

Meeting:	Executive
Meeting date:	13 October 223
Report of:	Neil Ferris Corporate Director of Place
Portfolio of:	Councillors Jenny Kent and Kate Ravillious Executive Members for Environment and Climate Emergency

Decision Report: New statutory arrangements for biodiversity and nature recovery

Subject of Report

1. The Council has been preparing for the implementation of the Environment Act (2021, which dictates the implementation of mandatory Biodiversity Net Gain (BNG) within the planning system from November 2023. The Act also requires the creation of Local Nature Recovery Strategies (LNRs), a new system of spatial strategies for nature covering all of England and which will partly rely on BNG for their delivery.
2. The Government has however recently announced that it is delaying putting into action the new biodiversity net gain planning regime. However, there is ample evidence that biodiversity across England is in crisis, with the 2023 State of Nature Report painting a stark picture. Whilst the Government delay removes any structured funding from this key objective, the Council Members are asked to consider the recommendation in this report and proceed to start putting in place a biodiversity recovery plan for York, and identifying potential suitable locations for biodiversity net gain, so that we are ready to take advantage of the new environmental laws when they are enacted and provide nature with the greatest opportunity for recovery across York.

3. This report intends to brief Members on the approach to prepare for BNG and the implementation of LNRS. It also sets recommendations for enhanced actions to further proactively address BNG and seeks approval for relevant governance arrangements for LNRS.
4. Whilst the BNG has been delayed the LNRS activities are progressing it is proposed respect of both new statutory regimes. Broad delegation in consultation with the relevant Executive Members for the Corporate Director for non-key decision-making matters in respect of both of these regimes is therefore sought to ensure a timely response to Government guidance and implementation.

Benefits and Challenges

Biodiversity Net Gain

5. BNG is an approach to development and / or land management that aims to leave biodiversity in a measurably better state than pre-development. BNG requires the use of a metric to determine a proxy biodiversity value and assess changes in biodiversity value (losses or gains) brought about by proposed changes in land management- for instance calculating how much new or enhanced habitat is needed, and of what type, in order to deliver sufficient net gain as part of a planning application. Notably, it is considered in addition to any mitigation requirements where harm to designated assets is identified.
6. BNG and nature recovery are not a new concept, but one that has gained increased political importance in recent times as part of a wider focus on the environment and sustainability. It comes from the growing recognition that the natural environment has often been negatively impacted by development. Whilst there are various designations across some land other less protected habitats have shrunk over the generations. BNG provides an opportunity to redress this and support a recover in nature to the benefit of existing and future generations.
7. The mandatory requirement for BNG that was proposed was to achieve a minimum of 10% net gain above the initial baseline. BNG assessments against a standard metric would be required to be submitted as part of the planning application process and must be secured with a minimum 30-year management plan.

8. The opportunity for BNG would have been a combination of:
 - On-site – habitat creation or enhancement, landscaping or green infrastructure delivery.
 - Off-site – New habitat creation or enhancement on land holdings or via habitat banks

Or as a last resort:

- Statutory Credits – Only if units not available to create landscape-scale strategic habitat creation delivering nature-based solutions

The process for recording off-site BNG was planned to be through a register managed by Natural England.

9. Despite the delays it is still anticipated that there are opportunities for the Council to explore habitat banking to proactively deliver sites within York.
10. Up until the announced delays BNG would have been enacted in a phased way; from November 2023 it would have required the majority of development to comply with the regulations with the exception of ‘small sites’ which would have come into force in April 2024.

Local Nature Recovery Strategy

11. The LNRS will provide a strategic direction for future nature-based opportunities. LNRSs are designed as tools to drive more coordinated, practical, and focussed action to help nature and encourage the use of nature-based solutions to address wider environmental problems. Each Strategy will, for the area that it covers:
 - Agree priorities for nature’s recovery.
 - Map the most valuable existing areas for nature.
 - Map specific proposals for creating or improving habitat for nature and wider environmental goals.
12. LNRSs will help target the delivery of BNG to where it will have most benefit, provide a focus to a strengthened duty on all public authorities to conserve and enhance biodiversity, and support the conservation and enhancement of biodiversity through the planning process. LNRSs will also provide a mechanism for

targeting funding to encourage and reward more environmental land management, such as tree planting and peatland restoration.

13. In order to recognise the cross-boundary green infrastructure linkages, North Yorkshire Council (NYC) has been designated by The Department for Environment, Food and Rural Affairs (Defra) as the 'Responsible Authority' for delivering the LNRS for York and North Yorkshire. City of York Council is designated as a 'Supporting Authority' and consequently, is required to positively input to and consult with NYC in the production of the LNRS for our area. It is expected that the LNRS will take 18 months to prepare and be complete in summer 2025.
14. North Yorkshire Council (NYC) are proposing a Joint decision-making arrangement to take public decisions as it goes through the process of creating and adopting an LNRS and the NYC Executive will have to confirm CYC agree with the process and Strategy as part of their decision-making process. The Environment (LNRS)(Procedure) Regulation 2023 set out the obligations of the Responsible Authority in preparing the LNRS.
15. It is therefore proposed that as York engages with NYC on the development of the LNRS that the Executive delegate to Executive Members for Environment and Climate Change emergency to take public decisions as to the CYC position with adoption of the LNRS being reserved for Executive as a Key decision.

Opportunities for CYC

16. In addition to the proactive engagement with the BNG and LNRS Statutory regimes as regulator both regimes provide opportunities for CYC as landowner and convenor of third-party landowners to enhance the impact of these regimes in York. It is therefore proposed that a 2-phase approach is commissioned to explore the opportunities for biodiversity investments in CYC land and with willing developers the opportunity to go beyond the 10% policy requirements of the BNG regime.
17. It is proposed that the first phase is to commission a desktop study of CYC land to better understand the existing biodiversity that would / could qualify for investment, and it is anticipated, subject to Government guidance, this could include all open spaces, parks, strays flood plains etc recognising the constraints of the latter. This desktop work would also encompass working with willing

developers to explore opportunities and benefits to exceeding their 10% statutory obligations. For example, this may include developers registering their sites and offering excess units for sale as a business proposition.

18. The second phase of the work would take the most promising sites identified in the desktop study for improved biodiversity and subject to the remaining budget seek to develop a more detailed action plan.

Policy Basis for Decision

19. The Environment Act (2021) is the driving force behind the mandatory implementation of BNG and LNRS, including the timescales for their implementation. The Environment (Local Nature Recovery Strategies) (Procedure) Regulations 2023 set out the statutory preparation requirements for LNRS, including the roles of the designated 'responsible' and 'supporting' authorities.
20. The Local Plan defines the Council's land use planning and expectations and the contributions to the development; Policy GI2 'Biodiversity and Access to Nature' sets the requirement locally to meet the statutory requirements of the Environment Act. Adoption of the LNRS will spatially define our Natural Capital development expectations and will become relevant evidence base for future decision and plan-making.
21. The Council Plan adopted in September 2023 identifies "Cutting Carbon, Enhancing the environment for future generations" as one of the Councils key priorities. This report details how funding will be secured and contribute towards making the most of our blue and green infrastructure and increase biodiversity and support nature recovery.
22. The new BNG regime would have provided for investment currently not available through the public purse into the environment and the LNRS development and adoption will provide opportunities for the all the residents of York to shape that strategy and contribute towards public decisions that will define York's ambition and expectations.
23. The implementation of BNG and LNRS increases opportunities to implement strategies such as the Local Biodiversity Action Plan and the Pollinator Strategies.

Financial Strategy Implications

BNG

24. Grant funding has been used in preparing for the implementation of BNG principally through the Local Plan policy development. There is anticipation of Defra burden funding to help deliver BNG going forward but the announcement of delay may have put this in jeopardy.

LNRS

25. NYC have been allocated circa £800k initial capacity funding for the initial development work for the LNRS it is their duty to develop the strategy. CYC are currently negotiating with NYC regarding NYC's ability to contribute to CYC's staffing capacity to help deliver the strategy.

Opportunities for CYC

26. As the LNRS will cover more than 2 million acres of land within NY and York the level of detail and funding available will by necessity be strategic and will not contain the level of detail to explore the capacity of local sites to deliver BNG. There is therefore an opportunity for CYC to complement the strategic work with a more targeted piece of work for CYC as landowner and to encourage ambition from local developments.
27. It is therefore proposed that to ensure best value for money and identification of the most promising opportunities that a two-phase piece of work is undertaken at a one-off cost of £30k. If successful, it could see CYC land become an investable BNG proposition and see developers make above policy investment in BNG in the vicinity of York. This cost will be funded from the existing BNG grant funded by Department for Environment, Farming and Rural Affairs.

Recommendation and Reasons

28. Executive are asked to note the delays to the implementation of the BNG regime by Government.
29. Executive are asked to delegate to The Executive Members for the Environment and Climate Change Emergency the necessary Member decisions for the development of the LNRS and that

officers convey those decisions for consideration of NYC as statutory Authority.

30. Executive are asked to confirm that whilst not statutory Authority they wish to reserve the agreement to adopt the LNRS as a key decision.
31. That the Executive agree the one off £30k expenditure from the Government grant detailed in the financial implications to commission a 2-phase approach to enhanced BNG opportunities for York and along with sums negotiated for the delivery of the LNRS expenditure is delegated to the Director of Transport Highways and the Environment in consultation with the Executive Members for Environment and Climate Change Emergency.

Background

What is Causing Change? The Environment Act 2021

32. A considerable proportion of existing environmental law and policy in the UK derives from the EU, with its implementation largely monitored and enforced by EU institutions such as the European Commission. In this context, the Environment Act 2021 (referred to here as The Act) is concerned with securing environmental protection and restoration through of domestic legislation.
33. Part 6 of The Act introduces a range of measures for nature and biodiversity conservation. These include a strengthening of the duties under Section 40 of the NERC Act to require public authorities to enhance as well as conserve biodiversity (Section 102 of the 2021 Act). The Act has also introduced a mandatory requirement for BNG into the planning system (The Act, Sections 98-101). This includes the establishment of a register of land used for biodiversity net gain purposes, secured either through a planning obligation (s.106 agreement) or through conservation covenants.
34. The statutory requirement for BNG was due to take effect November 2023 this implementation date has now been postponed by Government and at this time no clear timetable is available for implementation.

Consultation Analysis

35. Consultation will take place as part of the development of the LNRS. A consultation strategy will be agreed between NYC and CYC in due course.
36. Developers identified as potentially obligated under the BNG regime from Local Plan allocations will be consulted with regarding their appetite for above policy interventions.

Options Analysis and Evidential Basis

37. The BNG and LNRS regimes are statutory regimes for which there are no options.
38. Decision making for CYC engagement within the process of development of the LNRS could be delegated to officers. As CYC are not the statutory authority the adoption of the LNRS is not actually been taken by CYC this could also be delegated.
39. As the LNRS is of significant public interest and benefit it is proposed that CYC engage with the LNRS process as if it were the primary decision maker and follow the Councils approach to open and transparent engagement and decision making.

Organisational Impact and Implications

Financial - There will be additional financial obligations imposed on developers in managing the BNG regime. The Government have provided one-off funds of £73.7k covering the period 2021/22 to 2023/24. £40.4k was spent in previous years leaving £33.3k available in 2023/24 to prepare for the new obligation. The intention is that the costs of the new responsibility will fall on developers however there may be longer term costs on the council. This will include costs associated with the Council assessment of applications and the long-term implications associated with monitoring BNG over the 30-year management plan period and reporting duties to the Government. Subject to the ongoing negotiations with NY there may be opportunity for further work for the LNRS to complement the proposed CYC work. This will be monitored and reported back to Executive should there be significant costs. It is currently anticipated that initial implementation will be managed within the Government funding and existing resources.

Human Resources (HR) - There will be additional obligations imposed on officers in managing the BNG regime and engaging with the development of the LNRS. At this time there is insufficient evidence nor detail available to quantify the impacts. It is however anticipated that initial implementation will be managed within existing resources.

Legal - The Council Monitor has with NY to ensure compatibility for decision making regimes.

Procurement - There are no procurement implications.

Health and Wellbeing - There is evidence that Biodiversity loss has harmful effect on human health, including an increasing likelihood of zoonotic diseases, heat / cold effects and deteriorating / less healthy food systems. BNG presents an opportunity to protect York residents from these effects, and improve their health, inline with the York Health and Well Being Strategy 2022-32.

Environment and Climate action - BNG presents an opportunity to increase climate change adaptation and resilience in line with the ambition of the York Climate Change Strategy. There may also be opportunities to deliver co-benefits from BNG that provides carbon sequestration.

Affordability - As noted, there are beneficial impacts to Health derived from Biodiversity which complements the Health and Well Being Strategy, and these environments should be available to society at low cost.

Equalities and Human Rights - The implementation of specific BNG site developments and interventions will need to consider Equalities and Human Rights on a site-specific basis the noting of the proposed statutory regime in this report has no impacts. North Yorkshire Council will have to consider Equalities and Human Rights in the development of the LNRS Strategy.

Data Protection and Privacy - There are no Data Protection issues associated with this report.

Communications - Upon completion of the Council BNG work the Council will need to consider next steps with York residents before progressing any initiatives. The LNRS development will require extensive consultation and CYC officers will be working with NY as lead

Authority to promote full engagement with all interested parties and residents in York.

Economy - A high-quality natural environment provides a desirable location for sustainable business models and on a city scale enhances the ability of businesses to attract staff to York.

Risks and Mitigations

40. These are new statutory regimes that will inevitably face challenges. Public decision making for the LNRS and close working with developers will be intrinsic to the success of the regimes.
41. The risk for York is that with NYC being the responsible authority for the LNRS, opportunities may focus on the much larger scale of opportunity with NYC eclipsing the opportunities that exist in York. The Public decision making and small one-off investment to seek to enhance the opportunities for BNG in York for CYC land and going beyond policy with willing developers will mitigate against these risks.

Wards Impacted

42. Biodiversity is not constrained by land investment or allocations. All wards will potentially benefit from the increased biodiversity in the environments surrounding and within York.

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Background papers

None

Annexes

None