

TITLE	Responsible body status (Biodiversity Net Gain)
FOR CONSIDERATION BY	The Executive on Thursday, 14 March 2024
WARD	(All Wards);
LEAD OFFICER	Director, Place and Growth - Giorgio Framaliccio
LEAD MEMBER	Executive Member for Environment, Sport and Leisure - Ian Shenton

PURPOSE OF REPORT (INC STRATEGIC OUTCOMES)

The purpose of the report is to seek Executive approval to apply to the Department for Environment, Food & Rural Affairs (Defra) to become a Responsible Body (RB) and to enact the Council to be an RB should the application be successful.

Becoming an RB will allow Wokingham Borough Council to agree conservation covenants with landowners who wish to sell biodiversity units to developers. This approach will support the Council in ensuring a local market for Biodiversity Net Gain (BNG) units and BNG opportunities are maximised within the borough as opposed to developers needing to purchase units outside of the borough or from Natural England through the statutory biodiversity credit scheme.

With Wokingham Borough Council (WBC) as a RB, it will offer more options to landowners in the Borough to secure their land for long term conservation purposes, providing more opportunities for privately owned land in the borough to achieve beneficial habitat and environmental enhancements that will deliver wider public benefits.

The resource required in relation to becoming an RB will be staff time to make and progress the application in year 1 and it is considered that this will be achieved within existing resources. Future costs associated with being an RB (compliance checking, management plan reviews, enforcement, reporting) will be covered through a mechanism within the conservation covenants.

RECOMMENDATION

That the Executive:

1. Authorise the Director of Place and Growth to apply to the Department for Environment, Food & Rural Affairs (Defra) for Wokingham Borough Council to become a Responsible Body.
2. Authorise the Director of Place and Growth to enact being a Responsible Body should the application be successful.

EXECUTIVE SUMMARY

Executive approval is being sought to apply to the Department for Environment, Food & Rural Affairs (Defra) to become a Responsible Body (RB) in order to (where appropriate)

enter into conservation covenants with landowners in support of delivering Biodiversity Net Gain (BNG) within the borough.

BNG is an approach that ensures biodiversity is in an improved measurable state than before development took place. Mandatory BNG, which came into force for major developments on 12th February 2024, will ensure the creation of new or enhanced existing greenspaces that deliver improvements for wildlife habitats.

A conservation covenant will set out what a landowner (who will be delivering the units) and RB must do to help conserve the land and once agreed will become legally binding. The conservation covenant will ensure that the BNG enhancements are being managed and monitored appropriately for the required timeframe (at least 30 years).

Becoming an RB will allow Wokingham Borough Council to agree conservation covenants with landowners who wish to sell biodiversity units to developers (in order that they achieve mandatory BNG). This approach will support the Council in ensuring BNG opportunities are maximised within the borough as opposed to developers needing to purchase units outside of the borough or from Natural England through the statutory biodiversity credit scheme. Any BNG units generated in Wokingham would most likely be used to meet the demand from development within the Borough, however they could also be used to provide for needs in neighbouring authorities and/or nationally.

With WBC as an RB, it will be easier for landowners in the Borough to secure their land for long term conservation purposes, providing more opportunities for privately owned land in the borough to achieve beneficial habitat and environmental enhancements that will deliver wider public benefits. In addition to the wildlife benefits of biodiversity improvements in the borough, a local market of BNG units will deliver wider public benefits such as improved air quality, mental and physical health benefits and support with adaptation to climate change.

The risk of not becoming an RB will be that the Council will not be able to help third party landowners bring forward land for long term conservation purposes and sell biodiversity units to developers. If there is an undeveloped local supply of BNG units or not enough RB's to enter into Conservation Covenants to monitor the units that are available, there is a greater risk that developers will seek their off-site BNG units from suppliers outside of the local area; thereby not providing the Borough with the immediate benefits.

Subject to Executive approval, once an application has been submitted to Defra, they will require 12 weeks to determine the application. If accepted as an RB, the Council will need to register any conservation covenants it creates on the appropriate local land charges register and will need to submit an annual return by 31 March each year for the conservation covenants it holds.

BACKGROUND

As part of the Environment Act 2021, from 12th February 2024 Mandatory Biodiversity Net Gain (BNG) will be required for all major developments, with smaller sites requiring compliance with mandatory BNG from 2nd April 2024.

The Environment Act sets out the following key components to mandatory BNG:

- Minimum 10% gain required calculated using Biodiversity Metric & approval of net gain plan
- Habitat secured for at least 30 years via obligations/ conservation covenant
- Habitat can be delivered on-site, off-site or via statutory biodiversity units
- There will be a national register for off-site net gain delivery sites
- The mitigation hierarchy still applies of avoidance, mitigation and compensation for biodiversity loss
- Will also apply to Nationally Significant Infrastructure Projects (NSIPs)
- Does not change existing legal environmental and wildlife protections

Whilst this change to the planning system will involve some additional regulatory requirements, there are also opportunities for the Council as a landowner, to be a provider of BNG units through the ecological enhancement of existing Council owned sites such as Countryside Sites, Public Open Spaces and farmland. The Government envisages a market approach to the provision of off-site BNG units where the income received through the sale of BNG units should cover all of the capital, monitoring and ongoing maintenance costs (for at least 30yrs) and provide a capital receipt to the landowner. This is something that Officers are already working on implementing on Council owned land as part of the BNG Pilot Project approved by Executive in March 2023.

Executive approval is now being sought to apply to the Department for Environment, Food & Rural Affairs (Defra) to become a Responsible Body (RB) in order to enter into conservation covenants with landowners in support of delivering BNG within the Borough. A conservation covenant will set out what a landowner and RB must do to help conserve the land and once agreed will become legally binding. The conservation covenant will ensure that the BNG enhancements are being managed and monitored appropriately for the required timeframe (at least 30 years). BNG is an approach to development, land and marine management that ensures biodiversity is in an improved state than before the development took place. Mandatory BNG will ensure the creation of new or enhanced existing greenspaces; delivering nature improvements to benefit both wildlife and the public.

BUSINESS CASE

Biodiversity includes every one of us, and although we as humans currently pose its greatest threat, we also offer the only hope for protecting and conserving the diversity of life for future generations. The natural environment has been modified by human activity and many existing wildlife habitats face pressure from development threats or high recreational use. Despite this there is still a great variety of wildlife which can be found locally in Wokingham and opportunities for biodiversity enhancements across the borough.

Becoming a RB will allow Wokingham Borough Council to agree conservation covenants with landowners who wish to generate and sell biodiversity units to developers. This approach will support the Council in ensuring a local market for BNG units develops and BNG opportunities are maximised within the borough as opposed to developers needing to purchase units outside of the borough or from Natural England through the statutory biodiversity credit scheme. Any BNG units generated in Wokingham would most likely used to meet the demand from development within the Borough however they could also be used to provide for needs in neighbouring authorities and/or nationally.

With WBC as an RB, it will offer more options to landowners in the Borough to secure their land for long term conservation purposes, providing more opportunities for privately owned land in the Borough to achieve beneficial habitat and environmental enhancements that will deliver wider public benefits. In addition to the wildlife benefits of biodiversity improvements in the borough, a local market of BNG units will deliver wider public benefits such as improved air quality, mental and physical health benefits and support with adaptation to climate change.

The risk of not becoming an RB will be that the Council will not be able to help third party landowners bring forward land for long term conservation purposes and sell biodiversity units to developers. If there is an undeveloped local supply of BNG units or not enough RB's to enter into Conservation Covenants to monitor the units that are available, there is a greater risk that developers will seek their off-site BNG units from suppliers outside of the local area; thereby not providing the borough with the immediate benefits. If there are no (or few) other RBs in the local area this will mean that developers have fewer options for the purchase of off-site biodiversity units and may not be able to meet the minimum 10% mandatory BNG requirement.

Where the 10% mandatory BNG cannot be achieved, the Council will not be able to grant planning permission unless the developers can provide all their biodiversity units within the development site, through another RB (if there is another one available to provide the units) or they are willing to purchase statutory credits from Natural England. Natural England will be selling statutory biodiversity credits on behalf of the Secretary of State however units purchased through this route will be at a significantly higher price, as set by Defra. Units purchased through this route are also unlikely to benefit local biodiversity.

It is therefore considered that applying for RB status will support in the delivery of the council aim to continue to be a clean and green Borough with biodiversity enhancements within the borough to provide local environmental benefits as well as supporting in the delivery of the development management process.

To apply for RB Status, the Council must send an application form to Defra. This will enable Defra to check that Wokingham Borough Council meets the criteria to become and remain a RB. These criteria are:

- eligibility (all local authorities are eligible)
- financial security – that the organisation has a UK bank account, that the organisation's financial situation is secure, that the organisation has adequate internal fiscal and administrative control for long term financial viability
- operational capacity and capability – the organisation must have the capacity and capability to manage and enforce the types of covenants it expects to enter into. Checks may include access to relevant expertise (such as ecologists), ability to work with landowners, ability to monitor and enforce legal agreements, and that we have a track record in dealing with environmental or heritage issues.
- ongoing suitability – once the organisation gains RB Status it must continue to meet the criteria for being one. Defra must be informed if the organisation's circumstances change, and it may no longer meet one or more of the criteria

If accepted as a RB, the Council will need to register any conservation covenants it creates on the appropriate local land charges register and will need to submit an annual return by 31 March each year for the conservation covenants it holds. The annual return must include:

- total number of conservation covenants the organisation holds
- the area of land covered by each conservation covenant

The information required can be gathered by Officers at the time that conservation covenants are agreed so it is considered the annual monitoring required for conservation covenants can be delivered through existing resources.

Importantly, a local authority cannot act as both RB and landowner in the same conservation covenant agreement. Where the Council requires a conservation covenant as a landowner (in order to generate and sell BNG units on the market), they will need to agree a covenant with another RB. In these cases, it is expected that a reciprocal arrangement with adjacent authorities (who have achieved RB status) can be agreed and Officers are currently in conversations with neighbouring authorities on this matter. A conservation covenant is a legal agreement between an RB and a landowner. If the Council is acting as an RB, it would only progress that legal agreement if there is an undertaking by the landowner to cover the Council's legal costs. Where the Council is acting as a RB, they will have enforcement powers to take action if through the reporting and monitoring, the Council establishes that the landowner is not compliant with the conservation covenant. It is expected that a reserve fund would be worked into the conservation covenant to cover this potential cost. As an RB, the Council will only agree a conservation covenant that has a mechanism to cover future costs to the Council (compliance checking, management plan reviews, enforcement, reporting). This is likely to be an upfront contribution in order to reduce the financial risk.

It is important to remember that if the Council becomes an RB, there is no mandatory requirement to agree conservation covenants. Therefore, the Council will only enter agreements where the financial risk has been mitigated as above.

Timescales

The national register for BNG went live on 12th February 2024. The longer the delay in the Council becoming an RB, the greater the risk that developers will work with suppliers outside of the local area to achieve their mandatory BNG because there is an under-developed market locally.

Once an application has been submitted, Defra will aim to inform the Council of the outcome of the request within 12 weeks. If the Council's application is successful, Defra will add its contact details and main areas of expertise to the list of designated RBs.

FINANCIAL IMPLICATIONS OF THE RECOMMENDATION

The Council faces unprecedented financial pressures as a result of; the longer term impact of the COVID-19 crisis, Brexit, the war in Ukraine and the general economic climate of rising prices and the increasing cost of debt. It is therefore imperative that Council resources are optimised and are focused on the vulnerable and on its highest priorities.

	How much will it Cost/ (Save)	Is there sufficient funding – if not quantify the Shortfall	Revenue or Capital?
Current Financial Year (Year 1)	Nil - Staff time to progress the application	Can be achieved within existing resource	
Next Financial Year (Year 2)	Cost neutral	Monitoring costs will be recovered through conservation covenants	
Following Financial Year (Year 3)	Cost neutral	Monitoring costs will be recovered through conservation covenants	

Other Financial Information

There are no costs associated with the application and receiving the RB status other than staff time to put the application in which can be covered from within existing staffing resources. RB status once received will incur costs in carrying out these duties, which could include a need for additional staff, however all costs incurred are rechargeable to the organisation requesting the service meaning no financial loss to WBC.

Where the Council generates and sells BNG units on its own landholdings, the set unit price for BNG units sold to developers will incorporate the resource required for monitoring and managing the units.

As a RB the Council will only agree a conservation covenant that has a mechanism to cover future costs to the Council (compliance checking, management plan reviews, enforcement, reporting). This is likely to be an upfront contribution in order to reduce the financial risk. It is important to remember that if the Council becomes a RB, there is no mandatory requirement to agree conservation covenants, therefore the Council will only enter agreements where the financial risk has been fully mitigated.

The annual reporting requirement for being a RB will be covered from within existing resources.

Legal Implications arising from the Recommendation(s)

This report and decision-making process arising from the same has been considered by the Legal Officer within the context of the Constitution and public law

Stakeholder Considerations and Consultation

Green Infrastructure Officers are working in partnership with Countryside, Cleaner and Greener and Property Officers to explore opportunities within the Council's landownership for BNG enhancement opportunities to support in the delivery of BNG units.

Public Sector Equality Duty

Equality assessment has been undertaken and approved by the Inclusion team. The Stage 1 EqIA has been saved in the central archive.

Climate Emergency – *This Council has declared a climate emergency and is committed to playing as full a role as possible – leading by example as well as by exhortation – in achieving a carbon neutral Wokingham Borough by 2030*

By becoming a RB, the Council will be able to support third party landowners in conserving their land by selling BNG units required for mandatory BNG. The delivery of BNG units will include the creation and enhancement of species rich environments, including new woodlands, scrub and grassland enhancements that will all deliver a positive contribution to the Climate Emergency Action Plan.

Reasons for considering the report in Closed Session

N/A

List of Background Papers

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