

NATIONAL HIGHWAYS DESIGNATED FUNDS – BIODIVERSITY PROJECT

Summary: To report on the development and early delivery of a wildflower grassland restoration project funded by National Highways.

Recommendations: That the report is noted.

Report by: Simon Smith (Nature Recovery Lead) and Lorna Baggett (Glorious Cotswold Grasslands Programme Officer)

EARLY CONVERSATIONS

1. From late 2020 onwards conversations with National Highways (NH) concerning the A417 Missing Link included an exploration of developing proposals to their national Designated Funds. One idea was to develop a programme where our Glorious Cotswold Grasslands (GCG) team delivered Biodiversity Net Gain (BNG) units through wildflower grassland restoration which NH can count towards their internal biodiversity KPI.
2. It is important to note that although this project is using the BNG methodology, this is only to provide a credible measure of biodiversity benefit for the NH KPI. It is not connected to statutory BNG. We are using BNG metric 2 which was the version available when we first proposed the project and is now out of date. The resulting units can only be counted towards the NH KPI, they cannot be transferred and have no tradable value.

PROJECT PROPOSAL

3. An early challenge was finding a way for us to draw down the funds in a manner that accommodated both the seasonal nature of the work and NH processes and internal timetables. This resulted in a three-stage annual process, with each stage providing the information required for the next:
 - Feasability – to be drawn down in November this covered initial capital costs in year 1, storage costs and work to source sites and liaise with landowners over the winter resulting in an initial list of sites.
 - Detailed Design – to be drawn down in March this covered the detailed botanical surveys and negotiations with landowners to be completed over the summer resulting in signed landowner agreements and full baseline information.
 - Implementation – to be drawn down in August/September this covered the costs of ground preparation, providing and sowing seed, mileage and 30-year management costs.
4. For internal use a business plan comprising of a project risk register and a 33-year financial spreadsheet were developed in January 2022. The risks identified and planned for included:
 - Failure to recruit or retain landowners
 - Failure to cover future costs
 - Failure to recruit a suitable team member
 - Weather impacting on seed collection and/or sowing

The NH programme was integrated with, rather than entirely additional to the current GCG programme. This draws on existing team members contacts and experience and helps to limit some risks. We will receive the funding for the 30-year management periods up front within each implementation payment. The business plan spreadsheet allows for this expenditure to be planned in detail beyond our normal budgeting timescales.

5. In August 2022 we jointly submitted a detailed proposal for a £7.66 million programme with the National Trust Ebworth team to restore 320 Ha of grassland. Our element of the programme was to restore 120 Ha over 3 years and to ensure follow on management for 30 years at a total cost of £2.12 million. The National Trust have subsequently reduced the scale of their element to include only work on their own land initiated in the first year.

LEGAL AGREEMENTS

6. This programme involves two sets of legal agreements. Funding agreements between ourselves and NH for the three stages outlined above and the 30-year landowner management agreements. The details of the implementation funding agreement have consequences for our landowner agreements. In order to protect the Cotswolds Conservation Board (CCB), the landowner agreements have to contain clauses that reflect those of the implementation funding agreement. (Our old name is used deliberately in this context as the proper name of the legal entity).
7. Funding agreement negotiations proceeded slowly. In order to have a team member in place for the 2023 summer season we ran the recruitment concurrently with the negotiation of the feasibility agreement. Lorna Baggett started work as the Programme Officer (PO) in March 2023 and the funding agreement for all three years feasibility funding was signed in April 2023.
8. The PO embarked on initial landowner liaison from March to May. This work was originally intended to take place over the preceding winter but fortunately there were plenty of good leads from the existing GCG team. Initial negotiations indicated that in excess of 50 Ha were likely to be restored in this first season.
9. Negotiating funding agreements with NH for the detailed design and implementation stages proved to be a more challenging and lengthier process than anticipated. Additionally, NH introduced a requirement that our landowner agreements contain a legally binding land charge into our funding negotiations in mid-May. Fortunately, we are one of the public bodies granted the ability to enter into "Section 39 Management Agreements" by the Wildlife and Countryside Act 1981. This has created a tremendous amount of work which was not anticipated. Our original intention was to use landowner agreements adapted from Farming in Protected Landscapes agreements.
10. The PO has led on developing the detailed content of both the funding and landowner agreements. This demonstrated considerable ability and flexibility. Negotiating legal agreements was not emphasised in the recruitment materials! In order to protect CCB we had to source and understand legal advice for both sets of agreements which again took up more time. There are few specialists with experience of Section 39 agreements. NH have funded this additional cost.
11. The PO undertook the detailed botanical surveys on all the potential sites throughout June and July and submitted the full dossier of information required for the implementation stage in early July. The exception being the signed final landowner section 39 agreements.
12. Negotiations between ourselves, landowners, NH and legal advisors concerning both sets of agreements continued for the remainder of 2023. We developed heads of terms to progress landowner negotiations and full draft landowner agreements were sent in September. The detailed design agreement was signed in October and we had first sight of the main body of the implementation funding agreement in December. It is envisaged that the first cohort of landowner agreements and the corresponding first implementation agreement should all be signed early in 2024.

THE 2023 PRACTICAL SEASON

13. Seed harvesting ran from 3 July – 8 September. Following several years of warm dry summers excellent for harvesting, 2023 was exceptionally wet. This produced a prolonged season with harvesting opportunities concentrated into the few dry days and repeat visits to sites being necessary to capture the required variety of seeds. The impact of the poor weather was compounded by teething difficulties with the new vehicle and brush harvester. Additionally, the late delivery of the new trailer on 19 July made it difficult to run two harvesters at the same time prior to that date. Despite all of these issues the team collected sufficient seed for this programme.
14. Although the implementation agreement had not been signed the seed had to be sown in the autumn and following internal approvals, we received the green light from NH to start sowing from 11 October. Ground preparation (light harrowing) proved challenging as many landowners had not been able to take hay in July because of the rain and even where they had the warm, wet conditions allowed the grass to continue growing late. Contractors were swamped with work to cut grass late in the season. In the end the weather broke in mid-October and sowing was completed by 30 October.

CONSEQUENCES

15. The evolution of the landowner agreements into Section 39 Management Agreements containing a legally binding 30-year land charge proved unattractive to some of our landowners. The area currently predicted to be signed up has dropped from just over 50 Ha to just over 30 Ha. This area may drop further before the final agreements are signed. Changes resulting from concurrent landowner negotiations cause a complication for the implementation agreement where the PO has to submit revised annexes and NH revisit their value calculations.
16. This programme sits within a rapidly developing “marketplace”. It was initially designed to compare well against similar Environmental Stewardship and other Environmental Land Management options and although these payments have recently increased it still does. Furthermore, the risk of future less favourable comparisons has been mitigated by allowing landowners to switch to another source (other than BNG) to fund on going management whilst remaining in the scheme (receiving monitoring visits, advice, interventions, etc.).
17. A greater challenge to the programme is the imminent rolling out of statutory BNG. A Gloucestershire based BNG broker is offering considerably higher payments although discussions have shown that they are only interested in relatively large areas of over 7 Ha. It is understandable that landowners interested in restoring larger areas would wish to keep their options open and would shy away from an agreement containing a 30-year land charge. We believe that there is still a good role for this programme targeted at people seeking to restore areas of under 7 Ha. These landowners are also more likely to value the comprehensive specialist support programme that only we offer.

REFLECTIONS

18. This programme has had an exceptionally complex and challenging first year. The timings of the various funding agreements slipped due to lengthy negotiations. Consequently, the detailed design and implementation fieldwork ran concurrently with negotiating funding agreements and the linked task of designing and negotiating landowner agreements (which became more legally onerous than anticipated). Additionally, we experienced challenging harvest and sowing seasons in terms of weather.
19. The 2024 season should (must!) be better. The NH funding and our landowner agreements will have been designed and used. The PO will be in place throughout the preceding winter to recruit and negotiate with landowners, we have all the equipment ready to use and we understand our niche in the market. The team have prepared our offer for the 2024 season, started negotiations and are initially predicting to restore an additional 50 Ha in 2024. Following their experience of 2023 their tenacity and commitment to the restoration of wildflower grasslands is commendable.
20. The management of financial and reputational risk has required constant attention not least in designing the financial, legal and operational elements of a 36-year long programme.
21. The hard lessons of 2023 have been well learned and will prove invaluable. We have rare and valuable practical field experience of negotiating long term legally binding landowner agreements at a time when options for green financing for nature recovery measures are being widely explored. We also now understand our even rarer legal power to do so.

SUPPORTING PAPERS

- None

JANUARY 2024