

REPORT TO CABINET COMMITTEE

From: Brian Collins, Deputy Leader
Rebecca Spore, Director of Infrastructure

To: Policy and Resources Cabinet Committee – 11 March 2026

Subject: Biodiversity Net Gain overview

Decision no: N/A

Classification: Unrestricted

Future Pathway of report: Policy and Resources Cabinet Committee

Electoral Division: All - Countywide

Summary: This report is an introduction to Biodiversity Net Gain and identifies the opportunity for Kent County Council (KCC) to deliver Biodiversity Net Gain (BNG) units across its wider land portfolio. The aim where appropriate is to generate sustainable revenue streams while enhancing biodiversity on KCC freehold land.

Recommendation(s):

The Policy and Resources Cabinet Committee is asked to NOTE this report and comment on the proposal to use KCC sites for Biodiversity Net Gain units.

1. Introduction

- 1.1. Biodiversity Net Gain (BNG) offers an opportunity for KCC to generate income by creating or improving habitats on its land. These habitats could then be leased to developers who need to fulfil the statutory requirement of a 10% increase in biodiversity.
- 1.2. BNG could provide a long-term income stream for KCC and support environmental stewardship, whilst maintaining ownership and control of the site/land. From KCC's perspective, BNG creates an opportunity to enhance habitats, such as grassland, woodland, wetlands, or hedgerows on land and have those improvements formally recognised and valued. KCC would flag hard-to-develop sites, such as green belt land, or areas with difficult topography, as they typically have low disposal value.

2. Key Considerations

2.1. The key considerations for BNG are:

- BNG requires a 30-year commitment to the ongoing management of any habitat created.
- Upfront costs will be required to create habitats, either directly through KCC, or indirectly through outsourcing.
- Income received is subject to the successful sale of BNG units.
- It will be necessary to review all sites that could potentially support a Biodiversity Net Gain project.
- The impact of any changes in national legislation relating to BNG requirements.

3. Background

- 3.1. In England, Biodiversity Net Gain (BNG) is mandatory under Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021).
- 3.2. The Act requires developers to deliver a BNG of 10%. This means a development will result in more or better-quality natural habitat for wildlife than prior to the development.
- 3.3. Biodiversity value is measured and calculated using the statutory biodiversity metric¹ tool. The tool measures how many biodiversity units a habitat contains before development and calculates how many are needed to replace those lost and provide the statutory 10% biodiversity net gain.
- 3.4. If developers cannot achieve all of their BNG on-site, they can deliver through a mixture of on-site and off-site. Developers can either make off-site biodiversity gains on their own land outside the development site or buy off-site biodiversity units on the market.
- 3.5. For off-site gains and significant on-site gains, developers must maintain any habitats created or enhance for a minimum of 30 years and the responsibilities for this will be set out in a legal agreement.
- 3.6. Biodiversity Net Gain (BNG) offers landowners, in this case KCC, an opportunity to generate income by assessing their land's ecological value and improving it by creating or enhancing habitats, resulting BNG units that can be sold to developers who need off-site gains to meet their statutory 10% biodiversity uplift requirement.
- 3.7. KCC owns vacant land which could be utilised to create habitats to generate income. Eligible sites may include hard-to-develop areas, such as green belt land or sites with difficult topography or are otherwise challenging. Selling BNG

¹ The BNG metric tool is the statutory calculator used to measure changes in habitat value, converting habitat areas and features into standardised 'biodiversity units' to demonstrate whether a development achieves the required biodiversity net gain.

units can provide a long-term income stream, support environmental enhancement and maintenance, whilst maintaining ownership and control of the land. It is also a financially sustainable way to secure sites for longer term consideration for future use or development

3.8. Selling BNG units aligns with KCC's Asset Management Strategy and Reforming Kent's Future, supporting objectives to:

- Maximise income from underutilised assets.
- Deliver environmental benefits and statutory compliance.
- Reduce reliance on core budgets and external funding.

4. Options considered and associated risk

4.1. KCC will assess multiple approaches for delivering BNG, from in-house provision to fully outsourced models. Each option will be assessed using critical success factors with a weighted scoring system.

4.2. Assessment Framework: Critical Success Factors (CSF)

Each option will be evaluated using a structured scoring matrix against the following CSFs:

4.2.1. **Scalability** - The extent to which the option allows for expansion of BNG delivery across other KCC sites.

4.2.2 **Financial Return** - Assessment of short and long-term financial benefits including:

- Upfront costs and/or receipts
- Income potential
- Expenditure over 30 years
- Capital receipt versus BNG unit sale opportunity

4.2.3 **Non-Financial Benefit (Environmental)** - Evaluation of ecological outcomes, contribution to nature recovery, biodiversity uplift, and alignment with KCC's environmental objectives.

4.2.4 **KCC Use of BNG units for Projects** - How well the option supports KCC's internal demand for BNG units (e.g. school projects).

4.2.5 **Deliverability / Risk** - Assessment of:

- Feasibility
- Complexity
- Legal and regulatory considerations
- Market uncertainty
- Operational, financial, and environmental risks
- Long-term management obligations

1.1. **Associated risks for consideration**

- Land would be committed for 30 years.
- Income generation is dependent on units being sold.
- Changes to Environment Act 2021
- Changes to National Policies which could impact delivery of BNG.
- Deferred income model

5. **Financial Implications**

5.1 Biodiversity Net Gain (BNG) offers an opportunity for KCC to generate income.

5.2 Expenditure will be required to create habitats, either directly through KCC or indirectly through outsourcing.

5.3 Any income generated is subject to the successful sale of BNG units.

6 **Legal implications**

6.1 A number of legal implications will need to be considered before BNG units can be sold:

1.1.1. **Statutory powers and lawful basis** - KCC must be able to demonstrate a clear statutory power to operate a BNG habitat bank and sell units.

1.1.2. **Dual role conflict: regulator and seller** - Conflict of interest management is a legal implication to be considered. Where KCC determines planning applications as decision-maker and sells BNG units as provider.

1.1.3. **Restrictions on using Section 106 with own land** – KCC cannot usually enter into a Section 106 agreement with itself in its dual role as planning authority and landowner.

6.1.4 **30-year commitment** - Legally secure habitat delivery and management for a minimum of 30 years.

6.1.5 **Registration and exclusivity of units** - Sites must be registered on Natural England's Biodiversity Gain Site Register.

6.2 For any lease, sale or contract for a BNG unit, external legal advisors will be appointed in consultation with KCC legal services.

7. **Equalities implications**

7.1. No decision is required at this stage and therefore an Equalities Impact Assessment (EQIA) is not necessary.

8. Data Protection Implications

- 8.1. No decision is required at this stage and therefore an assessment of Data Protection implications is not required at this time.

9. Other corporate implications

- 9.1. None.

10. Governance

- 10.1. It is expected that the level of receipt/income for each BNG unit or site could be in excess of the Director's delegated threshold.
- 10.2. Since developers are required to maintain any habitats created or enhanced for a minimum of 30 years, any lease or contract arising will be in excess of the Director's delegated threshold.
- 10.3. As per the Constitution and the Council's governance processes, Key Decisions will therefore be required for BNG transactions. These may be sought per site, as a collective grouped decision, or as a programme decision which gives authority to Director of Infrastructure within agreed limits. The best approach is to be determined.
- 10.4. In accordance with the property management protocol the views of the local Member, in each instance, will be sought and reported to the Cabinet Member taking the decision.
- 10.5. Delegated authority is to be given to the Director of Infrastructure, in consultation with the Deputy Leader, to finalise the terms of any BNG agreement and execution of all necessary or desirable documentation required to implement.
- 10.6. The Government has announced plans for Local Government Reorganisation (LGR), aiming to abolish two-tier government by 2028. At present, KCC has not received specific guidance from Central Government about how LGR will be implemented in Kent and Medway; further details are expected between May and August 2026. Until directed otherwise, KCC remains responsible for making decisions in the best interests of Kent taxpayers.
- 10.7. When any exchange of contracts is approaching, the Director of Infrastructure will consider all relevant factors including financial considerations, any pending LGR decisions, and applicable legislation before finalising any contract agreements.
- 10.8. If at any point prior to the exchange of contracts a KCC service requirement becomes apparent, the Director of Infrastructure has the authority to withdraw from the lease or sale and reallocate the asset to a KCC service user.

11. Next steps and Conclusions

11.1. The next steps are:

- To decide whether KCC selling BNG units is a viable option for the council.
- To review commercial viability and commitment.
- To develop each option further.
- To develop Business Case which explores piloting programme.
- Return to Policy and Resources Cabinet Committee in May 2026 for Key Decision on pilot scheme

Recommendation(s):

The Policy and Resources Cabinet Committee is asked to NOTE this report and comment on the proposal to use KCC sites for Biodiversity Net Gain units.

12. Background documents

12.1. Schedule 7A of the Town and Country Planning Act 1990
<https://www.legislation.gov.uk/ukpga/1990/8/schedule/7A>

13. Contact details

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