

**FORM 2**

**NOTICE OF DECISION OF CABINET MEMBER**

Pursuant Section 15(4) of the Local Government Act 2000, as amended by section 63 of the Local Government and Public Involvement in Health Act 2007, the senior executive member may discharge any of the functions that are the responsibility of the Cabinet or may arrange for them to be discharged by another member of the Cabinet or Officer. On 1<sup>st</sup> December 2010, the Council adopted the Strong Leader Model for Corporate Governance 2011 as required under Part 3 of The Local Government and Public Involvement in Health Act 2007 (The 2007 Act).

In accordance with the authority delegated to me, I have made the following decision:

<b>Subject</b>	<b>Decision</b>	<b>Reason for decision</b>	<b>Date for Decision to be taken</b>
Biodiversity Net Gain Monitoring Fees	To agree the Biodiversity Net Gain (BNG) Monitoring Fee approach to enable the Planning Team to introduce a fee to help cover the cost of monitoring, reporting and possible enforcement action on biodiversity net gain (BNG) that is being delivered as part of a development.	The Council considers it is necessary to impose a BNG monitoring fee policy to help cover the cost of monitoring and reporting on planning obligations relating to the mandatory requirement for developments to deliver 10% biodiversity net gain.	21 <sup>st</sup> December 2023

**I confirm that the appropriate statutory officer consultation has taken place with regard to this decision.**

Dated: 21<sup>st</sup> December 2023

Signed: *M. J. Hart*  
Council Leader: .....  
Marcus Hart

## Strong Leader Report

### Legal Agreements - Biodiversity Net Gain Monitoring Fees

<b>OPEN</b>	
<b>CABINET MEMBER:</b>	Dan Morehead, Cabinet Member for Economic Regeneration, Planning and Localism
<b>RESPONSIBLE OFFICER:</b>	Kate Bailey, Head of Strategic Growth
<b>CONTACT OFFICER:</b>	Helen Hawkes ext 2517
<b>APPENDICES:</b>	N/A

#### **1. PURPOSE OF REPORT**

- 1.1 The purpose of this report is to agree the Biodiversity Net Gain (BNG) Monitoring Fee approach to enable the Planning Team to introduce a fee to help cover the cost of monitoring, reporting and possible enforcement action on biodiversity net gain (BNG) that is being delivered as part of a development.

#### **2. RECOMMENDATION**

- 2.1 For the Cabinet Member for Economic Regeneration, Planning and Localism to approve the following additions to the council's schedule of planning obligation monitoring fees:
- 2.1.1 The biodiversity monitoring fee of £750 per BNG unit to be paid to the Council on all planning applications received where a mandatory 10% BNG is required to be provided by virtue of the Environment Act 2021 and/or any regulations made thereunder.
- 2.1.2 For all applications received prior to the BNG mandatory requirement and are not transferring land to the Council to deliver and/or entering into an agreement for it to maintain on-site BNG, a monitoring fee of £219.00 per BNG unit to be paid to the Council.
- 2.1.3 For all applications received prior to the BNG mandatory requirement and are transferring land to the Council to deliver and/or entering into an agreement for it to maintain on-site BNG, a monitoring fee of £146.00 per BNG unit to be paid to the Council.

#### **3. BACKGROUND**

- 3.1 The government published the 25 Year Environment Strategy in 2018 signalling that they would strengthen the Biodiversity Duty and introduce a mandatory system for development of BNG (i.e., making sure that the habitats for wildlife associated with a development are on completion of that development in a better state than before the development took place).
- 3.2 At local level, Policy SP.23 of the Wyre Forest District Local Plan (adopted 2022) requires developments to deliver measurable net gains in biodiversity.

3.3 The Environment Act 2021 states that 10% BNG would become mandatory for all development commencing with major developments in January 2024 and small-scale developments, excluding those exempt from the mandatory BNG requirement in April 2024. The dates in January and April are subject to parliamentary timetabling as they will require regulations to be made.

3.4 The Town and Country Planning (Development Management Procedure)(England) Order 2015 defines Major Developments as follows:

Major Developments involves any one or more of the following:

- (i) the number of dwellinghouses to be provided is 10 or more;
- (ii) the development is to be carried out on a site having an area of 0.5 hectares or more and the development is not known;
- (iii) the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more;
- (iv) development carried out on a site having an area of 1 hectare or more.

3.5 Small Scale Development involves any one or more of the following:

- (i) the number of dwellinghouses to be provided is between 1-9;
- (ii) the development is to be carried out on a site having an area less than 0.5 hectares and the development is not known;
- (iii) the provision of a building or buildings where the floor space to be created by the development is less than 1,000 square metres;
- (iv) development carried out on a site having an area of less than 1 hectare.

3.6 Applications exempt from the mandatory BNG requirement are:

- Section 73 applications which relate to a small scale development which was originally granted planning permission up until April 2023.
- Householder development as defined by the Town and Country Planning (Development Management Procedure)(England) Order 2015;
- Development granted planning permission by a development order under section 59;
- Development subject to the de-minimis exemption (i.e. a development that does not impact a priority habitat and impacts less than 25 square metres (e.g. 5m by 5m) of habitat, or 5 metres of linear habitats such as hedgerows);
- Self-build and custom build development which consists of no more than 9 dwellings and is carried out on a site, which has an area no larger than 0.5 hectares and consists exclusively of dwellings which are self-build or custom housebuilding as defined in Section 1 (A1) of the self-build and Custom Housebuilding Act 2015; and
- Development of biodiversity gain site.

3.7 At planning application stage, all planning applications that are subject to mandatory BNG will be required to submit the latest Statutory Biodiversity Metric and demonstrate through a Biodiversity Net Gain Plan that the development would

deliver biodiversity net gain either on site or off site, which might not be within the Wyre Forest District.

- 3.8 At post-development stage, the developer would be required through a Section 106 Agreement or a Conservation Covenant to prepare a BNG Report at 2, 5, 10, 15, 20, 25 and 30 years following the date of commencement of the development to assess the biodiversity value of the site and identify whether the habitat is in compliance with the approved Biodiversity Net Gain Plan. The report would be submitted to and approved in writing by the Local Planning Authority and any additional ecological enhancement measures would be required to be implemented prior to the next report being submitted. The results of the report would be recorded on the Local Planning Authority's system and the national BNG database. If the BNG is not achieved or no report is submitted to the Local Planning Authority at each required year, then appropriate planning enforcement action may need to be undertaken to ensure compliance of the planning obligation secured by the Section 106 Agreement or the Conservation Covenant (as the LPA would be the responsible body).
- 3.9 In October 2023, the Council appointed a Tree and Biodiversity Officer to work within Development Management to review and evaluate BNG for developments, which enables a consistent approach to the BNG metric and BNG Gain Plans especially when this involves technical elements such as habitat classification, the manipulation of inputs into the BNG metric and how off site BNG can be considered.
- 3.10 The implementation of the mandatory BNG requirement will have an impact on the resource of the Tree and Biodiversity Officer, Technical Support Officers, Planning Enforcement Officers and Council's Solicitor and it is therefore appropriate to make a charge.
- 3.11 There are large developments where applications have already been submitted that will not be caught by the mandatory, statutory requirement. Nevertheless, those applications will be required, under policy, to provide a measurable 1% BNG. The council therefore needs to recover costs of monitoring that requirement, in addition to the already adopted schedule of monitoring fees.
- 3.12 To meet the requirements for biodiversity net gain, the Planning Service may also need to obtain a new I.T. Biodiversity Module from IDOX, at a cost of £5,500, along with an annual subscription fee of £4,000 and a one-off fee for staff training (£4,200). The total Biodiversity Module will cost £13,700.

#### **4. The Proposal**

- 4.1 It is proposed to reduce the additional resource impact by adopting a BNG monitoring fee for all Small-Scale Developments and Major Developments that are accompanied by a Section 106 Agreement or Conservation Covenant, which would enable the Council to potentially: recruit additional staff if required; obtain Drones or other A.I to undertake the review of habitat units; and obtain a specific IT biodiversity module to record and process BNG plans and reports.
- 4.2 The ability to adopt a BNG monitoring fee is set out in regulation 122 of The Community Infrastructure Levy Regulations 2010 No 948 as amended by the Community Infrastructure Levy (Amendment) (England) (No.2) Regulations 2019

with effect from 1 September 2019. The regulation states that such monitoring fees can be sought where;

- 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.

4.3 It is anticipated that the following resources would be required to administer and monitor a development that required one biodiversity unit to achieve 10% mandatory BNG, over 2, 5, 10, 15, 20, 25 and 30 years (7 periods). The hourly rates include on costs:

4.3.1 Tree and Biodiversity Officer – 3 hours x 7 periods (November 2023 Hourly Rate (On Costs) of £25.61) = £537.81

- Physical review of the submitted BNG report to determine compliance with the approved BNG plan, which may require a visit to the site located within or outside of the District to assess the habitat and written approval being provided by the Local Planning Authority.

4.3.2 Technical Support Officer – 0.5 hours x 7 (November 2023 Hourly Rate (On Costs) of £18.82) = £65.87

- Recording of responsible body/organisation or property/landowner contact details;
- Recording of approved biodiversity net gain report and any ecological enhancement measures identified and agreed;
- Inputting biodiversity net gain units in national database; and

4.3.3 Planning Enforcement Officer – if necessary (November 2023 Hourly Rate (On Costs) of £19.91)

- If planning enforcement action is necessary over the 7 periods.

4.3.4 Legal Services – if necessary in line with HM Courts and Tribunals guideline hourly rates-currently £255 per hour)

- Prosecution action.

4.4 The BNG monitoring fee would be charged per biodiversity unit and would be set at £750 per biodiversity unit, as calculated by the above staffing hourly rates, which covers the full costs anticipated for the Tree and Biodiversity Officer and Technical Support Officer and gives an allowance of £150 to cover potential costs for Enforcement and Legal Services. It should be noted that not all applications will require input from Planning Enforcement or Legal Services. The BNG monitoring fee of £750 is considered to be in proportion to the scale of work required to administer, monitor and enforce the mandatory BNG.

4.5 Therefore, to ensure the Planning Team can monitor compliance with the BNG mandatory requirement in terms of reviewing BNG reports at years 2, 5, 10, 15, 20, 25 and 30 it is recommended that a biodiversity monitoring fee is sought to secure

the resources to review and advise on Biodiversity Net Gains reports and potential enforcement to ensure BNG is implemented properly and effectively. This sum is considered to be in proportion to the work that will be involved in administering and monitoring the mandatory BNG and is unlikely to exceed the authority's estimate of its cost of monitoring the development over the lifetime of the planning obligations which relate to that development.

- 4.6 The proposed BNG monitoring fee would come into effect on the 1st January 2024, subject to the Council being designated a 'responsible body' by Defra. It would be applied to all Section 106 Agreements and Conservation Covenants from that date and would need to be payable on commencement of development. The Section 106 Agreement and Conservation Covenant would be used to transfer payment from the developer to the LPA for monitoring BNG over the 30 year period and would cover BNG units being provided within and outside the district.
- 4.7 When the application relates to a phased development, the BNG Monitoring fee would be payable at each Reserved Matters application.
- 4.8 The proposed BNG monitoring fee would be reviewed on an annual basis as part of the Fees and Charges policy to ensure that the fees collected reflect the true monitoring costs. It is proposed the first review would take place in 2025 and be applied in 2026, to allow an appropriate amount of time for the initial fees to bed in.
- 4.9 The BNG monitoring fee would cover costs of potential enforcement and legal fees. This is to ensure that Planning Services have sufficient resources to ensure the landowner is meeting their obligations and ability to take action if they do not. Paragraph 006 of the 'Draft biodiversity net gain planning practice guidance' dated 29.11.2023 advises that 'failure to comply with the general biodiversity gain condition by commencing development without approval by commencing development without approval of the Biodiversity Gain Plan will be a breach of planning control. Local planning authorities have a range of planning enforcement powers and have responsibility for taking whatever enforcement action may be necessary, in the public interest, in their area.
- 4.10 The council already charges a monitoring fee in respect of s106 agreement obligations as follows:

Small Developments (less than £1,500 contributions)	£250
Minor Developments (less than 10 dwellings)	£1,500 (up to 5 obligations) £500 per trigger for each additional obligation Monitoring fee capped at £2,500
Major Developments (10-199 dwellings)	£2,500 (up to 5 obligations) £500 per trigger for each additional obligation Monitoring fee capped at £5,000
Major Development (200-500 dwellings)	£3,500 (up to 5 obligations) £500 per trigger for each additional obligation Monitoring fee capped at £10,000

Large Scale Development (500+ dwellings)    £4,500 (up to 5 obligation)  
£500 per trigger for each additional  
obligation  
Monitoring fee capped at £10,000

- 4.11 Even where there is no mandatory reporting requirement, there is considerable time involved in monitoring to ensure that the biodiversity measures are delivered over a long period of time. It is therefore proposed that for applications that have been received, but not yet determined, and for applications received from now until the mandatory requirements are introduced, that a monitoring fee of £146.00 or £213.00 shall be introduced that just relates to BNG and is dependent on whether the Council is maintaining any on-site BNG, in addition to the existing monitoring fees. The BNG obligation will then not count towards the additional obligations if there are 5 or more, so there is no element of double charging.
- 4.12 If there are significant cost constraints affecting a development and a financial viability assessment has been undertaken and evident that the development would be unviable if all planning obligations necessary to make the development acceptable in planning terms were to be met, then the BNG monitoring fee would be given the lowest priority as set out below:

The Council's Cabinet report, dated 16th September 2020, sets out the priorities for Section 106 planning obligations for sites where there is a shortfall in meeting the costs of all obligations following a viability assessment. It was agreed that the Council will prioritise in the following order:

1. On and/or off site infrastructure necessary to make the development acceptable
2. Affordable housing
3. Open space and recreation
4. Education
5. Other stakeholder contribution requests such as infrastructure costs associated with health provision or the police

- 4.13 Since the Cabinet report at 4.12 was agreed it has since been agreed that a s106 monitoring fee is paid and so the new hierarchy proposed through the BNG approach is to order, after number five shown in 4.12, number 6 as the s106 Monitoring fee and number 7 as the BNG Monitoring Fee.

## **5. FINANCIAL IMPLICATIONS**

- 5.1 The costs of adopting the BNG monitoring fee policy mostly relate to staff time. It is anticipated that the resource generated from the monitoring fee will be made available to create capacity through increased staffing to support the process (if required), additional software and drones (if required).
- 5.2 Any Officer input required for management and reporting would be carried out by existing posts. The level of monitoring fees that will be generated will be related to the number of planning permissions that involve BNG requirements and cannot be accurately predicted at this time as we don't know the number of units in relation to each site. Furthermore, as the costs that it supports will be defrayed over 30 years, this does not mean that the fee income generates a windfall for the council or that it will close the financial gap. All income received will be ringfenced to meet in year or

future staffing and other cost liabilities. Balances will be held in an earmarked reserve to meet costs incurred in future years.

## **6. LEGAL AND POLICY IMPLICATIONS**

- 6.1 The ability for Local Planning Authorities to charge monitoring fees is enshrined in regulation 122 of the Community Infrastructure Levy Regulations 2010 No 948, as amended by the Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019 with effect from 1 September 2019.

## **7. RISK MANAGEMENT**

- 7.1 No significant risks are identified in respect of introducing this monitoring fee as the fee has been calculated in accordance with the requirements of the regulations. The level of the fee will be reviewed in future to ensure that it remains appropriate. As with other contributions that developers have to make as part of the development process, the addition of these fees may have marginal impacts on what other contributions can be afforded in a way that leaves developments financially viable.

## **8. CONCLUSION**

- 8.1 The Council considers it is necessary to impose a BNG monitoring fee policy to help cover the cost of monitoring and reporting on planning obligations relating to the mandatory requirement for developments to deliver 10% biodiversity net gain.
- 8.2 It is proposed that this BNG Monitoring fee will be charged from 1 January 2024 and will be reviewed annually from 2025 to ensure it keeps in line with rising costs.

## **9. CONSULTEES**

- 9.1 Statutory Officers  
9.2 Trees and Biodiversity Officer  
9.3 Planning Manager.

## **10. BACKGROUND PAPERS**

- 10.1 Not applicable