

Delegated Decision Report

Decision below £250k



Subject:	Approval to sign up to the Greater Manchester Combined Authority's Off-site Biodiversity Net Gain Responsible Body Service
Decision maker: Senior Officer	Emma Barton, Deputy Chief Executive (Place)
Decision maker: Cabinet Member	Cllr Elaine Taylor, Cabinet Member for Neighbourhoods and Deputy Leader
Decision date:	9 March 2026
Report author:	Elizabeth Dryden-Stuart, Strategic Planning and Information Team Leader
Ward (s):	Not applicable

Reason for decision

The purpose of this report is to seek approval to sign up to the Greater Manchester Combined Authority's (GMCA) Responsible Body Service function to facilitate delivery of Biodiversity Net Gain on council-owned sites.

Recommendation(s)

To grant approval for Oldham Council to sign the Service Level Agreement with the Greater Manchester Combined Authority (see draft attached at Appendix 3) for their Responsible Body Service function to facilitate delivery of Biodiversity Net Gain on council-owned sites.

1. Introduction

- 1.1 Biodiversity Net Gain (BNG) became mandatory in 2024, requiring a 10% biodiversity uplift for all eligible new developments across England. If this uplift cannot be delivered within the boundaries of the development site itself, the gain must be compensated for and delivered elsewhere (off-site BNG). This could be through offsite habitat enhancement or creation and / or the purchase of biodiversity units on a habitat bank or statutory credits (as a last resort).
- 1.2 The off-site BNG system is however market driven, with developers able to choose where and from whom to purchase off-site BNG units. Currently, there are two registered (privately owned) habitat banks in operation within the Borough where developers can purchase BNG units – Shaw Habitat Bank and Crompton Moor (a cross-boundary site with Rochdale Council). There are also limited registered banks across GM generally. The implications of this are that developers have limited opportunities to purchase off-site biodiversity units locally. This has the potential to stall development coming forward

and may result in the benefits being lost from within the Borough, with the off-site BNG being delivered elsewhere in Greater Manchester or even nationally.

- 1.3 It is considered that the use of appropriate council-owned land as off-site habitat banks should be pursued as part of a suite of options for the provision of BNG units across the Borough. To ensure that Oldham benefits from the creation of BNG units secured through new development, whilst also enhancing nature and biodiversity generally across the Borough.

This report sets out the:

- options available to the Council for the delivery of off-site BNG on council-owned sites;
- proposed GMCA Responsible Body Service;
- preferred option; and
- next steps and the identification of council-owned sites for use of Habitat Banks.

2. Background

2.1 One way to avoid the loss of biodiversity uplift to sites outside the Borough is to bring forward our own habitat banks on suitable council-owned land.

2.2 To be able to sell off-site BNG units, habitat banks need to be officially registered on Natural England's national register. To enable this, habitat banks require a 30-year legal agreement to secure the site, via:

- The use of S106 agreements – however, local authorities are unable to enter agreements with themselves unless they a) lease the land; b) create a Special Purpose Vehicle; or c) delegate the planning enforcement function relating to the delivery of BNG to a neighbouring local authority. The advantages and disadvantages of each of these options have been considered and is summarised in Appendix 1. They were all found to be prohibitive.
 - Entering into a Conservation Covenant with a Responsible Body – these bodies must apply to and be approved by government to create, manage, and monitor Conservation Covenants, which are contracts between the Responsible Body and respective landowner (including local authorities). Having considered the advantages and disadvantages of this (see Appendix 1 also) and the other options mentioned above, the signing of a Conservation Covenant with a Responsible Body is considered the most appropriate way in which a local authority can secure a site(s) for the delivery of BNG.
- 2.3 Given the lack of Responsible Body options for local authorities in Greater Manchester, GMCA was asked by the GM local authorities, in 2024, to apply to Defra to become a Responsible Body. The application was approved in December 2024 and provides GMCA with the legal authority to enter Conservation Covenants, including with local authorities, to enable them to secure their habitat banks for off-site BNG.

- 2.4 Since this time, GMCA has:
- carried out an options appraisal on whether, and how, the service could be commissioned; and
 - following the identification of a preferred option from said appraisal, designed the Responsible Body Service, including its financing, resourcing and legal implications.

3. GMCA Responsible Body Service

- 3.1 Details of GMCA's proposed Responsible Body Service are contained in a report that went to the GMCA on 28 November 2025 and which is attached at Appendix 2. This report outlines a proposal for GMCA to establish an Off-Site Biodiversity Net Gain (BNG) Responsible Body Service for the Greater Manchester local authorities. Through this report GMCA is requested to a) note the background to the Responsible Body Service; and approve the commissioning of the Responsible Body Service.
- 3.2 The Council, along with seven other GM authorities (Bolton, Bury, Salford, Stockport, Tameside, Trafford and Wigan), has expressed interest in signing up to GMCA's Responsible Body Service subject to costs, formal decisions required internally and other local authorities signing up. Manchester and Rochdale are not in a position to sign up at this point in time.
- 3.3 The Responsible Body Service has been designed in conjunction with both Manchester City Council (MCC) Shared Legal Service and the Greater Manchester Ecology Unit (GMEU), with support from the 10 Greater Manchester local authorities.

Roles and responsibilities

- 3.4 There are three main aspects to the Responsible Body Service:
- Validation – GMCA to check that the correct documents have been submitted.
 - Verification – GMCA and GMEU to review documentation, prepare the conservation covenant for agreement by the local authority and monitoring schedule, and make arrangements for the signing of the covenant with an agreed Habitat Management and Maintenance Plan in place.
 - Auditing – GMEU to audit ecological monitoring reports.
- 3.5 The GMCA, as Responsible Body, would provide the auditing and enforcement functions required to allow the land to be registered as off-site BNG with Defra. Whilst the Council would be responsible for selling the BNG units and delivering the agreed habitat enhancements works.

Financial implications

- 3.6 There would be two main costs for use of the Responsible Body Service:
1. Fixed 'subscription' cost - This element requires local authorities to commit to a minimum subscription of 3 years covering the period during which habitat banks are

expected to come forward for validation and verification. Those local authorities who sign up for the service will pay a consistent fee for each year of the 3 year subscription period which will fund the costs of the dedicated GMCA Project Manager post.

2. Variable costs associated with the verification and auditing of an identified habitat bank – The subscription fee for the Responsible Body Service does not include for verification and auditing of a specific habitat bank that the authority wishes to register / bring forward. These costs will vary depending on the complexity of a specific site.
- 3.7 Importantly, the service will operate on a cost-neutral basis. All costs, including the subscription fee and third-party costs, will be recouped by the GMCA through an annual recharge back to the local authorities. The local authorities will recoup these costs as part of the sale of BNG units (ensuring that the pricing is appropriately set to enable delivery of all components of BNG without placing additional strain on the Council's budget. A breakdown of indicative costs for the fixed and variable elements can be found in Annex C of Appendix 2.

Legal requirements

- 3.8 There are two main agreements that will underpin provision of the GMCA Responsible Body Service:
1. An agreement between GMCA and the Council which sets out the overall terms of the Responsible Body Service to be provided. This is the subject of this report.
 2. Once appropriate council-owned sites have been identified the Council will then need to enter a Conservation Covenant with GMCA (in its role as the Responsible Body) to secure the habitat banks for conservation over the required 30-year period. Depending on how and when appropriate sites are identified there may be one overarching covenant or multiple covenants entered into on a site-by-site basis.

Signing up to the Responsible Body Service

- 3.9 To sign up to GMCA's Responsible Body Service the Council must sign a Service Level Agreement (see draft at Appendix 3). This agreement includes the role and responsibilities of both the GMCA and the Council to ensure that expectations are clear and understood. The agreement also includes details of the fixed 'subscription' costs as well as how variable costs are identified and addressed. Delegated approval is therefore sought for the Council to sign up to said agreement.
- 3.10 Once local authorities have signed their respective agreements, GMCA will then need to sign them. GMCA propose to sign these in one tranche once all those authorities signing up to the service have done so. It is anticipated that all agreements between the GMCA and districts will be signed in time for the service to be launched April 2026.

4. Preferred option and recommended approach

- 4.1 There are still many legal and financial issues that will need to be resolved by the Council before determining when and where to create habitat banks on Council land.
- 4.2 However, in view of the projected demand for BNG units for development in Oldham, it is prudent to start the process of preparing to use Council owned land for creating BNG units should there be no local market emerging. Due to the length of time involved and complexities of setting up the processes to enable the Council to use its land for BNG unit creation, it is recommended Oldham works with GMCA acting as the Responsible Body and sign the Service Level Agreement at Appendix 3.
- 4.3 This approach provides the necessary resilience and flexibility and allows the Council to avail of the experience and knowledge at GMCA. If the Responsible Body route proves viable then subscribing to the service will reduce our start-up costs compared to other options and allow the Council to benefit from the critical mass of several LAs working together at a GM level.
- 4.4 In order for the GMCA proposed Responsible Body route to be in place in time to meet the coming demand for BNG units, a commitment from interested districts is required by GMCA. This includes a requirement to subscribe to the Responsible Body service for at least 3 years. The costs of this undertaking are approximately £19,000 over 3 years. The recommendation is therefore for Oldham Council to make this initial commitment and subscribe to the GMCA Responsible Body service for the next 3 years.
- 4.5 There are several other benefits to the preferred approach:
- Oldham Council must demonstrate how it is planning to enhance biodiversity across the Borough as part of the biodiversity duty placed on public authorities. Utilising Council land for creating BNG units to compensate development is a key means of fulfilling this statutory duty and is identified as a potential action in our emerging Biodiversity Duty report.
 - Selling BNG units via habitat banks on Council-owned sites will ensure that the Council maintains as much biodiversity as possible within the Borough as development takes place and is a way to enhance and manage land positively funded by developers in the absence of available revenue / budget.
 - In addition, the provision of units on Council-owned land is an important way for the Council to achieve the enhanced statutory responsibilities under the amended provisions of the Natural Environment and Rural Communities Act 2006.
 - GMCA are the Responsible Authority for the GM Local Nature Recovery Strategy (LNRS). Therefore, utilising GMCA as the Council's Responsible Body provider strengthens the collaborative endeavour of the LNRS and allows Oldham to

collaborate with other GM local authorities who will be using this service. Strong relationships and collaboration already exist across work on nature recovery across Greater Manchester, so utilising the offer presented by GMCA as a Responsible Body makes strategic sense. There is also clear alignment in delivering aligned statutory duties and strategic priorities for nature between the council and GMCA as public bodies.

5. Next Steps

Identification of council-owned sites for use of Habitat Banks

- 5.1 This section provides information on the progress officers have made with regards to the identification of suitable habitat banks. The agreement of which will be the subject of a report to Cabinet in due course.
- 5.2 Habitat Management Plans have been prepared for several sites across the Borough to provide a baseline position regarding biodiversity, setting out how this could be enhanced and the amount of BNG units that may be generated. These sites were initially chosen due to the ecological benefits that are presented by their natural characteristics and geographical spread. The sites are:
- Bank Top and Constantine Street
 - Calf Lane
 - Crompton
 - Daisy Nook
 - Friezland
 - Oldham Edge
 - Tandle Hill
- 5.3 Bank Top / Constantine Street and Oldham Edge have been identified as the first tranche.
- 5.4 To date, officers have carried out high-level title due diligence relating to two of these sites. This has included the identification of any land within the proposed sites that, whilst owned by the Council, is held on charitable trust for the benefit of the public. Any disposal of, or change in the use of, this land would need to be in accordance with the procedures in the Charities Act 2011.
- 5.5 This is just one example of legal work which will need to be completed before a decision to use a specific site can be made. Further title due diligence would need to be carried out on the other sites identified.
- 5.6 In addition, there is also potential for Northern Roots to become a habitat bank, a matter which is being explored further.

5.7 In the meantime, a report will be brought to Cabinet in due course to establish Bank Top / Constantine Street and Oldham Edge as habitat banks for the delivery of off-site BNG. In doing so, the Council will be committing to set aside this land for the delivery of BNG for a minimum of 30 years. Note, that any playing pitches have been excluded from the HMMP's.

Alternative option(s) to be considered *(please give the reason(s) for recommendation(s))*

See Section 4 and Appendix 1.

Consultation *(include any conflict of interest declared by relevant Cabinet Member consulted)*

Not applicable

Risks

As set out in the attached GMCA report at Appendix 2, the Responsible Body Service presents some risks for both GMCA and the local authorities, which have been carefully assessed and mitigated through the development of the proposals. These are set out in Appendix 2 and relate to capacity, legal and financial risks.

Implications

Financial	<p>The projected costs for the Responsible Body Service (based on the number of authorities who sign up) are £6,192.43 for 2026, £6,378.21 for 2027 and £6,569.55 for 2028. Therefore, the total cost for Oldham Council to sign-up for use of the service would be £19,149.19 spread over 3 years.</p> <p>It is expected that this cost will be funded from the Biodiversity Net Gain Grant received earlier this year, totalling £27,142. Grant conditions confirm that this grant can be carried forward for use in future years.</p> <p>(John Hoskins)</p>
Legal	<p>The Council has the legal power to sign up to GMCA's Responsible Body Service.</p> <p>The proposed Service Level Agreement includes the role and responsibilities of both the GMCA and the Council to ensure that expectations are clear and understood, and details of the fixed 'subscription' costs as well as how variable costs are identified and addressed.</p>

	(A Evans)
Procurement	<p>The purpose of this report is to grant approval for the Council to sign up to GMCA's Responsible Body Service. There are no procurement implications at this stage.</p> <p>It will be necessary to ensure that the appropriate Contract Procedure Rules are followed when identifying partners for the delivery of the Biodiversity Gain Plans on specific habitat banks.</p>
Equality impact including implications for Children and Young People	(A Porter) Not applicable
Other	None

Has the relevant Legal Officer confirmed that the recommendations within this report are lawful and comply with the Council's Constitution?	Yes
Has the relevant Finance Officer confirmed that any expenditure referred to within this report is consistent with the Council's budget?	Yes
Are any of the recommendations within this report contrary to the Policy Framework of the Council?	No


Background Papers under Section 100D of the Local Government Act 1972


1. See Appendix 2 - GMCA Report on off-site Biodiversity Net Gain Responsible Body Service for relevant background information

Appendix

1. Options appraisal of routes to securing BNG in Oldham
2. GMCA Report on off-site Biodiversity Net Gain Responsible Body Service
3. Draft Service Level Agreement for the Greater Manchester off-site Biodiversity Net Gain Responsible Body Service

Report author sign-off	Eliabeth Dryden-Stuart
Role	Strategic Planning and Information Team Leader
Date of sign-off	4 March 2026

Approval	
	
Officer approval sign-off	Emma Barton
Role	Deputy Chief Executive
Date of sign-off	06 March 2026

Approval	
Member(s) approval sign-off	
Role	Cllr Elaine Taylor- Statutory Deputy Leader and Cabinet Member for Neighbourhoods
Date of sign-off	10 th March 2026

Appendix 1: Options appraisal of routes to securing BNG in Oldham

To be able to sell off-site BNG units, habitat banks need to be officially registered on Natural England’s national register. To enable this, habitat banks require a 30-year legal agreement to secure the site. There are four options for doing so:

1. Through the use of a S106 agreement – however, local authorities are unable to enter agreements with themselves unless they:
 - a. lease the land;
 - b. create a Special Purpose Vehicle; or
 - c. delegate the planning enforcement function relating to the delivery of BNG to a neighbouring local authority.

2. Entering into a Conservation Covenant with a Responsible Body – these bodies must apply to and be approved by government to create, manage, and monitor Conservation Covenants, which are contracts between the Responsible Body and respective landowner (including local authorities).

The principles of each of these routes, and their advantages and disadvantages, are summarised below.

Entering into a Conservation Covenant with a Responsible Body
<p>A conservation covenant is a private voluntary agreement between a landowner and a ‘responsible body’ to do, or not do, something on their land for a conservation purpose for the public good, i.e. conserve the natural or historical environment of the land. A conservation covenant continues to be effective even if the land changes ownership.</p> <p>In this instance conservation covenants with responsible bodies can operate in the following ways:</p> <ul style="list-style-type: none"> • As an agreement for the local authority to carry out the biodiversity unit provision works, with the Responsible Body monitoring the work to ensure that responsibilities are met. • As an agreement for the Responsible Body to carry out the works with the local authority taking on the monitoring responsibilities.
<i>Option Appraisal</i>
<p>The Council could enter into a conservation covenant with a Responsible Body (as approved by Defra).</p> <p>The Council, as landowner, would enter into obligations relating to the creation, management, and maintenance of habitat to secure the BNG, whilst the responsibility for monitoring and enforcing the conservation covenant would rest with the Responsible Body.</p> <p>This is considered the simplest legal mechanism for registering the land and the sale of BNG units, as it should only require the completion of a single legal agreement before the land can be entered onto the BNG register.</p> <p>The degree of separation between the Council and the Responsible Body may also enhance transparency and public confidence, particularly when compared with the other options where the Council retains more direct control.</p>

However, there are potential cost drawbacks to this approach as responsible bodies are likely to charge significant legal, monitoring, and administrative fees, and require financial security (such as bonds or deposits) to ensure they can step in and enforce the covenant over its full term.

Acknowledging that the use of conservation covenants may be the simplest way in which authorities can deliver off-site habitat banks and the potential cost drawbacks, GMCA has recently gained Responsible Body status and are proposing a Responsible Body Service for all interested local authorities across Greater Manchester.

The cost of the GMCA's Responsible Body Service depends on how many authorities subscribe. The initial demand is for interested districts to sign up for a minimum of three years. At present the projected costs are £6,192.43 for 2026, £6,378.21 for 2027 and £6,569.55 for 2028. Therefore, the initial cost for Oldham Council to sign-up for use of the GMCA Responsible Body service would be £19,149.19 spread over 3 years.

A site-specific fee would then be charged for the validation and auditing of each habitat bank.

This approach would also mean that the Council would be responsible for selling units and delivering BNG as per the agreed Biodiversity Gain Plan. Specifically:

- Whilst the cost of this will be recouped by the sale of BNG units, there will inevitably be a time lag and at first the financial cost will need to be borne by the Council until the project is up and running. Whether this be through the appointment of a BNG / Biodiversity Officer (either full or part-time) or through the recognition that relevant staff may be taken from other priorities (in the short-term whilst sufficient funds are generated to fund said Biodiversity Officer).
- There will also be the cost of delivering the Biodiversity Net Gain plan itself – this may be done in-house or through consultants. Either route would have financial implications which again would need to be borne the Council (particularly the management of the consultants) until such a time as the costs can be recouped.

Establishing a 'BNG' Special Purpose Vehicle

In this instance the Council would create a new company as a 'special purpose vehicle' (SPV). This company would be responsible for the creation and maintenance of the off-site biodiversity units created on Council-owned land, which would be leased to the SPV for a period of at least 30 years).

This approach would ensure the necessary degree of separation for entering S106 legal agreements relating to biodiversity enhancements on each habitat bank, while the site remained in the proprietorship of the Council. Developers would need to provide proof of allocation of units from the SPV to discharge the BNG pre-commencement condition and pay for them under terms provided by the SPV.

Option Appraisal

Through this arrangement the Council would lease (for a period of at least 30 years) Council land (as identified for delivering BNG) to the SPV to deliver, maintain and manage the biodiversity units. The SPV, in its capacity as the leaseholder of the relevant BNG site, would then have sufficient legal interest to enable it to enter into a Section 106 agreement with the

local planning authority (which would monitor the delivery of the BNG units by the SPV under the agreement). The SPV would then be in a position to offer BNG units to either the Council and/or developers.

The creation of a SPV would enable the Council to retain a high degree of control. An advantage with this approach is that it allows the use of a Section 106 agreement in a form determined by the Council, provided it meets the requirements for registration of the land on the BNG register. Once the SPV is established and the land is transferred or leased to it, the process of completing the Section 106 agreement should be relatively expeditious and cost effective.

However, there are potential drawbacks to this option:

- The perception that the Council is effectively entering into a Section 106 agreement with itself may raise concerns about the enforceability of the obligations in practice.
- The SPV would require substantial legal and administrative work to set up (for example, incorporation, governance and leases), and ongoing management once established.
- The grant of any lease would be considered a 'disposal' in accordance with the legislation and the sites for habitat banks are likely to be classified as public open space. As such any 'disposal' of the land (via lease) would need to be advertised in accordance with s.123 of the Local Government Act 1972 and due process followed thereafter. This presents a potential complication and an added drawback to utilising routes that requires leasing of land.

Reciprocal S106 arrangement

In this option, the Council would make an arrangement with another local planning authority and agree to enter into a S106 legal agreement(s) with each other to monitor the provision of habitat units on each other's land holdings that are subject to planning obligations. As with other options, developers would need to provide proof of allocation of units from the Council to discharge the BNG pre-commencement condition, and pay for them under terms provided from the Council.

Option Appraisal

Whilst the legislation does not require the other LPA to be a neighbouring authority, from a practical perspective (particularly in relation to monitoring and enforcement), it would be preferable for the Council to consider local planning authorities within close geographic proximity. To date there has been no indication that any other local planning authority would be willing to enter such an arrangement with the Council.

In addition, this route would require extra Council resource in terms of managing and monitoring the s106 agreements.

Lease of council owned land to a third party to create and deliver BNG units

The final option available to the Council would be to lease its land to a third party who would, on our behalf, carry out the necessary enhancement works to create off-site BNG units for sale to developments. This would require the Council to provide a minimum lease of 30 years to a third-party organisation.

Option Appraisal

The Council could lease its land (identified for delivering BNG) to a trusted third party for a minimum period of 30 years. Under this arrangement, the third party would be responsible for the creation, management, and maintenance of the biodiversity units. As leaseholder, the third party would hold sufficient legal interest in the land to enter into a Section 106 agreement with the local planning authority, which would enable said authority to monitor the delivery of the BNG units in accordance with the agreement.

Potential drawbacks to this option are that:

- It is anticipated that the third party would expect to retain a proportion of the revenue generated from the sale of BNG units, given their responsibility for delivering and maintaining the habitat on the land. Consequently, the Council would likely realise less value from the BNG units compared to other options.
- Leasing of Council land would again be required to facilitate this option and as described previously under the SPV option, this presents a further legal complication and potential negative public perception.

Appendix 2: GMCA report on off-site BNG Responsible Body Service

See separate document.

Appendix 3: Service Level Agreement to be signed between GMCA and Oldham Council

See separate document.