

# CABINET

## Establishment of Habitat Banks in Lancaster District 8 July 2025

### Report of Chief Officer – Planning and Climate Change

PURPOSE OF REPORT				
(i) To agree to the approach to securing local Habitat Banks within the district by entering into legal agreements with offsite biodiversity unit providers; and,				
(ii) To approve progression of a Council-owned Habitat Bank and to delegate specific designation of Council-owned land for habitat banks to the Chief Officer – Planning and Climate Change, following case-by-case consultation with the other relevant Chief Officers comprising the Council's Senior Leadership Team.				
Key Decision		Non-Key Decision	X	Referral from Cabinet Member
Date of notice of forthcoming key decision	N/A			
This report is public				

#### RECOMMENDATIONS OF COUNCILLOR SUE TYLDESLEY

- (1) To allow Lancaster City Council to enter into standalone legal agreements (Section 106 Agreements) with private landowners to secure offsite Biodiversity Gain Sites ('Habitat Banks') which will:
  - (a) Allow Officers to engage with landowners who wish to create a 'Biodiversity Gain Site' of 'Habitat Bank';
  - (b) Use Biodiversity Net Gain (BNG) habitat banking criteria to inform the assessment of proposed habitat banks;
  - (c) Enable officers, upon receipt of information from landowners to enter negotiations with landowners with a view to (i) checking proposals are suitable and acceptable for offsite Biodiversity Net Gain; and (ii) agreeing a Section 106 (or 'S106') to secure the site and a Habitat Management and Monitoring Plan (HMMP) for a minimum of 30 years, as appropriate;
  - (d) Permit the Chief Officer - Planning and Climate Change, or officers authorised by the Chief Officer, to negotiate S106 agreements on this matter and amend the guidance in light of experience and/or updated guidance or legislation from government; and,

- (e) Allow for sign-off of the legal agreements.
- (2) To progress the development of habitat banks on Council-owned land as follows:
  - (a) To support Council officers in work to put Council assets forward for off-site BNG, the decision to create habitat banks on individual sites will be delegated to the Chief Officer of Planning and Climate Change, informed by an approved business case on a site-by-site basis as appropriate;
  - (b) To agree to the negotiation of a S106 agreement with Chorley Council for a habitat bank on Council-owned land at Bailrigg (Burrow Beck) solar array.

## **1.0 Introduction - Habitat Banks and Biodiversity Units**

- 1.1 The introduction of mandatory BNG in 2024 brought additional requirements and responsibilities to local authorities. Where a development is unable to achieve all of the compensation and enhancement necessary within the boundary of a proposed development, the developer will need to secure offsite biodiversity units, as assessed in a statutory biodiversity metric produced by the Department for Environment, Food and Rural Affairs (DEFRA).
- 1.2 This has created a new market for biodiversity units. Both private landowners and public bodies can create and enhance habitats for biodiversity and sell the generated biodiversity units on the market.
- 1.3 Developers are free to purchase offsite biodiversity units from any registered habitat bank, but the statutory biodiversity metric includes a proximity weighting to incentivise provision of biodiversity units locally.
- 1.4 If there is no habitat bank within the local planning authority area (or National Character Area [Natural England - National Character Area Profiles - National Character Area Profiles](#)) this will tend to increase the cost for local private and public developments that require off-site biodiversity units.
- 1.5 There are no registered habitat banks within the Lancaster District (as of the time of drafting this report). To date, officers have not been contacted by any landowners seeking to set up a habitat bank. There is, however, no requirement to notify a local planning authority (about a Conservation Covenant with a Responsible Body) prior to registration of a habitat bank on the Biodiversity Gain Sites Register.
- 1.6 To secure an area of land as a habitat bank for BNG, a landowner is required to enter a S106 agreement with the local planning authority (or a Conservation Covenant with a Responsible Body).
- 1.7 Where the Council is the landowner, the Council cannot enter a S106 agreement with itself, so the provision of biodiversity units must be secured by legal agreement with a separate body. This must be either a S106 agreement with another local planning authority, or a Conservation Covenant with a Responsible Body.
- 1.8 In the BNG Action Plan Lancaster City Council sought to “*investigate opportunities for BNG delivery on Council owned land*” (BNG Action Plan Action 6.2, June 2024). A feasibility study in 2023 considered a series of Council-owned sites. Those were all small sites and mostly in existing amenity use, which would reduce their viability as habitat

banks.

- 1.9 However, the Burrow Beck Solar Array site at Bailrigg, which is currently under construction following the grant of planning permission, offers an opportunity as a future habitat bank site, subject to completion of a legal agreement with another local planning authority.

## **2.0 Proposal Details**

- 2.1 There are two proposals to consider, namely:

- (i) To use S106 Agreements to secure private land with a Habitat Management and Monitoring Plan (HMMP) for off-site BNG; and,
- (ii) To develop a habitat bank on Council-owned land.

### **2.2 Proposal 1 – s106 agreements to secure private land with a Habitat Management and Monitoring Plan (HMMP) for Offsite Biodiversity Net Gain**

Private landowners within the district cannot register any land for off-site BNG until it has been legally secured by a legal agreement. This must be by S106 agreement with the local planning authority (or a Conservation Covenant with a Responsible Body). Planning conditions cannot be used for this purpose.

- 2.3 By hosting legal agreements to enable private land to provide BNG, the Council will support the provision of biodiversity units locally, which can be allocated or sold to developments that require off-site BNG compensation. The Council can also recover the cost of meeting its responsibilities in hosting S106 agreements.

- 2.4 Following the signing of a s106 agreement, the Council becomes the responsible body for the agreement, which includes monitoring for compliance and responsibility for enforcement if there is any breach of the agreement during the period.

- 2.5 The Council's other responsibilities include requirements to:

- (a) Ensure the habitat bank proposals are acceptable (i.e. that the proposed habitat creation and enhancements are achievable and there is sufficient ecological information), and to minimise the risk of breaches of the HMMP and S106 agreement;
- (b) Ensure the proposals are assessed against other environmental and administrative considerations and constraints such as impacts on flood risk, archaeology and geology, and infrastructure / maintenance requirements;
- (c) Ensure the landowner or 'Biodiversity Gain Site provider' has the legal and administrative right to deliver and secure the proposals for 30 years and has the resources and ability to deliver, maintain and manage the proposals throughout the period;
- (d) Review monitoring reports submitted to the Council to check the implementation of the HMMP at agreed intervals during the agreement (e.g. 2, 5, 10, 15, 20, 25, 30 years after completion of initial habitat creation and enhancement works);

- (e) Ensure contingencies are in place to address any potential breaches and minimise risk to the Council as a result of breaches;
  - (f) Carry out enforcement action against the landowner in the event of a breach of the S106;
  - (g) Ensure the S106 agreement and HMMP are suitable to support the site's registration onto the Government Biodiversity Gain Site Register; and,
  - (h) Register the planning obligation (the s106) with the local land charges register.
- 2.6 Monitoring must be undertaken by an officer with the appropriate skills to enable effective assessment. In the first instance this will be managed by the Biodiversity Officer, in conjunction (where necessary) with other officers within the Planning & Climate Change Service. Management of the land and monitoring of habitats remains the responsibility of the landowner.
- 2.7 The costs of arranging and administering S106 agreements would be met by fees charged for:
- (a) The application and review of the proposals;
  - (b) The creation and sign-off of the s106 (as per hourly rates);
  - (c) Review of the monitoring reports during the 30-year period, with the fee based on the likely staff time required (cost recovery); the size of the site; and the complexity and risk associated with the proposals.
- 2.8 The monitoring for compliance will include reviewing monitoring reports submitted to the Council by the landowner and site inspections to check progress of the habitats provided. The cost of the officer time expected to be required will be estimated in advance to determine a fee cost, with allowance made for inflation during the 30-year period.
- 2.9 The revenue from S106 agreements is expected to be at least cost-neutral to cover the staff time required and associated costs, including the software which is essential to keep track of biodiversity net gain across numerous sites and habitats for periods of at least 30 years.
- 2.10 The risk of breach of conditions of a S106 agreement and associated HMMP will be minimised by scrutiny at the application stage, to ensure that the proposals are feasible.
- 2.11 If the risk that the proposed biodiversity units would not be delivered and maintained successfully was perceived to be high, then the proposal would not be recommended for a S106 agreement.
- 2.12 A S106 agreement will incorporate contingency plans to minimise risk of non-delivery. The site monitoring set out in the HMMP will identify any failures or non-compliance and the corrective actions required by the landowner, so the issues can be rectified as soon as possible, and so reduce the likelihood that enforcement action is required.
- 2.13 If the landowner was unwilling or unable to rectify issues, the Council could take enforcement action. As a last resort, this would include the right for the Council to carry

out remedial works and pass on costs to the landowner.

- 2.14 A S106 agreement must include measures to ensure that the requirements pass to any future owner. A s106 Agreement is a local land charge and should be added to the local land charges register.

2.15 **Proposal 2 – Development of a Habitat Bank on Council-owned land**

Setting up a habitat bank on Council-owned land will create biodiversity units that have a monetary value in the habitat banking market and/or can be used for other developments on Council-owned land as appropriate. In contrast, the purchasing of biodiversity units from habitat banks outside the district means that local habitat losses are not compensated locally.

- 2.16 The planning application for the solar farm at Bailrigg (Ref: 23/01383/FUL) was granted in January 2025. The application pre-dates mandatory BNG, but in accordance with the National Planning Policy Framework (NPPF) and to satisfy Local Plan Policy DM44, the development needs to achieve a biodiversity gain, which was taken to be at least 10%.
- 2.17 Government guidance indicates that where a development achieves greater biodiversity gains than the 10% required (or higher where specified in local policy) the landowner can make biodiversity units available in off-site markets, provided that the site is registered in the Biodiversity Gain Sites register. In other words, it can become a habitat bank. [Make off-site biodiversity gains as a developer - GOV.UK](#)
- 2.18 The costs of maintenance and monitoring to achieve BNG have already been costed into the solar farm project. Planning condition 10 requires submission of a pre-commencement Biodiversity Gain Plan and HMMP and its subsequent implementation. Condition 13 requires reporting of the landscaping works carried out prior to first use of the solar farm and for this to be maintained throughout the lifetime of the development. Management of the site as a habitat bank will not increase costs compared to those already included in the project. The Project Team responsible for the delivery of the solar farm have been discharging their planning condition obligations in a timely manner and there is not believed to be any obstacle to the implementation of the approved development.
- 2.19 The risk of the site not achieving the intended BNG is minimised by conservative assumptions about the future extent and condition of the habitats created and enhanced. The HMMP includes monitoring and adaptive management in response to conditions on site.
- 2.20 For the avoidance of any doubt, the habitats that will be created and enhanced at the solar farm site include grassland, scrub and hedges, which all have 'medium' distinctiveness as measured by the biodiversity metric (related to habitat importance and difficulty of re-creation). There are trading rules in the biodiversity metric, which means that any unavoidable loss of habitats of higher distinctiveness (e.g. woodland, ponds, intertidal habitats, heathland) have to be compensated by habitats of the same type or high distinctiveness. The habitats at the solar farm site could meet typical requirements of local developments, but not all.

**Potential S106 Agreement with Chorley Council**

- 2.21 Most of the local planning authorities locally have not yet made S106 agreements for habitat banks and many have not yet started securing S106 agreements for significant

on-site gains on development sites. None of the local authorities approached at the beginning of 2025 were willing to consider a S106 agreement with another Council at that time.

- 2.22 Chorley Council has its own ecologist (Biodiversity Gain Project Lead) who would be responsible for managing the 'hosting' role of Chorley Council for any S106 agreement with another Council.
- 2.23 Following initial contact and provision of information about the Burrow Beck solar farm project, Chorley Council has expressed a willingness to proceed to develop a S106 agreement with Lancaster City Council for this project. Initially envisaged as a 'stand-alone' agreement, Chorley Council may have a habitat bank proposal ready concurrently and assuming so would favour a one-off reciprocal arrangement.
- 2.24 An advantage of a reciprocal arrangement would be that each party could bear its own costs (largely officer time) for the startup (stages 1 and 2). It would minimise the initial outlay, although there would still be a registration fee payable to Natural England and the Land Registry for the relevant registrations. With a stand-alone agreement the fees to the hosting authority would have to be paid in advance, prior to the registration of the habitat banks and any income from sale or allocation of biodiversity units.

Alternative options previously considered regarding the establishment of a Council-owned habitat bank

- 2.25 A habitat bank can be secured by a Conservation Covenant with a Responsible Body. Those in or adjacent to Lancashire which were contacted about possible Conservation Covenants had too many other requests to deal with or were only willing to consider those within their own area of operations. Given the imminent delivery of the solar farm development, this is not a realistic option.
- 2.26 The Council could lease land to a tenant, who would then enter a S106 agreement for a private habitat bank. This was not considered suitable for the solar farm site as agreement would be required for the precise rental and/or share of return from the sale of biodiversity units. Such an arrangement would also remove the habitat bank from the control of the Council, but as landowner the Council would be liable for the full term if the tenancy ceased or failed. This option was not considered further.
- 2.27 Another alternative would be for the Council to set up a Special Purpose Vehicle (SPV); a new enterprise which could be created for the purpose of delivering and managing biodiversity net gain on Council-owned land. This would be a more complex and lengthy process than a S106 agreement with another local authority. It would involve preparation of a company structure for the SPV, bespoke Articles of Association, business plans, a formal Memorandum of Understanding suitable for a SPV. This would be followed by a Land Management Agreement with the landowner (the Council) and Management Services Agreement. Only then could this progress to a S106 agreement with this Council to secure a habitat bank. However there are currently few opportunities for habitat banking on Council land and this may not be enough to make the SPV financially viable.
- 2.28 Additionally, the length of time likely to be required for the establishment of the SPV is likely to be a far lengthier process than the S106 option and would not fit well with the schedule of work for the solar farm project. This option may be worth considering after the local government reorganisation in Lancashire, if there are efficiencies of scale available to bring green finance into management of Council-owned sites.

- 2.29 The final alternative would be for the Council to simply meet the off-site needs of its own developments by purchase of biodiversity units on the open market only when they are needed. The Council could accept the effectively higher cost of purchase of biodiversity units from habitat banks outside the district until such time as a private habitat bank might be set up locally. However this option was discounted because of the loss of control; i.e. the uncertainty about the timely availability (and cost) of units. Each Council development would have to search the open market for suitable units to buy. Habitat Banks may be located outside the district, so may result in the exporting of biodiversity provision outside the district. This option would not take advantage of the potential income generation that might ensue for the Council.

### **3.0 Details of Consultation**

- 3.1 The Government does not require consultation on the implementation of biodiversity net gain.

### **4.0 Options and Options Analysis (including risk assessment)**

- 4.1 Given that there are 2 proposals, both proposals are separately analysed in this section.

#### **Proposal 1: S106 agreements to secure private land with a Habitat Management and Monitoring Plan (HMMP) for Offsite Biodiversity Net Gain**

	<b>Option 1:</b> S106 agreement with private landowners to secure offsite biodiversity gains	<b>Option 2:</b> direct landowners to Responsible Bodies for conservation covenants
<b>Advantages</b>	<p>Provides revenue to oversee compliance with the S106 agreement.</p> <p>Council can work with landowners so proposals contribute to local nature recovery and potentially align with other policy, e.g. Green and Blue Infrastructure/LNRS/ flood risk reduction.</p> <p>Example templates for legal agreements are available (Planning Advisory Service).</p>	<p>No responsibilities for Council, just ensure biodiversity units are registered and correctly allocated to in-district developments post-decision.</p>
<b>Disadvantages</b>	<p>Requires input from multiple services to determine acceptability of proposal and minimise risk of need for future enforcement.</p>	<p>May be more expensive for landowner, depending on Responsible Body criteria may only take large projects.</p> <p>Habitat bank may be set up out of district.</p> <p>No revenue to Council.</p>
<b>Risks</b>	<p>May only get small scale proposals from developers for their own developments, rather than habitat banks at large scale.</p> <p>Habitat bank business might fail during the 30-year period. Could require a bond to insure against this, but it may affect viability in early stage.</p> <p>Unforeseen events (e.g. catastrophic storm, fire or new disease – but landowner would not be penalised in such cases).</p>	<p>Entry into S106 is discretionary, but Council could be seen as unreasonable in refusing a viable option, especially if challenged in an appeal on a developer-led proposal).</p>

**Proposal 2:** Development of a habitat bank on Council-owned land



	<b>Option 1:</b> Enter into a S106 agreement with Chorley Council for habitat bank at Burrow Beck solar array	<b>Option 2:</b> To not enter into a S106 Agreement with Chorley Council, and to further explore alternatives
<b>Advantages</b>	<p>S106 is a legal agreement type known to both Councils.</p> <p>Low cost for S106 monitoring role payable to Chorley Council (c. £8000 plus legal costs) as Chorley has assessed the site as small and low risk.</p> <p>A simple stand-alone agreement, with no need for a reciprocal arrangement.</p> <p>Cost of maintenance of habitat at this site will be met by the revenue from the solar farm, whether or not the site becomes a habitat bank.</p> <p>Revenue from sale or allocation of biodiversity units can be used to help set up habitat banks on other Council land for when this site has sold available units.</p>	None.
<b>Disadvantages</b>	<p>Council has 30+ year commitment. Would limit any other development on the site during the period.</p> <p>Small cost to set up agreement and carry out future monitoring and report, but minor compared to potential income from sale/allocation of units.</p>	<p>Not entering into a S106 to deliver the habitat bank would result in the Council having to search the open market for suitable units to buy in the future (for its own developments).</p> <p>There would be a loss of opportunity for potential income generation.</p>
<b>Risks</b>	<p>Possible risk that units delivered could be less than forecast, but metric and HMMP has been deliberately conservative.</p> <p>Uncertainty about future monetary value of biodiversity units – depends on demand.</p> <p>Low financial risk as site management is funded by solar farm income, not dependent on sale of biodiversity units.</p>	Alternative Habitat Banks may be located outside the district and could result in the exporting of biodiversity provision outside the district.

## 5.0 Officer Preferred Option (and comments)

- 5.1 In respect of **Proposal 1**, the preferred option is Option 1 (i.e. to enter into S106 agreements with private landowners to secure off-site biodiversity gains).
- 5.2 Private landowners providing off-site biodiversity gain locally will help development viability locally and so contribute to delivery of housing targets.
- 5.3 If private habitat banks are set up at scale locally this has potential to contribute to nature recovery and other local policy aims.
- 5.4 Off-site provision of biodiversity gain must be legally secured by S106 (or conservation covenant). Developers that need to make significant biodiversity gains can also use this method to secure net gain for individual developments, although scrutiny will be needed at application and post-application stages to assess viability and risks.
- 5.5 In respect of **Proposal 2**, the preferred option is Option 1 (i.e. to enter into a S106 Agreement with Chorley Council for a habitat bank at Burrow Beck Solar Array).
- 5.6 A S106 agreement with Chorley Council is the only opportunity currently available with another local authority. Chorley Council is further ahead in preparation of S106 agreements for habitat banks including agreement with another Council which means that there is a process ready to adopt for this proposed S106 agreement.
- 5.7 The Burrow Beck solar array at Bailrigg offers a low-risk opportunity for Lancaster City Council to start its first habitat bank. With Chorley Council willing to enter a hosting agreement to legally secure the habitat bank, this gives an opportunity to make a start, fitting with the timescale for the solar farm delivery. It is expected that if this option is adopted the habitat bank can be registered this year and start to make allocations of units.

## 6.0 Conclusion

- 6.1 This report sets out the preferred way forward for (i) securing habitat banks throughout the district and (ii) utilises the timely delivery of the Burrow Beck solar array to deliver the Council's first habitat bank.
- 6.2 It is intended that the approach adopted by Chorley Council (Appendix 1) will continue to be used until such time as guidance is reviewed and amended.
- 6.3 Separate to this report, future consideration will need to be made about the priorities for the allocation or sale of units in future, and the price at which any units should be offered for sale (if they were to be made available to private developers, rather than being solely allocated to the council's own future developments). It is anticipated that any strategic decisions regarding this will be a matter for Cabinet, at the appropriate time.

## RELATIONSHIP TO POLICY FRAMEWORK

The Council's Policy Framework is the list of plans and strategies that are decided by Full Council. The includes the Council Plan, and Local Development Plan and Development Plan Documents and other plans or strategies. In this case the Council's Biodiversity Action Plan (Fulfilling the Biodiversity Duty Considerations) as approved by Cabinet in 2024 is also relevant. The proposals presented in this report are in accordance with key objective of increasing biodiversity in the Council Plan, particularly Action 1.4 on Ecology &

Biodiversity. The proposals also support the implementation of policies in the adopted Local Plan; particularly Policy DM44 on the protection and enhancement of biodiversity. The proposals also support specific actions in the Biodiversity Action Plan approved by Cabinet in 2024, particularly (a) Action 1.3 on developing an internal monitoring system to support the delivery of BNG across the district, ensuring delivery and condition can be monitored over 30 years; (b) Actions 6.1 & 9.4 on exploring the preparation of a local off-site BNG register at either a local or county level; and (c) Action 6.2 on investigating opportunities for BNG delivery on Council owned land. Given that the proposals described in this report are aligned to both formal Policy Frameworks documents previously approved by full Council and the Biodiversity Action Plan previously approved by Cabinet then Cabinet is the appropriate body for decision making body for proposals that would create working arrangements with another local planning authority and establishing the necessary biodiversity net gain implementation management arrangements to enable BNG to be appropriately and objectively managed on Council-owned assets.

#### **CONCLUSION OF IMPACT ASSESSMENT**

**(including Health & Safety, Equality & Diversity, Human Rights, Community Safety, HR, Sustainability and Rural Proofing)**

There are no impacts expected on any of these.

#### **LEGAL IMPLICATIONS**

S106 of the Town and Country Planning Act 1990 provides that a landowner can enter into an agreement with a Local Planning Authority (LPA) so as to restrict the use, development or provide a use over land in the LPA area. Accordingly, the LPA can enter s106 Agreements with private landowners to secure BNG/habitat provision, management and monitoring.

The Council cannot make a s106 agreement with itself. However, it can enter a s106 Agreement with another LPA. In this instance, Lancaster City Council would be acting as landowner and the Chorley Council would be acting as LPA.

In terms of charging fees in connection with the creation and monitoring of the s106 Agreement, the Council may recover its legal cost in the normal way (which is undertaken on a solicitors' hourly rate and upon a solicitor's undertaking been obtained). The Council can also cover the cost of monitoring a s106 Agreement. Costs for processing applications and monitoring s106 obligations will need to be quantified and will need to reflect cost-recovery of officer time and the Council's resources.

#### **FINANCIAL IMPLICATIONS**

Since Councils are unable to manage their own S106 agreements, which are necessary for the establishment of habitat banks, this service must be outsourced.

As Chorley Council is also wanting to establish their own bank, a contract between Lancaster and Chorley will benefit both Councils as we can manage the S106 for one another.

Going forward, there will be some consideration required around the pricing and administering of the purchase of units. This will need more clarity and will be subject to further Cabinet approval.

## **OTHER RESOURCE IMPLICATIONS**

### **Human Resources:**

There will be additional demand on officers' time in preparing and overseeing S106 agreements. If demand for S106 agreements increases significantly, the front-loading of monitoring costs in fees will contribute to the cost of additional staffing as required (or consultancy support if necessary).

### **Information Services:**

There are no requirements for additional software beyond that which is now available to Development Control.

### **Property:**

The management of the habitats on Burrow Beck solar farm will be the responsibility of the Council. It is expected that at least some of the maintenance will be undertaken by council staff, or else by contractors.

### **Open Spaces:**

There are no implications for Open Spaces because the proposed site for the habitat bank is within the solar farm, where there will be no public access.

## **SECTION 151 OFFICER'S COMMENTS**

The Section 151 Officer has no comments to add.

## **MONITORING OFFICER'S COMMENT**

The Monitoring Officer has no comments to add.

## **BACKGROUND PAPERS**

Appendix 1 BNG Habitat Banking Criteria  
January 2025, Chorley Council and South  
Ribblesdale Borough Council

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