



CABINET

DATE: 8 MARCH 2022

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## DEVELOPMENT OF THE POTLAND BURN BIODIVERSITY NET GAIN SITE AND APPROVAL OF CAPITAL AND REVENUE EXPENDITURE

**Report of Interim Executive Director of Planning and Local Services**

**Cabinet Member:** Cllr Horncastle, Portfolio Holder for Community Services

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### **Purpose of report**

To seek approval for the capital and revenue expenditure that will be incurred in the development of the first phase of the Potland Burn biodiversity net gain site and which is fully funded by a S.106 contribution by Britishvolt, and for the capital and revenue budgets to be amended. To set out the likely need for further habitat creation at this site to meet the biodiversity net gain requirements for future strategic scale inward investment.

### **Recommendations**

#### **To approve**

1. The creation of an earmarked reserve using the developer contributions in order to fund the scheme over the lifetime of the reserve
2. The creation of a capital expenditure budget of £450,000 (as profiled below) which will be funded from the reserve as a revenue contribution to capital
3. The creation of a revenue expenditure budget of £1,688,400 (including the revenue contribution to fund the capital expenditure) as set out in paragraphs 4 to 6 below, all of which will be externally funded using the developer contributions.
4. The addition of the capital element of expenditure to the capital programme and the amendment to the revenue budget as per the profile in paragraph 7.
5. The use of the Potland Burn site in meeting future biodiversity net gain requirements for strategic employment sites.

### **Link to Corporate Plan**

The development of the site at Potland Burn for biodiversity net gain will support the following aspects of the corporate plan:

Thriving: We want to attract more and better jobs

The introduction of a requirement for biodiversity net gain currently as a policy requirement but shortly as a national mandatory condition of obtaining planning permission. This requires that the Council to take action to ensure that land will be available for habitat creation, to meet net gain requirements for inward investment schemes and other developments of importance to the Council's economic strategy. Failure to do so will place Northumberland at a competitive and comparative disadvantage compared to other areas where net gain land has been made available. Due to its size, the nature of the land and its location in south-east Northumberland, the Potland Burn site is both well suited and critical to this requirement.

Living: We want you to feel safe, healthy and cared for and Enjoying: We want you to love where you live

While some of the habitats to be created at Potland Burn will not be suitable for public access due to disturbance issues, extensive areas will be suitable for access through an enhanced footpath/cycling network. This will provide further green space on the edge of Ashington, alongside Ashington Community Woodland.

### **Key issues**

1. The Britishvolt planning application was the highest financial value application determined by the County Council since LGR. It presented a number of challenges due to the scale of the development. From an ecological perspective, over the time that the coal stocking yard was unused it developed a range of valuable ecological features. Furthermore, as a planning application that fell to be determined under the Environmental Impact Assessment Regulations there was a particular need to be able to demonstrate that ecological issues had been addressed thoroughly and transparently. For these reasons it was agreed with Britishvolt that they would need to develop a scheme that demonstrated a biodiversity net gain of at least 10% based on the metric published by Defra for this purpose.
2. The main challenge arising from this specific requirement was to identify land suitable for habitat creation that was reasonably close to Cambois and available for this purpose, a challenge that was magnified by the speed at which Britishvolt needed to secure planning permission. Fortunately, the Potland Burn site met all of those requirements. There is no realistic prospect of development on most of the former surface mine and, being in the early stages of aftercare following restoration from surface mining primarily to agriculture it is essentially a blank canvas, comprising fields sown to a temporary grass ley. This means that appropriate habitat creation can secure a significant uplift in ecological value, giving it a high value per hectare for net gain purposes. This approach also removes the need for extensive and engineered under drainage to be installed at the site, which was a requirement of the planning conditions attached to the original opencast permission. The estimated value of the works outstanding in 2020 was approximately £400,000.
3. Because the Potland Burn site is in the ownership of Advance Northumberland, it is a party to the S.106 Agreement as well as Britishvolt and Northumberland County Council. The Agreement obliges Advance Northumberland to allow the Council to manage this area of land for the purpose of habitat creation and management for biodiversity net gain. Accordingly, the Agreement ensures that the scheme can proceed as set out in this report irrespective of whether the land remains in the

ownership of Advance Northumberland or is transferred to Northumberland County Council.

4. The metric-based calculations shows that an area of 67ha is required for habitat creation at Potland Burn to secure the necessary 10% biodiversity net gain for the Britishvolt scheme. This work will be managed by specialists within Northumberland County Council's Environment and Design Team with funding from Britishvolt. The level of funding contribution has been calculated using guidance contained in the Government's economic impact assessment of the Environment Bill and the experience of LPAs that have adopted net gain already, and on this basis the Section 106 Agreement for the planning permission commits Britishvolt to make a contribution of £1,688,400 to the Council for habitat creation at Potland Burn and its subsequent management for a period of at least 30 years. This is to be paid in two equal instalments; the first prior to commencement of development and the second within two years of the first payment. The first payment is expected to be received during the first quarter in 2022/23.
5. Capital expenditure will be incurred primarily during the first few years of the scheme as the new habitats are created and is likely to be in the region of £450,000. This will be for the excavation of an extensive network of ponds and wet scrapes; the sowing of wildflower mixes and the collection, growing on and planting of plug plants of scarce species growing on a site adjacent to this one; the planting of trees and scrub, access improvements and construction of a small livestock shed and handling facilities. It is difficult to profile this expenditure precisely at this point as an Officer needs to be recruited to take the project forward, soil nutrient testing undertaken to refine the habitat creation measures required and a work schedule drawn up that takes account of the various restrictions on the site. These mean that most of the larger scale work will need to be undertaken in late summer and autumn; after the bird breeding season and before the soil becomes too wet in winter.
6. Revenue funding will comprise officer time which will be 1.0fte initially estimated to be for three years during establishment. The budget will be reviewed once the capital element of works is completed but it is hoped future developments will contribute to further work at Potland Burn including this officer post, as well as ongoing management of habitats and maintenance of site fabric for a period of at least 30 years. Subject to changes in funding levels, any associated redundancy costs will be met from contributions received to date. It is proposed to create an earmarked reserve from contributions received and use it to fund the revenue and capital costs over the lifetime of the project.

7. The estimated profile of spending over financial years is shown below:

	2022/23	2023/24	2024/25	2025 - 2052	Total
	£	£	£	£	£
Capital Expenditure	200,000	200,000	50,000	0	450,000
Revenue Expenditure					
Staffing	38,540	40,690	42,870	382,360	504,460
Running costs of site	20,000	20,000	20,000	673,940	733,940
Revenue contribution to Capital	200,000	200,000	50,000	0	450,000
<b>Total Revenue*</b>	<b>258,540</b>	<b>260,690</b>	<b>112,870</b>	<b>1,056,300</b>	<b>1,688,400</b>

\*Funded from the S106 Contribution

8. Now that the Environment Bill has been enacted and biodiversity net gain is to become mandatory, it is also important to consider the nature and extent of habitat creation that is likely to be required to ensure that the requisite net gain can be achieved as key strategic employment sites such as NEP 2, Ashwood and West Hartford are developed. Failure to do so at this stage will mean that these matters would then have to be addressed on a case-by-case basis once an investor was actively engaging in a site selection process. This would add risk by creating uncertainty, delay and additional cost that would reduce the attractiveness of the Council's key inward investment sites. This is especially important as it is anticipated that the Britishvolt development will attract significant supply chain companies which will be looking for sites in north-east England. These requirements can be roughly estimated based on the vegetation communities present on the sites, although exact requirements will depend on the land take of any particular development and the potential for meaningful habitat creation on the development site itself.
9. A further 35ha will be available within the parcel of land already identified for use for biodiversity net gain at Potland Burn, and this could accommodate about 30% of the potential requirement arising from strategic employment sites in south-east Northumberland. There is a further 50ha of land within the former surface mine site on the western side of Longhirst Lane, excluding areas identified as having development potential in the medium to long term. If this was to be made available for habitat creation for net gain purposes it could accommodate about 50% of the potential future requirement arising from the development of strategic employment sites. Discussions are ongoing with the Council's Strategic Estates Team to identify further sites. As with Britishvolt, all of this work would be fully funded by developers and secured through S.106 Agreements.

## **Background**

1. The Britishvolt planning application was the first time that the Planning Service used Defra's recently developed biodiversity net gain metric to quantify ecological impacts and ensure that enhancement was provided sufficient to demonstrate a 10% net gain in ecological value overall. However, the Environment Act received the Royal Assent in November 2021 and it introduces a mandatory requirement for most types of planning application to demonstrate a net gain of at least 10%, which will come into effect in autumn 2023.
2. Where the land being developed is of low ecological value and there is space within the development for some habitat creation, it will be possible to satisfy that requirement on site through appropriate landscaping. However, where more important habitats will be impacted and space for habitat creation on site is limited, habitat creation off-site will be required. A recently published Market Analysis Study commissioned by Defra estimates that about 50% of new habitat will be delivered off site when net gain becomes mandatory.
3. While there is no requirement for local authorities to be proactive in helping developers to meet their net gain requirements, it will inevitably become an important aspect of developers' site selection processes, given the costs, additional work and potential delays involved. Accordingly ensuring that there is land available to meet net gain requirements for strategic employment sites will secure a significant advantage as developers consider the potential sites available to them, while failure to do so may make sites elsewhere more attractive to developers. Accordingly, this now needs to be an important aspect of the Council's approach to securing inward investment and meeting its economic regeneration aspirations.
4. The Environment Act requires that habitats created to meet net gain requirements are managed to keep them in their intended state for a period of at least 30 years. To assist developers and local planning authorities in the costing of such work Defra has commissioned research and provided guidance, firstly in the [Impact Assessment](#) published with the Environment Bill in 2019 and more recently in a [Market Analysis Study](#) published with the consultation on biodiversity net gain regulations and implementation that opened in January 2022. The Environment Bill Impact Assessment together with experience from local authorities that have pioneered the use of offsetting and net gain approaches were used to calculate Britishvolt's financial contribution for the work at Potland Burn. The more recently published Market Analysis Study supports the figures used.

## **Implications**

<b>Policy</b>	By facilitating inward investment the development of Potland Burn as a strategic net gain site will strongly support the Council's economic strategy. It also accords with the draft Northumberland Local Plan, in that it will ensure that net gain is secured at a site that is located in an ecologically appropriate area, being within the South East Northumberland Wildlife Network and Northumberland Coalfield Nature Improvement Area. Importantly it is also of a large enough scale to secure meaningful ecological benefits. Therefore it will help to deliver important employment-generating schemes by ensuring that they accord with policies ENV1 and ENV 2 of the Plan.
<b>Finance and value for money</b>	All of the work set out in this report is funded completely by developer contributions, and so there will be no cost to the Council.
<b>Legal</b>	<p>The Council, Advance Northumberland and Britishvolt are signatories to a S.106 Agreement, part of which governs the creation and management of new habitats on 67ha of land at Potland Burn by the Council, funded by Britishvolt.</p> <p>The recommendations relate to an executive function with the meaning of S.9D(2) Local Government Act 2000 as the expenditure is not an exception specified in regulations made under subsection 3 of that Act.</p>
<b>Procurement</b>	All work to be commissioned will be subject to the Council's procurement rules.
<b>Human Resources</b>	An Officer will be recruited to the Environment and Design Team in Planning Services to lead this work. A job description and person specification has been through evaluation and Human Resources has provided a job description number.
<b>Property</b>	The site will be managed by specialists within the Environment and Design Team in the Planning Service in the same way as the Cambois Wader Mitigation Site is currently managed.
<b>Equalities</b> (Impact Assessment attached)  Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>	n/a
<b>Risk Assessment</b>	The Britishvolt funding for habitat creation and management has been secured by a legal agreement and will fully cover the costs

	involved, and so it is considered that this falls below the threshold for which a formal risk assessment is required.
<b>Crime Disorder &amp;</b>	n/a
<b>Customer Consideration</b>	The use of a biodiversity net gain approach to resolving ecological impacts at the development site enabled Britishvolt to secure planning permission within its required timescale.
<b>Carbon reduction</b>	The extensively managed wetland, grassland and scrub habitats to be created at Potland Burn all play a significant role in carbon sequestration, helping to meet the Council's carbon reduction targets.
<b>Health and Wellbeing</b>	While some of the areas will be sensitive to disturbance and so not suitable for public access, other areas will be capable of sustaining a level of managed access and so will provide an important greenspace resource.
<b>Wards</b>	Bothal, Pegswood

### **Background papers:**

S.106 Agreement for 21/00818/FULES Construction of battery factory at Cambois coal stocking yard

### **Report sign off.**

***Authors must ensure that officers and members have agreed the content of the report:***

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