

# Draft Biodiversity Net Gain Supplementary Planning Document

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## Strategic Environmental Assessment and Habitats Regulations Assessment Screening Report

### Introduction and Purpose

1. Cheshire East Council has produced a final draft Biodiversity Net Gain Supplementary Planning Document (“SPD”). The purpose of the SPD is to provide guidance on the provision of Biodiversity Net Gain and achieving an appropriate Biodiversity Net Gain mix on development sites proposed in the borough, adding further detail to policies contained within the Development Plan.
2. The Development Plan for Cheshire East consists of the Local Plan Strategy (LPS) and the Site Allocations and Development Policies Document (SADPD). In addition, made Neighbourhood Plans also form part of the Development Plan.
3. The policy framework for the SPD is contained in the LPS, with a particular focus on Policy SE 3 (“Biodiversity and Geodiversity”), SE 5 (“Trees, Hedgerows and Woodland”) and Policy SE 6 (“Green Infrastructure”); and within the SADPD via policies ENV1 (“Ecological Network”) and ENV2 (“Ecological Implementation”).
4. This screening report is designed to determine whether or not the contents of the final draft Biodiversity Net Gain SPD require a Strategic Environmental Assessment (“SEA”) in accordance with the European Directive 2001/42/EC and associated Environmental Assessment of Plans and Programmes Regulations 2004. The report also addresses whether the draft Biodiversity Net Gain SPD has a significant adverse effect upon any internationally designated site(s) of nature conservation importance and thereby subject to the requirements of the Habitats Regulations. The report contains separate sections that set out the findings of the screening assessment for these two issues.
5. From 17 May 2021 until the 14 June 2021, a previous iteration of the BNG SPD and its accompanying SEA and HRA Screening Report were consulted on. Feedback was received from Natural England and The Environment Agency, but not in relation to the screening report. No feedback was received in relation to the SEA and HRA Screening Report.

6. This statement, alongside the final draft Biodiversity Net Gain SPD, will be the subject of consultation in accordance with the relevant regulations and the Council's Statement of Community Involvement. This will include consultation with the relevant statutory bodies (Natural England, Environment Agency and Historic England). Comments received during the consultation on the draft Biodiversity Net Gain SPD and this statement will be reflected in future updates to this document.

## **Strategic Environmental Assessment Screening**

### **Legislative Background**

7. The objective of SEA is to provide for a high level of protection of the environment with a view to promoting the achievement of sustainable development. It is a requirement of European Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (also known as the SEA Directive). The Directive was transposed in UK law by the Environmental Assessment of Plans and Programmes Regulations 2004, often known as the SEA Regulations.
8. Article 3(3) and 3(4) of the regulations make clear that SEA is only required for plans and programmes when they have significant environmental effects. The 2008 Planning Act removed the requirement to undertake a full Sustainability Appraisal for a SPD although consideration remains as to whether the SPD requires SEA, in exceptional circumstances, when likely to have a significant environmental effect(s) that has not already been assessed during the preparation of a Local Plan. In addition, planning practice guidance (PPG – ref Paragraph: 008 Reference ID: 11-008-20140306) states that a SEA is unlikely to be required where an SPD deals only with a small area at local level, unless it is considered that there are likely to be significant environmental effects.

### **Overview of draft Biodiversity Net Gain SPD**

9. The purpose of the draft Biodiversity Net Gain SPD is to provide further guidance on the implementation of the SE 3 ("Biodiversity and Geodiversity"), SE 5 ("Trees, Hedgerows and Woodland") and Policy SE 6 ("Green Infrastructure") LPS policies.
10. It is important to note that policies in the LPS and SADPD were the subject of Sustainability Appraisal, which incorporated the requirements of the SEA regulations (as part of an Integrated Sustainability Appraisal). The likely significant environmental effects have already been identified and addressed – the SPD merely provides

guidance on existing policies. The LPS Integrated Sustainability Appraisal has informed this SPD screening assessment.

11. SEA has been undertaken for policies SE 3 (“Biodiversity and Geodiversity”), SE 5 (“Trees, Hedgerows and Woodland”) and Policy SE 6 (“Green Infrastructure”), as part of the Integrated Sustainability Appraisal that supported the LPS. For the purposes of compliance with the UK SEA Regulations and the EU SEA directive, the following reports comprised the SA “Environmental Report”:

- SD 003 – LPS Submission Sustainability (Integrated) Appraisal (May 2014);
- PS E042 – LPS Sustainability (Integrated) Appraisal of Planning for Growth Suggested Revisions (August 2015);
- RE B006 – LPS Sustainability (Integrated) Appraisal Suggested Revisions to LPS Chapters 9-14 (September 2015);
- RE F004 – Sustainability (Integrated) Appraisal – Proposed Changes (March 2016);
- PC B029 – Sustainability (Integrated) Appraisal - Proposed Changes to Strategic and Development Management Policies (July 2016);
- PC B030 – Sustainability (Integrated) Appraisal - Proposed Changes to Sites and Strategic Locations (July 2016);
- MM 002 - Sustainability (Integrated) Appraisal - Main Modifications Further Addendum Report.

12. In addition, an SA adoption statement was prepared in July 2017 to support the adoption of the LPS. It should also be noted that the SADPD and the policies contained in it have also been supported by a Sustainability Appraisal (incorporating the requirements for the SEA directive).

### **SEA Screening Process**

13. The council is required to undertake a SEA screening to assess whether the draft Biodiversity Net Gain SPD is likely to have significant environmental effects. If the draft Biodiversity Net Gain SPD is considered unlikely to have significant environmental effects through the screening process, then the conclusion will be that SEA is not necessary. This is considered in Table 1 below:-

**Table 1: Establishing the need for a SEA**

| Stage |   | Decision | Rationale   |
|-------|---|----------|---|
| 1.    | Is the SPD subject to preparation and/or adoption by a national, regional or local authority OR prepared through a legislative procedure by Parliament or Government? (Art. 2 (a)).   | Yes      | The SPD will be prepared and adopted by Cheshire East Borough Council.  |
| 2.    | Is the SPD required by legislation, regulatory or administrative provisions? (Article. 2 (a)).  | No       | The Council's Local Development Scheme (2020 – 2022) does not specifically identify the need to produce a draft Biodiversity Net Gain SPD.  |
| 3.    | Is the SPD prepared for agricultural, forestry, fisheries, energy, industry, transport, waste management, telecommunications, tourism, town and country planning or land use, AND does it set a framework for future development consent of projects in Annexes I and II to the EIA Directive? (Article 3.2 (a)). | No       | The SPD is being prepared for town and country planning use. It does not set a framework for future development consent of projects in Annexes I and II to the EIA Directive (Article 3.2 (a)). Whilst some developments to which the guidance in the SPD applies would fall within Annex II of the EIA Directive at a local level, the SPD does not specifically plan for or allow it. |
| 4.    | Will the SPD, in view of its likely effect on sites, require an assessment under Article 6 or 7 of the Habitats Directive? Art 3.2 (b)).  | No       | A Habitats Regulations Assessment has been undertaken for the LPS and emerging SADPD. The SPD does not introduce new policy or allocate sites for development. Therefore, it is not considered necessary to undertake a HRA assessment for the SPD. This conclusion has been supported by an HRA screening assessment as documented through this report.                                |
| 5     | Does the SPD determine the use of small areas at local level, OR is it a minor modification of a PP subject to Art. 3.2? (Art 3.3)  | No       | The SPD will not determine the use of small areas at a local level. The SPD provides guidance on the how applicants should demonstrate the delivery of biodiversity net gain, but it does not specifically determine the use of small areas at a local level. The SPD will be a material consideration in decision taking.  |
| 6.    | Does the SPD set the framework for future development consent of projects (not just projects in Annexes to the EIA Directive)? (Art. 3.4)   | No       | The LPS and emerging SADPD provide the framework for the future consent of projects. The SPD elaborates upon approved and emerging policies and does not introduce new policy or allocate sites for development.  |

14. The final draft SPD is considered to not have a significant effect on the environment and therefore SEA is not required. However, for completeness, Table 2 assesses whether the draft SPD will have any significant environmental effects using the criteria

set out in Annex II of SEA Directive 2001/42/EC<sup>1</sup> and Schedule 1 of the Environmental Assessment of Plans and Programmes Regulations 2004<sup>2</sup>.

Table 2: assessment of likely significance of effects on the environment

| SEA Directive Criteria Schedule 1 of Environmental Assessment of Plans and Programmes Regulations 2004   | Summary of significant effects, scope and influence of the document  | Is the Plan likely to have a significant environmental effect (Yes / No) |
|--|--|--|
| <b>1.Characteristics of the SPD having particular regard to:</b>   |  |  |
| (a) The degree to which the SPD sets out a framework for projects and other activities, either with regard to the location, nature, size or operating conditions or by allocating resources. | <p>Guidance is supplementary to policies contained in the LPS and SADPD, both of which have been the subject of SA / SEA. The policies provide an overarching framework for development in Cheshire East.</p> <p>The final draft Biodiversity Net Gain SPD provides further clarity and certainty to form the basis for the submission and determination of planning applications, consistent with policies in the LPS.</p> <p>Final decisions will be determined through the development management process.</p> <p>No resources are allocated.</p> | No   |
| (b)The degree to which the SPD influences other plans and programmes including those in a hierarchy.   | The final draft SPD is in general conformity with the LPS, which has been subject to a full Sustainability Appraisal (incorporating SEA). It is adding more detail to the adopted LPS, SADPD and other policies in the Development Plan, which has itself been the subject of Sustainability Appraisal. Therefore, it is not considered to have an influence on any other plans and programmes.  | No   |
| (c)The relevance of the SPD for the integration of environmental considerations in particular with a view to   | The final draft SPD promotes sustainable development, in accordance with the NPPF (2019) and LPS policies. The LPS has been the  | No   |

<sup>1</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001L0042&from=EN>

<sup>2</sup> [http://www.legislation.gov.uk/uksi/2004/1633/pdfs/uksi\\_20041633\\_en.pdf](http://www.legislation.gov.uk/uksi/2004/1633/pdfs/uksi_20041633_en.pdf)

| SEA Directive Criteria Schedule 1 of Environmental Assessment of Plans and Programmes Regulations 2004   | Summary of significant effects, scope and influence of the document   | Is the Plan likely to have a significant environmental effect (Yes / No) |
|--|---|--|
| promoting sustainable development.   | subject of a full Sustainability Appraisal (incorporating SEA). The final draft SPD has relevance for the integration of environmental considerations and promotes sustainable development by providing guidance on the delivery of Biodiversity Net Gain in the borough.   |  |
| (d)Environmental problems relevant to the SPD.   | There are no significant environmental problems relevant to the SPD.  | No   |
| (e)The relevance of the SPD for the implementation of Community legislation on the environment (for example plans and programmes related to waste management or water protection). | The final draft SPD will not impact on the implementation of community legislation on the environment.  | No   |
| <b>2.Characteristics of the effects and area likely to be affected having particular regard to:</b>  |   |  |
| (a)The probability, duration, frequency and reversibility of the effects.  | The final draft SPD adds detail to adopted LPS and SADPD policy; itself the subject of SA.  | No   |
| (b)The cumulative nature of the effects of the SPD.  | The final draft SPD adds detail to adopted LPS and SADPD policy, itself the subject of SA. The SA associated with the LPS and SADPD have considered relevant plans and programmes. No other plans or programmes have emerged that alter this position.  | No   |
| (c)The trans-boundary nature of the effects of the SPD.  | Trans-boundary effects will not be significant. The final draft SPD will not lead to any transboundary effects as it is providing additional detail regarding the implementation of policies SE 3, SE 5 & SE 6 in the LPS and ENV1 and ENV2 in the SADPD, and does not, in itself, influence the location of development. | No   |
| (d)The risks to human health or the environment (e.g. due to accident).  | The final draft SPD will not cause risks to human health or the environment as  | No   |

| SEA Directive Criteria Schedule 1 of Environmental Assessment of Plans and Programmes Regulations 2004  | Summary of significant effects, scope and influence of the document   | Is the Plan likely to have a significant environmental effect (Yes / No) |
|---|---|--|
|   | it is adding detail to environmental policies in the Local Plan.  |  |
| (e)The magnitude and spatial extent of the effects (geographic area and size of the population likely to be affected) by the SPD.   | The final draft SPD covers the Cheshire East administrative area. The draft SPD will assist those making planning applications in the borough.  | No   |
| (f)The value and vulnerability of the area likely to be affected by the SPD due to: <ul style="list-style-type: none"> <li>• Special natural characteristics of cultural heritage</li> <li>• Exceeded environmental quality standards or limit values</li> <li>• Intensive land use.</li> </ul> | The final draft SPD will not lead to significant effects on the value or vulnerability of the area. It is adding detail regarding the implementation of environmental policies SE 3, SE 5 and SE 6 in the LPS, and policies ENV1 and ENV2 of the SADPD, and does not, in itself, influence the location of development. | No   |
| (g)The effects of the SPD on areas or landscapes which have recognised national Community or international protected status.  | The SPD does not influence the location of development, so will not cause effects on protected landscape sites.   | No   |

### Conclusion and SEA screening outcome

15. The SPD is not setting new policy; it is supplementing and providing further guidance on an existing LPS and SADPD policy. Therefore, it is considered that an SEA is not required on the final draft Biodiversity Net Gain SPD. This conclusion will be revisited following consideration of the views of the three statutory consultees (the Environment Agency, Historic England and Natural England) and if there are significant changes to the SPD following public consultation.

## Habitats Regulations Assessment Statement

16. The Council has considered whether its planning documents would have a significant adverse effect upon the integrity of internationally designated sites of nature conservation importance. European Directive 92/43/EEC on the Conservation of Natural Habitats and Wild Flora and Fauna (Habitats Directive) provides legal protection to habitats and species of European importance. The principal aim of this directive is to maintain at, and where necessary restore to, favourable conservation status of flora, fauna and habitats found at these designated sites.
17. The Directive is transposed into English legislation through the Conservation of Habitats and Species Regulations 2017 (a consolidation of the amended Conservation of Habitats and Species Regulations, 2010) published in November 2017.
18. European sites provide important habitats for rare, endangered or vulnerable natural habitats and species of exceptional importance in the European Union. These sites consist of Special Areas of Conservation (SACs, designated under the EU Directive 92/43/EEC on the conservation of natural habitats and of fauna and flora (Habitats Directive)), and Special Protection Areas (SPAs, designated under EU Directive 2009/147/EC on the conservation of wild birds (the Birds Directive)). Government policy requires that Ramsar sites (designated under the International Wetlands Convention, UNESCO, 1971) are treated as if they are fully designated European sites for the purposes of considering development proposals that may affect them.
19. Spatial planning documents may be required to undergo Habitats Regulations Screening if they are not directly connected with or necessary to the management of a European site. As the draft Biodiversity Net Gain SPD is not connected with, or necessary to, the management of European sites, the HRA implications of the SPD have been considered.
20. A judgement, published on the 13 April 2018 (People Over Wind and Sweetman v Coillte Teoranta (C-323/17) clarified that measures intended to avoid or reduce the harmful effects of a proposed project on a European site may no longer be taken into account by competent authorities at the Habitat Regulations Assessment “screening stage” when judging whether a proposed plan or project is likely to have a significant effect on the integrity of a European designated site.
21. Both the LPS and SADPD have been subject to HRA.



22. The final draft Biodiversity Net Gain SPD does not introduce new policy; it provides further detail to those policies contained within the LPS. The HRA concluded that policies s SE3 'Biodiversity and Geodiversity', SE5 Trees Hedgerows and Woodland, SE6 'Green Infrastructure' could not have a likely significant effect on a European Site. The same applies to the final draft Biodiversity Net Gain SPD. The draft Biodiversity Net Gain SPD in itself, does not allocate sites and is a material consideration in decision taking, once adopted.
23. The final draft Biodiversity Net Gain SPD either alone or in combination with other plans and programmes, is not likely to have a significant effect on any European site. Therefore, a full Appropriate Assessment under the requirements of the Habitats Regulations is not required.

### **Conclusion and HRA screening outcome**

24. Subject to views of the three statutory consultees (the Environment Agency, Historic England and Natural England), this screening report indicates that an Appropriate Assessment under the Habitats Regulations is not required.