

Report to: Cabinet



Date of Meeting 5 March 2025

Document classification: Part A Public Document

Exemption applied: None

Review date for release N/A

---

## **Biodiversity Net Gain (BNG) – Habitat banks, monitoring, and fees**

### **Report summary:**

All relevant developments must achieve at least 10% Biodiversity Net Gain (BNG) mandated by the Environment Act 2021. New habitats created or enhanced through BNG must be maintained for at least 30 years.

If BNG cannot be delivered on-site, off-site measures on land controlled by the developer or a Habitat Bank can be used. As a last resort, Statutory Credits can also be purchased from Natural England. A habitat bank is a site where habitats are created, restored, or enhanced to generate biodiversity units that can be sold to developers to offset the environmental impact of their projects.

Monitoring reports on the delivery of BNG must be provided to the Council over the 30-years which must be reported to central government with no additional funding.

Off-site BNG habitats must be registered on the Natural England off-site (biodiversity gain site) register. To register, providers must have a legal agreement (Section 106) with the Council or via a Conservation Covenant (CC) with a responsible body.

Currently, there are no Habitat Banks in East Devon, but there is interest, meaning that currently development impacts can lawfully be offset outside of East Devon. Registration of habitat banks, within East Devon, will ensure development impacts are offset locally and help facilitate the delivery of the local plan.

Establishing and monitoring legal agreements, including potential enforcement issues, requires significant resources and potential risks, so it is important to focus on suitable sites. The Council can secure fees to cover these costs, but it is a significant commitment and up to the Council to decide whether to enter into these legal agreements. Therefore, it is proposed to recover costs where BNG monitoring is required.

### **Is the proposed decision in accordance with:**

Budget Yes ☒ No ☐

Policy Framework Yes ☒ No ☐

### **Recommendation:**

That Cabinet:

- 1.1. Delegate authority to the Assistant Director Planning Strategy and Development Management to enter into S106 legal agreements with landowners, habitat bank providers, and other persons with an interest in the land to secure a habitat bank based on the outlined framework.
- 1.2. Approves the principle and proposed fee structure for BNG monitoring and reporting based on full cost recovery.
- 1.3. Notes that the fees will be reviewed at least annually in relation to inflation, pay awards, and considering emerging data and/or policy or guidance.

### **Reason for recommendation:**

Facilitating habitat banks will contribute to the Council's statutory duty regarding biodiversity and demonstrate its commitments in the Nature Recovery Declaration, facilitate the delivery of the Local Plan, and the Council Plan.

The Council must establish a transparent process and consistent approach to determine the appropriateness of third-party proposals, prioritise them, and decide why it is willing to enter into legal agreements. It also requires a transparent framework to recover reasonable fees with the Council's costs associated with BNG.

Officer: Will Dommett, District Ecologist, [Will.Dommett@eastdevon.gov.uk](mailto:Will.Dommett@eastdevon.gov.uk); Charlie Plowden, Assistant Director – Countryside & Leisure, [CPlowden@eastdevon.gov.uk](mailto:CPlowden@eastdevon.gov.uk)

---

Portfolio(s) (check which apply):

- ☒ Climate Action and Emergency Response
- ☒ Coast, Country and Environment
- ☐ Council and Corporate Co-ordination
- ☐ Communications and Democracy
- ☐ Economy
- ☐ Finance and Assets
- ☒ Strategic Planning
- ☐ Sustainable Homes and Communities
- ☐ Culture, Leisure, Sport and Tourism

**Equalities impact** Low Impact

**Climate change** Low Impact

**Risk:** High Risk; To not secure habitat banks could result in development impacts being offset outside of East Devon and impede the delivery of the Local Plan. Without charging fees the Council is legally obliged to monitor and report on BNG delivery at its own cost.

### **Links to background information**

Link to [Council Plan](#)

Priorities (check which apply)

- ☐ A supported and engaged community
- ☒ Carbon neutrality and ecological recovery
- ☐ Resilient economy that supports local business
- ☐ Financially secure and improving quality of services

---

## Report in full

### 2. Background

- 2.1. The [Environment Act 2021](#) mandates that all relevant developments from 2024 must deliver a minimum of 10% Biodiversity Net Gain (BNG) to ensure that developments deliver measurable improvements in biodiversity. BNG is measured using the Defra [Statutory Biodiversity Metric \(SBM\)](#).
- 2.2. Biodiversity value (including area, linear, and watercourses) is quantified in Biodiversity Units (BUs). All habitat types present on site must deliver 10% gain if present, regardless of whether there is a predicted impact.
- 2.3. BNG can be achieved through creation or enhancement of habitats on-site (within the redline boundary); a combination of on-site and off-site (off-site can be within the ownership boundary or from the off-site market (including from a habitat bank); or as a last resort developers must [buy statutory biodiversity credits](#).
- 2.4. Developers can use a combination of these measures but they must ensure they follow the [biodiversity gain hierarchy](#), a sequential approach to BNG delivery, a separate consideration to the [mitigation hierarchy](#).

### 3. Biodiversity Gain Plan

- 3.1. All relevant BNG planning applications are subject to a [deemed pre-commencement condition](#) (the biodiversity gain condition) which ensures that development may not commence unless a [Biodiversity Gain Plan \(BGP\)](#) has been submitted to and approved by the Local Planning Authority (LPA). The BGP sets out how the biodiversity gain objective of at least a 10% gain will be met. Special arrangements are in place for phased developments.

### 4. Off-site BNG delivery (including Habitat Banks)

- 4.1. Where appropriately justified, development proposals may rely in part or in whole upon an off-site BNG solution. The appropriate solution will differ from site to site but should be governed by the biodiversity gain hierarchy.
- 4.2. All off-site gains must be legally secured, either by a Section 106 (S106) planning obligation or through a conservation covenant secured with a Responsible Body. Off-site gains may be secured on other adjacent land in the same ownership (i.e. land within the 'blue line'); other land under option by the applicant/developer; or land in a third-party ownership.
- 4.3. Off-site providers effectively enhance or create habitat on a specific piece of land which is entirely separate to any specific development proposal. This habitat generates 'biodiversity units' as measured through the SBM. These biodiversity units can be sold to developers for reliance upon in meeting their off-site BNG obligations.
- 4.4. There are two key delivery mechanisms for bringing forward off-site BNG solutions:
- 4.5. Habitat banks – habitat enhancement/creation in advance of securing sales of resulting biodiversity units.

- Habitat to order – off-site provider enhances/creates habitat only in response to a specific requirement from a development.
- 4.6. Any off-site gains contributing towards the delivery of BNG must be listed on the Natural England (NE) [biodiversity gain sites register](#). Developers (or their agents) are responsible for registering sites which require a secured legal agreement in place.
- 4.7. The purpose of the register is to list sites that are providing biodiversity units to allocated developments and prevent ‘double counting’, which would happen if the same units were assigned to multiple developments.
- 4.8. Off-site land must be allocated to the development on the register before the Council can discharge the BGP.

## 5. Habitat banks

- 5.1. [Habitat Banks](#) are new habitats which are created on the basis that costs can be met through selling biodiversity units to developers. They are set up at the owner’s risk and in an open marketplace for purchasing biodiversity units. There are no Habitat Banks in East Devon.
- 5.2. Currently there are four main models for habitat banks:
- A private landowner or leaseholder sets up the bank themselves;
  - A broker working on behalf of a landowner or leaseholder sets up the bank;
  - A specialist habitat bank provider enters into an agreement with a landowner, and they set up and manage the site under a 30-year lease;
  - A Council creates a habitat bank.
- 5.3. Sites must be subject to controls and habitat banks must:
1. Have the creation/enhancement and maintenance of habitats secured with a legal agreement (planning obligation or conservation covenant) for a minimum period of 30 years; and
  2. Ensure biodiversity units are formally recorded in the statutory biodiversity gain site register operated by Natural England.
- 5.4. The Council is not a [responsible body](#) for the purposes of agreeing and monitoring conservation covenants. As such, any proposed habitat bank in East Devon will need to be secured via a [S106 planning obligation](#). This is a different use of S106 and will create standalone S106 agreements that are not associated with a particular planning permission.
- 5.5. Entering these arrangements will place obligations on the Council to monitor and enforce the correct delivery of these sites over a 30-year period. The Council can secure a fee to cover the costs of assessing and monitoring off-site habitats and habitat banks. It is however potentially a significant commitment, and it is ultimately up to individual Councils whether they decide to enter into these legal agreements with providers.
- 5.6. Legal fees will also need to be charged and it is envisaged fees will be paid by the developer or habitat bank provider at the point of signing the relevant legal agreement.

5.7. The creation of a Council owned habitat bank is outside the scope of this report.

## **6. Council criteria for Habitat Banks**

6.1. Entering into legal agreements for habitat banks with landowners is discretionary. For anyone interested in setting up a habitat bank (private landowner, leaseholder, broker, developer, or specialist habitat bank provider), a framework has been developed based on other Council approaches.

- Stage 1 – Initial assessment/screening
- Stage 2 - Prioritisation and stakeholder review
- Stage 3 – Detailed review and legal agreement

6.2. Stage 1 - Initial feasibility assessment of a habitat bank site against a set criteria Appendix A). Sites providing insufficient or incorrect information will not be considered further.

6.3. It is proposed that a call for sites will be launched so applicants can submit their proposal for consideration. All applications will be subject to a non-refundable £460.00 fee to cover officer time to check the submission based on the officer day rate (refer to section 8.2). Should sites be taken to signing a S106, the application fee will be deducted from the monitoring contribution.

6.4. Stage 2 - Each site is ranked, e.g., whether Priority Habitat will be created/enhanced. The top priority site will progress to Stage 3 following stakeholder consultations with relevant offices and interested bodies, e.g., ward member (Appendix B).

6.5. If applicable and relevant, other specialisms consulting on habitat banks may also propose to charge a fee to cover their time, e.g., as defined in proposed planning fees.

6.6. Stage 3 - Submission of additional information to assess the risk of failure, such as a sound business plan (Appendix C).

6.7. Once the Council has confirmed that the additional information provided at Stage 3 demonstrates a low risk of failure, the site will proceed to negotiation of a S106 agreement. If a site progressing to Stage 3 later fails to enter a S106 legal agreement, the next priority site will progress. This is to ensure Council resources are prioritised to get the preferred sites onto the market more quickly.

6.8. Only when the S106 is signed can the habitat bank provider register the site on the biodiversity gain site register.

## **7. BNG Monitoring and Reporting**

7.1. The implementation of BNG includes collecting and scrutinising large amounts of data at the planning application stage and over the following 30 years. Monitoring BNG delivery is a statutory duty for LPAs, and the results are a central input into [Biodiversity Duty reporting](#).

7.2. There are two types of monitoring:

- **Direct Monitoring** involves site surveys to track individual habitat development (habitat type and condition). This is normally undertaken by the land manager, i.e. the landowner or their agents, such as a management company or a consultancy.
- **Indirect Monitoring** is undertaken by the LPA and comprises the tracking of BNG schemes through the compilation of data in Direct Monitoring reports, and possibly other evidence such as review of aerial imagery and site visits to verify that BNG habitats remain in place.

- 7.3. Guidance makes it clear that [LPAs are responsible for BNG monitoring](#). Reports and data from Direct Monitoring must be sent to the LPA at the pre-determined intervals; the LPA will then assess if habitat development is on track. The developer or third parties (such as a habitat bank provider) acting on their behalf are responsible for providing the LPA with the monitoring reports at specified intervals.
- 7.4. At some monitoring intervals, an LPA ecologist may also need to conduct a site visit to verify the ecology report. They may need to discuss remedial management actions with the biodiversity gain site manager, for example if the habitats are not on track to meet standards committed to in the agreement.
- 7.5. These activities by the LPA carry a significant cost, given that the burden of ongoing agreements will grow over time as new developments, tied to 30-year commitments are granted planning permission. The costs of staff time can be expected to grow year on year, so inflation effects should be considered. As an illustration, an assumed inflation rate of 3.5%, compounded yearly would make a cost approximately 2.8 times greater by year 30 compared to year one.
- 7.6. The [Local Government Act 2003 \(section 93\)](#) permits the authority to seek to recover the costs of administration / monitoring by levying a fee. This can include recouping the cost of monitoring BNG schemes by charging monitoring fees through S106 agreements.
- 7.7. The Planning Advice Service (PAS) has created a suite of [sample templates](#) that cover the various ways of securing biodiversity gains via S106 agreements (including for standalone monitoring contributions) and via planning condition. The use of an obligation or condition is dependent on the onsite habitats being delivered. All off-site habitats (including habitat banks) must be secured via a planning obligation.
- 7.8. The Council are required to monitor all off-site habitats and '[significant on-site enhancements](#)'. The maintenance of significant enhancements must be secured with a legal agreement (planning obligation or conservation covenant) or planning condition for 30 years in the same way as off-site gains.

## 8. Benchmarking

- 8.1. For benchmarking (Appendix D), the charging structures for BNG monitoring for other English authorities was reviewed. In summary, most of the case study LPAs charge a one-off fee payable at the signing of a S106 legal agreement to cover the costs over the 30 years and most include an index-linked element to account for inflation.
- 8.2. Most also have charges tiered by size of the BNG site, and some also by technical difficulty of creating or enhancing the habitats. Of the benchmarked councils, the lower end examples start their scale of charges at around £3k- £5k. The upper end ranges are more variable, some open-ended for large complex sites.

- 8.3. The below is a breakdown of how costs have been derived by Devon Authorities to be used as a base from which Devon LPAs can derive their monitoring fees.
- 8.4. The Service Level Agreement (SLA) day rate for a principal ecologist to review monitoring reports and undertake site visits has been calculated at £333 (£44.44 /hr). A yearly inflation of 3% per annum has been included.
- 8.5. Monitoring reports will be expected to be submitted on Years 2, 5, 10, 15, 20, 25 and 30 of the agreement. Site visits will be undertaken by an ecology officer on years 1, 5, 15, 25 and 30. Costings for a sixth site visit at an unspecified time (with required access notice period included in the S106) have also been included.
- 8.6. Based on [Devon Authorities fees](#), monitoring costs for significant on-site and registered off-site provision will be associated with the size of land parcel. The following fees have been proposed.
- Small site (0-10ha) - £4,131.08
  - Medium site (11-20ha) - £5,076.97
  - Large site (21ha+) - £6,022.86
- 8.7. The costs are based on estimated officer time at each monitoring event, related to both size (total habitat area to be monitored, in hectares) and complexity of the site (based on the highest technical difficulty category of the habitats included, using the Difficulty scores in the Statutory Metric). It also includes allowances for corporate overheads and inflation.

## **9. East Devon Fee Structure**

- 9.1. For habitat banks and off-site BNG delivery it is proposed that East Devon bases their fee structure on the Devon model, with some adjustments. This is using the same cost calculator but based on East Devon specific data/rates (including corporate overheads and oncosts). The cost calculator is a modified version of one used by other Councils, including Buckinghamshire and North Yorkshire.
- 9.2. The day rate for the District Ecologist to review monitoring reports and undertake site visits has been calculated at £460.00 (£62.10 /hr). A yearly inflation of 5% per annum has been included, given the uncertainty of inflation over a 30-year period.
- 9.3. The following fees have been proposed (Appendix E).
- Small site (0-10ha) - £8,030.02
  - Medium site (11-20ha) - £9,925.60
  - Large site (21ha+) - £11,821.19
- 9.4. Payment of fees will be required prior to signing a S106 agreement, to ensure that reasonable fees are recovered to ensure the long-term monitoring of the sites do not cause an undue burden on the Council.
- 9.5. The same fees will apply to monitor significant on-site enhancements secured on [major developments](#), secured either by planning obligation or by condition. Two fees may be required, if a combination of on and off-site BNG is proposed.



- 9.6. For [minor developments](#), significant on-site enhancements could include the planting of a few individual trees or small area of relatively (in an ecological sense) low value habitats, such as grassland and scrub. In these situations, the monitoring framework and costs could also be overly burdensome for the Council to monitor and a disproportionate cost to developers.
- 9.7. While it is required to secure these small-scale on-site significant enhancements for 30-years, a balance is proposed in the level of monitoring required.
- 9.8. Monitoring reports will be expected to be submitted on Years 2, 5, 10, 20, and 30 of the agreement. Site visits will be undertaken by an ecology officer on year 5, and one other unspecified time within the 30-years.
- 9.9. The day rate for the Ecologist Officer to review monitoring reports and undertake site visits has been calculated at £383.00 (£51.80 /hr). A yearly inflation of 5% per annum has been included.
- 9.10. The monitoring fee would be £3,369.60 secured via a standalone obligation unless other obligations are also required (Appendix F).
- 9.11. For minor development sites with low or moderate distinctiveness habitats proposed in moderate condition (or lower) providing significant on-site BNG, such as individual trees, small areas of scrub, or other neutral grassland then monitoring contribution will not be required, unless these extend in area above 0.5ha or a combined biodiversity unit outcome more than 2 biodiversity units.

---

### **Financial implications:**

Subject to EDDC check on correct costings for fee charges

### **Legal implications:**

The legal issues are dealt with in the body of the report.