



Doncaster Council

Report

Date: 10th August 2022

To Members of the Cabinet

DONCASTER COUNCIL – BIODIVERSITY NET GAIN - BIODIVERSITY OFFSETTING CONTRIBUTIONS

Relevant Cabinet Member(s)	Wards Affected	Key Decision
Cllr Nigel Ball & Cllr Mark Houlbrook	All	Yes

EXECUTIVE SUMMARY

1. Following feedback from recent public consultation on a Supplementary Planning Document (SPD) on Biodiversity Net Gain it is proposed that the Council sets a Biodiversity Offsetting Contribution fee at £25,000 per Biodiversity Unit. This fee would be in place until approximately winter 2023 at which point it is to be replaced by a Statutory Biodiversity Credit introduced by central government.

EXEMPT REPORT

2. This report is not exempt.

RECOMMENDATIONS

3. Members of the Cabinet are recommended to:
 - i) Support the proposal to introduce a £25,000 Biodiversity Net Gain Contribution Fee as part of a Biodiversity Net Gain SPD and to include this on the Council's list of fees and charges.

WHAT DOES THIS MEAN FOR THE CITIZENS OF DONCASTER?

4. Having a Biodiversity Offsetting contribution fee will provide developers a final option that they can use to allow them to deliver biodiversity net gain as part of their development. The money collected from biodiversity offsetting fees will allow new habitat creation projects to take place across Doncaster. Habitat creation can have a range of benefits including improving air quality, better mental health and improved public access to green networks. It will also contribute significantly to borough wide nature conservation strategies.

BACKGROUND

Biodiversity and Net Gain and the Environment Act

5. The fundamental principle of Biodiversity Net Gain is that development leaves the natural environment in a measurably better state than it was before a development occurred. This is achieved through measuring in *biodiversity units* what is being lost and then demonstrating how projects will deliver improvements through habitat creation or enhancement after firstly avoiding, and then mitigating harm.
6. Using guidance published by Defra¹, Biodiversity value is quantified in '*Biodiversity Units*'.



A Biodiversity Unit is a term of measurement that incorporates three things:

- The area covered by a habitat.
- How '*distinctive*' or special that habitat is considered. (Measured as Low, Medium, High or Very High distinctiveness)
- How good an example the habitat or its '*condition*'. (Measured as Poor, Moderate or Good condition)

A Biodiversity Unit also takes into account:

- Whether the habitat is considered very important in that location.

So, by way of some illustrative examples, the following shows how different in biodiversity unit value one hectare of land can be depending on the condition and distinctiveness of the habitat present.

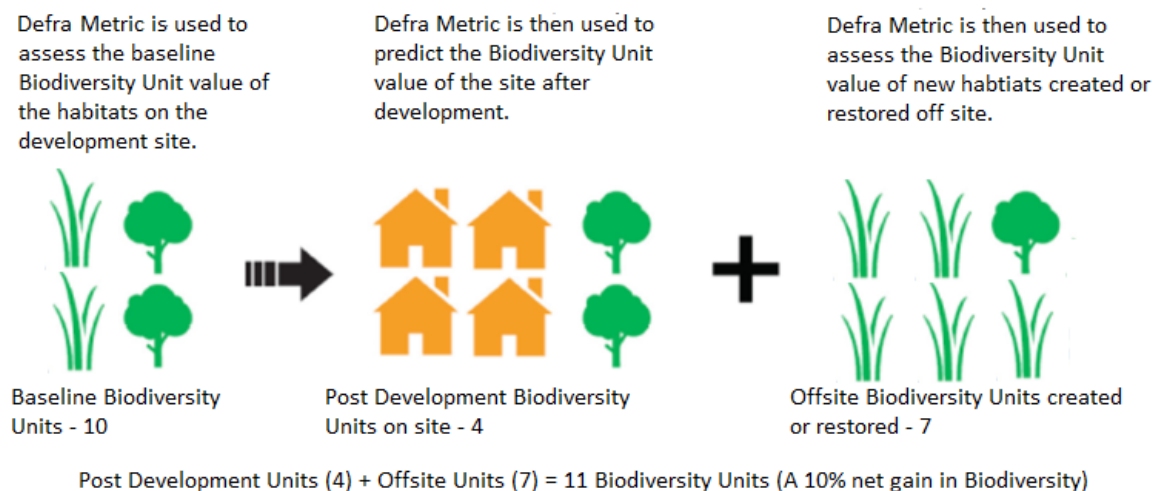
<p>A playing field</p> 	<p>A playing field is not very special. It is a low distinctiveness habitat that is widespread common. It is a poor condition grassland because it is mown frequently and has few species and little structural diversity.</p>	<p>1 hectare of this habitat would be worth 2 biodiversity units.</p>
<p>A species rich limestone grassland</p> 	<p>This is a very special high distinctiveness habitat. It is rare and not widespread. Depending on management, it could vary in condition, but a grazed meadow with lots of species, few weeds and little damage would be considered to be in good condition.</p>	<p>1 hectare of this habitat would be worth 20.7 biodiversity units.</p>

¹ <http://publications.naturalengland.org.uk/publication/6049804846366720>

7. Biodiversity Units can be lost as a result of development building on habitats. Those losses can be compensated by undertaking projects that either:

- Take areas of land with low distinctiveness habitat and turn it into more valuable higher distinctiveness habitat, or;
- Take areas of existing habitat that are in poor condition and manage them well so that their condition improves.

The value of these new habitats is also measured in Biodiversity Units so that % gains can be measured. The process is illustrated in the drawing below:



8. If as in the example above, seven units of biodiversity loss was compensated through the Biodiversity Offsetting Compensation fee, this would equate to a payment to the Council of £175,000. This money would be used to deliver a project that provided seven biodiversity units. This equates to approximately 1.4 hectares of new grassland or 2.3 hectares of new woodland being created and managed for 30 years.

The Environment Act

9. The Environment Act amends the Town and Country Planning Act and means that by winter 2023 the requirement for planning applications to demonstrate biodiversity net gain will become law. It will mean development will be legally required to demonstrate a minimum net gain of 10% and secure those gains for a minimum of 30 years.

Existing Planning Policy

10. National Planning Policy Framework (NPPF) paragraph 174 part d already requires planning decisions to provide net gains in biodiversity.
11. The newly adopted Local Plan, Policy 30, goes further than the NPPF and requires planning proposals to deliver a minimum 10% net gain in biodiversity.

The Role of a Supplementary Planning Document (SPD)

12. The Council has recently finished public consultation on a draft SPD that gives guidance to developers on the Council's expectations with respect to biodiversity net gain in order to help shape more sustainable development.
13. Following feedback from Elected Members on the need for a local first approach to delivery of Biodiversity Net Gain, the SPD sets out a sequential approach to how the Council will expect Biodiversity Units to be delivered, with developers being asked to show how each of the following measures has been taken in turn. This was designed to ensure that local options for delivering Biodiversity Units are prioritised.
 1. Firstly, avoid negative impacts on site and retain habitats through good design.
 2. Secondly, lessen harmful impacts through mitigation measures wherever possible.
 3. Thirdly, deliver as much new habitat/compensation as possible within the red line boundary of the planning application itself.
 4. Fourthly, demonstrate a local first approach to BNG delivery by seeking to secure offsite biodiversity as close to the proposed development as possible. (This may be through bespoke developer led, council led or privately led BNG schemes).
 5. Finally, once all of the above have been exhausted:

Up to Winter 2023:

Pay the Council a Biodiversity Net Gain Contribution fee of £25,000 per Biodiversity Unit. This would be used by the Council to secure units for delivery within Doncaster.

Post Winter 2023:

The Council will no longer be allowed to collect Biodiversity Offsetting Contribution fees. Instead as a final option developers would be expected to buy Statutory Credits from the Secretary of State. These would be used to deliver habitat creation schemes outside of Doncaster, potentially anywhere in the country.

Previous Reports

14. A report was taken to Exec Board in March 2022 explaining the rationale for producing an SPD including a Biodiversity Offsetting Contribution. That report set out that following the public consultation, a future report would be taken to Cabinet on the topic of the Biodiversity Offsetting Contribution Fee.
15. The decision to adopt an SPD is taken via an ODR in consultation with the relevant portfolio holders, however the decision to set a Biodiversity Offsetting Compensation Fee is considered a key decision, so needs to be made by Cabinet. The rest of this report sets out information in relation to making a decision on the setting of a Biodiversity Offsetting Contribution Fee.

What are the benefits of allowing Biodiversity Offsetting Contributions?

16. It is from now until the winter 2023 when the Environment Act will make Biodiversity Net Gain a legal requirement for development that having a fixed Biodiversity Offsetting Contribution fee would be most useful. The reasons for this are set out below.
17. At present it is very difficult for planning applications to demonstrate how they are going to deliver net gain. Particularly for smaller developments, where only a handful of units are required, it is not cost effective for brokers to offer schemes. While some larger developers may have the resources to design their own off site biodiversity offsetting schemes, this is not the case for smaller developers. This leaves some developers with very limited ways in which they can show how they achieve biodiversity net gain and this can lead to delays in planning decisions, or permissions being granted that are open to challenge on the grounds that biodiversity concerns have not been properly addressed.
18. Habitat banks are able to provide small numbers of units for sale to developers, but these schemes take time to develop, and are needed to cover a range of habitats. The Torne Valley habitat bank will offer for sale grassland units but will not provide for other habitats such as woodland and scrub. Further habitat bank schemes are currently being developed by Council officers, but it can take between 12-24 months for such projects to reach the point where they are ready for units to be sold, and in the interim units are still needed by developers. How additional habitat banks will be identified, including their location to ensure as many communities as possible can benefit from having them in their areas, will be subject to further and separate decisions in due course.
19. Officers understand the political appetite to see the benefits from biodiversity net gain delivered in and around communities, especially ones where deprivation issues prevail and challenges exist around connecting people to nature. Communities that may not be seeing biodiversity net gain coming forward on development sites within their area, due to limited growth opportunities, could still see the benefits of habitat creation schemes within their locality as contributions from the £25k/unit offsetting fee can be spent on such projects. Officers will need to monitor and report on contributions and this data will assist in such decisions, alongside other considerations such as availability of Council land and/or ability to acquire land for such purposes. The emerging South Yorkshire Local Nature Recovery Network will also provide an opportunity to identify our local priorities for future investment and connecting existing and future nature conservation assets to communities.
20. The statutory credits system is proposed by government in order to prevent development stalling in situations where no biodiversity units are available for sale. However, this system is not available until winter 2023. The temporary introduction of Biodiversity Offsetting Contribution fees will ensure planning applications can be determined expediently. It will provide developers with certainty of what is expected, prior to land transactions being negotiated, and give a level playing field to developers across Doncaster during the next eighteen months. It will also mean planning decisions can demonstrate how they are meeting both national and local planning policy requirements.

21. The cost of Biodiversity Offsetting Contribution fees, set by the Local Planning Authority, needs to be higher than the cost at which Third Party Brokers or Habitat Banks would be able to offer schemes. Having an appropriate Biodiversity Offsetting Contributions fee is important to provide confidence to brokers and conservation partners looking to invest in developing biodiversity offsetting projects designed to deliver biodiversity units. It will act to stimulate the market for delivering offsetting schemes. This is vital so that once the transition period ends, and statutory credits are introduced, there is a robust market of local providers delivering biodiversity units for sale. If this does not happen then, following the transition period, money will be directed via the statutory credit system to habitat creation projects in other parts of the country.
22. The Council declared a Climate and Biodiversity Emergency in 2019. The introduction of Biodiversity Offsetting Contribution fees will help to demonstrate the Council's commitment to this declaration and ensure that development in Doncaster is working to help address the biodiversity crisis we are facing. Current planning policy already gives us the ability to ask development to show how it will deliver Biodiversity Net Gain. The Climate and Biodiversity Emergency is happening now and waiting until winter 2023 would miss a major opportunity to make significant positive changes happen far sooner.

What are the Headlines/Key Areas?

HOW HAS THE VALUE OF THE PROPOSED BIODIVERSITY OFFESTTING CONTRIBUTION BEEN DETERMINED?

23. A Biodiversity Offsetting Contribution fee paid by a developer needs to be precautionary and based on a total cost recovery model. This is so that the local authority can be confident that it will be able to find schemes that can deliver the required biodiversity units and cover the cost of 30 years of management.
24. Further information on the proposed Biodiversity Offsetting Contribution fee is included in the Background Paper. In summary, the Biodiversity Offsetting Contribution fee is calculated from estimates of:
- **Land acquisition costs** - To secure land on which to undertake the necessary habitat creation works. This is based on average land cost prices to buy farmland in England. Habitat creation projects will generally take place on agricultural land (not land with development potential where such costs will vary much more in different market and land value areas) so costs will be similar across the borough and as such we have assumed an average agricultural land value.
 - **Habitat Creation** - The average estimated cost of undertaking works associated with habitat creation for grassland, woodland and scrub habitats. This includes things such as installing fencing, buying seed or tree whips, preparing the ground, planting/sowing, watering and establishment management grass cuts.
 - **Ongoing management and maintenance** – These costs are estimated over a 30 year period. (This is calculated assuming an inflation rate of 2.3%). This includes things such reseeded to increase grassland

diversity, grazing or taking annual hay cuts, weed control, rotational clearance of scrub, woodland thinning, creation of glades and creating coppiced woodland edges.

- **Project development/feasibility** – This is based on staff time to find suitable sites, develop projects, design schemes, undertake due diligence, secure landowner agreement/acquire sites, contract management, commission feasibility studies etc.
- **Monitoring and Project Management** - As part of a Biodiversity Net Gain agreement monitoring of habitat creation is required for 30 years. This would involve site visits potentially in years 1,2,3,5,10,15,20,25 and 30, mapping habitats using UK Habs classification and condition assessments against the Defra Metric. Report writing and review of management practices. The costs here include staff time to commission and manage contracts necessary for the delivery and monitoring of the project.
- **Project Insurance/Contingency** - Due to the potential for unforeseen circumstances when creating habitats it is necessary to include a contingency fund in order to be able to rectify problems that may occur. This has been calculated as 10% of habitat creation, management and land purchase costs.

25. Based on the information in the Background Paper, as summarised above, it is proposed to set Biodiversity Offsetting Contribution fees at £25,000 per biodiversity unit. Each £25,000 contribution would cover the Council's costs to create and manage one unit of biodiversity.

WHAT WAS THE FEEDBACK FROM PUBLIC CONSULTATION TO THE PROPOSED BIODIVERSITY OFFSETTING CONTRIBUTION?

26. In total 19 consultation responses were received on the Draft SPD. Of these, 14 made no reference to the proposed Biodiversity Offsetting Fee, two said the £25,000 was too high and three said it was too low.

Responses stating £25,000 Biodiversity Offsetting Contribution is too low

27. Of the three responses that thought the tariff was too low, two of these said that this was because they felt that Biodiversity Offsetting Contributions should not be set on an at cost basis, but should instead penalise developers who prefer to pay a sum of money and walk away from BNG obligations. They felt that an offsetting contribution set at a minimum of £50,000 fee would be more appropriate.

28. The purpose of the Council setting a Biodiversity Offsetting Contribution is not to penalise developers. The £25,000 fee is designed on the basis of precautionary, but real estimates of the cost to deliver a BNG scheme. Schemes on known sites, where the costs can be more accurately determined based on actual site conditions are likely to cost less, and hence it is expected that units for sale on the market will cost less than the proposed fee. This will already act as an incentive for developers to find real projects to deliver rather than just pay the Council Biodiversity Offsetting Contributions. In order to be lawful any financial asks of development that are made by the Council must be necessary to make the development acceptable in planning terms, fair and reasonable in scale and

kind and directly related to the development. It is therefore not considered appropriate to set the contribution fee at a higher rate.

29. The third response from the Environment Agency stated that projects which sought to deliver River Units (i.e. where watercourses are impacted by development) could in many instances cost far more than the proposed £25,000 fee to deliver. They felt that to offer a fee of £25,000 for River Units would disincentivise developers from delivering Biodiversity Net Gain for river units on site as it would be cheaper to buy units from the Council instead.
30. In light of this comment, it is proposed that the guidance in the SPD will be clarified to state that Biodiversity Offsetting Contribution payments will not be accepted in cases where River Units are required. Instead, developers will be expected to find projects to deliver such units themselves and the guidance will encourage them to use the advice services from the Environment Agency to help them do this.

Responses stating £25,000 Biodiversity Offsetting Contribution is too high

31. A response from the National Farmers Union suggested that the proposed £25,000 Biodiversity Offsetting Contribution fee was excessive, as they were concerned there is not a part credit option for smaller developments.
32. The intention is for the purchase of part credits to be permitted. So for instance if 0.5 units were required a fee of £12,500 would be payable. In response it is proposed to make this clearer in the SPD.
33. The second response from Banks Group that suggested the proposed Offsetting Contribution was too high, cited that Durham County Council are proposing a unit value of £15,000 based on a study by Defra that tariff units might cost £9-15,000².
34. A more recent Biodiversity Net Gain Market Analysis Study³ as well as consultation responses to this original work by Defra have stated that this figure is considered to be too low. Various additional factors need to be taken into account such as experience in existing markets, transaction costs and the need to provide suppliers with some profit and the opportunity costs of land, as reflected in farmland land sale prices. This newer work suggests a market price of £20,000 per Biodiversity Unit would be more realistic and also suggests that in areas where there is a scarcity of units available this could be £25,000.
35. In setting the proposed biodiversity offsetting contribution fee at £25,000 the estimates of the costs of purchasing land, habitat creation and management for a minimum of 30 years, project development and management, monitoring work and a contingency to allow for unforeseen issues to be rectified if required, have all been included. While it is considered that £25,000 is a fair representation of the potential costs, it is accepted that real projects may well be able to achieve lower unit price. However, as highlighted in the concerns raised by the Environment Agency, it is vital that

² https://consult.defra.gov.uk/land-use/net-gain/supporting_documents/netgainconsultationdocument.pdf

³ <http://randd.defra.gov.uk/Default.aspx?Menu=Menu&Module=More&Location=None&ProjectID=20608>

a Biodiversity Offsetting Contribution fee is not set so low that it is attractive to developers over and above units that may become available on the open market. To do so would act as a significant disincentive to landowners to bring forward BNG schemes and would not help to stimulate the needed growth in this sector within the Borough.

WHAT IS HAPPENING ELSEWHERE AND HOW HAVE DEVELOPERS RESPONDED TO REQUESTS FOR CONTRIBUTIONS?

36. Locally, Leeds is the only other Local Authority that has set a Biodiversity Offsetting Contribution. This is £25,000 per Biodiversity Unit. The Borough of Sutton in London has set a fee of £93,570.48 per biodiversity unit. Cornwall uses a per unit fee of £28,679. As is evident here there is disparity across areas in the proposed cost set by Local Authorities.
37. While no fixed contribution is likely to be welcomed by developers, setting a Biodiversity Offsetting Contribution fee will add certainty to the Biodiversity Net Gain requirement at Doncaster Council. One thing we know the development industry does welcome is upfront certainty around the likely planning contribution asks from the local planning authority so that these can be factored into land transaction costs at the outset.
38. Interestingly, while the development sector was included as part of the SPD consultation, only two organisations representing the industry responded. Homes England raised no comments about the proposed biodiversity Offsetting Contribution fee.

VIABILITY OF DEVELOPMENT AND SPENDING OF BIODIVERSITY NET GAIN OFFSETTING FEES

39. Providing an element of Biodiversity Offsetting was factored into the whole plan viability testing when the Local Plan was prepared, however there may still be a viability issue for some planning applications. If this is the case then a developer would be expected to provide a viability assessment. As happens currently, the Section 106 Board would decide how funds should be distributed between any requested financial contributions. There is a strong case that requiring offsetting contribution fees from now, will help prepare the market for the point when Biodiversity Net Gain is a statutory requirement in addition to a requirement of planning policy. Once the Environment Act comes into force, then biodiversity net gain will be a legal requirement and such decisions would not be taken by the Section 106 Board. At this point Statutory Credits will replace any local Biodiversity Offsetting Contribution fees in cases where local projects selling biodiversity units are not available.
40. The following guidance was included within the draft SPD in relation to how Biodiversity Offsetting Contribution fees will be spent.

All money collected from Biodiversity Offsetting Contribution Fees will be used to secure Biodiversity Net Gain schemes within Doncaster. These will either be delivered on land owned by the Council or via an agreement with a third party to provide the required offset. In line with Local Plan Policy 30 the schemes secured will seek to deliver a minimum of a 10% net gain in biodiversity. In some circumstances this may mean that a larger than 10% net gain might be secured. In spending biodiversity offsetting contributions

the Council will look for local opportunities first, while also seeking to achieve strategic biodiversity goals such as those in the emerging Local Nature Recovery Strategy and aiming to minimise the time between a contribution being received and the offset being secured.

It is important to note that, as set out in the SPD, taking Biodiversity Offsetting Contributions is the option of last resort. The local first approach to BNG delivery will firstly seek to see any unavoidable losses compensated on site and then as close to the development as possible. Determining the Governance arrangements for spending Biodiversity Offsetting Contribution Fees will be subject to further internal decisions in due course. This will mean that the involvement of Elected Members in such decisions can be formalised.

What are the next steps?

41. Subject to approval of this report by Cabinet, a further report will be taken to Cabinet for a decision on including the proposed Biodiversity Contribution Fee in the Council's list of fees and charges (i.e. the quarterly Finance Report). At the same time an ODR will be prepared seeking to adopt the new SPD in consultation with the two relevant Portfolio Holders for Planning and Sustainability.
42. Finally a report would be produced for information for Planning Committee to make them aware of the new SPD as a material planning consideration when determining applications.

OPTIONS CONSIDERED

43. The following options are proposed for consideration by members of the Cabinet.
 - **OPTION 1 (RECOMMENDED)** – Support the proposal to introduce a £25,000 Biodiversity Net Gain Contribution Fee as part of a Biodiversity Net Gain SPD and to include this on the Council's list of fees and charges.
 - **OPTION 2 (NOT RECOMMENDED)** – Do not support the proposal to introduce a £25,000 Biodiversity Net Gain Contribution Fee.




REASONS FOR RECOMMENDED OPTION






44. The introduction of a £25,000 Biodiversity Offsetting Contribution fee is recommended for the reasons set out in the report and summarised below.
 - It will drive the local delivery of BNG by requiring developers to show how they have prioritised local BNG opportunities.
 - It will provide a fall back option to secure BNG on planning applications.
 - It gives an additional way to demonstrate National and Local Planning Policy are being followed.
 - It reduces the risk of legal challenge by demonstrating Biodiversity is being properly considered.

- It will prevent planning decisions from being delayed allowing them to be determined more expediently.
- It provides a level playing field for developers.
- It gives certainty to developers regarding the Council's expectations.
- It will help to stimulate the market for third parties to bring forward possible Biodiversity Offsetting Schemes.
- It reduces the risk of offsetting projects not being available following the transition period and hence Doncaster's offsetting contributions being directed to schemes elsewhere in the Country.
- It will demonstrate the Council's commitment to it's declaration of a Climate and Biodiversity Crisis and provide a mechanism to help secure more sustainable development in Doncaster.

IMPACT ON THE COUNCIL'S KEY OUTCOMES

45. The introduction of a Biodiversity Offsetting Contribution fee is considered to impact on Doncaster Council's key outcomes as follows:

Great 8 Priority	Positive Overall	Mix of Positive & Negative	Trade-offs to consider – negative overall	Neutral or No implications
 Tackling Climate Change	✓			
As well as helping to deliver biodiversity and better ecological networks, new habitats can also provide investment in other ecosystem services such as flood alleviation, carbon storage and improved air quality. These additional ecosystem services will help Doncaster to limit the negative impacts of and adapt to climate change.				
 Developing the skills to thrive in life and in work				✓
N/A				
 Making Doncaster the best place to do business and create good jobs	✓			
Inward investment in habitat creation in strategic locations within Doncaster as well as ongoing management of these new habitats will provide work within the borough. The introduction of a Biodiversity Offsetting Contribution fee will also help stimulate development by expediting planning decisions, providing clarity to developers on the Council's expectations in terms of Biodiversity Net Gain, help prepare the development industry for the forthcoming changes to the industry brought about by the Environment Act.				

 Building opportunities for healthier, happier and longer lives for all	✓			
<p>The loss of species and habitats poses as much a danger to life on Earth as climate change does. As well as underpinning the food we eat and the air we breathe, we depend on it for protection from other threats, like pollution, flooding and climate breakdown. The biggest driver of biodiversity loss is 'land-use change': specifically, converting and managing wild land for agriculture and development. The introduction of a Biodiversity Net Gain Contribution Fee will help to alleviate the impacts biodiversity loss from land use change and hence help the public health of Doncaster's communities.</p>				
 Creating safer, stronger, greener and cleaner communities where everyone belongs	✓			
<p>The introduction of a biodiversity offsetting contribution will provide a more transparent mechanism to show how biodiversity is being taken into account in planning applications near people's homes. It will provide funding for habitat creation projects that could help to bring wildlife closer to communities while at the same time delivering other ecosystem services that will make communities safer by delivering ecosystem services such as flood alleviation, clean air and carbon storage all of which will be increasing important in mitigating the negative impacts of climate change.</p>				
 Nurturing a child and family-friendly borough	✓			
<p>Access to nature and green spaces have proven benefits for people's mental health and personal well being. The implementation of a biodiversity offsetting contribution fee will help to kick start a net gain system within Doncaster and see the creation of new wildlife rich habitats that can help to connect children and families to nature.</p>				
 Building Transport and digital connections fit for the future				✓
N/A				
 Promoting the borough and its cultural, sporting, and heritage opportunities				✓
N/A				

Fair & Inclusive				✓
In line with the corporate approach for compliance against the Equality Act 2011 due regard must be shown across all activity within the Council. As the introduction of a biodiversity offsetting contribution fee is a high level strategic decision there are no detailed impacts on any people, groups or individuals on which to base a due regard statement. However as biodiversity net gain becomes further developed, a due regard statement may need to be completed and reported as and when appropriate.				

LEGAL IMPLICATIONS [Officer Initials SC/ND Date 24/06/22]

46. The Environment Act 2021 achieved royal assent in November 2021. It introduces a requirement for developers to demonstrate that they will achieve a minimum biodiversity net gain (BNG) increase of 10% from the pre-development biodiversity value, on all new development sites. A two year transition period for this requirement is included in the Act, with provision for secondary legislation to set a date for the requirement to come into force. This is not expected to be until late 2023. The legislation requires that net gain will either be provided on-site, or off-site via the purchase of statutory biodiversity credits. The price of statutory biodiversity credits (when implemented) will be set by the secretary of state.
47. Whilst the introduction of the statutory credits system is under 2 years away, it is proposed that a Supplementary Planning Document (SPD) is prepared which sets out the Council's expectations in relation to BNG in the intervening period. The SPD will importantly provide guidance for the implementation of a per unit biodiversity offsetting contribution, where on-site mitigation is not proposed. The SPD will strengthen the current policy framework with regard to BNG which comprises of:
- Policy 30 of the Doncaster Local Plan (adopted 2021) which requires certain proposals to demonstrate that they will deliver a minimum 10% net gain for biodiversity; and
 - Paragraph 174(d) of the National Planning Policy Framework (2021) which requires planning policies and decisions to provide net gains for biodiversity.
48. Consultation on the proposed SPD should be carried out as required by Part 5 of the Town and Country Planning (Local Planning) (England) Regulations 2012.
49. Should the proposed SPD be adopted, the Council will be able to attribute weight to it as a material consideration in the determination of planning applications, which will strengthen its ability to justify the contribution in an appeal scenario.
50. Section 1 of the Localism Act 2011 allows the Council to do anything which an individual may be permitted to do.

51. The income received from Biodiversity Offsetting Contribution fee should not create a profit for the Council. Where there is a likelihood of profit being achieved, further legal advice will be required in relation to charging and or trading powers available to the Council which may also include the need to set up a separate company.

FINANCIAL IMPLICATIONS [Officer Initials OB Date 09/06/2022]

52. As described in the body of the report, it is proposed to introduce a Biodiversity Offsetting Contribution Fee for the interim period, before the government begins to issue Statutory Biodiversity Credits in the winter of 2023. The fee is intended to be purely to cover costs of providing Biodiversity Net Gain for the developer and not intended to generate any kind of profit for the council.
53. The proposed fee has now been through consultation via the Supplementary Planning Document process, the outcome of which is provided in this report. As per financial procedure rules the final revised fee will need to be added to the Councils approved and published Fees and Charges. Financial procedure rule B.16 states that any new fees and charges proposed within the financial year will be approved by the CFO in consultation with the relevant Portfolio Holder, subject to key decision rules and reported to Cabinet in the quarterly monitoring report. It is expected that the income generated from this biodiversity offsetting contribution will be over the Key Decision threshold of £250k and therefore the fee requires a Key Decision report in order to be added to the Council's approved Fees and Charges.
54. The Biodiversity Offsetting Contribution Fee is a cost recovery fee based around three examples of different habitat improvements modelled by the service and includes the costs of acquiring a piece of land, developing the habitat and the project development, management and monitoring of the site for 30 years. A 10% contingency and 2.3% annual inflation is built into the cost modelling. The total costs are then divided by the number of units produced, to give an average cost per unit. More detail is provided within the report.
55. It should be noted that, in reality, the actual projects and their costs can vary considerably from these modelled examples. However, it is anticipated by the biodiversity officers that a fee set at this level would be sufficient to fund local projects and the benchmarking described in this report supports this. However, there remains a small risk that the costs of delivering the units would be higher than the fee received. The council would then be committed to delivering units for 30 years at a higher price and funding the resulting gap. The costs of acquiring land in particular could vary significantly from the price used in the calculations. Inflation may also be greater than 2.3% per annum over the 30 years which would create a funding shortfall as this would compound over the 30 year period. However, this new fee is only intended to be an interim measure for a short period, and is only intended to be used when local projects are not available and as such this risk is considered to be very low. There would also be an opportunity to revise the fee for later projects within the annual budget setting process if there were

concerns about any shortfalls arising.

56. The same fee is proposed for all habitat types (except River Units which has now been excluded – see body of report) despite the modelling showing that scrubland could be considerably less expensive per unit. This is because the service do not want developers to make decisions around which habitats to develop on based upon the cost of these units. Any surplus income generated as a result would need to be ring-fenced to covering the costs of the scheme and funding its objectives as the fee is intended to be purely to cover costs of providing Biodiversity Net Gain for the developer and not intended to generate any kind of profit for the council.
57. There could be a negative financial impact arising from dedicating a high fee for biodiversity units, as consequently less funding may then be available for investment into other local Section 106 priorities. Also, developers could choose to build fewer homes in the area or increase local house prices as a result.
58. It is assumed that there are no further costs to delivering biodiversity units beyond those listed in the appendices and that there are no future cost pressures that will be passed on to other internal council teams as a result of the delivery. This should be challenged prior to approving the fee and, if appropriate, other services should be consulted.
59. If clawback clauses are included in the agreements with the developer, care should be taken to monitor the delivery of the units to ensure that there are no timing or other issues which could result in the withdrawal of funds, impacting upon council budgets.

HUMAN RESOURCES IMPLICATIONS [Officer Initials KJ Date 16/06/22]

60. There are no direct HR implications in relation to this report.

TECHNOLOGY IMPLICATIONS [Officer Initials ET Date 16/05/22]

61. There are no technology implications in relation to this report.

RISKS AND ASSUMPTIONS

62. Not agreeing to the use of biodiversity offsetting contribution fees will mean that more planning decisions are likely to seek approval without being able to demonstrate how they satisfy all the requirements in the National Planning Policy Framework or Doncaster Local Plan. This could leave planning decisions open to challenge.
63. We have sought Counsel's advice on setting a Biodiversity Offsetting Contribution fee and have been advised that this would be most securely done through inclusion within a SPD.
64. There is a risk that having taken biodiversity offsetting contributions, the Council will be unable to find suitable off site compensation schemes. This is considered a very low risk. It is proposed to only take payments in compensation for common habitats, as this will minimise the risk of suitable projects not being able to be found.

CONSULTATION

65. A report on a potential Biodiversity Offsetting Contribution fee has been taken to Executive Leadership Team and Exec Board in both March 2022 and July 2022, and meetings held with Councillors Ball and Houlbrook about Biodiversity Net Gain in the run up to both. Portfolio holder feedback has been particularly important in highlighting the desire to see a 'local first' approach to delivery of Biodiversity Net Gain. This feedback has been taken on board and resulted in the SPD setting out a local first approach to BNG delivery. The SPD has also been out for public consultation. Feedback was received from a range of stakeholders including developers, statutory bodies, NGO's and members of the public. The feedback on the Biodiversity Offsetting Contributions Fee resulting from this consultation is summarised in paragraphs 26-35. Chair's of the Communities & Environment and Regeneration & Housing Overview & Scrutiny Panels have been briefed on the subject and requested an informal Scrutiny meeting with the 2 Panels to consider this item on 15 July 2022. The Panel have fed back their findings to the relevant Portfolio holders and are supportive of the 'local first' approach and welcome the Council's proactive approach to developing a net gain system for Doncaster.

BACKGROUND PAPERS

Background Paper 1 - How has a tariff been calculated?

GLOSSARY OF ACRONYMS AND ABBREVIATIONS

BNG – Biodiversity Net Gain
NGO – Non Governmental Organisation
NPPF – National Planning Policy Framework
ODR – Officer Decision Record
SPD – Supplementary Planning Document.

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