

Havant Thicket Reservoir - Pipeline Planning Application

SUBJECT	PROJECT NO.	DATE
HTR Biodiversity Net Gain Process	100103591	19 February 2025
AUTHOR	DISTRIBUTION	REPRESENTING
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Background

Delivery of Biodiversity Net Gain (BNG) became mandatory for most developments from 12 February 2024 under Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021). As a result, the grant of planning permission in England is subject to a condition to secure a minimum of 10% BNG when compared to pre-development biodiversity value¹ unless the development meets the exemption criteria (permission for the Dual Pipeline approved under reference APP/24/00405 would not be exempt).

This technical note sets out the Dual Pipeline BNG activities, providing a summary of what’s been done and identifying the process and remaining tasks up to discharge of the statutory BNG condition.

1. Stage 1: Planning Application

- 1.1 Article 7(1A) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 identifies the mandatory information requirements to support planning applications which include (among other things): a completed Statutory Biodiversity Metric excel spreadsheet, including the existing baseline and post-intervention habitat calculations; plans identifying onsite habitat; and the pre-development biodiversity value of the on-site habitat. The HBC Local List² (updated in December 2024 to include BNG requirements) includes further detail as to the information that must be submitted alongside planning applications.
- 1.2 The information required to comply with the mandatory statutory requirements was included within a Biodiversity Net Gain Assessment (May 2024) submitted with the planning application which comprises:
 - A baseline assessment – a quantification of the current biodiversity value of the site (using habitat as a proxy) measured in biodiversity units; and
 - A post-development assessment to determine the number of biodiversity units required to achieve net gain.
- 1.3 The conclusions of the BNG Assessment are as follows:

¹ Paragraph 1 and 2 of Schedule 7A of the TCPA 1990

² Local Information Requirements Consultation Version 2024, Havant Borough Council, Consultation Date: 28 October 2024 – 9 December 2024

TECHNICAL NOTE

- *Area habitats* - The total net unit change is -7.02 Area Biodiversity Units (ABU) (-5.17%). Enhancement of onsite habitats is limited because the habitats are all widely used public spaces.
- *Linear habitats* - 208.48 % (2.59) increase in linear hedgerow units, no off-site hedgerow creation is required.
- *Watercourses* - a net loss of 1.48 Watercourse Biodiversity Units (-27.46%). However, this is based on a precautionary approach due to uncertainty around the construction programme. Off-site watercourse enhancements will be required to create the WBUs needed to achieve the mandatory 10% net gain.

- 1.4 The habitat types have been agreed in principle with the HBC Ecologist (Tristan Norton). The offsite BNG required is up to 20.61 Habitat Units and 2.02 Watercourse Units.
- 1.5 The BNG Assessment will be updated to take account of changes to the scheme since submission and inform the post-permission BNG planning conditions (Biodiversity Net Gain Plan and HMMP).
- 1.6 In recent supplementary [BNG guidance](#)³, HBC also recommends that the following information (in addition to the statutory minimum requirements) would be helpful at the point of application for all but the simplest of developments:
- A statement describing how the 10% BNG minimum will be achieved.
 - An indication of how BNG will be delivered – on-site, off-site or both.
 - For off-site BNG, a statement on intended location, area and habitat type where known.
 - A statement on how the BNG Hierarchy has been considered.
- 1.7 Portsmouth Water has identified suitable offsite land which can be used to deliver off-site BNG within both its own ownership and within the ownership of the Pig Shed Trust. It should be noted that, at this stage, agreement is being finalised with the Pig Shed Trust as to the use of its land to deliver BNG.
- 1.8 **Action:** to agree with HBC that:
1. The BNG Assessment submitted with the planning application (satisfying the statutory information requirements) and a BNG Statement satisfying the BNG guidance criteria set out in paragraph 1.6, identifying the maximum number of units required offsite and their locations, will provide sufficient evidence to HBC that the 10% net gain is achievable in order that HBC can grant the planning permission.

2. Stage 2: Planning Permission (planning conditions and s106 agreement)

Conditions

- 2.1 The statutory biodiversity gain condition is deemed to apply to relevant planning permissions and the condition (and its reason for imposition) should not be included on the decision notice. The deemed condition requires that a Biodiversity Gain Plan be submitted and approved before the *commencement of development*, ensuring that the development achieves the 10% increase in biodiversity value.

³ Biodiversity Net Gain - Supplementary Information to Local List (consultation 2024)

TECHNICAL NOTE

- 2.2 The local planning authority must comply with statutory requirements related to its notice of a decision or determination of an application⁴. The purpose of the decision-notice requirements is not to duplicate the deemed condition, but to signpost the applicant to the statutory framework for BNG.
- 2.3 To ensure consistency in approach, the planning practice guidance suggests paragraphs⁵ that can be included on the written notice, but these are not mandatory, and the local planning authority can use its own language.
- 2.4 Additional planning conditions may be used to secure matters relating to the delivery of on-site BNG, including conditions to secure submission of a Habitat Management and Monitoring Plan (HMMP) where there are significant on-site biodiversity gains. In this case, such a condition is not considered to be required, as explained below in paragraphs 2.12 onwards.
- 2.5 Note, a local planning authority typically has 8 weeks to approve or refuse the application to discharge the Biodiversity Gain Plan and HMMP condition (can be more, if they request an extension, or less than 8 weeks).

Legal agreements

- 2.6 Not all elements of delivery of BNG can be secured by condition, and it may be necessary to use a legal agreement (section 106 agreement or a conservation covenant) as well. In cases where 'significant' onsite biodiversity gains are proposed then delivery, maintenance and monitoring of this may be secured through a legal agreement.
- 2.7 Note a planning condition can be used but the Council would consider the most appropriate mechanism, and this would need to be agreed at the planning permission stage. As noted above, this is not considered to be a case where such an approach is merited.
- 2.8 A separate legal agreement is required to secure delivery, maintenance and monitoring of any off-site BNG for a period of 30 years. Delivery of BNG on third party land requires its own HMMP which is secured by the section 106 agreement related to that off-site land. The agreement also secures the registration of the land and allocation procedure for any units created by the works on that land.
- 2.9 Importantly, this legal agreement can be completed following the grant of any planning permission that relies on that BNG, but must be completed before commencement of the development to enable the Biodiversity Gain Plan to be approved by the local planning authority.
- 2.10 As such, a section 106 agreement will be needed to secure the delivery of BNG on land owned by the Pig Shed Trust and a separate section 106 agreement to secure delivery of BNG on Portsmouth Water's own offsite land. These legal agreements can be entered into following grant of the Dual Pipeline planning permission but will need to be entered into (and registration and allocation of units will need to occur) prior to commencement of the Dual Pipeline planning permission, in order to allow the Biodiversity Gain Plan for the Dual Pipeline development to be approved by HBC.
- 2.11 The section 106 agreements will be entered into by the landowners of the land (in this case the Pig Shed Trust and Portsmouth Water), anyone else with a legal interest in the land, and the local planning authority responsible for the area within which the land falls. As the Pig Shed Trust land is within South Downs National Park, HBC will not be party to this section 106 and will not be responsible for reviewing or discharging information relating to the offsite management and monitoring in its capacity as local planning authority for the Dual Pipeline development. The Portsmouth Water offsite land is within HBC so HBC will be party to this section 106 agreement

⁴ Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015

⁵ [Suggested paragraphs for Biodiversity Gain Information](#)

TECHNICAL NOTE

and will review and discharge the offsite HMMP (in its capacity as LPA for that offsite land, not the Pipeline land).

- 2.12 Portsmouth Water will include within its Biodiversity Gain Plan evidence to demonstrate that the units required have been allocated to it and that is sufficient under the relevant statutory legislation and planning guidance to satisfy HBC in its approval of the Biodiversity Gain Plan.

Definition of 'significant' gains

- 2.13 Significant enhancements are areas of habitat enhancement which contribute significantly to a proposed development's unit gain, relative to the biodiversity value of the site before development is carried out. What counts as a significant enhancement will vary depending on the scale of development and existing habitat. HBC includes some examples in its [BNG guidance](#) document.
- 2.14 The Planning Advisory Service also provides [guidance](#) on this and suggests 'significance' can be established by considering: *"The number of units compared to baseline factoring in habitat distinctiveness/condition plus location and local context, taking into account whether it's practical (both possible, but also worth the time/effort) to secure for 30 years"*.
- 2.15 This guidance also emphasises that the question of whether the gain is worth the time and effort of securing for 30 years is a valid consideration as to whether it should be considered 'significant'.
- 2.16 Based on the discussion points below it is not considered that the on-site enhancements being delivered within the scheme boundary are 'significant':
- The overarching strategy for the development has been to reinstate habitats temporarily impacted by the construction of the pipeline on a like for like basis (seeking betterment in habitats where practicable). The impacts are not considered as 'temporary' within the metric calculations (apart from the turf translocation area within Staunton Country Park) due to the metric guidelines (a full discussion on this point is made in the BNG Assessment Report⁶) so these areas are shown as 'lost' and 'created' in the calculations. However, in reality most areas will be fully reinstated and available for public use after a short window of disruption. There are only minor localised permanent impacts associated with the Emergency Discharge Chamber and other small pieces of infrastructure (e.g. manhole covers etc).
 - A large proportion of the habitat present within the development boundary, where habitat loss / creation will occur, forms narrow strips of land within much larger areas managed as public green space by various bodies, including: Havant Borough Council, Hampshire County Council and Portsmouth City Council. Portsmouth Water manage the habitats within the Havant Thicket Reservoir site as part of their operational site management and the site has a rolling management plan informed by periodic ecological monitoring. In all of these areas the development boundary affects a discrete area within a larger green space or habitat, these adjacent areas will still need to be managed under existing arrangements by the various councils, therefore imposing an alternative mechanism of management (i.e. following prescriptions outlined in an onsite HMMP delivered by Portsmouth Water) for a small area within them will create a disjointed approach to managing the public areas, which is not practical in the long term and would have no genuine biodiversity benefit.
 - With regard to the number of units associated with created habitat compared to baseline, the total baseline is 135.91 units, with 108.57 units retained and only 20.91 units created. Overall, there is a net loss. The areas where habitat is created cumulatively equates to a total of 4.86 ha of habitat, within a series of individual parts of larger land parcels under various ownerships. Furthermore, the habitats to be created are predominantly of low to

⁶ Environmental Statement, Volume 4 Appendices, New Appendix A9.21 Biodiversity Net Gain Assessment

TECHNICAL NOTE

medium distinctiveness and include other neutral grassland, mixed scrub, other woodland; broadleaved, urban tree and modified grassland.

- The only high distinctiveness habitat to be created on-site is 0.18 ha of wet woodland. This is present around the culvert upgrade locations (where a worst-case assessment of habitat loss, and therefore creation, has had to be made in advance of detailed design). This habitat is to be created amongst existing wet woodland, in areas where hydrological conditions will not change, and to the same pre-construction baseline condition (moderate). It is therefore considered that establishment will be achieved within the five-year aftercare period for the development and long-term the habitat will develop without specific management interventions. This habitat restoration is therefore not considered to constitute a 'significant' enhancement.
- The picture is similar for linear hedgerows with a total baseline of 1.24 units, 0.87 units retained and 2.96 units of linear habitat to be created (in the form of species-rich hedgerows which are easily established within the five-year aftercare period). While there will be a gain, this is in multiple very small sections of hedgerow in different locations and no area is considered to constitute a 'significant' enhancement.
- A total of 0.42 watercourse units are to be created, compared to 3.49 units of retained watercourse units. Watercourse creation relates to the reinstatement of watercourse habitats following the 'loss' (change in condition/encroachment) experienced during the construction process, which although temporary, a precautionary approach was taken and it was assumed to take longer than 2 years for reinstatement at the existing condition. This creation (reinstatement) is therefore considered a non-significant localised uplift in biodiversity. Watercourse enhancement opportunities are limited on Site due to the constrained nature of the modified development boundary. Specifically, the existing modified nature of the watercourses and the constraints associated with adjacent land-uses (e.g. residential/ industrial buildings, local footpaths and road infrastructure) mean there is limited space for in-channel and riparian enhancements through for instance re-meandering and bank re-profiling. Moreover, the riparian zones of both the Riders Lane Stream and Hermitage Stream are significantly constrained by existing encroachment which will need to be retained e.g. public footpaths and commercial/residential land uses. Therefore, watercourse units created and retained will not incur specific management activities.

2.17 As such, Portsmouth Water Limited considers that these enhancements do not require maintenance provisions and therefore can be secured simply through condition.

2.18 **Actions:** to Agree with HBC that:

1. The onsite BNG is not considered 'significant' and therefore onsite habitat restoration and creation that contribute to BNG could be delivered through a standard landscape reinstatement planning condition, covering five year after-care relating to the detailed landscape reinstatement design submitted, and do not require a condition, agreement or plan for 30 years' maintenance.
2. The off-site BNG being secured on Portsmouth Water and third-party land will be secured via separate section 106 agreements which can be entered into post planning permission.

3. Stage 3: Post Planning Permission

Definition of 'commencement of development'

3.1 A Biodiversity Gain Plan is a pre-commencement condition, meaning that development cannot legally begin until the plan is in place and approved by the planning authority.

TECHNICAL NOTE

- 3.2 Development is defined by Section 55 of the Town and Country Planning Act 1990 (as amended) as:
- *Building Operations*: This encompasses construction, demolition, rebuilding, structural alterations, and other similar activities.
 - *Material Changes of Use*: Any significant change in the use of buildings or land.
 - *Other Operations*: This includes mining, engineering, and other operations on land.
- 3.3 Section 56(2) provides that development shall be taken to be begun on the earliest date on which any material operation “comprised in the development” begins to be carried out. “Material operations” are listed at Section 56(4) as:
- “a) any work of construction in the course of erection of a building;*
 - aa) any work of demolition of the building;*
 - b) the digging of a trench which is to contain the foundations, or part of the foundations of any building;*
 - c) the laying of any underground main pipe to the foundations or part of the foundations of a building, or to any such trench mentioned in paragraph (b).*
 - d) any operation in the course of laying out or constructing a road or part of a road;*
 - e) any change in the use of the land which constitutes material development”.*
- 3.4 Case-law⁷ also makes clear that certain minor works may fall under a de minimis threshold for the purposes of section 56(4).
- 3.5 Portsmouth Water wishes to carry out certain works prior to submitting the Biodiversity Gain Plan for approval by HBC. Portsmouth Water is of the view that such works do not constitute a ‘material operation’ for the purposes of section 56(2) or fall under the de minimis threshold, do not constitute commencement of the development, and therefore can be carried out without triggering the pre-commencement biodiversity condition.
- 3.6 These works are likely to include the following works around Shafts 2 and 3 which will be in the first phase:
- site/vegetation clearance
 - installing fencing
 - temporary welfare/office portacabins
 - containers for storing tools etc
 - holding tanks for water/materials
 - a generator
 - installing tree root protection matting/fencing
 - tree translocation
- 3.7 Therefore, Portsmouth Water will be seeking early confirmation from HBC that the above specified operations would not constitute beginning development (either because they are minor operations which do not constitute ‘material operations’ and fall below a de minimis threshold i.e. minor vegetation clearance or tree-removal which is required to facilitate the Development) and therefore can be carried out prior to submission and approval of the Biodiversity Gain Plan.

⁷ [*R. \(on the application of Connaught Quarries Ltd\) v Secretary of State for the Environment, Transport and the Regions* | Westlaw UK](#)

TECHNICAL NOTE

Other legal agreements

3.8 As set out above at paragraphs 2.6 to 2.12, Portsmouth Water will need to secure off-site land for the delivery of biodiversity net gain to allocate to the Dual Pipeline development. Such agreements will be entered into prior to commencement of the development and Portsmouth Water will include within its Biodiversity Gain Plan evidence to demonstrate that the units required have been allocated to it and that is sufficient under the relevant statutory legislation and planning guidance to satisfy HBC in its approval of the Biodiversity Gain Plan.

3.9 Actions:

1. Agree with HBC that works listed at paragraph 3.6 above do not constitute a “material operation” and are not therefore “development” for the purposes of the 1990 Act and can proceed before the deemed BNG condition is discharged.
2. Prepare and discharge the standard Biodiversity Gain planning condition (Biodiversity Gain Plan). This will include the following tasks:
 - a) Complete section 106 agreements with the landowners of offsite units (Pig Shed Trust and Portsmouth Water) and ensure agreements and units are registered with Natural England on the Biodiversity Gain Site Register.
 - b) Allocate the required units to the Pipeline development, providing a reference number to include in the BNG Plan (6-week process, in parallel with the preparation of the planning conditions). Registration of the BNG Section 106 and the allocation must occur prior to approval of the BNG Plan.
 - c) Update the BNG assessment and prepare the Biodiversity Gain Plan to discharge the planning condition (4-month timeframe, submission of conditions application at start of May and determination 8 weeks later, end June). Work started this week.

4. Summary of Immediate Actions

4.1 Agree with HBC that:

1. The BNG Assessment submitted with the planning application, and the BNG Statement, submitted alongside this technical note, identifying the maximum number of units required offsite and their locations, will provide sufficient evidence that the 10% net gain is achievable in order that HBC can grant the planning permission.
2. The onsite BNG is not considered ‘significant’ and therefore an additional onsite BNG condition / S106 is not required. It is intended that there would be a standard landscape reinstatement planning condition covering five year after-care of the reinstatement design.
3. A clause to be included in the Pipeline planning application s106 to require Portsmouth Water to implement their BNG strategy as set out in their BNG Statement (need flexibility to take account of the post permission BNG assessment updates and work to prepare the Biodiversity Gain Plan).
4. Legal agreements to secure off-site BNG on land owned by Portsmouth Water and third parties can be entered into after the grant of planning permission, but before the Biodiversity Gain Plan is approved.
5. Site clearance and limited vegetation and tree clearance works do not constitute ‘material operations’ and therefore can proceed before the deemed BNG planning condition is discharged.