

Report of the Portfolio Holders for Economic Development and Asset Management, and Resources and Personnel Policy.

Biodiversity Net Gain Monitoring Fees

1. Purpose of Report

To set out a charging schedule for monitoring of Section 106 (S106) agreements for Biodiversity Net Gain (BNG) sites for all sites where such an obligation exists and to justify this and seek approval. This is in accordance with several of the Council's Corporate Aims but especially the priority of Environment – protect the environment for the future.

2. Recommendation

Cabinet is asked to RESOLVE that the charging schedule for the Biodiversity Net Gain monitoring fees set out in appendix 1 be approved.

3. Detail

Mandatory Biodiversity Net Gain (BNG) commenced in February 2024, with any development larger than one dwelling legally required to contribute. This means there is a requirement for any developer to show an enhancement of 10% BNG on their respective development, and this must be in place for 30 years. The main reasoning behind this is historically the UK's BNG has significantly diminished and this approach would try and redress that balance. In some instances, this issue can be covered through a planning condition, but for the majority of cases this matter will be outlined within an accompanying S106 agreement agreed alongside any planning permission. The developer will be required to provide the Local Planning Authority (LPA) with a copy of its site monitoring reports at agreed intervals throughout the 30-year period.

Monitoring of activities by the LPA carry a significant cost, given that the burden of ongoing agreements will grow over time. The monitoring of land in BNG agreements will require review of condition reports and site visits by a qualified Ecologist at regular intervals. There will also be a further burden on Administration, Finance, and Legal. This is a resource/capacity issue that cannot be accommodated within the existing regime and as such a charging structure is proposed. The intention is to make full recovery of costs associated with Council Officer's monitoring the progress of BNG sites. Members are asked that the costs outlined in the **Appendix 1** are agreed. **Appendix 2** outlines some case studies from other LPA areas for comparison.

4. Key Decision

This report is a key decision as defined under Regulation 8 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

5. Financial Implications

The comments from the Head of Finance Services were as follows:

There is a risk that not imposing monitoring fees would be detrimental to the Council's finances. Costs are expected to rise significantly over 30 years and the total caseload of agreements to be monitored will increase. An over-simplified charging structure could result in the Council failing to recover its costs in full or risk significantly over-charging developers. The monies collected for the BNG monitoring process will need to be ring-fenced within an earmarked reserve.

6. Legal Implications

The comments from the Monitoring Officer / Head of Legal Services were as follows:

Section 93 Local Government Act 2003 gives the Council the power to charge for discretionary services. Furthermore, regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 No 948, as amended by the Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019 gives specific powers for monitoring fees.

Whilst there are no direct legal implications of the new fees' calculator. New legal agreements to secure BNG will be mandatory in the BNG legislation so whilst the authority will have an increased legal burden resulting from BNG, the levying of a fee has no effect on that legal burden. There is current practice already within Legal Services to charge for work on S106 agreements (for any purpose). This proposal relates to additional planning and administration officer time associated with these additional S106 agreements. At present any such fees would have to be determined and negotiated ad hoc with each developer. The fees and charges calculator simply provides a standardised way to derive that fee in a way that accounts for true costs over 30 years.

7. Human Resources Implications

Not applicable.

8. Union Comments

Not applicable.

9. Climate Change Implications

The climate change implications are contained within the report.

10. Data Protection Compliance Implications

Not applicable.

11. Equality Impact Assessment

Not applicable.

12. Background Papers

Nil.

Appendix 1

Justification

It is proposed that Broxtowe Borough Council charging structure follows a basic one off fee approach, based on the size of the development (which is turn directly links to amount of BNG). This approach is proposed based on the size of the borough and the number of BNG S106 agreements we are likely to receive.

Though this approach will need to be revisited in the future and amended if necessary.

Very small sites (less than 1ha)	£2000
Small sites (up to 5ha)	£4000
Medium Sites (up to 15ha)	£6000
Large Sites (above 15ha)	£8000
Very Large Sites (over 30ha)	£10,000

Larger sites and higher difficulty are reflected in increased time allowance or site visits and for reviewing the reports.

BNG is evaluated against Biodiversity Units which is the unit of measurement used by the Biodiversity Metric.

Policy Context

BNG must be achieved through creation of habitats on the development site, or where a deficit remains, on sites elsewhere (known as offsite BNG). The habitat value is quantified in Biodiversity Units (BUs) using a statutory metric. Areas of habitat are split into three distinct biomes: area, riverine, and hedgerow/line of trees, and then the area is assessed based on its quality and this is recorded as a BU score. The higher the quality of the BNG habitat the higher the BU score. Then any BNG enhancement (off or on site) must indicate a BU score which is 10% higher than that assessed initially, to comply with BNG regulations.

All habitats created or enhanced offsite must be secured by a Planning Obligation for a minimum of 30 years. Any significant BNG habitat onsite must also be likewise secured for the same timeframe.

Planning obligations are legal obligations entered into to mitigate the impacts of a proposed development. Planning obligations are normally secured through a legal agreement under S106 of the Town & Country Planning Act 1990 (as amended) and are a mechanism through which development proposals can be made acceptable in planning terms.

The Local Government Act 2003 -Section 93 provides the legislative basis for local authorities to charge for discretionary services such as the administration/monitoring of obligations within the S106 Agreement. An amendment to the CIL and S106 regulations in September 2019 (addition of Regulation 10) clarified that monitoring contributions could be sought through a S106 agreement provided (a) the sum to be paid fairly and reasonably relates in scale and kind to the development; and (b) the sum to be paid to the authority does not exceed the authority's estimate of its cost of monitoring the development over the lifetime of the planning obligations which relate to that development.

Furthermore, the PPG Community Infrastructure Levy, Paragraph: 028 Reference ID: 74-028-20240214 provides for the local planning authorities to charge a monitoring fee through section 106 planning obligations, to cover the cost of monitoring and reporting on delivery of BNG obligations within that S106 agreement. (- <https://www.gov.uk/guidance/biodiversity-net-gain>)

Monitoring fees can be used to monitor and report on any type of planning obligation, for the lifetime of that obligation. The PPG provides for the mechanism for charging the fees. It states that the "fees could be a fixed percentage of the total value of the S106 agreement or individual obligation; or could be a fixed monetary amount per agreement obligation (for example, for in-kind contributions). Authorities may decide to set fees using other methods. However, in all cases, monitoring fees must be proportionate and reasonable and reflect the actual cost of monitoring. Authorities could consider setting a cap to ensure that any fees are not excessive".

All off-site and significant on-site BNG will have to be secured by a legal agreement, specifying an agreed Habitat Management and Monitoring Plan. The developer or third parties (such as a Habitat Bank provider) acting on their behalf will provide the LPA with monitoring reports at specified intervals. Key monitoring points throughout the 30-year period, will be set out in the s106, for example in years 1, 3, 5, 10, 15, 20, 25 and 30 after the initial work to establish the habitats. (Total of eight monitoring years per site.)

At some monitoring intervals an external ecologist may also need to conduct a site visit to verify the ecology report. They may need to discuss remedial management actions with the biodiversity gain site manager, for example if the habitats are not on track to meet standards committed to in the agreement.

All of these activities carry a significant cost, given that the burden of ongoing agreements will grow over time as new developments, tied to 30-year commitments are granted planning permission. Further, the costs of staff time can be expected to grow year on year, so inflation effects should be considered. As an illustration, an assumed inflation rate of 3.5%, compounded yearly would make a cost approximately 2.8 times greater by year 30 compared to year one.

Fee Charging

This report presents a proposed charging structure for Broxtowe Borough Council based on a monitoring fees calculator. The intention is to make full recovery of costs associated with Council Officers monitoring the progress of BNG sites.

The monitoring fees charging structure accords with the principle of making it cost neutral to the authority and in accordance with Regulation 10 of the CIL regulations.

The charging structure is based on estimated officer time at each monitoring event, related to both size (total habitat area to be monitored, in hectares) and complexity of the site (based on the highest technical difficulty category of the habitats included, using the difficulty scores in the Statutory Metric). We also include allowances for corporate overheads and inflation.

For benchmarking, the charging structures for BNG monitoring in several other English LPAs have been reviewed. These case study examples are included in Appendix 2, namely Leeds City Council, Buckinghamshire County Council, New Forest District Council, Bracknell Forest Council, Calderdale Council and South Cambridgeshire District Council.

In summary, most of the case study LPAs charge a one-off fee payable at the signing of the legal agreement to cover the costs over the 30 years and most include an index-linked element to account for inflation. Most also have charges tiered by size of the BNG site and some also by technical difficulty of creating or enhancing the habitats therein. It is proposed that Broxtowe generically follows a '*charges tiered by size of the BNG site*' approach.

Of all the benchmarked Councils, the lower end examples start their scale of charges at around £2,000 to £5,000. The upper end ranges are more variable, some open ended for large complex sites. Leeds City Council have a simple two-tier scale, charging £2,500 or £5,000 with the threshold for the higher fee being sites yielding more than 10 Biodiversity Units. However, it is not clear how they have arrived at those figures.

Buckinghamshire County Council developed the most comprehensive staff-time calculator spreadsheet: the smallest and simplest sites are charged £8,618 ranging to the largest and most complex sites charged at £50,316, for greater than 20ha. Buckinghamshire specified the most monitoring intervals (10) and used a much higher staff day rate of £700.

One benchmarked Council, Bracknell Forest, charges pro-rata by hectares, e.g. a 25ha site (large in BNG terms) would be £90,000 (versus £50,000 in the Buckinghamshire calculator) for the 30-year monitoring costs.

Appendix 2

Benchmarking of BNG Monitoring and Reporting Fees: Case study examples for monitoring fees in other local planning authorities.

Council	Details	Comments
Leeds City Council	<ul style="list-style-type: none"> -Charge a one off-fee for 'Biodiversity Monitoring & Reporting Body' function -Two-tier fee, scaled by number of Biodiversity Units (BUs) involved in the agreement -£2,500 for up to 10 biodiversity units or £5,000 for over 10 biodiversity units (where units purchased directly from a private Habitat Bank or on developers' own land*) 	<ul style="list-style-type: none"> -No indication of allowance for price inflation over 30 years. -Simple, easy to understand. -This applies only to non-council Council land. -They suggest cost is in line with similar monitoring obligations of other S106 items such as Highways
Buckinghamshire County Council	<ul style="list-style-type: none"> -Charging a one-off fee for Biodiversity Monitoring -Developed a Monitoring Fees Calculator – an excel spreadsheet based on estimated staff time -Uses an assumed officer day rate of £700 -Uses an assumed inflation rate of 3.5% per annum -Uses an assumed corporate overheads multiplier of 1.4 (ie 40%) -Fees Calculator based on several input variables and pre-determined values: -Size of BNG offset site (small 0-10ha, medium 11-20ha, large >20ha) -Technical Difficulty of BNG habitats involved (Low, Moderate, High – use highest present on site) 	<ul style="list-style-type: none"> -Rather involved; initially complicated to understand but generates the figures automatically. -The calculator would be consulted for each new agreement. -Useful approach and the calculator could be adapted or simplified. -Fixed inflation projection could draw criticism. -Could also be used for levying a fee at time of each monitoring event rather than a one-off up-front payment, index linked for actual inflation using CPI or RPI.

Council	Details	Comments
	<ul style="list-style-type: none"> -Number of monitoring events = 10, plus initial review of plan year zero – Some years reviewing report only, some years report plus site visit (4, 5 or 7 occasions depending technical difficulty) -Estimated time per report or site visit (range: small sites of low diff to large sites of high difficulty) -Track record/ experience level of site manager (a lower scale if they already manage more than 10 existing sites for nature) 	
New Forest Council	<ul style="list-style-type: none"> -Charging a one-off fee for Biodiversity Monitoring -Based on 10 officer days (at £400) plus 2.5 general officer support days (at £250) for review of reports -Based on five monitoring points at years 2, 5, 10, 20 and 30 -Flat fee of £4,625, 'developments up to 50 units' (but units here meaning dwellings) -Developments over 50 units 'Minimum £4,625. Additional rate charged if physical inspection likely to take additional time.' -'Subject to annual indexation uplift using the Retail Prices Index (RPI).' 	<ul style="list-style-type: none"> -RPI indexation applied to agreements is revised annually, but as it is still a one-off fee charged up- front this does not factor the ongoing cost (of officer time etc) increasing over the 30 years. -On the other hand, a very straightforward approach to inflation and there will be an income stream from new agreements which rises year on year with RPI. -Their proposals, as of March '22, also set out different fees for the range of other s106 agreements eg POS, affordable housing.
Bracknell Forest Council	<ul style="list-style-type: none"> -Charging a one off-fee for 'administration monitoring' of S106 agreements for BNG. -Scaled by area; up to one hectare £3600 -Over one hectare £3,660/ha pro rata 	<ul style="list-style-type: none"> -Based on estimate of hours 60hrs/ 60+hrs spent in admin and monitoring. -No mention of indexation so does not factor costs increasing over 30 years. -Pro rata the most expensive eg a 25ha site x £3,600 = £90,000 compared

Council	Details	Comments
		to Buckinghamshire's £50,000 for 20-40ha, high complexity.
Calderdale Council	<p>-One-off charges payable 'to cover facilitation, monitoring and strategic biodiversity delivery':</p> <p>-£2,000 per Biodiversity Unit BU 'to cover the cost of monitoring over 30-year period'</p> <p>-£1,000 per BU 'strategic biodiversity delivery charge'</p> <p>-£2,000 per BU one-off 'facilitation charge' for Council owned land-banks</p>	<p>-The above were arrived at based on a proposal to sell BUs on Council land priced at £20,000 per BU.</p> <p>-The monitoring cost and the facilitation charge each being 10% of £20,000, the strategic charge being 5% of £20,000.</p> <p>-For Habitat Banks, only the strategic charge would be levied, £1,000.</p> <p>-Monitoring fee plus Strategic charge applies to other cases.</p> <p>-Facilitation charge applies to council land banks for baseline surveys, management plans etc.</p> <p>-Strategic fee to contribute to biodiversity projects such as LWS surveys and management advice.</p> <p>-Would query whether the strategic fee can be justified for BNG or whether a statutory duty of LPA.</p>

Council	Details	Comments
South Cambridgeshire District Council	<ul style="list-style-type: none">- 'District Council Ecologist Monitoring Fee' payable at each monitoring event - 'To cover the cost of monitoring the Habitat Site and reviewing the Management Plan and the Monitoring Report' -Paid in 10 instalments years 1, 2, 3, 4, 5, 10, 15, 20, 25, 30 -Index Linked by Way Of CPI	-Appears to be the only one of these case studies levying a fee at each monitoring event.