

## **ANNEX 5: BIODIVERSITY AND GEODIVERSITY**

Conserving and enhancing biodiversity and geodiversity is one of the key aims of sustainable development. To address the impacts of development, the Council will, where appropriate, seek planning obligations to provide for nature conservation and geodiversity interests.

Torfaen boasts a wide range of wildlife and the planning system has a vital role to play in maintaining and enhancing biodiversity. The County Borough of Torfaen is characterised by high quality natural habitats and contains areas of national and local conservation importance. There are 4 ecological Sites of Special Scientific Interest (SSSI), approximately 200 Sites of Importance for Nature Conservation (SINC) and 7 Local Nature Reserves (LNR). The Afon Lwyd is an important ecological corridor in Torfaen alongside the Monmouthshire and Brecon canal. Key habitats include deciduous woodland, wildlife corridors, wetlands, species rich grassland and heath land. Woodlands in general comprise approximately 5% of the total area in Torfaen and there are examples of ancient woodlands in Cwmbran. The Local Biodiversity Action Plan (2003) identifies that there are approximately 20 UK priority species found in Torfaen with approximately 136 species of conservation concerns and a further 40 species of interest. Furthermore, Section 42 of the Natural Environment and Rural Communities Act 2006 sets out a list of species and habitats of principal importance for conservation of biological diversity in Wales.

Geodiversity refers to the variety of soils, rocks, fossils, minerals and natural processes that make up the Earth's physical landscape and structure. There are no designated geological SSSI's in Torfaen; but the Torfaen LDP has, based upon the British Geological Society "South Wales RIGS Audit - Torfaen CBC, 2012", designated 7 Regionally Important Geological Site (RIGS).

### **5.1 Policy and Guidance**

The following policy and guidance is specifically relevant. Torfaen Local Development Plan policies are generally set out in full in Part One to this SPG.

- Future Wales The National Plan 2040 (February 2021) Policy 9 states *"In all cases, action towards securing the maintenance and enhancement of biodiversity (to provide a net benefit), the resilience of ecosystems and green infrastructure assets must be demonstrated as part of development proposals through innovative, nature based approaches to site planning and the design of the built environment."*
- Planning Policy Wales 11<sup>th</sup> Edition (February 2021) paragraphs 6.2.12, 6.4.3, 6.4.9 (box) and 6.4.21
- Natural Environment and Rural Communities Act 2006
- Habitats Directive (92/43/EEC)
- Conservation of Habitats and Species Regulations 2010
- Technical Advice Note 5: Nature Conservation and Planning (2009)

This Technical Advice Note provides advice about how the land use planning system should contribute towards protecting and enhancing biodiversity and geological conservation. It should be read in conjunction with Planning Policy Wales.

TAN 5 confirms that under Section 40(1) of the Natural Environment and Rural Communities Act (NERC) 2006, every public authority has a duty to *"have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity"*.

Natural heritage incorporates both biodiversity and geodiversity to include flora, fauna, geological and geomorphological features. Paragraphs 3.4.1 and 3.4.2 set out the need for a Local Planning Authority to produce a biodiversity SPG.

Paragraph 4.7.1 identifies that obligations are particularly useful for delivering measures in a proposed development to avoid, mitigate or compensate for potential harm to nature conservation and to ensure proposed natural heritage benefits are delivered in a timely and appropriate way.

- Minerals Technical Advice Note 1: Aggregates (2004): paragraphs 49, 55 - 61, 96, 100, 112, 114, 126, 134 - 137 & D7.
- Minerals Technical Advice Note 2: Coal (2009): Paragraph 87 states *“Regionally Important Geodiversity Sites (RIGS) are designated for their scientific, educational, historic or aesthetic features as the most important places for geology and geomorphology outside SSSIs. Integrity sites contain finite deposits or landforms which are irreplaceable if destroyed; exposure sites provide exposures of a rock which is extensive or also well-developed below the ground and offer opportunities for RIGS creation.”*
- Welsh Office Circular 13/97 Planning Obligations: paragraphs B2, B7, B11 and B14.
- Welsh Government Circular 016/2014 The Use of Planning Conditions for Development Management: paragraphs 3.10, 4.21, 4.22 and 5.80.
- The Community Infrastructure Levy Regulations 2010 (as amended): Regulations 122 & 123.
- Torfaen Local Development Plan (2013) Policies: All site allocations, S2 (Sustainable Development), S3 (Climate Change), S4 (Place Making / Good Design), S7 (Conservation of the Natural and Historic Environment), S8 (Planning Obligations), BW1 (General Policy - Development Proposals), H5 (Provision for Recreation, Open Space, Leisure Facilities and Allotments), M3 (Tir Pentwys Preferred Area for Aggregates (*includes Llanhilleth Quarry RIGS*)), CF4 (Protection of Important Urban Open Space), CF5 (Protection of Allotments and Recreation & Amenity Open Space) and BG1 (Locally Designated Sites for Biodiversity and Geodiversity).

## 5.2 Circumstances in which Obligations will be Sought

A contribution relating to ecology and biodiversity may apply to any scale and any type of development, according to the specific characteristics of the proposed site and the potential impact from the proposed development. This includes both direct and indirect impacts on the site and linked areas (e.g. water corridors, green corridors, foraging areas). There is no standard threshold or trigger and as such, discussion with the Council as to the likelihood of such a contribution is recommended at the earliest point.

In considering potential development, sites will be assessed for ecological value using the most up to date information sources, including Section 42 listings (NERC Act 2006), the Local Biodiversity Action Plan and information held by South East Wales Biodiversity Records Centres (SEWBREC). Where there is a reasonable likelihood of ecological value, developers will be expected to undertake the required ecological survey work to determine the extent of species / habitats on site. This survey work will assist in determining necessary mitigation measures. A summary of the appropriate times for surveying different species has been attached as Appendix 5A.

All circumstances will be considered on their individual merits and will be assessed on a case by case basis. The over-riding principle with regard to ecology and biodiversity is to ensure a net benefit to biodiversity and where enhancement above and beyond that required to mitigate the impact of the development is possible, it will be encouraged.

Obligations (as opposed to planning conditions) may be used where mitigation, enhancement or compensation measures require a long term or complex commitment, or where a financial contribution and / or transfer of land is required. The nature and scale of the obligation(s) will reflect the impact of the development and the need for improvements, management and monitoring of biodiversity and geodiversity.

## 5.3 Nature of Obligation

The Council's approach to ecology and biodiversity is based upon the Five Point Approach to Planning Decisions for Biodiversity as set out in the Planning for Biodiversity Good Practice Guide (RTPI) (1999) and advocated in TAN 5 (2009) as follows:-

Information - Is more information about the site's biological resource needed? Is more information about the development and its potential effects needed? Is the significance of the effects clear? Is there internal or external expertise that can help to inform the decision?

Avoidance - Have all adverse effects on wildlife species and habitats been avoided wherever possible?

Mitigation - Where adverse effects are unavoidable have they been or can they be minimised by use of mitigation measures that can be guaranteed, for example by conditions or planning obligations / agreements?

Compensation - Where, despite mitigation, there will be residual adverse effects that mitigation cannot reduce further, have they been or can they be compensated by measures that try at least to offset the harm? Can the compensatory measures be guaranteed by conditions or planning obligations / agreements?

New Benefits - Where there would be no significant harm to wildlife habitats, are there opportunities to provide new benefits for wildlife, for example by habitat creation or enhancement, and can these new benefits be guaranteed by planning obligations / planning agreements?

It is preferable for all impacts to be avoided or mitigated. Compensation or enhancement is not an alternative to avoidance or mitigation if that is possible. Where this is not possible effects should be compensated for by the enhancement or creation of features of comparable scale and nature to that which is lost or compromised. In such cases, the Council will consider the attachment of conditions or enter into legal agreements that would overcome the potentially damaging effects of development on habitats and / or species. Where new benefits would be appropriate, they would be linked to the scale and nature of the impact and the need for compensation.

Where a mitigation or compensation plan is required, it should incorporate aims and objectives, mitigation / compensation measures, means of delivery, timescales and a scheme of monitoring and reporting. Mitigation / compensation measures should be technically feasible, demonstrate good practice, be ecologically viable in terms of size, extent and siting, be fully resourced and have a guaranteed long term funding commitment.

Some impacts cannot be compensated for e.g. the loss of ancient woodland and in such circumstances, the loss of the feature would have to be considered as a material consideration in the assessment of the planning application.

Enhancement or creation of features should wherever possible, be primarily on site (i.e. closest to the point of loss). The first priority should be like for like replacement of features however, where the nature conservation features of the site would be changed by the proposed development, the measures may not be able to comprise like for like replacement. In such circumstances, a specific assessment of the constraints and opportunities of the site may provide for the provision of alternative features to a similar scale as those lost. Where provision can only be addressed off site, a financial contribution in lieu of the provision may be acceptable.

Examples of potential obligations to address ecology and biodiversity issues comprise:-

- Restricting development in identified / sensitive areas so as not to harm existing features
- The undertaking of specific measures to address the individual requirements of an identified species and / or habitat
- Securing on-site works required to enhance existing features, e.g. woodlands, hedgerows, ponds, grassland, bird nesting boxes, bat roosting boxes
- Securing the creation of new features within the site, e.g. wildlife planting, pond, nature reserve area
- Securing a financial contribution to enhance or create appropriate conservation assets nearby e.g. accessibility improvements, interpretation facilities, nature reserve, stepping stone habitats

- Securing a programme of monitoring and / or management associated with the development site or a nearby related site
- Measures to reduce the visual impact of development proposals within the local landscape by the provision of structure or focus planting.

The longer term management of facilities and habitats must also be addressed. In circumstances where the developer provides new facilities within the site, it will be necessary to ensure a suitable management and monitoring plan covering a minimum of 20 years and the provision of resources to implement the plan. A Management Plan (to include monitoring programme as appropriate) should be produced in accordance with the Countryside Council for Wales Minimum Format Management Plan and should include appropriate financial costs. Management options on a longer term basis than 20 years should be addressed where appropriate.

In some circumstances, it may be appropriate to transfer a specified part of the site to the Council, accompanied by a commuted sum to enable the Council to undertake the management of the site for a period of 20 years.

The Council will consider adopting land on a site by site basis. Greater weight will be placed on adopting sites which are of particular ecological or local biodiversity significance. This could also include land comprising protected trees or important woodland.

Where a Management Plan is not provided prior to determination of the planning application, a planning obligation may be necessary to ensure appropriate provision for the long term management and care of the land.

#### **5.4 Scale of Obligation**

The extent of the contribution required will directly relate to the impact upon the site and locality of the proposed development. As stated previously, the priority is to ensure no net loss of biodiversity as a result of development although where further enhancement is possible, it will be encouraged. The obligations required will therefore vary according to the specifics of each site and each proposed development.

It is the Council's expectation that wherever possible, works should be delivered directly by the developer in accordance with details and specification to be agreed with the Council. The developer would be expected to fund the development of the detailed scheme and carry out the works to the appropriate standard.

Where a financial sum to contribute towards off site facilities / features is agreed in principle, the works agreed will be costed with reference to SPON's External Works and Landscape Price Book, Tir Gofal management costings (or its replacement, Glastir), and records of similar work undertaken by the Council.

Where a Management Plan is required, it must provide reasonable costings for implementation of the proposed measures for a minimum period of 20 years. The Management Plan should include monitoring where appropriate.

Where an area of land is to be transferred into Council ownership, the land shall be transferred free of charge and accompanied by a commuted sum to enable the Council to undertake the required management for a period of 20 years. Alternatively, a Management Company should be established to provide for management of the land / facility in perpetuity.

#### **5.5 Standard Heads of Terms**

The following definitions and clauses are suggested for use as appropriate in Section 106 legal agreements and unilateral undertakings where an ecology and biodiversity obligation is required.

## Definitions

**“Ecology and Biodiversity Land”** means the land hatched on Plan [ ] annexed to this Agreement where the Ecology and Biodiversity Works shall be provided

**“Ecology and Biodiversity Obligation”** means a planning obligation to be determined at the time of the submission of full details of the Development (or any subsequent full application for planning permission) to be secured by the Council in accordance with the adopted Planning Obligations SPG current at the time the submission or application is made in the interests of protecting ecological and / or biodiversity resources

**“Ecology and Biodiversity Payment”** means the sum of £ .... pounds (£...) increased (but not decreased) by RPI from the date of the resolution to grant the Planning Permission to the date of payment to undertake the Biodiversity Works

**“Ecology and Biodiversity Safeguarded Land”** means the land hatched red on Plan [ ] annexed to this Agreement on which no development or occupation shall occur in the interests of protecting ecological and / or biodiversity resources

**“Ecology and Biodiversity Scheme”** means a detailed specification for the avoidance mitigation compensation and enhancement of wildlife habitats or features of ecological importance on the [specified land] which shall include timescales and proper costings

**“Ecology and Biodiversity Works”** means the works to be undertaken in accordance with the Ecology and Biodiversity Scheme

**“Management Scheme”** means an agreement for the management of [specified land] in accordance with the terms of section 39 of the Wildlife and Countryside Act 1981 (as amended)

**“Management and Monitoring Payment”** means the sum of £ .... pounds (£...) increased (but not decreased) by RPI from the date of the resolution to grant the Planning Permission to the date of payment to implement the Management and Monitoring Plan

**“Management and Monitoring Plan”** means a detailed and costed scheme submitted in support of the Planning Application for the management and monitoring of the [specified land] over a period of twenty years produced in accordance with [ ] or other such plan produced by Natural Resources Wales at the time the application is made

**“Fully Serviced”** means the proper connections within the Site so as to connect it to surface water drainage facilities and to mains foul drainage facilities water gas electricity and telecommunications and enjoys direct access to the public highway or a roadway constructed to adoptable standards connecting to the public highway which is the subject of an agreement under s38 of the Highways Act 1980

## Example Clauses

### Payments

1. Prior to the Commencement of Development the Owner / Developer shall pay to the Council the Ecology and Biodiversity Payment
2. The Council shall use the Ecology and Biodiversity Payment to undertake the Ecology and Biodiversity Works [as specified within the Ecology and Biodiversity Scheme]
3. Prior to the Commencement of Development the Owner / Developer shall pay to the Council the Management and Monitoring Payment

4. The Council shall use the Management and Monitoring Payment to implement the Management and Monitoring Plan

#### Provision of Ecology and Biodiversity Works

5. Prior to the Commencement of Development the Owner / Developer shall submit to the Council for the Council's approval the Ecology and Biodiversity Scheme such approval shall not be unreasonably withheld or delayed
6. The Owner / Developer shall carry out the Ecological and Biodiversity Works in accordance with the approved Ecology and Biodiversity Scheme and shall complete the Ecology and Biodiversity Works prior to the Occupation of the (.th) Dwelling
7. The Owner / Developers shall transfer the [specified land] to the Council prior to the Occupation of the (.th) Dwelling
8. The Council shall use the [specified land] for purposes related to ecology and biodiversity and for no other purpose

#### Management

9. The Owner / Developer shall at all times implement the requirements of the Management and Monitoring Plan

#### Land Transfer




10. The Owner / Developer shall not use or occupy the Ecology and Biodiversity Safeguarded Land for any purpose
11. Prior to the Commencement of Development the Owner / Developer shall transfer the Ecology and Biodiversity Safeguarded Land to the Council at no cost together with associated rights of access
12. The Council shall use the Ecology and Biodiversity Safeguarded Land as a [Local Nature Reserve] and for any purpose necessary and incidental thereto but for no other purpose

#### Outline Planning Permission

13. The Owner / Developer shall enter into a further legal agreement to secure any required Ecology and Biodiversity Obligation as appropriate when the full details of the proposals are submitted as reserved matters or a full planning application

## Appendix 5A: Timetable for Ecological Surveys

Survey	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Extended Phase 1												
Plants												
Breeding Birds												
Wintering Birds												
Badgers												
Bat Activity and Emergence												
Bat Roost Sites												
Bat Winter Hibernation Sites												
Hazel Dormouse												
Otters												
Reptiles												
Water Voles												
Great Crested Newts (adults in ponds)												

	indicates the likely optimum time for survey
	indicates that surveys may be possible, but that it is a sub-optimal time
	indicates that surveys cannot be undertaken

This table is intended to provide indicative guidance only. Professional advice should always be sought when planning survey programmes.

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