Dorset Council

Biodiversity Net Gain

Off-site habitat banks – Dorset Council selection criteria and process v2.0.

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Off-site habitat banks – Dorset Council selection criteria

1.1. Introduction

What is the purpose and scope of this document?

1.1.1. The Environment Act 2021 introduced a mandatory requirement for new development to deliver 10% biodiversity net gain (BNG). This is secured through the planning process and developers must demonstrate the correct amount of BNG can be achieved before planning permission can be granted. In the first instance, developers should seek to provide this on-site but, where this is not possible, the legislation allows for off-site BNG. To achieve this, a supply of local habitat banks is needed to ensure BNG units are available for developers to meet the BNG requirement.

1.1.2. Dorset Council is working to secure habitat banks but is also keen to work with landowners interested in providing habitat banks, as this can benefit both landowners and developers. Where landowners are interested in creating habitat banks, there will be a need to provide the necessary assurances to Dorset Council (in its capacity as the Local Planning Authority) that there is a legal agreement in place to provide certainty that the BNG credits will be secured for the relevant development before a planning permission can be issued.

1.1.3. This document provides guidance for land owners, managers and land agents who are interested in securing their land by legal agreement with Dorset Council to create a BNG off-site habitat bank[1]. It is part of the suite of documents available from Dorset Council providing guidance on achieving BNG.

1.1.4. The document sets out the stages in Dorset Council's decision-making process around determining which third party owned, off-site habitat banks to prioritise when looking to legally secure (through a s106 agreement[2]) a supply of biodiversity gain units to enable development in Dorset. In the expectation that some nominated sites will be better able to provide BNG than others, it is important to have a clear understanding of how Dorset Council will select those for progression. This document does not cover the process of securing land by conservation covenant with Dorset Council as a responsible body, and separate guidance will be produced for this at a later date.

1.1.5. Dorset Council will amend and update the document as required to reflect national legislation and guidance relating to BNG, and to reflect the internal decision-making process around third party owned habitat banks. This is an iterative process and as such the document will be reviewed and updated as necessary.

1.1.6. This document is a guide to what is required and Dorset Council reserves the right to ask for additional information as necessary. Dorset Council has no obligation to enter into negotiations or a legal agreement with the owners of a potential habitat banks where the above criteria have been met, and is not able to guarantee that the negotiations will be successful. The Council reserves the right to withdraw from the process at any time.

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[1] Sell biodiversity units as a land manager - GOV.UK

[2] Section 106 of the Town and Country Planning Act 1990

1.1.7. This document has been compiled after Dorset Council worked to secure a set of three 'pilot' habitat banks with third party land owners in Dorset. The council has used this process to develop template legal agreements and understand the stages involved and potential issues along the way.

1.1.8. Additional information on Dorset Council's approach to biodiversity net gain can be found on our webpage Biodiversity net gain - Dorset Council and in the Dorset Council Biodiversity Net Gain Guidance for Applicants and Agents.

1.1.9. Government guidance on BNG and off-site habitat banks can be found here: Biodiversity net gain - GOV.UK

1.2. Legal agreement

1.2.1. A legal agreement (s106 agreement) is required to secure each habitat bank for the purposes of BNG[3][4]. This enables the habitat bank (and associated biodiversity gain units) to be added to the national biodiversity gain sites register[5], following which the biodiversity gain units can be allocated to development which requires off-site units to secure 10% net gain.

1.2.2. The legal agreement will include the following:

- The parties involved and their involvement in the site
- Confirmation of how many and what type of units will be delivered
- How the units will be delivered – whether in phases or across the whole site
- The Habitat Management and Monitoring Plan[6] (HMMP)
- A red line site boundary plan
- Requirement of an allocation notice informing the council of the allocation of any units
- Requirement of a commencement notice informing the council of commencement of works, alongside a table in an annex to the agreement showing when completion works for specified habitats will be completed
- Requirement of a completion notice once specified works are complete
- Details of the monitoring fee, to be paid by the habitat bank owner at defined points set out in the agreement. Details of the fee based on a monitoring schedule and fee charges will be set out in an annex to the agreement
- Provisions to cover owner and council obligations, including transfer of ownership, default or breach of agreement, lack of reasonable progress, step in rights, change in site management and therefore agreed biodiversity units.

1.2.3. Dorset Council has produced a set of template legal agreements specifically for securing off-site habitat banks with third party owners and is confident that these templates cover all reasonable eventualities.

[3] Enter a legal agreement for biodiversity net gain - GOV.UK
[4] BNG-flowcharts-for-landowners.pdf
[5] Search the biodiversity gain sites register - GOV.UK
[6] Creating a habitat management and monitoring plan for BNG - GOV.UK

1.2.4. Dorset Council will only progress legal agreements using the Dorset Council s106 templates.

1.3. Fees

1.3.1. The application process is subject to fees intended to recoup the Council's costs in establishing habitat banks and the 30 year monitoring fee

1.3.2. Establishment fee

- An establishment fee to cover review of the proposal and drafting of the legal agreement. The fee will depend on the complexity (including size, unit type, phasing) of the proposal and a fee estimate will be provided when the Stage 1 information is submitted.

1.3.3. Monitoring fee.

- The monitoring fee covers the cost of monitoring the habitat bank for the 30 year BNG monitoring period (from legal commencement), plus monitoring of any pre-commencement habitat creation works.
- The monitoring fee will be calculated using the monitoring framework set out in the HMMP document and the current officer hourly costs. The fee will also be index linked.

1.3.4. Default fee

- A default fee schedule will be included in the legal agreement to pay for any additional costs incurred by the Council should a breach of the HMMP occur.

1.4. Stage 1: Initial information required

1.4.1. The following information must be supplied when submitting a potential habitat bank for consideration:

- Proof of ownership in the form of land registry title deeds and plans for all parcels within the proposed red line boundary. If the site is tenanted or leasehold, details of the agreement to provide confidence that the land can be managed as agreed for the minimum 30 year period.
- Size of site (ha)
- Location of site (including which National Character Area[7] it is in).
- A red line site plan
- Whether delivery of units will be phased
- A phasing plan (if relevant)
- Number and type (habitat) of units in total and for each phase (if relevant)
- Ecological surveys must be conducted by a suitably qualified and experienced ecologist. BNG calculations and information (must be prepared and produced by a competent person meeting the Statutory Metric User Guide definition. All the following must be provided:

[7] Natural England - National Character Area Profiles - National Character Area Profiles

a. An HMMP[8], ideally having been agreed in draft through discussion between the Council's Natural Environment Team and the site ecologist. The HMMP must use the standard HMMP template provided by Natural England[9].

b. A completed Statutory Biodiversity Metric, including Defra Condition Assessment sheets both in their Excel format.

- A completed Dorset Council Ecology Report template. Provide information as per the notes in each section.
- Information on involvement in or intended involvement in any other land management schemes such as countryside stewardship, nutrient mitigation, carbon credits. Disclose any licences, permissions, consents or restoration plans on the land that could conflict with delivery of BNG. whether stacking or bundling[10] of other Nature market[11] credits/units is intended and explanation of BNG additionality.
- Agreement to submit records to the Dorset Environmental Records Centre (DERC).
- An indication of what the long term intention is for the site, beyond the 30 year BNG period.

1.4.2. If this information is not supplied in full, the Council will not be able to assess the habitat bank for consideration in later stages of the process and the site will not progress any further.

1.5. Stage 2: Site assessment

1.5.1. The Council will progress habitat banks in small groups, so as to secure sites as quickly as possible. When the Council is ready to start progressing a new group of habitat banks, the Stage 1 information for each submitted site will be assessed by a panel of officers covering planning, ecological, legal and other specialisms as needed.

1.5.2. The assessment will consider:

- whether the proposed BNG uplift is achievable
- whether it will provide enough biodiversity gain to justify the time involved in securing and subsequently monitoring it,
- the strategic significance of the potential habitat bank, with reference either to the adopted LNRS (due to be published in December 2025) or in line with the Metric User Guide, the BNG hierarchy and Dorset ecological networks, and
- whether the habitat bank contributes to enabling Dorset Council to fulfil its biodiversity duty under the Natural Environment and Rural Communities (NERC) Act, 2006: to consider what action they can properly take, consistent with proper exercise of functions, to further the general biodiversity objective (to conserve and enhance biodiversity).

[8] Creating a habitat management and monitoring plan for BNG - GOV.UK
[9] Habitat Management and Monitoring Plan Template - JP058
[10] Combining environmental payments: biodiversity net gain (BNG) and nutrient mitigation - GOV.UK
[11] Nature markets:

1.5.3. Those habitat banks which best meet the baseline assessment requirements above will go forward to the third stage of the process. Information from other habitat banks will be kept on file and used to assess these sites for progression at a later date.

1.6. Stage 3: Securing the habitat bank

1.6.1. As soon as practically possible, Dorset Council will commence discussions with the promoters of habitat banks chosen for progression.

1.6.2. If at any time Dorset Council becomes aware of a change in circumstances which may affect the conclusion of the initial assessment above, the Council reserves the right to withdraw from negotiations and stop progressing that habitat bank.

1.6.3. Discussions with the council will be led by the Council's solicitor, with support from specialist officers as needed.

1.6.4. Once a site is nominated, the first stage will be for Dorset Council to carry out an initial check on the site's suitability and we will consult relevant specialist officers in the Council to ensure that each site and the works proposed is suitable in terms of impacts on: landscape, archaeology, historic environment, flood risk, highways, rights of way, flooding, trees and mineral and waste.

1.6.5. Any issues emerging from the consultation will be resolved through discussion with the habitat bank team, and subsequent re-consultation with the relevant internal specialist(s).

1.6.6. Once all issues have been resolved, the site will progress to finalising and securing the legal agreement.

1.7. Stage 4: Habitat bank operation

1.7.1. Once the legal agreement has been signed and sealed, the habitat bank operator can apply to add the site to the national biodiversity gain site register, unlocking sale of biodiversity gain units which will help enable development in Dorset and possibly more widely.

1.7.2. The habitat bank operator must ensure full compliance with all triggers and monitoring points in the legal agreement, and Dorset Council encourages informal discussion and communication about issues or achievements over the years.

1.7.3. We are keen to work with land owners to deliver BNG in Dorset and recognise the long term commitment from those involved.