

# Cheltenham Borough Council

## Cabinet – 23<sup>rd</sup> May, 2023

### Approval of countywide Memorandum of Understanding – Co-operation on Biodiversity Net Gain through the Gloucestershire Nature and Climate Fund

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**Accountable member:**

Cllr Alisha Lewis, Cabinet member

**Accountable officer:**

Mike Redman, Director of Climate Change and Place Services

**Ward(s) affected:**

All

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**Key Decision:** No

**Executive summary:**

The government has announced that developers in England will be required to deliver 10% biodiversity net gain (BNG) when building housing, industrial or commercial developments from November 2023.

In circumstances where biodiversity improvements are not possible, developers will be able to pay for improvements on other sites by purchasing “units” via a private, off-site market.

Gloucestershire local authorities have been working in association with the Gloucestershire Local Nature Partnership (GLNP) to establish a countywide mechanism to provide options for developers locally, which will reduce the risk of BNG payments being used for biodiversity enhancement outside of the county. This mechanism is intended to establish a Gloucestershire Nature and Climate Fund (GNCF), which will offer an option to developers for the delivery and monitoring of off-site BNG, where this cannot be achieved on the application site.

BNG was introduced by the Environment Act 2021 and forms part of the government’s plans to halt species decline by 2030.

To underpin the innovative partnership work that has been taking place, authorities in the county are being encouraged to sign a Memorandum of Understanding (MoU) which will provide greater transparency in relation to the work taking place, whilst making clear that GNCF will not be the only off-site BNG option available to developers and that it is not the intention that this should create a monopoly service. **The draft MoU is attached as Appendix 2 to this report.**

## Recommendations:

1. Cabinet is recommended to approve the principle of continued co-operation on Biodiversity Net Gain through the Gloucestershire Nature and Climate Fund. Whilst it will not be the only option available to developers unable to provide the required minimum 10% biodiversity uplift on-site, GNCF is designed to provide a robust off-site option for retaining developer investment in BNG within the county;
  2. To delegate authority to the Cabinet member for Climate Emergency to sign the MoU on behalf of the authority.
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## 1. Implications

### 1.1 Financial, Property and Asset implications

- 1.1.1 There are no direct financial, property or asset implications arising from the recommendations in this report. This is because the memorandum of understanding is not a legally binding agreement. Whilst all parties are requested to comply with the terms of the MoU, there is no legal obligation to do so and no legal consequence if they do not. There is therefore flexibility for the Council when considering development proposals which means that decisions can be taken which balance both climate priorities with the financial needs of the Council.

**Signed off by:** Gemma Bell, Director of Finance & Assets, [gemma.bell@cheltenham.gov.uk](mailto:gemma.bell@cheltenham.gov.uk)

### 1.2 Legal implications

- 1.2.1 The Authority is being asked to sign up to a memorandum of understanding which is not a legally binding agreement. This means that whilst all parties are requested to comply with the terms of the MoU, there is no legal obligation to do so and no legal consequences if they do not do so.
- 1.2.2 Advice has been given to officers on the content of the MoU and this arrangement. We have also requested changes to some of the provisions of the MoU. For example, currently there are no termination provisions meaning that, unless changed, the MoU will continue until all parties agree to terminate the MoU, or allow one council to withdraw.
- 1.2.3 We are instructed that GNCF is not carrying out services on behalf of the Authorities and that GNCF could undertake their roles without involvement from the Authorities. Should the Authority require services of this nature to be provided, a compliant procurement will need to be undertaken in accordance with the Authority's Contract Procedure Rules.
- 1.2.4 There is no obligation upon developers to make use of the option offered by GNCF and they are able to make their own arrangements to demonstrate BNG compliance.
- 1.2.5 GNCF is a company limited by guarantee and not set up to earn profits for shareholders. However, it is not a company that is owned by public bodies, nor is it a charity or a community interest company so there are no restrictions in law about its ability to make, or how to use profits.

**Signed off by:** Donna Ruck, Solicitor, One Legal. [legalservices@onelegal.org.uk](mailto:legalservices@onelegal.org.uk)

### 1.3 Environmental and climate change implications

1.3.1 GNCF will provide a mechanism within the county to encourage off-site biodiversity net gain where this cannot be delivered on-site. The arrangement has been designed specifically to support nature and help to mitigate the impact of climate change, both through carbon sequestration, but also by enhancing habitat on those sites which attract BNG funding.

**Signed off by:** Laura Tapping, Climate Emergency Programme Officer,  
laura.tapping@cheltenham.gov.uk

### 1.4 Corporate Plan Priorities

This report contributes to the following Corporate Plan Priorities:

- Working with residents, communities and businesses to help make Cheltenham #netzero by 2030
- Ensuring residents, communities and businesses benefit from Cheltenham's future growth and prosperity

### 1.5 Equality, Diversity and Inclusion Implications

1.5.1 There are no equality, diversity or inclusion implications arising from the recommendations in this report.

### 1.6 Performance management – monitoring and review

1.6.1 As the GNCF will operate independently of local authorities and their property and planning responsibilities, there will be no direct performance management implications arising from the report. However, it is worth noting that planning authorities will need to establish mechanisms for monitoring the delivery of BNG commitments by developers and the GNCF offers a potentially robust and funded mechanism for effectively carrying out this monitoring against an established baseline for each BNG site identified by the scheme as capable of delivering BNG units.

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## 2 Background to the Gloucestershire Nature and Climate Fund

2.1 The GNCF has a role to play in supporting the county to reach 'net-zero' emissions. GNCF biodiversity net gain principles and the spatial operating strategy are set out in Appendix 3.

2.2 Within organisations and communities, when emissions have been reduced to their lowest possible level, there will be residual emissions remaining, many falling into the 'too difficult to fix now' category.

2.3 Some of the enabling technology and infrastructure to reduce the residuals (hydrogen fusion, small nuclear reactors, affordable EVs and solar power storage, safe rural cycling routes and e-buses) will not come on-line until after the net-zero deadline, which this authority has set at 2030. While the Gfirst LEP and Gloucestershire Local Nature Partnership (GLNP) have a role in championing these, we also have a role in enabling business and organisations in Gloucestershire to reach their net-zero deadlines with integrity.

- 2.4 The role of the GNCf is to leverage funds to help restore and enhance nature in Gloucestershire. It should also support businesses to meet legislative requirements and environmental goals. Reduction in emissions must be tackled first, and while 'offsetting emissions' is the last resort on our net-zero pathway, the GNCf can help to ensure that it is delivered with scientific rigour. The GNCf will not promote offsetting as an excuse for 'business as usual'. The Fund's position on this will be made clear.
- 2.5 The main offer of the GNCf, will be the facilitation of biodiversity net gain through the supply of biodiversity credits. Its secondary offer, will be carbon credits that adhere to the methodology of the 'woodland carbon code' and provide a local narrative showing where carbon is stored. GNCf will deliver more than just carbon storage with each carbon credit that is sold; multiple benefits such as natural flood management, air pollutant removal and recreation will be identified and locked in. The Gloucestershire Tree Strategy has already identified the Fund as a key entity, enabling "multiple funding streams to be utilised to deliver multiple benefits through a wide range of delivery partners whilst ensuring delivery of this strategy".
- 2.6 While carbon offsetting is a nation-wide and global option, GNCf should be at the table, offering high integrity carbon credits that benefit the ambitious Tree Strategy, wetland creation and soil protection initiatives planned across Gloucestershire, creating a more climate resilient and climate positive landscape.

### 3 Reason for recommendations

- 3.1 Signing the Memorandum of Understanding will provide transparency in relation to the partnership work being undertaken by county local authorities in establishing a mechanism for the delivery of off-site BNG where this cannot be effectively provided on the application site. **Note:** This will still be subject to overview by planning authorities and sequential testing will be applied to ensure that wherever practicable, BNG mitigation takes place either on, or in reasonable proximity to application sites.

### 4 Alternative options considered

- 4.1 No suitable alternative options have been identified, but GNCf will **not** be a monopoly service and alternative market offers are likely to be available to developers needing to identify off-site BNG provision. Some of these options could include BNG units available on sites outside of the county, which whilst also being subject to sequential testing, may dilute the positive impact which BNG could otherwise bring about within Gloucestershire.

### 5 Consultation and feedback

- 5.1 Consultation has taken place with planning authorities in the county, including elected members and Climate Leadership Gloucestershire is also supportive of the scheme. Gloucestershire County Council is also a proposed signatory to the MoU and has offered loan funding to assist with the establishment of the GNCf.

### 6 Key risks

- 6.1 If there is no effective mechanism established for the delivery of off-site BNG in relation to local developments, there is a risk that developers will purchase BNG units from national providers, with the loss of potential benefits for nature in Gloucestershire.

6.2 In the absence of viable alternatives for off-site BNG and Suitable Alternative Natural Greenspace to offset development impacts on the protected Cotswolds Beechwoods, development proposals could be delayed, adding to existing housing delivery and economic growth challenges.

6.3 There is a risk in signing the MoU that participating authorities may be viewed as favouring GNCF over other BNG options available to developers. This is not the intention and any such perceptions should be mitigated by the independence of the planning process in determining the acceptability of developers' proposed BNG arrangements.

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**Report author:**

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**Appendices:**

1. Risk Assessment
2. Draft Memorandum of Understanding
3. GNCF biodiversity net gain principles and spatial operating strategy
4. Climate Change Impact Assessment

**Appendix 1: Risk Assessment**

| Risk ref | Risk description                                                                                                                                                                                                                                                      | Risk owner                                   | Impact score<br>(1-5) | Likelihood score<br>(1-5) | Initial raw risk score<br>(1 - 25) | Risk response | Controls / Mitigating actions                                                                      | Control / Action owner | Deadline for controls/ actions |
|----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------|-----------------------|---------------------------|------------------------------------|---------------|----------------------------------------------------------------------------------------------------|------------------------|--------------------------------|
|          | If there is no effective mechanism established for the delivery of off-site BNG in relation to local developments, there is a risk that developers will purchase BNG units from national providers, with potential benefits for nature in Gloucestershire being lost. | Director for Climate Change & Place Services | 3                     | 2                         | 6                                  | Reduce        | Approve report recommendations                                                                     | Cabinet                | May 2023                       |
|          | In the absence of viable BNG alternatives to offset development impacts, planning proposals could be delayed, adding to existing housing delivery and economic growth challenges.                                                                                     | Director for Climate Change & Place Services | 4                     | 3                         | 12                                 | Reduce        | Approve report recommendations                                                                     | Cabinet                | May 2023                       |
|          | There is a risk in signing the MoU that participating authorities may be viewed as favouring GNCF over other BNG options that                                                                                                                                         | Director for Climate Change & Place Services | 3                     | 2                         | 6                                  | Accept        | Any perceptions should be mitigated by the independence of the planning process in determining the | Cabinet                | May 2023                       |

| Risk ref | Risk description                | Risk owner | Impact score<br>(1-5) | Likelihood score<br>(1-5) | Initial raw risk score<br>(1 - 25) | Risk response | Controls / Mitigating actions                           | Control / Action owner | Deadline for controls/ actions |
|----------|---------------------------------|------------|-----------------------|---------------------------|------------------------------------|---------------|---------------------------------------------------------|------------------------|--------------------------------|
|          | may be available to developers. | Services   |                       |                           |                                    |               | acceptability of developers' proposed BNG arrangements. |                        |                                |