

Delegated Decisions report



8 June 2021

ADOPTION OF BIODIVERSITY: SUPPLEMENTARY PLANNING DOCUMENT

Name of Cabinet Member	Councillor Jenny Wilson-Marklew (Cabinet member for Climate and Sustainability)
Report sponsor	Paul Thomas Interim Director - Planning, Strategic Transport and Placemaking
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Exempt / confidential / not for publication	No
Council Plan reference	Not in Council Plan
Wards affected	All wards

Executive Summary

This report details the public consultation responses received on the draft Biodiversity: Supplementary Planning Document (SPD) consultation held for eight weeks between 28 September 2020 - 23 November 2020. It recommends the document be amended in the light of the responses received and adopted.

Once adopted, the SPD will support the implementation of Policies NE2 and NE3 and expand upon other policies of our Local Plan (Plan:MK). It provides:

- A guide for working with protected and priority species and habitats which are likely to be impacted upon by proposed developments.
- Detail of our requirements for applicants to build nature conservation features into developments, ensuring that a measurable net-gain to biodiversity is achieved in accordance with Plan:MK and national planning policies.

- Guidance for the construction phase, monitoring and future management of the development sites.

1. Decisions to be Made

- 1.1 That the amended Biodiversity: Supplementary Planning Document, attached at **Annex B**, be approved, in the light of changes set out in **Annex A**.
- 1.2 That the Interim Director - Planning, Strategic Transport and Placemaking, in consultation with the Portfolio Holder for planning, be given delegated authority to make any necessary minor corrections to the Biodiversity: Supplementary Planning Document prior to its publication.

2. Why is the Decision Needed?

- 2.1 The SPD will support the implementation of Policies NE2 and NE3 in Plan:MK; and provides guidance on biodiversity and nature conservation within new development. Policy NE2 of Plan:MK underlines the importance of protecting species and habitats. It states that, where a “site contains priority species or habitats, development should wherever possible promote their preservation, restoration, expansion and/or re-creation in line with Policy NE3.” Policy NE3 addresses biodiversity and geological enhancement matters. It requires development proposals to maintain and protect biodiversity and geological resources. This includes, where possible, delivering a measurable net gain in biodiversity. If significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated or, as a last resort, compensated for then planning permission should be refused.
- 2.2 The SPD highlights the importance of protecting and enhancing existing nature conservation features within proposed developments, following best practice guidance and the mitigation hierarchy¹. Where this is not possible the SPD details requirements for a developer to consider incorporating ecological compensation (including Biodiversity Offsets). This is in accordance with one of the actions from Bucks and Milton Keynes Biodiversity Action Plan (2018) which mentions that Local Authorities should seek to manage their land in a sustainable way, with biodiversity given priority where appropriate.
- 2.3 A Delegated Decision to approve an eight-week consultation on a draft SPD took place on 8 September 2020. We then undertook the public consultation between 28 September 2020 - 23 November 2020.

¹ Mitigation consists of measures taken to avoid or reduce negative impacts on species or habitats

Public Consultation on the Biodiversity: Supplementary Planning Document

- 2.4 We publicised the Biodiversity Supplementary Planning Document, including details of the consultation, a consultation response form, consultation statement, guidance notes for respondents and a Strategic Environment Assessment (SEA) screening statement, on our website. The SPD was also publicised via our consultation finder page.
- 2.5 Over 1,000 emails were sent, and 300 letters posted to those individuals, companies and organisations on our consultation database.

Responses to the Biodiversity: Supplementary Planning Document consultation

- 2.6 A total of 24 responses were received, as detailed in **Annex A** to the report. The greatest number of responses (nine) came from organisations including Natural England, Buckinghamshire and Milton Keynes Natural Environment Partnership, Canal and River Trust and Berks, Bucks and Oxon Wildlife Trust. In addition:
- four representations were made by members of the public;
 - one representation was received from a parish councillor and two representations from Parish and Town Councils;
 - eight representations from Developers or Agents; and
 - two representations from utilities/infrastructure providers (SGN Gas Networks and British Pipeline Agency Limited).
- 2.7 The representations focused around the following points:
- Respondents generally supported the need for the SPD and a few of them considered that the minimum 10% target was not ambitious enough. However, the SPD cannot set new targets/standards, but only expand upon the existing local plan policies and reference national targets. The SPD makes reference to the minimum of 10% increase over the predevelopment condition proposed in the draft Environment Bill.
 - Some respondents raised concerns over the transitional arrangements before the Environmental Bill becomes law. Clarification has been provided in the SPD that, at present, any requirements for biodiversity net gain are set by negotiation with the Local Planning Authority. This will be assessed in accordance with Plan:MK policies, the National Planning Policy Framework (NPPF) and other material considerations and will continue to take place in the transitional period.

- Several respondents proposed amendments to Maps and Tables. This was to add clarity and further reference. The majority of these comments were accepted. Additional references were added including link to the GIS database My Milton Keynes and My Maps (<https://mapping.milton-keynes.gov.uk/mymiltonkeynes.aspx>).
- Various paragraphs were revised following comments to remove any duplications.
- Where appropriate, in response to comments, additional clarification for some terms and guidance has been included.
- Several responses highlighted the need to expand the SPD to cover other matters, such as creating a database for MK environmental assets. However, these would fall outside the scope of the SPD.
- A number of responses alluded to the inclusion of on-site enhancement features. This has been included and references to supporting sources made.

2.8 Following consideration of the consultation responses, the SPD has been revised and is set out in **Annex B**.

3. Implications of the Decision

Financial	Yes	Human rights, equalities, diversity	No
Legal	Yes	Policies or Council Plan	Yes
Communication	No	Procurement	No
Energy Efficiency	No	Workforce	No

(a) Financial Implications

The SPD provides information on calculating compensation that, in a measurable way, can be used to demonstrate a net-gain to biodiversity value is likely to be achieved by a development. The SPD follows the use of the metric developed by Government (Defra) through Natural England which measures the biodiversity impacts of a development.

At present the level of net gain to be achieved is negotiated on a site-by-site basis, in accordance to Plan:MK policies, the NPPF and other material considerations.

The draft Environment Bill would require a minimum net gain of 10% increase over the predevelopment condition. This would become compulsory and is expected to come into effect during a two-year transition period which begins when the Environment Bill receives Royal Assent. The SPD provides clarification and guidance on how the metric should be used and applied.

Where development would result in significant harm to a protected/priority species/habitat appropriate planning conditions or obligations will be required to adequately mitigate and/or compensate for the harm.

(b) Legal Implications

The Town and Country Planning (Local Planning) (England) Regulations 2012 set out the statutory requirements for the consultation and adoption of Supplementary Planning Documents. Under section 19(3) of the Planning and Compulsory Purchase Act 2004, we must prepare SPDs in accordance with our Statement of Community Involvement. If adopted, in line with statutory requirements, the SPD will be a material consideration in the determination of planning applications. Once adopted, the SPD will apply to all planning applications not yet determined.

The Environmental Assessment of Plans and Programmes Regulations 2004 require a formal environmental assessment of certain plans and programmes which are likely to have significant effects on the environment. If a proposed plan or project is considered likely to have a significant effect on a protected habitat or site, then an appropriate assessment of the implications, in view of any conservation objectives, must be undertaken under Part 6 of the Conservation of Habitats and Species Regulations 2017.

The draft SPD was screened in relation to the need for a Strategic Environmental Assessment (SEA) and/or a Habitats Regulations Assessment (HRA). It was determined that neither were required, as the document does not create new policy and does not propose new areas of land use.

(c) Policies or Council Plan

The SPD refers to the relevant planning policy, legislation and best practice guidance. It sets out what information should be provided with planning applications, how it should be evaluated, and how the final form of development should respond to that aspect of the natural environment. This will be implemented through the determination of planning applications to deliver high quality design where biodiversity net gains are achieved across future proposed developments in Milton Keynes.

4. Alternatives

4.1 Do-Nothing

The 'do nothing' option is not considered appropriate. Plan:MK (Para 12.24) states that a SPD will be compiled to set out how the biodiversity metric should be applied to measure biodiversity losses or gains from proposed developments.

4.2 The 'Preferred Option' is to adopt the Biodiversity: Supplementary Planning Document which will reflect current national and local planning policy, including Plan:MK.

5. Timetable for Implementation

5.1 The SPD will be adopted at 5pm, 18 June 2021, unless subject to a call-in. Who and when can call-in a decision is defined in Milton Keynes Council Constitution.

List of Annexes

- Annex A Representations received on the draft Biodiversity: Supplementary Planning Document consultation
- Annex B Milton Keynes Council, Biodiversity: Supplementary Planning Document, June 2021

List of background papers

None.