



Report to: Cabinet Meeting - 23 January 2024

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Report Summary	
Type of Report	Open report, key decision.
Report Title	Biodiversity Net Gain – Policy and Actions
Purpose of Report	To inform Cabinet regarding 4 ‘topics’ relating to mandatory Biodiversity Net Gain (BNG) and propose recommended actions that are considered necessary.
Recommendations	<p>For Cabinet to:</p> <ol style="list-style-type: none"> 1. To adopt and publish definitions of what constitutes ‘significant enhancement’ within mandatory BNG calculations as set out in Section 2 and Appendix A to this report. 2. To adopt and publish interim definitions to be used for ‘strategic significance’ within mandatory BNG calculations as set out in Section 2 and Appendix B to this report. 3. To approve for a ‘call for sites – expressions of interest’ exercise to be undertaken. 4. To approve for officers to make an application for Newark and Sherwood District Council (NSDC) to be considered for Responsible Body status.
Alternative Options Considered	<p>For all four items, a ‘do nothing’ option has been considered.</p> <p>For ‘significant enhancement’ and ‘call for sites – expressions of interest’ a further option involving a collaborative approach with other Nottinghamshire planning authorities has been considered.</p>
Reason for Recommendations	<ol style="list-style-type: none"> 1. <u>‘Significant Enhancement’</u> – to provide clarity for applicants, facilitate efficiency for the Planning Development Team, future-proof alignment with emerging Policy DM7, and maximise opportunities to enhance and restore biodiversity within the district as required by Core Strategy Policy 12.

<p>Reason for Recommendations</p>	<p>2. <u>'Strategic Significance'</u> – to provide clarity for applicants, in the interim period before the Nottinghamshire Local Nature Recovery Strategy (NLRS) is published, and to facilitate efficiency for the Development Management Team when considering applications required to provide a BNG calculation.</p> <p>3. <u>'Call for sites – expressions of interest'</u> – It is considered important for NSDC to be proactive regarding the potential provision of off-site biodiversity units within the district. This is to ensure that the biodiversity gains from development are provided close to development sites and at least within the district to avoid the district bearing the impacts on biodiversity with the benefits provided elsewhere. Also, to ensure that the district does not become an unfavourable area for developers due to an insufficient supply of off-site biodiversity units.</p> <p>4. <u>'Responsible Body status'</u> –</p> <p>It is considered important that for NSDC to achieve full engagement of biodiversity net gain within the district, providers of off-site biodiversity units should not be constrained to a single option of entering into a Section 106 Agreement (s106) with NSDC. If their preference is to work with NSDC but via a Conservation Covenant rather than a s106, NSDC will only be able to do so if they have Responsible Body status.</p> <p>DEFRA's timeline for deciding on Responsible Body applications is within 12 weeks. Therefore, it is recommended that NSDC is proactive and applies as soon as possible rather than be reactive in the future and potentially miss opportunities for engagement with landowners where the 12-week delay might be considered unacceptable.</p> <p>This recommendation is made on the Lead Officer's understanding that, once awarded Responsible Body status, there is then no obligation to act as a Responsible Body if approached to do so.</p> <p>All four proposals are considered to be consistent with, and provide an important contribution towards, Community Plan Objective 5 to Protect and enhance the District's natural environment and green spaces; specifically <i>"To plan an active role in biodiversity net gain for the district,..."</i></p>
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1.0 **Background**

- 1.1 The [Environment Act 2021](#) set the legislative background for the implementation of mandatory Biodiversity Net Gain (BNG) of at least 10%. A two-year transition period then followed with secondary legislation proposed for November 2023 to provide the detail and measures needed to enable mandatory BNG to operate, and to provide a start date.
- 1.2 Two [draft Statutory Instruments](#) (SIs) were laid before Parliament on 30 November 2023. These have now been passed by the Commons and Lords enabling a further four related SIs to be laid before Parliament. This is expected to happen sometime during

the week commencing 15 January 2024, with mandatory BNG then coming into force towards the end of January 2024. These will be made under the negative procedure, so if the normal convention of having a negative SI laid in Parliament for at least 21 days before it comes into effect applies, mandatory BNG would start sometime on or after 05 February 2024.

1.3 Associated draft guidance regarding mandatory BNG has been published by the Government. Whilst this will remain as 'draft' until the suite of SIs come into force, major changes are not expected in the final guidance.

1.4 In many areas this guidance is not providing the clarity hoped by those that will effectively become practitioners of mandatory BNG.

1.5 Following a review of the SIs and guidance, the Lead Officer has identified four areas considered important to address at this stage of the emergence of the start of mandatory BNG. These are the subject of this report. It should be noted that mandatory BNG is a complex issue and as continued analysis of the guidance and implantation of the legislation continues there will invariably be other matters that will need to be considered and potentially brought before Cabinet. The short timescale between the legislation being made, guidance issued, and the requirements coming into effect, also means there has been insufficient opportunity for public and stakeholder consultation. A plan for future consultation will be considered; the results of this, and experience of implementation may require fresh consideration of the proposals set out in this report. The Council's Planning Policy Board is due to consider the proposals in detail after publication of this report, on Tuesday 16 January. Officers will update Cabinet regarding feedback from the Board at the meeting.

1.6 The four 'topics' are:

- The definition of '**significant enhancement**' (a critical factor in relation to securing and monitoring on-site BNG);
- Interim definitions for '**strategic significance**' (an input value for habitats within the Statutory Biodiversity Metric that will be used to calculate BNG);
- Consideration of a '**call for sites - expressions of interest**' (a proposal to help ensure that sufficient 'off-site' BNG will be available in the district); and
- A proposal to apply for '**responsible body**' status (in relation to Conservation Covenants which are a new form of legal agreement that can be used to secure BNG).

1.7 This report deals with the four topics in this order.

Significant Enhancement

1.8 Mandatory BNG will be provided in two locations:

- Within the development site (on-site); and
- Away from the development site (off-site) via Biodiversity Gain Sites (also known as 'habitat banks').

1.9 Whilst the wider public understanding is that there will be an automatic legal obligation for the mandatory minimum 10% BNG to be delivered and maintained for at least 30 years, this is not the case.

1.10 All the off-site element of a development's mandatory BNG obligation will need to be legally secured. This will be via legal agreements to ensure delivery, maintenance,

monitoring, and if required enforcement. These agreements might be with the relevant local planning authority (LPA) but may be with a Responsible Body. The relevant LPA cannot insist that the agreement is with them and so might not be involved with the off-site element. This is discussed further under the “Responsible Body” section of this report.

- 1.11 Schedule 7A (9) of the Environment Act 2021 sets out how it is only the on-site biodiversity increase that the relevant planning authority considers is **significant** in relation to the pre-development biodiversity value, that must be maintained for at least 30 years after the development is completed. Therefore, defining what constitutes ‘significant enhancement’ is of critical importance in terms of determining what measures will need to be delivered for at least 30 years.
- 1.12 Current [Government draft guidance](#) refers to ‘significant onsite habitat enhancements’, with specific guidance relating to what might be considered significant, within separate [guidance](#) aimed at developers.
- 1.13 It was hoped that the guidance would give unequivocal definitions as to what constitutes significant enhancement, but this is not the case. Whilst it gives some examples of what it considers would normally represent significant enhancement, these are preceded by the following text:

“What counts as significant enhancement will vary depending on the scale of the development and existing habitat, but these would normally be...” [\(DEFRA 2023\)](#)
- 1.14 As currently written, it is envisaged that applicants may seek to reduce their long-term obligations regarding delivery of the onsite element of their BNG by their interpretation of what constitutes ‘significant enhancement’, leading to challenges and disputes during the determination of development applications.
- 1.15 The guidance is clear in relation to habitats which are proposed to be retained but with no enhancement, *“Retention of existing habitat does not count as on-site enhancement”*. [\(DEFRA 2023\)](#)
- 1.16 The Cabinet is advised that in most cases this scenario will occur where habitat is present that is of sufficiently high biodiversity value (as defined by the Statutory Biodiversity Metric) for there to be no scope to achieve any uplift in biodiversity value. Appropriate management to maintain this state should therefore be a priority of any planning approval to align with existing and emerging local planning policy concerned with conserving biodiversity.
- 1.17 The proposed management and monitoring of significant on-site enhancements will need to be set out in the applicant’s Habitat Management and Monitoring Plan (HMMP). These will then need to be legally secured, monitored and if necessary enforced, by the LPA for at least 30 years.
- 1.18 Government guidance for developers is clearer for these non-significant enhancements *“...so for non-significant enhancements, you do not need to have an HMMP, legal agreement or commitment to maintain them for 30 years.”* [\(DEFRA 2023\)](#)
- 1.19 It is up to the LPA to decide if it wishes to secure the non-significant on-site element of the mandatory BNG. This would be via planning conditions for management plans like Landscape and Environmental Management Plans (LEMP) and Biodiversity Management Plans (BMP), i.e., the same as the current situation before the start of mandatory BNG.

- 1.20 This process will also result in LPAs having various parts of a development site where there is an obligation to legally secure, monitor and enforce the proposed habitat enhancement, with other areas falling outside of this obligation. These different areas will likely need to be covered by different sets of management plans and possibly different legal agreements, leading to an unnecessarily complicated post development administration.
- 1.21 All the component parts of a development site are included within the BNG calculation required to demonstrate delivery of mandatory BNG of at least 10%. With the non-significant on-site element not secured for 30 years it is likely that on many development sites some of this non-significant enhancement will not be delivered, or not achieve its proposed condition as projected within the BNG calculation. Although this might be at a low level on some sites, the cumulative effect across the district is likely to result in less than 10% BNG being realised.
- 1.22 This prediction is against a background of an emerging [Amended Allocations & Development Management Development Plan](#) Policy DM7 'Biodiversity and Green Infrastructure' that requires a net gain of at least 10% and for this to be guaranteed for at least 30 years.
- 1.23 Also, NSDC officers have contributed to the development of 'A Biodiversity Net Gain Framework for Nottinghamshire and Nottingham' with the expectancy that at an appropriate time a recommendation will be made to Cabinet for an endorsement of the Framework by NSDC. The Framework expects development to deliver a minimum 10% BNG (reflecting the legislation) but with aspirations for higher gains where possible, and aspirational targets of 20%. The predicted potential for 10% to not be delivered in full, does not align with the Framework.

Strategic Significance

- 1.24 The BNG will need to be calculated using the Statutory Biodiversity Metric (SBM). On 29 November 2023 the Department for Environment, Food & Rural Affairs (DEFRA) published the SBM and associated draft [Statutory Biodiversity Metric Guidance](#).
- 1.25 When a SBM (which is based on an Excel™ spreadsheet) is being populated to perform a BNG calculation some cells are automatically populated and the inputter has no control over them, others utilise drop-down lists which cannot be overridden, and other cells are open (e.g., habitat areas and lengths).
- 1.26 One of the required input values is 'strategic significance', and this represents one of what are referred to as habitat quality inputs. Strategic significance is the local significance of a habitat based on its location and habitat type. There are three categories, 'high', 'medium' and 'low'. Habitats of 'high' strategic significance have a multiplier score of 1.15, 'medium' 1.1 and 'low' 1.0, so habitats of high significance are given a higher value than those of 'medium' or 'low' distinctiveness.
- 1.27 The SBM offers the user three dropdown options to define these three categories:
- Formally identified in local strategy = **High** Strategic Significance
 - Location ecologically desirable but not in local strategy = **Medium** Strategic Significance
 - Area/compensation not in local strategy/ no local strategy = **Low** Strategic Significance

- 1.28 The draft [Statutory Biodiversity Metric Guidance](#) states that the relevant Local Nature Recovery Strategy (LNRS) and descriptions provided in Table 7 of the guidance should be used to assign the appropriate strategic significance to habitats.
- 1.29 The Nottinghamshire LNRS is unlikely to be published until sometime in 2025. There is therefore a need to address this matter in the interim with mandatory BNG expected to commence towards the end of January or early February 2024.
- 1.30 The draft user guidance addresses the issue where there is no published LNRS; *“If an LNRS has not been published, a relevant planning authority should specify alternative documents for assigning strategic significance whilst an LNRS is put in place.”*. It then goes on to list 13 examples of the type of document this might include. Examples that would potentially be of relevance within the district include, Local Plans and Neighbourhood Plans, Biodiversity Action Plans, Species conservation and protected sites strategies (i.e., the Local Wildlife Sites system), Green Infrastructure Strategies, River Basin Management Plans, and Catchment Plans and Catchment Planning Systems.
- 1.31 With the breadth and complexity that these documents cover, there is unlikely to be consistency with the approach taken by applicant’s ecologists when deciding which level of strategic significance to apply to specific habitat types within the SBM. In the absence of any published position by NSDC, there will be little, if any, scope for successful challenges to be made by NSDC if it is considered that incorrect strategic significance levels have been applied to habitats within completed SBMs.
- 1.32 An important element of the aforementioned Biodiversity Net Gain Framework for Nottinghamshire and Nottingham is to try and ensure that the ‘right habitats’ are created in the ‘right places’. This is considered important to maximise opportunities to create, restore and enhance ecological networks across the district and county. The strategic significance element of the SBM has an important role to play in this respect, by placing a greater value in the BNG calculation on specific habitats in specific locations that have been identified locally as being the most important.

Call for sites – expressions of interest

- 1.33 Most of the provision of off-site biodiversity units will come from land owned by third-party providers rather than from off-site land owned by the applicant. These units will be generated and sold as a commercial enterprise by landowners.
- 1.34 In the absence of any requirement to provide a measurable biodiversity net gain within the Council’s current local plan policies, there has been no market for the provision of biodiversity units within the district. When mandatory BNG begins this market will develop.
- 1.35 Recent Government delays and changes of position regarding some environmental issues (i.e., Nutrient Neutrality, delays to mandatory BNG starting) have not helped in terms of engagement by landowners pre-the onset of mandatory BNG.
- 1.36 It is important for sufficient supply of off-site biodiversity units to be available within the district to minimise the risk of off-site BNG being delivered out of the district.

Responsible Body status

- 1.37 Conservation covenants are a relatively new concept which enable private, voluntary agreements between landowners and a responsible body. They are intended to provide long-term conservation benefits for the public good. It is expected they will be used for a variety of purposes, but a key use will be to support the provision of BNG. It

is anticipated that with time, the use of Conservation Covenants will increase in popularity and may become the preferred type of legal agreement.

- 1.38 Before providers of off-site biodiversity units can sell biodiversity units, they must register their land on the National Biodiversity Gains Sites Register, which is administered by Natural England. Before the land can be registered, there needs to be a legal agreement to secure the commitment to create and manage the habitats to deliver the proposed BNG for at least 30 years.
- 1.39 The required legal agreement can either be a section 106 agreement or Conservation Covenant with the relevant local planning authority, or a Conservation Covenant with a responsible body.
- 1.40 Whilst the focus of this report relates to the use of Conservation Covenants on land used to provide offsite biodiversity units for developments, Conservation Covenants can also be used to secure the onsite element of a development's biodiversity net gain requirement.
- 1.41 Conservation covenants can only be with a responsible body, so if this is with a local authority, that authority must have responsible body status. It is the secretary of state that decides whether an organisation is suitable to be designated a responsible body.
- 1.42 Local authorities, public bodies or charities where at least some of their main purposes or functions relate to conservation, or private sector organisations where at least some of their main activities relate to conservation, can apply to be a responsible body. DEFRA's criteria for becoming and remaining a responsible body are:
- *Eligibility;*
 - *Financial security;*
 - *Operational capacity and capability;* and
 - *Ongoing suitability.* ([Criteria for being a responsible body](#))
- 1.43 A key factor with responsible body status, is that it is the responsible body that has the legal obligation to regulate and enforce what the landowner has agreed to do under a Conservation Covenant. Whilst local authorities will have experience of this type of regulatory and enforcement role through its existing development functions, for other organisations eligible for responsible body status this is likely to be daunting, and may be the reason why at the time of writing there seems to be little interest in organisations wishing to obtain responsible body status.
- 1.44 A provider of off-site biodiversity units can make their own decision whether to use a section 106 agreement with the relevant local authority, or if they prefer, a Conservation Covenant. If it is a Conservation Covenant, they are under no obligation to enter into the agreement with the relevant local authority, they can use whatever responsible body they wish, if that responsible body is willing to enter into the agreement. If the responsible body is not the local authority, that authority will then not be involved with the landowner or the scheme that is delivering biodiversity units.
- 1.45 It may therefore be prudent for NSDC to consider obtaining responsible body status to ensure that providers of offsite biodiversity units have the option to enter into an agreement with NSDC using either a section 106 agreement or a Conservation Covenant. From NSDC's perspective, having responsible body status will increase the flexibility to have greater control of the delivery of BNG within the district.

2.0 Proposal/Details of Options Considered

Significant Enhancement

Options Considered

- 2.1 One option would be to do nothing. It is considered that the implications of such an approach have been set out in Section 1 of this report.
- 2.2 There has been informal discussion amongst some of the Nottinghamshire local authority ecologists as to whether a coordinated approach should be taken across the County in terms of defining what is considered to represent significant on-site enhancement. This would be another option.
- 2.3 Whilst this might be of benefit to developers by providing a consistent approach across the County, this is a particularly complex matter that would need consideration against specific aspirations and policy positions amongst the districts and require an appropriate level of time for such deliberations. It is considered by the Lead Officer that this is an issue that needs to be addressed as soon as mandatory BNG starts in late January/early February. Consequently, this is not considered to be a preferred alternative at the present time.
- 2.4 However, it is important to note that a decision to follow the proposal recommended in this report, would not preclude the option to adopt a County-wide approach in the future.

The Proposal

- 2.5 The proposed recommendation is for Newark and Sherwood District Council to have stated a position and published what it considers represents significant enhancement. This would be via an appropriate published document. It is therefore proposed that the Cabinet approves this approach, using the text set out in **Appendix A**.
- 2.6 The proposal is considered to be consistent with, and provide an important contribution towards, [Community Plan](#) Objective 5 to Protect and enhance the District's natural environment and green spaces; specifically "*To plan an active role in biodiversity net gain for the district,...*"

Financial

- 2.7 The proposal would likely result in the need for a greater number of legal agreements to secure on-site enhancements, and subsequent monitoring by an ecologist, and enforcement for 30 years, than would be needed if the alternative options were adopted. Increased staff resources will be needed in the future within these respective disciplines.
- 2.8 For ecologist time, it is expected that full cost recovery should be achieved by including a charge as part of the relevant legal agreement required to secure the management and monitoring of the habitats that would be included within this proposal. [The Community Infrastructure Levy \(Amendment\) \(England\) \(No.2\) Regulations 2019](#) allow for charges to be levied for monitoring planning obligations. Verna Earth, suppliers of the Mycelia software for BNG administration, which is being trialled by NSDC, have provided an Excel spreadsheet tool to assist with the calculation of these costs.

Human Resources

- 2.9 As identified under 'Financial' increased staffing levels will be needed in to the future and advanced planning for this will be a consideration.

Information and Communications Technology

- 2.10 The identified increased staffing levels in the future will require additional resources (e.g., laptop/tablet, hardware for home working etc.). This will be considered fully and a report prepared when additional resource is required.

NSDC Planning Applications and Enforcement

- 2.11 If approved and implemented, this would apply to any planning applications submitted to and by NSDC which are required by the relevant legislation to provide a mandatory minimum 10% BNG.
- 2.12 With regular monitoring, enforcement for non-compliance is not anticipated to be a regular occurrence, but some additional enforcement officer time is likely, but this is less easy to account for than ecologist time. Where enforcement action is required, there would also be an impact upon legal resources as well. Consideration to this will also be given as and when this arises and more is understood.

Strategic Significance

Options Considered

- 2.13 It is considered that there are just two options; to do nothing or to publish a document that specifies how NSDC expects strategic significance to be applied in the interim period before the Nottinghamshire LNRS has been published.
- 2.14 The implications of the 'do nothing' approach have been set out in Section 1 of this report. To 'do nothing' would also be inconsistent with the NSDC Community Plan Objective 5 to Protect and enhance the District's natural environment and green spaces; specifically "*To plan an active role in biodiversity net gain for the district...*" [Community Plan](#). The proposal is therefore to do the alternative option.

Proposal

- 2.15 The proposal to publish an interim definition of how strategic significance should be applied in the interim period before the LNRS is published. This definition is formed of two parts, one focussing on work previously undertaken to identify priority areas for habitat creation and enhancement, and the other focussing on sites designated for their nature conservation interest. Table 1 below summarises these.

Table 1 – Summary of habitat strategic significance definitions

Strategic Significance		
High	Medium	Low
Habitats identified as a priority within the relevant Biodiversity Opportunity Mapping Focal Area.		All other habitats not meeting the definitions for High or Medium strategic significance.
Habitats immediately adjacent to a designated site that represent the habitat type(s) for which the site has been designated.	Habitats within 100m of a designated site that represent the habitat type(s) for which the site has been designated.	

Biodiversity Opportunity Mapping – Focal Areas

- 2.16 In 2008 the Nottinghamshire Biodiversity Action Group resolved to produce a Biodiversity Opportunity Map (BOM) for the county. The reasons were manifold but included providing baseline information to underpin BNG. The Council supported this approach and contributed to the costs for the work in its District. The outputs for [The Sherwood Biodiversity Mapping Project](#) were:
- A basemap showing the habitats across the district based on a digitised 1997-8 Phase 1 habitat survey with some updates from more recent survey data;
 - Habitat Network Maps for four broad habitat types (woodland, grassland, wetland and heathland/acid grassland);
 - Biodiversity Opportunity Maps highlighting ‘Long-Term 50 Year Opportunities’ and ‘Short-Term 10 Year Opportunities’ for habitat creation; and
 - Focal Area Maps which identify locations where it was considered that there are concentrations of opportunities for habitat creation, and where it was considered that activities for habitat creation and enhancement could be prioritised to provide maximum biodiversity benefits.
- 2.17 The assignment of specific strategic significance values can have a substantive difference on both the pre-development baseline value of a development site and for the predicted post-development biodiversity value. Therefore, it has been considered important to ensure that the approach taken is transparent and underpinned by a sound evidence base. In that respect it is considered that use of the BOM Focal Areas is appropriate. They have been determined via a detailed assessment process agreed by the various planning authorities and the assessment has been county-wide. The latter point is considered important as biodiversity is not constrained by arbitrary boundaries and Focal Areas frequently cross local planning authority boundaries. They identify where creation or enhancement of specific broad habitat types would provide maximum biodiversity benefits.
- 2.18 The proposal is for the broad habitat types and their corresponding SBM and/or UK HAB habitat types as set out in **Appendix B** should be considered as being of ‘High’ Strategic Significance. UK HAB is the habitat classification system utilised by the SBM.

Designated Sites

- 2.19 The key sites for biodiversity within the district are those that are afforded a nature conservation designation. These include statutory designations, which include sites within the National Site Network (of which there is just one – Birklands & Bilhaugh Special Conservation Area (SCA)), Sites of Special Scientific Interest (SSSI) and Local Nature Reserves (LNR) (although declarations for LNRs are not always based on them having a significant nature conservation interest). Other key sites are those that are afforded the non-statutory designation as Local Wildlife Sites, these have been selected against a set of published criteria based on local nature conservation importance values. The creation of appropriate habitats immediately adjacent to, or near, sites designated for the habitats they support is considered important. These provide opportunities to increase the area of interest, or to provide important steppingstones to enhance or create ecological networks.
- 2.20 It is proposed that any habitat of the type for which a site has been specifically designated for (either mentioned in the site citation, or which it can be shown that the

site meets the current selection criteria for) which is created or enhanced, and which is situated immediately adjacent to the designated site boundary is to be considered as being of 'High' Strategic Significance. Where such habitats are not immediately adjacent to the designated site boundary, but are within 100m of the boundary, these are to be considered as being of 'Medium' Strategic Significance. This is because these habitats will represent ecological linkage to important locations; i.e., sites designated for their nature conservation importance.

- 2.21 It is not proposed that there should be any size thresholds for such habitats as this would potentially over complicate matters. It is however acknowledged that some areas/lengths of habitats assigned 'high' or 'medium' strategic significance using this approach may be too small to provide a meaningful contribution to the objectives.

Habitats not meeting the proposed 'High' and 'Medium' definitions

- 2.22 All other habitat types not meeting the above criteria for 'High' and 'Medium' strategic significance are to be considered as being of 'Low' strategic significance.

Relevance with local policies and plans

- 2.23 Relevant extracts of the various considerations concerning biodiversity within the emerging Allocations & Development Management Development Plan Policy DM7 Biodiversity and Green Infrastructure ([NSDC 2023](#)) are:

"New development, in line with the requirements of Core Policy 12 of the Amended Core Strategy, should protect, promote and enhance biodiversity and the ecological network of habitats, species and sites of international, national and local importance".

"Development proposals in all areas of the District should seek to enhance biodiversity. Proposals should take into account the latest information on biodiversity including Nottinghamshire Biodiversity Opportunity Mapping, and the forthcoming Local Nature Recovery Strategy."

- 2.24 Therefore, it is considered that the proposal which focuses on the importance of designated sites, and which utilises the Biodiversity Opportunity Mapping exercise is consistent with the emerging policy.

- 2.25 Amended Core Policy 12 'Biodiversity and Green Infrastructure' ([NSDC 2019](#)) states how the Council will *"Seek to secure development that maximises opportunities to conserve, enhance and restore biodiversity..."*. It is considered that the proposal will assist with facilitating this outcome and is therefore consistent with the aims and objectives of Core Policy 12.

- 2.26 The proposal is considered to be consistent with, and provide an important contribution towards, [Community Plan](#) Objective 5 to Protect and enhance the District's natural environment and green spaces; specifically *"To plan an active role in biodiversity net gain for the district,..."*

Call for sites – expressions of interest

Options considered

Do nothing.

- 2.27 If an applicant cannot source their required off-site biodiversity units locally (i.e., within the district) they will have the option to source them out of the district or via the Government's statutory biodiversity credit scheme. In the latter case, this could be

anywhere in the country, although use of this scheme is disincentivised by the high tariffs set by the Government for use with the scheme [Statutory Biodiversity Credit Prices](#) . To do nothing, increases the risk of this happening.

- 2.28 If there are insufficient off-site biodiversity units available within the district to meet the needs of development proposals and this forces applicants to use the expensive Government statutory biodiversity credit scheme, this might make the district unattractive to developers. This has the potential to have a negative impact on delivery of development identified within the NSDC Local Development Framework.

Collaborative approach with other local planning authorities within Nottinghamshire

- 2.29 There has been informal discussion amongst some of the Nottinghamshire local authority ecologists as to whether a coordinated approach should be taken across the county to try and identify potential off-site providers. Rushcliffe Borough Council are already quite advanced in terms of developing a resource for off-site BNG provision within their area so considered it unnecessary to engage with this approach. Funded from the LNRS work, VIA have now been commissioned to undertake research into the issue of likely provision of BNG within the County. However, it is the Lead Officer's understanding that their remit and subsequent output (which is expected to be towards the end of March 2024) is not one of direct engagement and encouragement of landowners to consider setting up 'habitat banks' to provide off-site BNG.
- 2.30 The Lead Officer's advice to Cabinet is that timing is likely to be very important in terms of maximising the chances of generating interest from landowners. There is likely to be widespread coverage in both the national and farming media when BNG finally comes into force, and being pro-active at this time is likely to help with generating interest. This is likely to require a different approach to the work of VIA and would require an earlier action. Consequently, this is not considered a suitable option. However, the results and experiences of the recommended proposal would be shared with other districts, and potentially provide a useful input to the VIA work.

Proposal

- 2.31 To ensure that there is an adequate supply of appropriate off-site biodiversity units within the district it is considered that NSDC should be proactive and publish a call for expressions of interest to provide off-site biodiversity units, to coincide with the date that mandatory BNG comes into force.

Relevance with local policies and plans.

- 2.32 The proposal is considered to be consistent with, and provide an important contribution towards, [Community Plan](#) Objective 5 to Protect and enhance the District's natural environment and green spaces; specifically "*To plan an active role in biodiversity net gain for the district,...*".

Responsible Body Status

Options considered

- 2.33 One other option has been considered. That is to do nothing and wait and see if there is a demand for Conservation Covenants before deciding whether to apply for responsible body status.
- 2.34 The concern with this approach is the 12-week duration for DEFRA to decide on an application for responsible body status. The lead officer is already dealing with an approach from a potential offsite provider within the district and if Cabinet approval is

given for the call for sites expression of interest these approaches are likely to increase. Such discussions with landowners are likely to be more engaging if the Council has a stated position regarding the use of Conservation Covenants and responsible body status. If the Council have applied for responsible body status, this would demonstrate the ability to engage with landowners regarding Conservation Covenants if that was their preference.

- 2.35 Should the use of Conservation Covenants be required and deemed acceptable, delays would be minimised by having made the application for responsible body status.

Proposal

- 2.36 The proposal is for Cabinet approval for officers to apply for the Council to become a responsible body for Conservation Covenants.

Wider implications

- 2.37 In making this recommendation it is important to highlight that as Conservation Covenants are a relatively new concept, the potential impacts on resources that might be additional compared to entering into a Section 106 agreement are unknown and are likely to only become apparent once Conservation Covenants start to be drawn up, or when there is more widespread use of Conservation Covenants elsewhere (i.e., in other districts). Consequently, this recommendation is being made based on the following understandings:

- A responsible body is under no obligation to enter into a conservation agreement if approached to do so;
- A Conservation Covenant can be transferred to another responsible body as long as the covenant doesn't state that this cannot be done;
- An organisation can request to have its status as a responsible body revoked; and
- It is intended that officers would aim initially to only enter into Conservation Covenants for relatively small and uncomplicated schemes to better understand the implications before engaging with large and relatively complicated schemes.

- 2.38 It is therefore expected that should Cabinet agree to the proposal, that a future report(s) would be submitted regarding the wider implications of retaining responsible body status and entering into Conservation Covenants with landowners. If the proposal is approved by Cabinet, the immediate demands on resources would potentially be a few days of officer time spread across several disciplines to complete the application and deal with any subsequent queries from DEFRA.

- 2.39 It should be noted that having responsible body status could open a potential revenue stream, by NSDC acting as the responsible body for Conservation Covenants outside of the district.

Relevance with local policies and plans.

- 2.40 The proposal is considered to be consistent with, and provide an important contribution towards, [Community Plan](#) Objective 5 to Protect and enhance the District's natural environment and green spaces; specifically "*To plan an active role in biodiversity net gain for the district,...*".

3.0 Implications

- 3.1 In writing this report and in putting forward recommendations, officers have considered the following implications: Data Protection; Digital & Cyber Security; Equality & Diversity; Financial; Human Resources; Human Rights; Legal; Safeguarding & Sustainability and where appropriate they have made reference to these implications and added suitable expert comment where appropriate.

Significant Enhancement

Financial Implications (FIN 23-24/7471)

- 3.2 There are no direct financial implications at this stage. A budget for the Biodiversity & Ecology Lead Officer and Mycelia software has been included in the revenue budget. If any reviews of the regulations which require any additional budget; a further report will need to be brought to Cabinet.

Strategic Significance

- 3.3 It is not considered that the proposal would have any implications beyond the normal workings of the disciplines listed in paragraph 3.1.

Call for sites – expressions of interest

- 3.4 It is not considered that the proposal would have any implications beyond the normal workings of the disciplines listed in paragraph 3.1.

Responsible Body status

- 3.5 It is not considered that the proposal would have any implications beyond the normal workings of the disciplines listed in paragraph 3.1. However, it is anticipated that there will be the need for future widespread consultation and submission of subsequent reports to Cabinet regarding the use of Conservation Covenants as a designated responsible body.

Background Papers and Published Documents

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

None.