver improvements in the right locations and with the right mix of associated actions and benefits, it can also build a more equitable society, increase wellbeing, improve resilience to future challenges, and develop a thriving green economy.
6. The Council Plan expects action on addressing the climate and ecological emergencies to be integrated into all its work, and for this to underpin its aspiration for Somerset to become a leader in green technologies, the circular economy and renewable energy. It expects that where the Council has control, it will manage landscapes to protect habitats and improve biodiversity and use its policies and voice to support and encourage others to do the same. It recognises the potential value of farming and food production in developing natural capital responses and delivering ecosystem services including improvements for biodiversity. It recognises the critical role of planning in supporting nature restoration and recovery.
7. Sustainability is defined by three mutually dependent and interrelated objectives: environmental, social and economic. The Council Plan and its priority themes respond directly to this. Delivering BNG in the right places with the right objectives and through the taking into account of wider sustainability in land-use decisions it can be ensured that BNG contributes towards a sustainable future. The Guidance Note promotes taking a holistic view and actively planning to deliver on other complementary objectives alongside BNG which can improve sustainability and respond to all Council Plan priorities.
8. BNG delivery presents an opportunity to help ensure that the Council can continue to resource the conservation and enhancement of biodiversity and work towards nature recovery and climate resilience. Responsibility for monitoring BNG planning conditions and S106 legal agreements will sit with the Council. The guidance sets out that, generally, the Council will use S106 legal agreements to secure any significant on-site enhancements, and off-site delivery mechanisms.

The use of S106 legal agreements over planning condition in these cases allows for a monitoring fee to be charged, to help meet the associated costs, whereas use of planning conditions does not allow for this and therefore poses a greater risk. Further opportunities potentially exist in the delivery of BNG. Officers continue to explore options around use of Council-owned land and other services that the Council can offer on a fee-paying basis. Although BNG delivery does present real opportunities, there is a genuine risk that implementation of BNG could be severely undermined by a lack of sufficient resource within the planning and ecology services. Creative solutions will be needed both in the short and long term delivery of this project.

### **Financial and Risk Implications**

9. There are no financial implications directly as a result of adopting the Somerset BNG Guidance Note.
10. The BNG Guidance Note refers to a future 'call for sites', with the subsequent assessment of submitted sites and then negotiation of S106 legal agreements to secure land for off-site BNG. There are resourcing costs associated with this element of future work. However, the Guidance Note sets out a process for this which reflects the fact that this is a non-statutory element and as such the Council needs to be prudent in its resourcing and ensure that costs associated are recovered through establishment and monitoring fees. Whilst this element is non-statutory, without the Council enabling off-site solutions in Somerset, BNG will unreasonably become a stalling factor in new development and this will have much wider repercussions in relation to biodiversity, nature recovery, communities, statutory functions and Council priorities.
11. Implementation of mandatory BNG itself brings with it a host of financial implications for the Council, predominantly around resourcing new burdens. However, these implications are unavoidable due to the statutory requirements placed on the Council. The Government has provided Councils with the Biodiversity Net Gain Grant over recent years, which is ring-fenced for use in preparation for implementation of BNG. The Council continues to draw upon these funds in preparing the authority for implementation of BNG. The Government has also stated that it will be providing further new burdens funding relating to implementation of BNG following the requirement coming into effect. No further information is available on this at present.

12. Longer term, BNG presents potential financial opportunities for the Council associated with the use of Council-owned land for the sale of off-site BNG units and the charging for associated services. However, these are separate considerations from the Council's role as Local Planning Authority, and options in this regard will be subject to future business cases and separate reports to members.
  
13. There is a low risk that some aspects of the Guidance Note could become out of date as understanding, interaction with different circumstances and case law evolves. As such, to mitigate this, the Guidance Note should be considered as a live document and the recommendations of this report include delegating authority to approve future updates.

<b>Likelihood</b>	<b>3</b>	<b>Impact</b>	<b>2</b>	<b>Risk Score</b>	<b>6</b>
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14. There is a genuine risk that implementation of BNG could be severely undermined by a lack of sufficient resource within the planning and ecology services. This is a national issue reflected locally here in Somerset. The Planning Service is already carrying a significant number of vacancies and has struggled to recruit in recent times. The Council's corporate risk register includes risk ORG0065 - Workforce; inability to recruit & retain staff, to which this relates. The performance of the Planning Service to meet statutory timescales for decisions is measured by Government. BNG may well introduce a significant complexity to the consideration and determination of planning applications and subsequent applications to discharge conditions. By publishing and adopting the Guidance Note including the validation requirements for BNG, it is hoped to reduce some of these risks by being clear about information expectations up front and providing clear justification for requesting extensions of time to statutory planning application determination deadlines. The Ecology Service is small and already has a high case load on existing ecology inputs to planning. BNG will add a significant and distinct aspect to the ecology workload, upon which the Planning Service will be reliant in order to discharge its statutory duties relating to planning applications. Officers are continuing to explore ways to bolster resources within the planning and ecology teams in a sustainable manner whilst recognising the wider financial crisis. The Government Biodiversity Net Gain Grant and anticipated new burdens funding may assist in this regard, but a longer term sustainably financed solution also needs to be found. The adoption of the BNG Guidance Note does not impact upon this risk in itself, but this situation needs to be monitored and reviewed on a regular basis.

<b>Likelihood</b>	<b>4</b>	<b>Impact</b>	<b>5</b>	<b>Risk Score</b>	<b>20</b>
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15. BNG could pose a threat to delivery of development including meeting housing need (both market and affordable), policy compliant development generally and delivery of the Council's own projects through the creation of an additional viability burden. The national requirement has been incoming for a number of years and should have been being taken into account in the price paid for land for some time. However, BNG is an additional requirement over and above policy requirements accounted for in the viability assessment of many of the Council's development plans. As such, it could potentially have a detrimental impact upon development and wider policy aspirations unless carefully managed. The way that BNG is delivered can have a significant impact upon the costs involved. For instance, a reliance upon national statutory credits could have the biggest impact due to their deliberately uncompetitively high pricing. The Guidance Note mitigates this risk by building on the national Biodiversity Gain Hierarchy to require justification for progression from on-site, to off-site to credits, and promoting on-site and near-site first via the Somerset BNG Principles. It further promotes the integration of BNG into site design rather than treating it as an additional requirement and afterthought as this can reduce costs and improve opportunities for multifunctionality. Furthermore, the Guidance Note sets out local validation requirements which go beyond the national minimum requirements set out in Regulations. This enables the impact of BNG on development viability and wider policy aspirations to be fully understood and the development proposal's ability to achieve sustainable development to be properly considered as part of the application. If the Council relied solely on the national minimum validation requirements and such considerations are left to be dealt with entirely at the point of pre-commencement condition discharge, then the relationship with and implications on wider policy objectives and the ability of the application to deliver sustainable development (in the round) cannot be considered. This runs the risk of approving Biodiversity Gain Plans which in turn trigger S73 applications to vary applicability of other planning conditions. The above highlights risks inherent with the implementation of BNG nationally, which the Guidance Note aims to mitigate to the extent that it can do. The Guidance Note is recommended to be adopted with delegated authority for future updates. The success of the Guidance Note in responding to these risks should be monitored and reviewed periodically.

<b>Likelihood</b>	<b>3</b>	<b>Impact</b>	<b>3</b>	<b>Risk Score</b>	<b>9</b>
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## **Legal Implications**

16. BNG is a new legal requirement applying to developments granted planning permission by the Local Planning Authority via the Town and Country Planning Act 1990. In England, biodiversity net gain is required under a statutory framework introduced by Section 90A and Schedule 7A of the Town and Country Planning Act 1990 (inserted by the Environment Act 2021). Under the statutory framework for biodiversity net gain, every grant of planning permission is deemed to have been granted subject to a general biodiversity gain condition to secure the biodiversity gain objective. This objective is to deliver at least a 10% increase in relation to the pre-development biodiversity value of the development granted permission. This increase can be achieved through onsite biodiversity gains, registered off-site biodiversity gains or statutory biodiversity credits.
17. The general biodiversity gain condition is a pre-commencement condition. Once planning permission has been granted, a Biodiversity Gain Plan must be submitted and approved by the Council before commencement of the development. There are exemptions and transitional arrangements which disapply the condition from certain planning permissions.
18. The BNG statutory framework also includes provisions about information requirements for planning applications and the treatment of the condition on planning decision notices.
19. The Somerset BNG Guidance Note responds to this statutory framework by setting out local guidance on the subject and the consideration of BNG through the planning system, in particular how this will work in a Somerset context. The Guidance Note sets out how local processes will work and the wider considerations of relevance to BNG from local adopted policies, plans and objectives.
20. It also sets out local validation requirements which go above and beyond the national minimum requirements as set out in Regulations. The National Planning Practice Guidance sets out that LPAs may seek further information (beyond the national minimum information requirements) about the proposed strategy to meet the biodiversity gain objective for the development. Any changes to the local validation lists must comply with statutory tests set out in section 62 (4A) of the Town and Country Planning Act 1990 (inserted by the Growth and Infrastructure Act) and Article 11(3)(c) of the Town and Country Planning (Development Management Procedure) (England) (Order) 2015. They must be reasonable having regard, in particular, to the nature and scale of the proposed development and about a matter which it is reasonable to think will be a material consideration in the determination of the application.



21. National guidance also states that BNG will often be a material consideration, and, where relevant, LPAs will want to consider whether the general biodiversity gain condition is capable of being discharged successfully, particularly where significant on-site biodiversity enhancements or off-site biodiversity gains are proposed. It states that if planning obligations are going to be used, it is good practice to submit information about any potential planning obligations which may need to be entered into connected to the application, and that LPAs may seek this via their own local validation checklists (subject to the above statutory tests). LPAs are expected to review their local validation checklists every two years and publicly consult on changes ahead of adoption. The proposed validation requirements relating to BNG were consulted on in November 2023 alongside / as part of the Draft Guidance Note. The requirements have been altered slightly in response to consultation feedback and the Government publishing the Regulations and national guidance, but are not fundamentally different. As such, and applying the statutory tests, it is considered reasonable for the Council to adopt the BNG validation requirements as part of the local validation checklists. Normally this would be done as part of a wholesale local validation checklist review. However, given the timelines involved in this and the implementation of BNG it is reasonable to recommend adoption of the BNG validation requirements as an addendum to the existing local validation checklists which are in place. These requirements will subsequently be integrated in due course into each area checklist as they are updated.
22. The Guidance Note is accompanied by a Strategic Environmental Assessment (SEA) / Habitat Regulations Assessment (HRA) Screening Report in accordance with the Environmental Assessment of Plans and Programmes Regulations 2004 and the Conservation of Habitats and Species Regulations 2017 respectively. The Report was consulted upon with the statutory consultation bodies alongside the Draft Guidance Note in November 2023. The Report concludes that the Somerset BNG Guidance Note does not need to be subject to full SEA Environmental Report or HRA Appropriate Assessment.
23. The Environment Act 2021 extended the original Section 40 NERC Act 2006 biodiversity duty on public authorities to include the enhancement of biodiversity alongside conservation by way of creating "*the general biodiversity objective*". This requires us to consider what action the Council can properly take, consistently with the proper exercise of its functions, to further the general biodiversity objective.

24. After that consideration the Council must a) determine such policies and specific objectives as it considers appropriate for taking action to further the general biodiversity objective and b) take such action as it considers appropriate, in the light of those policies and objectives, to further that objective.
25. The first consideration must have been completed by 1 January 2024. Any subsequent consideration must be completed no more than five years after the completion of the Council's previous consideration. In line with the above, officers are currently working to determine which policies and specific objectives are appropriate to take.
26. Adoption of this Guidance Note will be consistent with and help to deliver against the biodiversity duty.
27. The NERC Act 2006 also requires the Council to monitor and report on the implementation of BNG in its area. The first report in this regard is due in January 2026.

### **HR Implications**

28. As highlighted in the risks section above, staffing resources within the planning and ecology services present a potentially high risk to the implementation and delivery of BNG with impacts beyond this on our performance as a Local Planning Authority. The Government Biodiversity Net Gain Grant and anticipated new burdens funding may assist in this regard, but a longer term sustainably financed solution also needs to be found. The adoption of the BNG Guidance Note does not impact upon this risk in itself, but this situation needs to be monitored and reviewed on a regular basis.

### **Other Implications:**

### **Equalities Implications**

29. An Equalities Impact Assessment (EqIA) is appended to this report. This was initially completed in consultation with the Equalities team in October 2023 in support of the Draft BNG Guidance Note ahead of public consultation. The Guidance Note has not drastically changed post-consultation. As such the original EqIA is considered to remain relevant.

30. The sample of respondents to the consultation survey cannot be said to be representative of the Somerset population in age, sexual identity or ethnicity. However, given the scope of the Guidance Note, and the purpose, scope and primary stakeholders of the consultation (development industry, nature conservation bodies and specific stakeholders rather than the general public) this is not considered in this case to invalidate the results.

### **Community Safety Implications**

31. There are no community safety implications relating to the recommendations of this report.

### **Climate Change and Sustainability Implications**

32. The publication and adoption of the Somerset BNG Guidance Note responds directly to the Climate and Ecological Emergency and will have a positive impact upon the Council's ability to respond to and meet with its targets. The primary function of the Guidance Note is to ensure that BNG works to deliver actual nature recovery locally within Somerset, linking with the emerging Local Nature Recovery Strategy. Beyond this, it uses the Somerset BNG Principles to ensure that a holistic approach is integral to delivery of BNG, with "Build Climate Resilience through Blue and Green infrastructure" identified as a core principle. Further climate and carbon considerations were added to the guidance which underpins this principle post-consultation.
33. The Guidance Note references potential for development of a Somerset Land Use Framework which builds upon reference to this within the adopted Climate Emergency Strategy.
34. The Guidance Note has been developed with clear reference to adopted development plans and associated policies. It builds on these in relation to BNG and these adopted plans and policies and other associated guidance documents have informed the holistic approach and Somerset BNG Principles in particular. Furthermore, it makes reference to the role of new local plans in helping to deliver BNG.

### **Health and Safety Implications**

35. There are no health and safety implications relating to the recommendations of this report.

## **Health and Wellbeing Implications**

36. The Guidance Note promotes a holistic approach to the delivery of BNG. This may involve seeking opportunities to enable appropriate public access to nature, integration of biodiversity enhancements into site design close to where people live, alignment with adopted Green Infrastructure strategies etc. Delivery in line with this approach has the potential to result in significant positive impacts on health and wellbeing, preventing ill-health (physical and mental health), and reducing health and social inequalities.

## **Social Value**

37. This report does not relate to a procurement or commissioning process. However, the delivery of BNG is closely linked with the delivery of social value and clearly can help in the meeting of social value objectives/priorities from an environmental, social and economic perspective.

## **Scrutiny comments / recommendations:**

38. The proposed decision has not been considered by a Scrutiny Committee. However, the Chair of the Climate and Place Scrutiny Committee has been engaged throughout the development of the Guidance Note and has stated that the Committee are not expecting to consider the item at this stage as it is predominantly about implementing national requirements. Scrutiny Committee are more likely to be involved in considering the related Local Nature Recovery Strategy over which we have more scope of influence.

## **Background**

### **Introduction to Biodiversity Net Gain (BNG)**

39. Biodiversity Net Gain (BNG) is an approach to development, and/or land management, that aims to leave the natural environment in a *measurably* better state than it was beforehand. It is intended to deliver measurable improvements for biodiversity by creating or enhancing habitats in association with development.
40. BNG arises from the Government's 25 Year Environment Plan and the Environment Act 2021, Part 6 and Schedule 14 of which make provision for at least 10% biodiversity gain to be a deemed condition of planning permission in England. A suite of secondary legislation was laid in Parliament in January 2023,

bringing the BNG requirement into effect from 12 February 2024. The Government has set out national guidance in relation to BNG at <https://www.gov.uk/government/collections/biodiversity-net-gain>.

41. Development proposals in England submitted from this date and granted under the Town and Country Planning Act 1990 are granted planning permission subject to the national statutory general biodiversity gain condition. Regulations set out exemptions from this requirement meaning that the following types of development permitted under the Town and Country Planning Act 1990 are not subject to the general biodiversity gain condition and as such are *not* legally required to achieve at least 10% BNG:
  - “small development” (meaning for residential development a site of 9 or less dwellings or a site area of less than 1 hectare, or if the number of dwellings is unknown, then a site area of less than 0.5 hectares; and for non-residential development a site less than 1,000 square metres proposed floorspace or a site area of less than 1 hectare) – temporary exemption until 1 April 2024 (small development becomes liable for BNG from 2 April 2024);
  - development impacting habitat of an area below a ‘de minimis’ threshold of 25m<sup>2</sup>, or 5m for linear habitats such as hedgerows ;
  - householder applications;
  - development associated with the high speed rail network;
  - development of biodiversity gain sites (where engineering works are required for habitats to be enhanced for wildlife);
  - small scale self-build and custom housebuilding (meaning a development of no more than 9 dwellings and on a site no larger than 0.5 hectares and consisting of exclusively dwellings which are self-build or custom housebuilding.
  
42. Mandatory national BNG does not apply where planning permission is not required. As such, it does not apply to permitted development and prior approval applications or Review of Old Mineral Permissions. BNG does not apply to Permission in Principle applications (PIPs), though applications for subsequent technical details consent are subject to the national deemed biodiversity gain condition. BNG will also not apply to listed building consent applications, but if these are made jointly with a full application which is not exempt from BNG, then BNG will be required for the full application.
  
43. In summary, BNG:

- Moves the system from seeking “no net loss” to seeking measurable “net gains”;
- Complements existing protections, and in no way reduces or undermines existing statutory and policy protections and requirements relating to wildlife, habitats, protected species, protected sites or irreplaceable habitat;
- Cannot be negotiated away, it is a statutory, not policy requirement;
- Should inform location and design of development from the start, not be dealt with as an additional requirement to be tacked on to otherwise designed schemes;
- Is measured via the national statutory Biodiversity Metric, which uses habitats and associated “biodiversity units” as a proxy for biodiversity;
- Must be secured for a minimum of 30 years.

44. BNG can be achieved in three ways:

- On-site
- Off-site (purchasing biodiversity units from a specific registered biodiversity gain site)
- Credits (purchasing nationally available statutory BNG credits).

The national system advocates and incentivises an on-site-first approach, with use of statutory credits (which are expensive and may deliver biodiversity enhancements anywhere nationally rather than locally) a last resort.

45. Applicants / developers must statutorily submit certain information alongside their planning application for it to be considered valid. Without this information Local Planning Authorities should not validate the application. However, the statutory information required at application stage is fairly minimal, relating predominantly to on-site baseline information. Local Planning Authorities are able to require reasonable further information at validation stage to help assess whether the general biodiversity gain condition is capable of being discharged successfully, where this is set out in an up-to-date local validation checklist.

46. An applicant / developer does not need to finalise their BNG proposals until after the site has been granted planning permission. The general biodiversity gain condition is a pre-commencement condition requiring submission and approval of a Biodiversity Gain Plan (or Overall and subsequent Phase Gain Plans for phased development). The Local Planning Authority must approve the Biodiversity Gain Plan if it complies with requirements set out in the Regulations.

### **The Council's role**

47. The Council has a number of important and potential roles in relation to BNG:
- Processing planning applications (including assessing the likely ability of applications to achieve the general biodiversity gain condition, and subsequently, developer's Biodiversity Gain Plans).
  - Enabling off-site biodiversity units to be made available within Somerset by being party to legal agreements to secure habitat enhancements for 30 year periods.
  - Monitoring compliance with on-site developer and off-site unit provider obligations.
  - Reporting on BNG implementation in line with the Council's duties under the Natural Environment and Rural Communities (NERC) Act 2006 as amended by the Environment Act 2021.
  - Using the Local Nature Recovery Strategy (LNRS) and other policy/guidance tools to encourage BNG to deliver the right habitats and solutions in the right places.
  - Potentially developing a platform for communicating availability of off-site solutions in Somerset;
  - Potentially becoming a Responsible Body for the purposes of Conservation Covenants;
  - Potentially developing off-site solutions on Council owned land;
  - Active promotion of Somerset for inward investment in the area's natural capital across environmental delivery schemes.
48. The Somerset BNG Guidance Note and this report focus on the first four of the above bullet points which relate directly to the implementation of BNG and making the system work from day one, and touches upon the fourth point around reporting. Further reports may be brought to members in due course relating to the remaining points about potential future roles and options for optimising BNG and associated opportunities.
49. The requirement to demonstrate and deliver at least 10% BNG and the core processes involved in doing so are set nationally. However, there are limited areas where the requirement can be tailored to local circumstances, particularly in relation to:
- Establishing our planning processes for dealing with BNG from pre-application, through submission and validation, consideration and determination of planning applications and appropriate securing of BNG through conditions and S106 legal agreements, in relation to pre-commencement condition/obligation discharge and on to monitoring and enforcement considerations.

- Ensuring delivery of BNG is strategically aligned wherever possible with a wide range of existing and emerging plans, policies and objectives of both the Council and area more generally.
- Establishing processes to enable off-site delivery mechanisms to come forward in Somerset.

50. Officers have received training on BNG and their roles and responsibilities. Training for members (principally those on the council's various planning committees) is planned for 22 February 2024. Training materials used will be made available to all members in due course. Furthermore, officers have also trained developers on the subject matter and plan to provide some training for parish councils and neighbourhood plan groups as well as landowners and land agents associated with any future 'call for sites'.

### **The Somerset BNG Guidance Note**

51. The Somerset BNG Guidance Note provides guidance and advice on calculating and delivering BNG in a Somerset context. It aims to ensure a consistent and efficient approach aligned to local policy context, by making clear the requirements and processes in Somerset, whilst being aligned with the national requirement and guidance.

52. The Guidance Note provides information on:

- The policy context for BNG and how its delivery fits with national and local plans, strategies and objectives (chapter 2);
- What BNG is, the basics of how it works and when it applies (chapter 3);
- The key stages of the process in relation to planning applications (chapter 4);
- A sequential approach to be followed in determining whether BNG should be provided on-site, off-site or via statutory credits (chapter 5);
- A holistic approach to BNG with alignment to six Somerset BNG Principles, linked to objectives in existing adopted plans, strategies and projects (chapter 6);
- How to consider 'strategic significance' within the BNG Metric in order to deliver nature recovery in Somerset (chapter 7);
- How BNG will be secured from new development (chapter 8);
- How the Council will enable off-site delivery mechanisms to come forward in Somerset (chapter 9);
- How monitoring and enforcement of BNG is proposed to work (chapter 10); and
- Planning validation requirements (Appendix 4).



53. Through the Somerset BNG Principles and definition of 'strategic significance' the Guidance Note makes a clear and effective link between BNG proposals, adopted planning policies and guidance and wider plans, projects and objectives. In time, the LNRS will play a greater role in determining 'strategic significance'. However, in the interim until such time as this has progressed further, the Guidance Note proposes criteria for how strategic significance should be measured using published plans and data.
54. This report recommends adoption of the Somerset BNG Guidance Note as a material planning consideration. This will provide clarity to developers over how the Council will consider the new statutory BNG requirement and its relationship with wider policies, guidance, plans, projects and objectives in relation to planning applications.

#### Local validation requirements

55. The Guidance Note also includes planning validation requirements at Appendix 4. These go beyond the national statutory minimum information required to be submitted alongside planning applications by the Regulations. Such exceedance is justified within the appendix. Local validation requirements include submission of the following information:
- Wildlife / Ecology Survey
  - Biodiversity Checklist
  - Arboriculture Report
  - BNG Statement
  - Completed Biodiversity Metric
  - BNG plans and drawings
  - GIS data
  - Declaration Form
  - Completed SHEP / HEP Metric
56. Of these, the BNG Statement is of particular importance, the content of which will vary depending on the type of application.
57. Officers consider that it is necessary to require further information beyond the national statutory minimum in order to ensure that the LPA can reasonably establish whether the statutory BNG requirement is capable of being successfully discharged post-permission.

58. The Planning Practice Guidance sets out that LPAs may seek further information (beyond the national minimum information requirements) about the proposed strategy to meet the biodiversity gain objective for the development. In particular, it states that BNG will often be a material consideration, and, where relevant, LPAs will want to consider whether the general biodiversity gain condition is capable of being discharged successfully, particularly where significant on-site biodiversity enhancements or off-site biodiversity gains are proposed. It states that if planning obligations are going to be used, it is good practice to submit information about any potential planning obligations which may need to be entered into connected to the application, and that LPAs may seek this via their own local validation checklists.
59. The national minimum information requirements relate predominantly to on-site baseline, and there is no mandatory requirement to provide information about the post-development proposals or off-site elements until post-permission as part of submission of the Biodiversity Gain Plan pre-commencement.
60. If establishing the strategy for delivering BNG requirements is left too late in the site development process, this can lead to increased costs and in the worst cases, may lead to an unnecessary reliance upon national Statutory Credits. Failing to embed BNG into site selection and design from the start can therefore increase the viability impacts of complying with the requirement. As BNG is a legal requirement, this may unreasonably impact upon a site's ability to respond to / meet other policy objectives.
61. If such considerations are left to be dealt with entirely at the point of pre-commencement condition discharge, then the relationship with and implications on wider policy objectives and the ability of the application to deliver sustainable development (in the round) cannot be considered. This runs the risk of approving Biodiversity Gain Plans which in turn trigger S73 applications to vary applicability of other planning conditions.
62. Given the above, it is essential that sufficient information about the proposed strategy for delivering at least 10% BNG (including the expected balance between on-site, off-site and credits) is submitted as part of a planning application.

#### Off-site delivery mechanisms

63. Where appropriately justified, development proposals may rely in part or in whole upon an off-site BNG solution.

64. Off-site providers effectively enhance or create habitat on a specific piece of land which is entirely separate to any specific development proposal. This habitat generates 'biodiversity units' as measured through the Biodiversity Metric. These biodiversity units can be sold to applicants / developers for reliance upon in meeting their off-site obligations in relation to a specific development proposal.
65. Off-site delivery mechanisms will be legally secured entirely separately from the development proposals they are due to serve, by either an 'overarching' S106 legal agreement with the landowner or a conservation covenant.
66. Conservation covenants are a new form of private, voluntary agreement which can be entered into by a landowner and a Responsible Body to conserve the natural or heritage features of the land. A Responsible Body can be a local authority, a public body or charity, where at least some of its main purposes or functions relate to conservation; or a private sector organisation, where at least some of its main activities relate to conservation. DEFRA have specified a number of criteria for becoming a Responsible Body namely eligibility, financial security, operational capacity and capability and ongoing suitability. At the point of writing, it is understood that as yet no such Responsible Bodies have been designated. This means that, at present, S106 legal agreement between a landowner and local planning authority are the only means of enabling off-site delivery mechanisms to come forward.
67. The Guidance Note sets out the broad process for determining which off-site solutions the Council will be willing to enter into a S106 legal agreement with to secure their delivery. This includes launching a 'call for sites' in the coming months and assessing and prioritising submissions based on key considerations. It is necessary to establish such a process in order to ensure that the Council is complying with its NERC Act duty to conserve and enhance biodiversity; to protect and use its limited resources effectively and efficiently; and to minimise the risk of failure associated with any such off-site solutions.

#### Consultation

68. A Draft Guidance Note, including the proposed planning validation requirements were consulted on publicly from 6th November 2023 to 4th December 2023. Comments and responses received have been taken into account in the production of the final Guidance Note. Further information on the consultation undertaken, comments received and how they affected the final document can be viewed in the accompanying Consultation Statement.

69. A total of 88 responses were received, with 66 via the Council's Citizen Space consultation portal, 19 via email and 3 via social media.
70. Those responding via email did not respond to the survey questions directly. In order to analyse them effectively, officers summarised emailed responses, split them down and attributed answers to the most relevant survey question. Comments were recorded and captured in analysis of qualitative responses. However, emailed responses did not generally give a clear answer to sentiment questions (i.e. how much agree with a statement or yes/no). As such, the quantitative analysis of sentiment responses generally only relates to those who responded to the online survey via Citizen Space, with the exception of one or two emailed responses where a clear sentiment was expressed.
71. 56% of responses to the online survey were from members of the public. There was a poor response rate from the development industry – likely due to the timing of national guidance and regulations being published in the final week of the consultation. Officers considered the content of the regulations and national guidance and determined that they did not change things drastically and as such there was no need to formally extend the consultation.
72. Many responses from members of the public highlighted the complexity of BNG as a concept and that it was difficult for the general public to understand. A number of responses also focused on issues beyond the scope of BNG or challenged aspects of the national regime which are beyond the Council's ability to influence. In response, the final Guidance Note is to be accompanied by a short non-technical summary document and a series of Frequently Asked Questions (FAQs), which can be easily updated. These are not yet available but are intended to be published on the website to aid understanding.
73. Beyond this, there were a number of useful comments made in response to the questions posed, which have influenced tweaks and refinements within the final Guidance Note – these are set out more fully within the Consultation Statement. However, no major issues were raised, and as a result no major changes were considered necessary.
74. Of those who responded directly to the survey questions, the majority of respondents:
- Felt that the proposed processes for dealing with BNG through the planning process was sufficiently clear and appropriate (59%)

- Felt that the proposed validation requirements were appropriate (61%)
- Felt that the proposed process for securing BNG from development sites through use of conditions and S106 legal agreements was considered reasonable (62%)
- Strongly agreed or agreed with the Somerset BNG Principles:
  - Principle 1 (86%)
  - Principle 2 (86%)
  - Principle 3 (89%)
  - Principle 4 (75%)
  - Principle 5 (88%)
  - Principle 6 (88%)
- Strongly agreed or agreed that the local definitions for strategic significance scoring were clear and workable (64%)
- Strongly agreed or agreed with the proposed sequential approach (58%)
- Generally agreed with the draft conclusions of the Draft Strategic Environmental Assessment (SEA) / Habitat Regulation Assessment (HRA) Screening Report (66%)

75. With regard to the Somerset BNG Principles, a number of useful points were raised which have informed updates and improvements to the guidance underneath each of the six identified principles. Some respondents also identified additional principles. However, in all cases, suggestions were felt to be better dealt with as 'tweaks' to guidance relating to already proposed principles rather than the creation of additional principles.

76. Respondents were asked whether they felt the proposed process and criteria for considering and determining off-site delivery mechanisms were reasonable and transparent. Responses were inconclusive, with 52% of responses answering 'yes' and 48% answering 'no'. A number of comments associated with 'no' responses suggested that off-site solutions should not be allowed as they undermine the purpose of BNG – however, this is a legally acceptable solution, and it is important that the Council enables such options to be established within Somerset otherwise this offset will be exported outside of Somerset and any benefit to local nature recovery will be lost.

77. Developer and planning agent respondents were asked whether they envisaged bringing forward planning applications requiring off-site biodiversity units in Somerset within the next 12 months. Just 4 responses were received to this question, 2 being 'yes', 2 being 'no'. No responses identified a specific number of off-site units that might be required.

78. Respondents were asked whether they felt the proposed monitoring approach was reasonable and proportionate. Responses were inconclusive, with 39% strongly agreeing or agreeing, 37% strongly disagreeing or disagreeing, and the other 24% being neutral. A number of comments suggested people's main concerns were around enforcement. This was recognised as being essential to the success of BNG, but the Council's resources and appetite for enforcement were a concern.
79. The Consultation Statement includes a table of responses to key points raised as part of a 'You said, We did' chapter. For further information on the consultation and responses to issues raised, please refer to the Consultation Statement.
80. As previously mentioned, the Government published the draft BNG regulations and draft national guidance in the final week of the consultation in November 2023. However, the Government's overall approach has not changed drastically between that anticipated in preparing the Draft Guidance Note and that in the final guidance and regulations. As such, the final Guidance Note has been updated and tweaked in response to these, but more major changes were not considered necessary.

#### Implementation and next steps

81. BNG is a new national requirement of a particularly complex nature. It is likely that processes and guidance may need to adapt and iterate in response to implementation over the coming months and years as understanding, interaction with different circumstances and case law evolves. This being the case, it is important to recognise the Somerset BNG Guidance Note as being a live document which will iterate and update in response. As such, this report recommends delegating approval of amendments and updates to the Executive Director for Climate and Place, Lead Member for Environment and Climate Change and the Lead Member for Economic Development, Planning and Assets depending upon the significance of such updates.
82. Next steps following implementation include:
- Working with the site promoters to agree a S106 legal agreement for an initial pilot off-site solution in Somerset so as to enable off-site units to be purchased in Somerset. Note, this pilot will provide learnings on time taken and processes involved in bringing such sites to market which can influence fine-tuning of process for future sites and effective cost-recovery via establishment and monitoring fees.

- Preparing and launching a ‘call for sites’ seeking further sites promoted for off-site solutions. Depending upon timing this may be wrapped up with the ‘call for sites’ proposed to be used in delivery of the Council’s Nutrient Mitigation Fund proposals.
- Assessing submissions to the ‘call for sites’ and working with appropriate site promoters to agree S106 legal agreements for further off-site solutions in Somerset (working from the template agreed in the pilot project).
- Reviewing options to enable Council-owned land to be used for habitat enhancement and subsequent sale of off-site biodiversity units for BNG purposes, together with options for other associated services that the Council could provide on a fee-paying basis. However, these are separate considerations from the Council’s role as Local Planning Authority. A business case and separate report will be brought to members in due course setting out options and recommendations in this regard.
- Exploring options around development of a Land Use Framework for Somerset.
- Informing vision, objectives, spatial strategy and policy development for new local plans including the main Local Plan, Minerals Local Plan and Waste Local Plan as well as advice and responses to proposals for Neighbourhood Plans in Somerset.
- Monitoring BNG proposals and reporting on BNG implementation as part of the Councils reporting duties under the NERC Act 2006.

## **Background Papers**

83. None

## **Appendices**

- **Somerset BNG Guidance Note (including appendices)**
- **SEA/HRA Screening Report**
- **Equalities Impact Assessment**
- **Consultation Statement**

## Assurance checklist

	Officer Name	Date Completed
Legal & Governance Implications	David Clark	19/01/2024
Communications	Peter Elliott	31/01/2024
Finance & Procurement	Nicola Hix	25/01/2024
Workforce	Alyn Jones	24/01/2024
Asset Management	Oliver Woodhams	01/02/2024
Executive Director / Senior Manager	Paul Hickson Kirsty Larkins	26/01/2024 26/01/2024
Strategy & Performance	Alyn Jones	24/01/2024
Executive Lead Member	Cllr Dixie Darch Cllr Ros Wyke	25/01/2024
<b>Consulted:</b>	Councillor Name	
Local Division Members	N/A	
Opposition Spokesperson	Cllr Steve Ashton Cllr Mark Healey	18/01/2024 18/01/2024
Scrutiny Chair	Cllr Martin Dimery	18/01/2024