

**SOUTH STAFFORDSHIRE COUNCIL**

**CABINET – 6 FEBRUARY 2024**

**SOUTH STAFFORDSHIRE HABITAT BANK**

**REPORT OF THE LEAD PLANNING MANAGER**

**COUNCILLOR VICTORIA WILSON - CABINET MEMBER FOR BUSINESS ENTERPRISE AND  
COMMUNITY INFRASTRUCTURE**

**PART A – SUMMARY REPORT**

**1. SUMMARY OF PROPOSALS**

- 1.1 This report comprises a proposal for South Staffordshire Council to set up its own habitat bank for the purpose of providing biodiversity units to sell in relation to biodiversity net gain.
- 1.2 The report includes detail on proposed parcels, their current condition, proposed habitats and next steps to take to register the sites with Natural England's net gain register at the point of sale after it becomes live after 12<sup>th</sup> February 2024.

**2. SUMMARY IMPACT ASSESSMENT**

POLICY/COMMUNITY IMPACT	Do these proposals contribute to specific Council Plan objectives?	
	Yes	The habitat bank will contribute to the following Council Plan 2020-2024 objective: <ul style="list-style-type: none"><li>• Provide a quality environment that we can all be proud of.</li></ul>
	Has an Equality Impact Assessment (Equal) been completed?	
	No	Not required
	Has a Data Protection Impact Assessment been completed?	
	No	Not required.
SCRUTINY POWERS APPLICABLE	Yes	The Constitution and associated protocol provides that front line Councillors, the Monitoring Officer and the Section 151 Officer will have five clear working days following dispatch of a notification of a proposed decision in which to call in for scrutiny, decisions proposed by the Cabinet or its members. In accordance with the provisions of the Constitution and associated protocol, any two or more members wishing to request that this proposed decision should be called in for scrutiny

		<p>should do so by giving notice to the Corporate Director of Governance either by e-mail or in writing before the end of the fifth day specifying the reason or reasons therefore. The Corporate Director of Governance will then call in the proposed decision and arrange for it to be considered by the Overview and Scrutiny Committee/relevant Scrutiny Panel. A copy of such notice must also be sent to the Lead Cabinet Member either by email or in writing by the end of the fifth day. This proposed decision will be confirmed and implemented or, where appropriate, referred to the Council for consideration at its next meeting, on or after the date to be notified upon circulation of the minutes of the meeting of the Cabinet, unless called in for scrutiny by that date.</p>
KEY DECISION	No	
TARGET COMPLETION/ DELIVERY DATE	<p>Biodiversity net gain becomes mandatory in February 2024.</p> <p>Natural England's Register will go live on 12<sup>th</sup> February 2024, and subject to completion of S106 agreements with Staffordshire County Council to secure the management, the land will be registered on the register at the point of sale.</p>	
FINANCIAL IMPACT	No	<p>Discussion and further investigation technical implementation of Conservation Covenants remain ongoing. At this stage it is recommended that support is obtained to continue with those investigations and discussions as the scheme is implemented.</p>
LEGAL ISSUES	No	<p>Discussion and further investigation technical implementation of Conservation Covenants remain ongoing. At this stage it is recommended that support is obtained to continue with those investigations and discussions as the scheme is implemented.</p>
OTHER IMPACTS, RISKS & OPPORTUNITIES including climate impacts and health impacts if applicable	<p>The proposals will create and enhance natural habitats through appropriate habitat management. This will directly contribute to the Council's Biodiversity Duty established in the Natural Environment and Rural Communities Act 2006, and will also contribute towards climate resilience by actively managing and enhancing areas of natural green space for biodiversity.</p> <p>The proposals will also provide local residents with more access to nature and biodiversity in the long-term, which have proven benefits in relation to mental and physical health.</p>	

IMPACT ON SPECIFIC WARDS	Yes	The current sites proposed are Council-owned sites in Perton, Bilbrook and Lower Penn. The long-term intention will be to include more land in other wards to ensure good geographical availability of biodiversity units in the future.
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## **PART B – ADDITIONAL INFORMATION**

### **3. INFORMATION**

#### **Background**

- 3.1 Biodiversity Net Gain (known as BNG), the principle of leaving a development site in a better state for biodiversity than before development commenced is enshrined in the Environment Act 2021 and will become mandatory for all developments (with some exceptions) by February 2024.
- 3.2 As of 12<sup>th</sup> February 2024, all major developments will be required to deliver 10% BNG. This will be applied to smaller sites from 2<sup>nd</sup> April 2024 subject to confirmation through secondary legislation.
- 3.3 When a developer is unable to deliver all or part of their BNG requirement on their development site, they may purchase 'biodiversity units' (the BNG 'currency') from a Habitat Bank to offset their on-site requirement to another site.
- 3.4 Habitat Banks are created when a landowner improves habitat on land within their ownership under a management plan that has been informed by a robust ecological assessment. The habitat prior to improvement is known as the 'baseline' habitat and the habitat post-improvement is known as the 'proposed' habitat.
- 3.5 Once a baseline has been established, the landowner can generate biodiversity units by progressing habitat management pursuant to the objectives of the management plan. The resultant 'uplift' in condition generates biodiversity units which can be sold to developers in need of these units to meet 10% BNG requirement.
- 3.6 All habitats created for BNG are legally required to be managed for a minimum period of 30 years.

#### **Opportunity In South Staffordshire**

- 3.7 South Staffordshire Council owns a number of land parcels suitable to create and/or enhance habitats. These habitats can generate biodiversity units which can subsequently be sold to developers for them to be able to achieve BNG requirements.
- 3.8 Several sites have been identified in South Staffordshire within the ownership of South Staffordshire Council that can be taken forward, initially, to contribute to the

South Staffordshire Habitat Bank. The initial tranche of sites are located in Lower Penn, Perton and Bilbrook.

- 3.9 The rationale for the selection of these sites has been based primarily on the ease of habitat creation (to generate units faster than complex/difficult management) and the presence of suitable access for management machinery if required.
- 3.10 The sites proposed to be taken forward initially have been surveyed between April and July 2023 by South Staffordshire Council, according to published habitat survey and condition assessment standards published by UKHab and DEFRA.
- 3.11 The sites proposed to be taken forward initially are as follows:

**Table 1. Sites proposed to be taken forward for BNG habitat management.**

Property/Land Description	Map Link
Open space located in area between Langley Road and Dirtyfoot Lane, Lower Penn	<a href="https://goo.gl/maps/QGkqYkaWZonDCypc9">https://goo.gl/maps/QGkqYkaWZonDCypc9</a>
Public Open Space Webb Avenue Perton South Staffordshire	<a href="https://goo.gl/maps/rAqHV1q1B12sPv8XA">https://goo.gl/maps/rAqHV1q1B12sPv8XA</a>
Upper Lake The Parkway Perton South Staffordshire	<a href="https://goo.gl/maps/zBe1TcyRGGKLenESA">https://goo.gl/maps/zBe1TcyRGGKLenESA</a> <a href="https://goo.gl/maps/Cp8GwutJHdZWqqCU6">https://goo.gl/maps/Cp8GwutJHdZWqqCU6</a> <a href="https://goo.gl/maps/BsVzaTN7mWTNKDfi9">https://goo.gl/maps/BsVzaTN7mWTNKDfi9</a>
Land near to 72 Stephenson Drive Perton Wolverhampton South Staffordshire WV6 7YB	<a href="https://goo.gl/maps/gFET1BrQzMTLAD6M6">https://goo.gl/maps/gFET1BrQzMTLAD6M6</a>
Land Off Watery Lane Codsall South Staffordshire	<a href="https://goo.gl/maps/tftcf8tKnBxPEYLQ6">https://goo.gl/maps/tftcf8tKnBxPEYLQ6</a>
Land near to 48 Millennium Way Bilbrook Wolverhampton South Staffordshire WV8 1GA	<a href="https://goo.gl/maps/86LBu1G9yAXhFhbf8">https://goo.gl/maps/86LBu1G9yAXhFhbf8</a>
Land near to Street Record Old Farm Drive Bilbrook South Staffordshire	<a href="https://goo.gl/maps/4vLop3igKUjcmH36">https://goo.gl/maps/4vLop3igKUjcmH36</a>

- 3.12 All calculations below are based on the accepted standard Defra 4.0 metric. The statutory metric has recently been released and the calculations below will be re-run through the statutory metric to ensure compliance with the relevant legislation.
- 3.13 Based on the Defra 4.0 metric calculations, South Staffordshire's Habitat Bank will initially generate circa 20 biodiversity units. This number will be updated once calculations have been progressed with the statutory biodiversity metric for the selected sites.

- 3.14 Units will be priced to ensure that the costs of habitat management works will be covered over the minimum 30-year period and will be competitively priced based on the market.
- 3.15 Further opportunities will be explored to add to the Habitat Bank, including areas such as Baggeridge Country Park, Shoal Hill etc. in the future.
- 3.16 It is possible that not all of the initial units generated by the scheme will be sold in the first year of offering units for sale, developers may have their own land to offset on, or may choose to use another habitat bank.
- 3.17 Until demand for the biodiversity units in South Staffordshire Council's Habitat Bank is demonstrated, it is recommended that sites are not registered with Natural England until the point of sale. This ensures costs are not incurred prior to units being sold, given that units may not be sold for a number of months/years.
- 3.18 If favourable management is progressed on habitats prior to their sale, they will begin to generate biodiversity units from the point that habitat management is progressed and the site is registered. Once demand has been demonstrated this may be an option that South Staffordshire Council wishes to pursue.

#### **How the Habitat Bank is Created & Units Prepared for Sale**

- 3.19 To be registered on the Register, habitat set aside for BNG unit creation must submit the following information to the Register:
- 1 A completed biodiversity metric for the 'baseline' units and the 'proposed' units.
  - 2 A Habitat Management and Monitoring Plan (HMMP) for a 30-year period.
  - 3 Provide evidence that the land is owned or long-term leased by the Habitat Bank and that landowner permission has been obtained.
  - 4 Provide details of a legal agreement (Conservation Covenant or S106 agreement) securing the management of the land and detailing responsibilities to manage in accordance with the Habitat Management and Monitoring Plan (HMMP).
- 3.20 Step 1 has been completed. Habitat and botanical surveys have been completed for the proposed parcels.
- 3.21 Step 2 is currently being progressed for each parcel. Natural England have released a Habitat Management and Monitoring Plan (HMMP) template and this is being used to write management regimes specific to each parcel of land.
- 3.22 Step 3 has been completed and our legal team have confirmed that we own the parcels to be used.

- 3.23 Step 4 will now not involve a Special Purpose Vehicle as a S106 agreement can be progressed with Staffordshire County Council to secure the management of the habitats to allow the sites to be registered. This is currently ongoing.
- 3.24 Conservation Covenants are another option for legally securing land management. This is a new legal mechanism introduced in 2023.
- 3.25 To be able to use Conservation Covenants, the Council must apply to Natural England to become a Responsible Body<sup>12</sup>. The ability to register as a Responsible Body with Natural England went live on 27<sup>th</sup> July 2023 and involves a range of stages of assessment/eligibility criteria<sup>3</sup>.
- 3.26 Once registered as a Responsible Body, the Council will be able to utilise Conservation Covenants as another legal tool for securing the conservation of natural or heritage features on land.
- 3.27 The ability to use Conservation Covenants also enables the Council to have more control over third party Habitat banks in the local area; though this does come with increased monitoring and enforcement burdens, and the capacity to do this should be explored prior to entering agreements with other landowners.
- 3.28 The Council as a Responsible Body would not be obliged or required to enter into Conservation Covenants with third party landowners. However, entering into Conservation Covenants may be beneficial to have control over monitoring & enforcement of land located within strategically beneficial areas (such as in the Nature Recovery Network or Local Nature Recovery Strategy<sup>4</sup>)
- 3.29 The Council as a Responsible Body would have annual reporting duties to the Secretary of State, as well as responsibility for enforcement of Conservation Covenants. Capacity to monitor and enforce Conservation Covenants should be considered, however please note paragraph 3.28 above.
- 3.30 Natural England aim to process applications to become a Responsible Body within 12 weeks of receiving a complete application.
- 3.31 The application to become a Responsible Body is currently being drafted and will be sent to legal and finance for further scrutiny.

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<sup>1</sup> [Conservation covenants: apply to become a responsible body - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/conservation-covenants-apply-to-become-a-responsible-body)

<sup>2</sup> [Conservation Covenants \(local.gov.uk\)](https://www.local.gov.uk/conservation-covenants)

<sup>3</sup> [Conservation covenants: criteria for being a responsible body - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/conservation-covenants-criteria-for-being-a-responsible-body)

<sup>4</sup> The LNRS is currently being produced by Staffordshire County Council. SSC are a supporting authority for the LNRS and the Senior Planning Ecologist is liaising with SCC on this.

### **Indicative Potential Costs to the Council**

- 3.32 On the basis that sites will be registered at the point of sale it is not anticipated that there will be any initial costs for habitat management prior to this. Any funds for the purpose of habitat management, upskilling etc. over and above existing costs would be available at the point of sale.
- 3.33 The cost of registering a site on the BNG Register will be £639; and each subsequent allocation of part or all of that land to a development will be £45.

### **4. IMPACT ASSESSMENT – ADDITIONAL INFORMATION**

- 4.1 No further impact assessment detailed.

### **5. PREVIOUS MINUTES**

- 5.1 Not previously considered.

### **6. BACKGROUND PAPERS**

- 6.1 Footnotes have been provided throughout in relation to supplementary information.

Appendix 1 provides location and habitat plans for the Bilbrook sites.

Appendix 2 provides a location and habitat plans for the Lower Penn site.

Appendix 3 provides location and habitat plans for the Perton sites.

### **7. RECOMMENDATIONS**

- 7.1 That the proposed sites as outlined in Table 1 are progressed as BNG delivery sites, and should progress through to the Habitat Management and Monitoring Plan (HMMP) stage which will override any existing Habitat Management Plans.
- 7.2 Discussions should continue with the legal team on the use of s106 agreements and Conservation Covenants, with a view to registering the proposed sites on Natural England's Net Gain Register at the point of sale.
- 7.3 Discussions should also continue with the legal team to understand the implications of registering to become a Responsible Body for the purpose of Conservation Covenants and to progress with the application to Natural England.

**Appendices are available as meeting documents.**

Report prepared by: Matthew Wall – Senior Planning Ecologist