

**Climate Change Cabinet Advisory Group  
Update on the “Biodiversity Duty”  
29 April 2024**

**Introduction**

The purpose of this paper is to provide an update on the introduction of biodiversity net gain through the planning process, and the various elements of the Council’s “biodiversity duty”, under the Environment Act 2021.

The Act places a duty on all local authorities (and other public bodies and statutory undertakers) to conserve and enhance biodiversity, across the whole range of their services (not just planning). The Council declared a Climate and Biodiversity Emergency in July 2019.

**Biodiversity Net Gain**

From 12 February, new applications submitted on or after this date for major development made under the Town and Country Planning Act (TCPA) 1990 are required to provide a 10% mandatory biodiversity net gain (BNG), using the Defra metric. Major development includes residential developments with 10 or more dwellings, or where the site area is greater than 0.5 hectares.

There are some exemptions, which include:

- Development below a ‘de minimus’ threshold
- Householder development
- Biodiversity Net Gain sites
- Small Scale self-build and custom housebuilding (no more than 9 dwellings; no larger than 0.5ha)
- High Speed Railway Transport network

The mandatory BNG requirement for small sites applied from 2 April 2024 and applicants will be required to complete the Defra small sites metric, and provide the 10% mandatory BNG. A full definition of small sites can be found in the regulations. However, this can be summarised as:

- Residential development where the number of dwellings is between 1 and 9, or if unknown the site area is less than 0.5 hectares
- Commercial development where floor space created is less than 1,000 square metres or the total site area is less than 1 hectare

In either case, the 10% gain can either be provided onsite (the preferred option); offsite through the purchase of biodiversity units via a habitat bank or other land in the applicant’s ownership; or via the purchase of national biodiversity credits.

A substantial amount of supporting guidance has been, and continues to be, published, which we are trying to keep up to date on our [web pages](#).

Before approving a planning application subject to net gain, the Council will be required to check any significant on-site enhancements or off-site gains are appropriate, legally secured and that a maintenance and monitoring plan is in place for 30 years. Assessment will also include analysis of the metric, reviewing habitat surveys, ensuring habitats are adequately valued and whether the type and location of any significant onsite habitat enhancements proposed for onsite gains are appropriate, taking into account other policies to support biodiversity and other wider objectives. Template Section 106 agreement clauses will be used within legal agreements (S106 and Unilateral Undertakings) attached to decisions, with a BNG monitoring fee planned to be introduced to assist in the funding of monitoring/enforcement of the agreed mitigation.

Through changes made to the planning act, all planning permission for development not exempt are subject to the requirement to submit a Biodiversity Gain Plan (BGP) prior to the commencement of development. This will be included as an informative on the Council's decision notices and the process of submission, consideration and decision of these plans follows the same process as discharging a normal condition. The plan has to include a final metric with all calculations from the approved development, plus pre-development and post-development plans and the final Habitat Management and Monitoring Plan (HMMP).

The Council is required to check how the biodiversity gain hierarchy has been applied, unit values before and after, and how 10% is achieved, with the agreed plan added to a statutory register. The Council is expected to enforce that the identified responsible individual (in the legal agreement/BGP/HMMP) is carrying out the obligations of the plan/agreement (on-site or offsite).

### **Interim Strategic Significance Guidance**

As part of the BNG process in assessing development proposals, the statutory metric baseline assessment relates to Strategic Significance which is defined as the local significance of the habitat based on its location and habitat type.

This is usually referenced in the Local Nature Recovery Strategy (LNRS). KCC are currently working with the Districts and other stakeholders on producing the LNRS (<https://www.makingspacefornaturekent.org.uk/>), but this is unlikely to be finalised before December 2025. If an LNRS has not yet been published, the metric user guide states that a relevant planning authority should specify alternative documents for assigning strategic significance such as Biodiversity Action Plans and green infrastructure strategies. The interim guidance has been developed using existing published strategies for Kent and Medway, which are evidence-led and have previously gone through public consultation such as the Kent Biodiversity Strategy.

To aid developers and local planning authorities, KCC have produced Interim Guidance on Strategic Significance which it recommends is used in the completion of the statutory metric for planning applications.

The Council currently obtains biodiversity advice for planning applications from KCC Ecological Advice Service (EAS). This guidance will be used by EAS to inform that advice. Although this interim guidance does not need to be reported to Cabinet as it is based on existing information, the final LNRS which will replace this guidance, will need to be.

## **Other updates**

### Biodiversity Report: First Consideration 2024

The [first consideration report](#) is required for all local authorities, and is essentially a “stock-take” of the work that has been carried out so far in support of the enhanced biodiversity duty, as required by the Environment Act 2021.

This will need to be reviewed regularly, monitoring progress and reporting to Defra.

### Biodiversity Baseline study

This study will provide an assessment of land within the district (including Council-owned land) to provide biodiversity improvements, but in particular, its potential to contribute to biodiversity net gain.

This work will be commissioned shortly (it may have been commissioned by the time of the meeting).

### Biodiversity Officer

The new Biodiversity Officer (Michael Lee, who was previously the Project Manager for Bird Wise East Kent) started in post on 15 April.