

Report to: Cabinet



Date of Meeting 12 July 2023

Document classification: Part A Public Document

Exemption applied: None

Review date for release N/A

---

## Delivering Environment Act 2021 new duties

### Report summary:

The Environment Act 2021 new duty for Biodiversity Net Gain becomes “live” in November 2023 and it will have a significant impact on the workload and ability of the Development Management team and District Ecologist to meet the demand that will be generated by this new process. It is both a complex and technically specialised area of work, which will require an additional Ecology Officer working alongside Development Management to provide advice and support. There is also a requirement from the Act to put in place a Habitat Management and Monitoring Plan that Local Planning Authorities will use as part of the reporting requirements for the 30 years of ‘on and off site’ habitat monitoring. It is proposed that an Ecology Graduate Apprenticeship role could help deliver this requirement. Therefore, it is essential that the Council is as prepared as is possible to meet this new duty from November and provide specialised support to the Planning teams through expert advice and support for those applications that will require this new biodiversity net gain assessment before any planning permission is granted.

### Is the proposed decision in accordance with:

Budget Yes  No

Policy Framework Yes  No

### Recommendation:

That Cabinet recommends to Council:

- That Cabinet recommend to Council the appointment of an Ecology Officer and an Ecology Graduate Apprenticeship role to help enable the Council to meet its new duty for Biodiversity Net Gain;
- To provide funding for an Ecology Officer role and an Ecology Graduate Apprenticeship role to enable the delivery of the new Environment Act 2021 duties for Biodiversity Net Gain. A request is made to Council for a budget of £47,049 per annum for the Ecology officer role and £27,344 for the Graduate Apprenticeship role to be funded initially from the Government’s new burdens payments and the Council’s General Fund Revenue budget whilst this new burdens payment is made available and thereafter by the Council’s General Fund Revenue

### Reason for recommendation:

To be able to meet the Environment Act 2021 duty to deliver Biodiversity Net Gain from November 2023

Portfolio(s) (check which apply):

- Climate Action and Emergency Response
- Coast, Country and Environment
- Council and Corporate Co-ordination
- Democracy, Transparency and Communications
- Economy and Assets
- Finance
- Strategic Planning
- Sustainable Homes and Communities
- Tourism, Sports, Leisure and Culture

**Equalities impact** Low Impact

**Climate change** Low Impact

**Risk:** High Risk; The risk of failure as a Local Planning Authority to meet the new duty through the volume of planning applications due to a lack of resource and capacity

**Links to background information** <https://www.local.gov.uk/pas/topics/environment/biodiversity-net-gain-local-authorities/biodiversity-net-gain-faqs>

**Link to [Council Plan](#)**

Priorities (check which apply)

- Better homes and communities for all
- A greener East Devon
- A resilient economy

---

## Report in full

### 1. [Background](#)

Biodiversity Net Gain (BNG) is a requirement of the Environment Act 2021 (The Environment Act). The Environment Act created four broad requirements for LPAs:

- **Identify and implement measures to further the biodiversity objective** (local plan policies, DM changes, better management/expansion of biodiversity resources).
- **Carry out biodiversity reporting** (reporting what we have done to further the biodiversity objective).
- **Input to the Local Nature Recovery Strategy (LNRS)** (contribute to the LNRS and ensure that NRN mapping aligns with EDDC priorities).
- **Implementing mandatory Biodiversity Net Gain (BNG) of at least the minimum percentage (10%).** However a policy for 20% net gain has been proposed within the Council's Local Plan review.

In general - The Act makes provision for nature recovery by 2030, improved air quality, improved water quality, reduction of waste and better use of our resources.

BNG is a principle, which should result in development increasing the net biodiversity value of an area. BNG is calculated using a metric tool, which consultants use to establish the pre and post construction biodiversity value of a site, in “biodiversity units”. A 10% net gain means that the biodiversity value of the site (in biodiversity units) is 10% greater post construction.

If this cannot be achieved on the development site, off site habitat enhancement/creation can be used to achieve net 10% BNG. There is an emerging off-site BNG “credit” market for offsite habitat creation/ enhancement, which is predicted to be worth £135m - £274m/year.

Offsite credits should be purchased as close to the site of impact as possible, and be focused in strategic nature recovery areas (as per Nature Recovery Network (NRN) mapping). Best practice states this, and so will our emerging policies. It is still possible that credits can be bought out of the Local Planning Authority and even further afield, although there is a penalty for this in the metric, and we have a policy in the draft new local plan which would deter this from happening in the future should the policy be adopted. The mandatory requirement will come in place from November 2023 for all but exemptions and small sites, so all applications with ten dwellings or more will require assessing for BNG. From April 2024, small sites will become part of the BNG assessment process for the Local Planning Authority.

## 2. Timeline for BNG new duty

- **Autumn 2021: 9th Nov** - Environment Bill gets Royal Assent - now the Environment Act
- **Winter 2021:** Government consultation on BNG statutory instruments and regulations (delayed, still being undertaken, closed start of April 2022)
- **Spring 2022:** Government response to consultation (delayed as above, still delayed at present)
- **Spring 2023:** BNG site register and statutory credits sales platform go live
- **November 2023:** Biodiversity net gain expected to become mandatory for all Town & Country Planning Act developments (except small sites and exemptions)
- **April 2024:** Biodiversity Net Gain consultation will begin for exemptions and small sites

## 3. Preparing for mandatory BNG

### **Staffing and training:**

One of the most significant shortfalls to BNG is the large burden it will place on LPAs, in terms of staff resource. BNG can be complicated and time consuming to assess, and requires specialist skills. It is estimated that the Development Management workload of East Devon would require approximately two full time staff members indefinitely, to assess BNG applications. This estimation came from discussions with Warwickshire Council, as well as Bath and North East Somerset Council, who have both implemented BNG ahead of it being mandatory.

All planning staff will require some training in the basics of BNG, i.e. where it will be applied, and where it will not, the planning validation requirements and which metric is to be used. The District Ecologist has pulled together a training programme that will be delivered from June to November 2023 for all planning officers, which will help the area teams to better understand what is required with the new duty. However, it is expected that as soon as the duty becomes “live” there will be a significant pressure on the District Ecologist to help support the whole of Development Management. Although the District Ecologist role was partly created to help with BNG it is not feasible for him to be the sole ecologist involved in operating BNG. He has many other tasks including commenting on complex ecological issues associated with planning applications coming through the system, addressing issues of nutrient neutrality in the River Axe catchment as well as supporting nature recovery work. It is clearly unsustainable for one person to do all of this work and implement BNG and so additional resource and capacity is required urgently to be able to put this support in place as close to November as is possible.

The process is envisaged to be based on applicants calculating their own BNG requirement and demonstrating how it will be provided as part of their planning application submission. However, it

will be important that we check their calculations to ensure that they are not underestimating the value of the bio-diversity on the site and ensure that they are therefore provide the correct amount of biodiversity elsewhere on the site or through some form of credit scheme to deliver the net gain off-site.

This work will require quite detailed assessment of the applicant's submission and in some cases a site survey. Investigating any proposals to deliver net gain will also be a key part of the work as well as ensuring that it is secured and then delivered. Clearly the monitoring and checking work will gradually build over time and not require the same level of expertise as the initial assessment of the proposal and hence it is proposed to consider an apprentice for this role who can gain experience and learn on the job with a view to growing our own ecologist for the future. This will also help to keep costs down.

### **Ecology Officer responsibilities**

It is anticipated that the new role will fulfil the following key functions and be fully embedded in the Development Management team to help ensure that the right net gain calculations are applied.

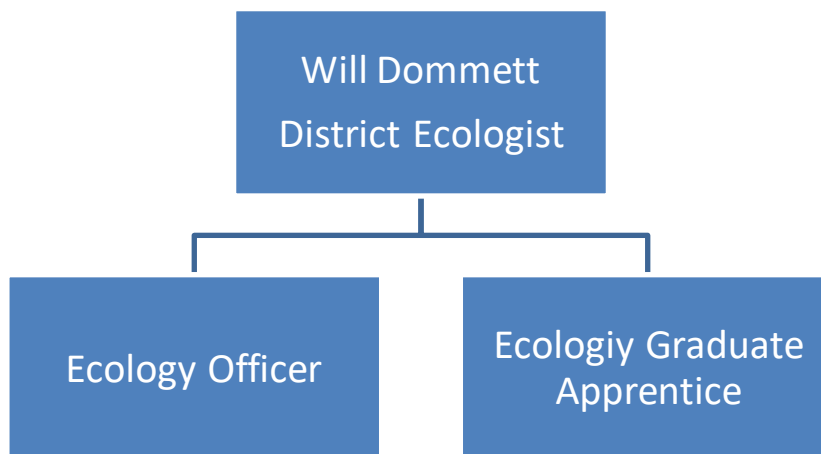
- This includes: assessment of the merits of individual planning applications, assessment of BNG Metric calculations and reports, assessment on expediency for alleged breaches of planning control, assessment and advice on Local Plans/Development Frameworks and policy documents; screening and scoping for Environmental Impact Assessment (EIA) and Appropriate Assessments & Habitat Regulations Assessment (HRA); (50% time allocation)
- Provide specialist advice to assist in the development and preparation of policies within the Local Plan/framework and other initiatives relating to development and biodiversity. Including support to Habitat Regulations Assessment, Strategic Environmental Assessment, Sustainability Appraisal of Local Plan, and meeting the requirements the Environment Act including response to BNG and advice for any other policy documents. (15% time allocation)
- Provide necessary support, advice and appearance at planning and enforcement appeals, inquiries and hearings 5% (time allocation)
- Provide assessment and provision of advice on Council development and other local authorities development (internal and external) (5% time allocation)
- Working as part of a project team, providing ecology advice in the development and subsequent management of Council green infrastructure (5% time allocation)
- Undertake surveys, assessments including BNG assessment & give advice on Protected Species (5% tie allocation)
- Provide training, briefings and advice to other officers, Councillors and other local authorities and other groups on all Ecological matters (10% time allocation)
- Monitor developments to ensure compliance with relevant ecological conditions and obligations (5% time allocation)

The creation of an Ecology Graduate Apprenticeship role will help the Council to also fulfil the habitat monitoring and maintenance, monitoring delivery, enforcement and reporting elements of BNG. The new duty requires LPAs to report on BNG delivery under the Natural Environment and Rural Communities' Act. There will be a Habitat Management and Monitoring Plan template developed by Natural England for LPAs to use as part of the reporting requirements for the 30

years on and off site habitat monitoring. The Environment Act in relation to BNG states that habitats should be secured for a minimum of 30 years as a reasonable requirement.

### Staffing structure

The proposed two posts will report to our District Ecologist (who reports to the Assistant Director – Countryside & Leisure) to ensure the specialist knowledge and expertise is kept within a small team which will sit within the Countryside & Leisure Service. The Ecology team along with the Tree team will provide specialist support and advice to the Development Management service and to the Countryside team, Green Infrastructure Manager and Habitat Mitigations team. This arrangement reflects the value added of the work of the Ecology team and the strategic need for it to work across many of the Council Plan’s priority areas. This reflects the growing urgency and importance of meeting the challenges of our natural environment emergency.



### BNG costs

The Government has committed to funding all new burdens on local authorities arising from the Environment Act and Defra is working with DLUHC on the new burdens process. Government announced in February 2023 that they will be providing up to £16.71 million of funding for LPAs to prepare for mandatory net gain up to November 2023. This appears to be being allocated retrospectively and we have recently bid for £43k for East Devon based on work undertaken so far.

Further funding for the remainder of the transition period for the period 1 April 2023 – 31 October 2023 it is understood will be confirmed by government in due course. It is not clear what funding will follow into the future and it seems likely that new burdens funding will only cover the initial work to set up processes and systems but not the long term operation of this. The government has consulted recently on increasing planning applications fees which may partly or wholly cover the cost of these posts.

A benchmarking exercise has been undertaken by looking at comparable roles being advertised nationally to understand the likely costs of providing these roles. The role is subject to a job evaluation assessment however the majority of comparable roles that are being advertised fit within our Grade 4 boundaries and below is an example of the bottom of scale (SCP 25) and a mid point (SCP 28) to build in any flexibility on negotiations.

Grade 4	Salary FT	On costs 35.5%	Total
SCP 25	32,020	11,367.10	43,387.10

The apprenticeship costs are:

	<b>2022/2023</b>			<b>Apprenticeship Rates</b>	
<b>Grade</b>	<b>Spinal Column Point</b>	<b>Hrly Rates</b>	<b>Value</b>	<b>Hrly rate @ 90% (where greater than RLW)</b>	<b>Salary @90% (where greater than RLW)</b>
<b>1</b>	7	£11.59	£22,369.00	10.90	£21,029
	8	£11.81	£22,777.00	10.90	£21,029
	9	£12.02	£23,194.00	10.90	£21,029
	10	£12.24	£23,620.00	11.02	£21,258
	11	£12.47	£24,054.00	11.22	£21,649
	12	£12.70	£24,496.00	11.43	£22,046
	13	£12.93	£24,948.00	11.64	£22,453
<b>2</b>	14	£13.17	£25,409.00	11.85	£22,868
	15	£13.41	£25,878.00	12.07	£23,290
	16	£13.66	£26,357.00	12.30	£23,721
	17	£13.91	£26,845.00	12.52	£24,161
	18	£14.17	£27,344.00	12.76	£24,610
	19	£14.44	£27,852.00	12.99	£25,067

Again, the role would have to be job evaluated to establish at what salary level the role would be advertised.

### **Development Management process and software**

BNG needs to be integrated into the Development Management system so that it runs smoothly. The government has not yet provided information on how this would be achieved, aside from the production of a standardized template which is currently a summary table.

BNG will need to be assessed and secured for 30 years through legal agreements and enforced. This will put a considerable strain on Planning Officers and the S106 officer and Enforcement all of whom will need advice and support from a professionally qualified and trained Ecologist working full time with Development Management on the technical aspects of BNG.

Integration of BNG into existing Development Management modules is therefore essential and may carry additional costs. Having the necessary professional expertise and capacity within the wider Countryside and Leisure Service to provide the expert advice and support that the Planning Officers will require is essential. It is also important that advice can be delivered in a timely fashion so that there are no delays to the delivery of new homes and jobs across the district.

### **Local Nature Recovery Strategy (LNRS) input**

East Devon DC input to the LNRS is important to enable and guide credit creation in the right place. We will not be able to force BNG credit creation to be within strategic areas, but there is a benefit to do so. Areas which are defined as being strategic benefit from a multiplier within the BNG Metric Calculator. This means that they are afforded a higher biodiversity value, meaning more credits can be generated on an area of land. This means that areas which are defined as

being strategic (i.e., LNRS Nature Recovery Network mapped areas) are likely to attract greater interest from BNG credit providers.

## **Planning policy**

A policy for 20% BNG has been drafted for the new East Devon Local Plan. It is currently as follows.

### **87. Policy – Biodiversity Net Gain**

Development proposals will need to result in a Biodiversity Net Gain of at least 20%, to be calculated and reported in accordance with published best practice local and national guidelines at the time of the application (except where published exemptions apply, de minimis or otherwise). This is in recognition of:

- The combined biodiversity and climate emergency
- The large volume of development predicted within the district (particularly within the west end of the district) during the period of this local plan, and the potential significant biodiversity impact of this volume of development
- Requirement to identify measures to further the biodiversity objective under the Environment Act 2021
- The intrinsic health and well-being community benefits of habitat creation
- The flood risk mitigation benefits of habitat creation
- The water and air purification benefits of habitat creation
- Requirement to implement and support the Local Nature Recovery Strategy (LNRS)
- Commitments to implementing the recommendations of the Lawton Report

Where off-site habitats are created or enhanced in order to provide 20% BNG, these should be located within East Devon District, unless proven and evidenced to be undeliverable.

The policies of the emerging local plan cannot carry any material weight at this time and so it is the statutory 10% requirement that we will seek to secure to start with. The above policy would need to be subject to further consultation and examination alongside the rest of the Local Plan before full weight could be given to this approach.

---

## **Financial implications:**

The financial details are outlined in the report. The report suggests that initial costs will be met in part from new burdens funding but the balance and future costs will have to be borne by the Council's budget. Members will have to consider the importance of this request as the Council already needs to find saving in the order of £900k in balancing its 2024/25 budget and this will add to that deficit. Government has proposed and consulted on increasing planning fees (consultation was an increase of 35% for major applications and 25% for others) which have not increased since January 2018. Additional income would assist the funding of these posts, however no announcement has been made by Government, consultation closed 25<sup>th</sup> April 2023.

## **Legal implications:**

The legal issues are dealt within the body of the report