

TITLE OF REPORT: **Registration as a Responsible Body for the use of Conservation Covenants**

REPORT OF: **Peter Udall, Strategic Director, Economy, Innovation and Growth**

Purpose of Report

1. The Government has recently established the process by which public bodies and other organisations involved in the conservation of the natural or historic environment can apply to be registered as Responsible Bodies for the purpose of entering into conservation covenants.
2. The report asks for the Council to become a Responsible Body so initially it may benefit in using its land for the benefit of off-site biodiversity net gain. In effect providing the opportunity to receive payment for managing its land in an ecologically beneficial way.
3. The report makes a recommendation for the Council to be registered as a Responsible Body with the Department for Environment, Food and Rural Affairs (DEFRA).

Background

4. The UK is one of the most nature-depleted countries in the world. The Government, to halt and reverse the decline, are making it mandatory for developers to deliver a biodiversity net gain (BNG) on new developments requiring planning permission of 10% and has identified various mechanisms in which this can be secured for a period of at least 30 years. One of the mechanisms is for landowners to enter a conservation covenant with a Responsible Body. A conservation covenant is a private, voluntary agreement between a landowner and a Responsible Body to conserve the natural or heritage features of an area of land.
5. Developers will need to create and/or enhance habitats to deliver biodiversity net gains – also known as biodiversity units – in the red-line boundary of the development site or by relying on the delivery of off-site units. Conservation covenants have an important role. Where a developer wishes to rely, including in part, on off-site biodiversity gains to meet or contribute to the 10% BNG requirement, those biodiversity units must be listed on a register of off-site habitats maintained by Natural England. Habitats can only be included on the register if they are legally secured either through a conservation covenant or a

section 106 planning obligation.

6. The Responsible Body regulates and enforces the promises made by the landowner under the agreement. Responsible Bodies are responsible for monitoring the actions of the landowner in fulfilling the terms of the conservation covenant, for which they can charge the landowner.
7. The Council as a Responsible Body is not obliged to enter into a conservation covenant should it choose not to.

Proposal

8. The proposal is for Gateshead Council to become a Responsible Body. Initially, it is anticipated the Council will only be required to act as a Responsible Body for a conservation covenant where the developer is a neighbouring local authority and where the neighbouring local authority wishes to use its own land for the purpose of delivering offsite net gains or for heritage assets. In this scenario, a local authority cannot enter into a S106 agreement with itself, hence the need for a conservation covenant to legally secure the offsite BNG or secure the heritage asset. This would be a reciprocal arrangement to allow Gateshead Council to benefit from the approach. The use of conservation covenants may also be offered to developers if it was felt appropriate.
9. Following an approach by a neighbouring local authority, Council officers will consider the proposal and, where satisfied, negotiate any charges for executing the duties of the Responsible Body.

Recommendations

10. It is recommended that Cabinet:

- (i) Approves that Gateshead Council applies to be registered as a Responsible Body for the purpose of entering into conservation covenants.
- (ii) Agrees to delegate authority for the purpose of entering a conservation covenant to the Service Director for Climate Change, Compliance, Planning and Transport.

For the following reason:

To ensure that the Council is ready as a landowner to meet the opportunities that changes in legislation provide to manage its landholding and maximise BNG.

Policy Context

1. On a local level, Conservation Covenants will directly help deliver the Councils Local Plan supporting policies to improve nature and facilitating development.

Background

2. The UK is one of the most nature-depleted countries in the world. According to a study by the Natural History Museum the UK has only half the biodiversity that existed before the Industrial Revolution, putting it in the bottom 10% of countries worldwide. Much of this depletion has taken place in the past 50 years.
3. The Government, to halt and reverse the decline, are making it mandatory for developers to deliver a biodiversity net gain (BNG) on new developments requiring planning permission of 10% and has identified various mechanisms in which this can be secured for a period of at least 30 years. One of the mechanisms is for landowners to enter into conservation covenants with a Responsible Body. Only relevant organisations can be registered as a Responsible Body for the purpose of entering conservation covenants with landowners.
4. A conservation covenant is a private, voluntary agreement between a landowner and a Responsible Body to conserve the natural or heritage features of an area of land, introduced under Part 7 of the Environment Act 2021.
 - A conservation covenant must be for the public good and have a conservation purpose.
 - The provisions of the covenant are legally binding and are registrable as a local land charge.
 - To be able to enter into conservation covenants, an organisation must apply to DEFRA to be registered as a Responsible Body.
 - The application determination period is up to 12 weeks.
5. The application process is free and is completed online at <https://www.gov.uk/government/publications/conservation-covenants-apply-to-become-a-responsible-body>
6. Conservation covenants will support the provision of biodiversity net gain (BNG) in accordance with the Environment Act. From January 2024, it will be mandatory for new developments requiring planning permission to provide at least 10% BNG. It is also anticipated that mandatory BNG will come into force in 2025 for nationally significant infrastructure projects given development consent under the Planning Act 2008.
7. Developers will need to create and/or enhance habitats to deliver biodiversity net gains – also known as biodiversity units – in the red-line boundary of the development site or by relying on the delivery of off-site units. Units can also be purchased directly from the government using its statutory credit scheme; however, this will be made deliberately expensive so as not to undermine the local market for off-site biodiversity units.

8. Conservation covenants have an important role in the new BNG legal regime. Where a developer wishes to rely, including in part, on off-site biodiversity gains to meet or contribute to the 10% BNG requirement, those biodiversity units must be listed on a register of off-site habitats maintained by Natural England. Habitats can only be included on the register if they are legally secured either through a conservation covenant or a section 106 planning obligation.
9. Conservation covenants can also be used to secure the conservation of land, or the setting of, places of archaeological, architectural, artistic, cultural, or historical interest. This can include protecting, restoring, or enhancing those assets. But the focus of the legislation is nature.
10. The Responsible Body regulates and enforces the promises made by the landowner under the agreement. Responsible Bodies are responsible for monitoring the actions of the landowner in fulfilling the terms of the conservation covenant, for which they can charge the landowner. Fees are a matter to be negotiated between the parties therefore the role of the Responsible Body can be undertaken on a full cost recovery or an income-generating basis.
11. When a Responsible Body is approached by a landowner who needs to enter into a conservation covenant, there is no obligation on the Responsible Body to do so; it is entirely free to decide whether it wants to do so depending on the circumstances of that case and the Responsible Body's capacity or desire to enter into covenants at that time.
12. The Environment Act 2021 introduced the concept of conservation covenants. A conservation covenant is a legally binding agreement between a landowner and a Responsible Body that commits the land to specific restrictions over an extended period, potentially in perpetuity, irrespective of successor ownership.
13. Conservation covenants are expected to become a useful tool in legally securing long term biodiversity net gain either in tandem with or replacing Section 106 agreements where related to delivering offsite biodiversity measures required through the planning process. It should be noted that the Council will still expect all biodiversity improvements to take place on-site wherever possible.
14. In September 2023 DEFRA opened applications for organisations to apply to become a Responsible Body. Although Local Authorities are not required to apply, it is the expectation that most will do so. Multiple Responsible Bodies can cover the same geographical area.
15. By nominating ourselves as a Responsible Body the Council does not commit to entering into any individual agreements but does commit to submitting an annual report on the number of conservation covenants entered into. There is little information on this at present, but the Secretary of State may make regulations in the future providing for how annual returns are to be made.
16. It should be noted that the Council cannot enter a Covenant with itself on land in our ownership. Northumberland County Council have already applied to be a Responsible Body and neighbouring authorities are considering their positions. It is understood that a conservation covenant can be moved between Responsible Bodies if all parties agree. This may present an opportunity for a regional Responsible Body to be set up in the future to take on BNG related conservation

covenants.

17. By becoming a Responsible Body, the Council will safeguard the ability to use this function in the future. The government has yet to provide detailed guidance regarding the use of conservation covenants, but it is considered prudent to ensure the Council is able to take advantage of this function in the future, where it is considered the most appropriate and effective vehicle to deliver the Council's aims.

Consultation

18. Consultation has taken place with the Leader, Deputy Leader and Environment and Transport Portfolio.

Alternative Options

19. The Council could choose to not be a Responsible Body, but this risks neighbouring Council's choosing not to perform the role of Responsible Body for conservation covenants where Gateshead Council is the developer and wishes to use its own land for the purpose of offsite biodiversity net gain measures. This could hamper the development aspirations of the Council (Gateshead) and prevent the delivery of much needed housing and employment growth and improved land management to encourage biodiversity

Implications of the recommendation

20. Resources

- **Financial Implications** - The Strategic Director Resources and Digital confirms that there are no cost implications arising from this report. Acting as a responsible body has potential to become an income-generating Activity.
- **Human resource Implications** – Registration does not require the Council to act as a Responsible Body for conservation covenants. The decision to enter a conservation covenant will be take on a case by case, subject to the Council having sufficient capacity to discharge its legal duties and ensuring full cost recovery.
- **Property Implications** - the Council cannot enter into a legal agreement with itself, entering into a conservation covenant with another Responsible Body will be required when securing biodiversity net gain on Council-owned land. Having a reciprocal arrangement with a neighbouring Council(s) will allow investment in nature on Council owned land

21. Risk Management Implications

There are no risks associated with this report.

22. Equality and Diversity Implications

There are no Equality or Diversity implications with this report.

23. Crime and Disorder Implications

There are no Crime and Disorder implications from this report.

24. Health Implications

Conservation covenants will be used to protect natural and historic assets that contribute to health and wellbeing, where access is available to the public.

25. Climate Emergency and Sustainability Implications

Conservation covenants will be used to secure new and enhanced habitats that contribute to climate change mitigation and adaptation including sequestering carbon, reducing flood risk, improving water and air quality.

26. Human Right Implications

There are no human rights implications from this report.

27. Ward Implications

All.