

TONBRIDGE & MALLING BOROUGH COUNCIL

COUNCIL

09 April 2024

Report of the Director of Planning, Housing and Environmental Health

Part 1- Public

Matters For Decision

1 **BIODIVERSITY NET GAIN MONITORING CHARGES**

1.1 **Background**

1.1.1 Biodiversity Net Gain (BNG) legislation is set to become mandatory on the 12th of February 2024 for major applications. TMBC will be responsible for monitoring and enforcing the relevant agreements, the proposed monitoring fees are to offset costs incurred by the local authority.

1.1.2 The Biodiversity Net Gain legislation requires developers to offset the impact of the development with 10% BNG. Once the legislation is implemented on the 12th of February 2024 it will impact major applications with immediate effect. Minor and small site applications will be affected from the legislative changes from the 2nd of April 2024. Householder developments will be exempt from BNG. A full list of developments which are exempt can be found via the GOV website (Annexe 1).

1.2 **Main Issues**

1.2.1 A 30-year monitoring period is required within the BNG legislation, this includes reporting and non-reporting years which will require a different amount of officer time and therefore the yearly charges will change. TMBC will charge the developer a one-time fee that will be required to cover the entire 30-year monitoring period. Monitoring fees are likely to be secured via a legal agreement when an application is determined.

1.2.2 TMBC have calculated the monitoring fees using the Mycelia calculator (Annexe 2) which is considered to be best practice at the current time, following research conducted around Kent authorities. The calculations have used a median of officer salaries equating to £35,847 this covers the various planning roles which will be required to monitor the BNG offset, along with a 31% overhead for the LPA, a 3% inflation rate, a 10% habitat monitoring plan fee and an additional cost of £500 to cover fees such as site visits, software subscriptions and necessary training.

1.2.3 Three variations of calculations have been undertaken to ensure that there is robust research behind the options available for TMBC to when charging for BNG monitoring, these options have been set out in the below tables alongside the

various pros and cons for each option. The figures have been calculated using an average number of applicable applications decided between the 2018-2023 financial years to enable an estimation of potential income for BNG monitoring purposes.

- 1.2.4 **Option 1:** shows a one-off cost which would apply to all proposed developments regardless of site size. The positives of using this model would ensure a higher income generation, however this would not be proportionate to the scheme size and would be seen as 'unfair' for smaller scale sites.

Option 1 – Mycelia calculator				
Officer time reporting year (hours)	Officer time non reporting year (hours)	Total monitoring fee cost per project	Total BNG monitoring cost covering 30-year period	Annual spend amount
11 Hours total	6 Hours Total	£11,856	£2,442,336	£ 81,411.20

- 1.2.5 **Option 2:** an alternative method of calculation has been undertaken using the Mycelia calculator spreadsheet, to show a breakdown of potential monitoring fees by government guideline site size rather than a single cost for all developments. The positives of using this model include a breakdown of site sizes, however due to the proposed scheme sizes not fitting in line with the national recognised definition for planning applications and therefore has a lower income generation for the monitoring costs.

Option 2 – using average number of applicable applications					
Site Size	Reporting year Officer time (hours) –	Non-Reporting Year officer time (hours)	Monitoring fee cost per project	Total BNG monitoring cost covering 30-year period	Annual spend amount
Small Sites (0 to 10ha)	8	2	£5,987	£1,347,075	£44,902.50
Medium Sites (11 to 20ha)	10	3	£7,945	£15,890	£529.67
Large Sites (20+ha)	16	6	£13,819	£27,638	£912.27
Total				£1,390,603	£46,353.43

- 1.2.6 **Option 3:** provides a projection based on adapted scheme sizes as set out by other Kent based local authorities. The small sites have been calculated using the average figure between the small to medium sites of £6966 as shown in Table 2, the large sites have been calculated using the large sites figure of £13,819 from the Mycelia calculator. This option provides a higher income generation than the

proposed scheme sizes in the government guidelines whilst also being in line with national recognised definitions for site sizes and proportionate to various schemes dealt with by TMBC, although it is noted that the monitoring fees collected would be lower than the single flat rate fee.

Option 3 – Variable fee rate based on scheme size in line with other Kent Authorities				
Development Site	Monitoring Fee cost per project	Average number of applications decided	Total BNG monitoring cost over 30-year period	Annual spend amount
Small/Medium Sites (up to 10 units or 0.5ha)	£6966	163	£1,135,458	£37,848.60
Large Sites (10+ units or 0.5ha+)	£13,819	48	£663,312	£22,110.40
Total annual transfer			£1,798,770	£59,959

1.2.7 New software will be required to enable ongoing and diligent monitoring of the BNG offset, with the costs for the software included in the monitoring fee figures. We have now appointed Verna by Mycelia as the software supplier for the BNG assessment and monitoring process.

1.2.8 The government guidelines have provided the figures for the varying site sizes, however it has been adapted by other local authorities across the country to amend the scheme size for a more proportionate impact, for example: North Yorkshire council have adapted a medium size site to start at 5ha rather than 10ha, Kent based councils TWBC and Ashford have set out an adapted site size of Small/Medium sites being up to 10 new units or 0.5ha, any large size schemes are 10+ units or over 0.5ha+. The review of site size specifications would be undertaken at the same time as any review to the monitoring fee costs.

1.3 Legal Considerations

1.3.1 Government Guidance to Local Planning Authorities (LPAs) and the Planning Practice Guidance (PPG) on BNG state that LPA's should monitor BNG to see whether the landowner is meeting their obligations and to take action if they do not. The PPG envisages that BNG Monitoring fees can be secured through s106 agreements in paragraph 028, where it states that LPAs can charge a monitoring fee through section 106 planning obligations, to cover the cost of monitoring and reporting on delivery of that section 106 agreement.

1.4 Financial and Value for Money Considerations

1.4.1 As the monitoring fee is set to be charged at a one-time cost to the developer but is set to cover the monitoring period of 30 years there is a financial implication to ensure that the charge covers the necessary costs for TMBC whilst also considering the potential increase in costs over the period due to inflation and

other increasing costs to TMBC. The costs set out in paragraph 1.2 above have been reviewed by the Council's finance team.

- 1.4.2 As set out in this report BNG monitoring fees are likely to be secured utilising the S106 and Unilateral Undertakings process currently undertaken for securing contributions to mitigate the impacts of development. This will ensure the fees are paid at a set point in the development. The creation of a standardised S106 agreement which will be available to download from the website is currently being drafted and will assist in identifying the monitoring fee at the early stages of drafting.
- 1.4.3 The above Options 1-3 set out a rudimentary annual income projection based on the average number of applicable applications decided within a 5-year period between 2018 – 2023.
- 1.4.4 Any monitoring fee income is ringfenced to offset the costs of monitoring BNG activity. The additional staffing requirements, alongside other expected costs are yet to be confirmed, this report sets out the income fee structure only. The long-term impact on the MTFS is yet to be evaluated.

1.5 Risk Assessment

- 1.5.1 There is a risk of TMBC undercharging for the monitoring services it is expected to provide, therefore we have been in contact with other local councils and utilised the information provided alongside the BNG calculator available to provide as accurate a figure as possible at this stage.
- 1.5.2 Due to increasing costs and inflation, there is a further risk of undercharging, as monitoring fees are required to cover the 30-year period. An attempt to consider these factors has been made using the fee calculators with a base rate of inflation. The fees would also be subject to regular review once the monitoring system has started and passed any preliminary stages.

1.6 Equality Impact Assessment

- 1.6.1 N/A

1.7 Policy Considerations

- 1.7.1 The BNG monitoring and charges in this report will support climate change mitigation and adaptation goals into the medium term. Effective monitoring over the 30-year period is essential to ensuring the establishment and flourishing of habitats, and realising the co-benefits of BNG for green infrastructure, carbon sequestration, and ecosystems.
- 1.7.2 Effective and appropriately resourced BNG monitoring will support use of BNG as a delivery mechanism in response to TMBC's 2019 declaration of a biodiversity emergency and Green Infrastructure strategy.

1.8 Recommendations

- 1.8.1 The proposed fees have been calculated as best practice at the current time, these figures will be subject to review once the monitoring has been started to ensure that the costs are proportionate and in-line with the on-going costs of monitoring the BNG offset.
- 1.8.2 **Recommendation 1:** With the above information taken into consideration it is proposed that the BNG monitoring fees adopted by TMBC are as shown in Option 3. This will ensure a proportionate approach based on development size in line with the current schemes that have been considered in the past 5 years.
- 1.8.3 **Recommendation 2:** The income generated via BNG monitoring costs will be held in a separately identifiable cost centre in the Council's Accounts, consideration to be given on how to best utilise it to offset staffing and other costs over the relevant monitoring period.

Background papers:

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Annexe 1 - [Mycelia Monitoring Calculator Tool](#)

Annexe 2 - [GOV guidance on exempt developments](#)

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