

## **BNG Guidance Note:**

### **Habitat Banks within South Oxfordshire and**

### **Vale of White Horse**

South Oxfordshire and Vale of White Horse District Councils are committed to improving the natural environment of the districts and contributing to nature's recovery more widely. Consistent with council Corporate Plan objectives<sup>1</sup> and statutory duties<sup>2</sup> placed on local authorities, the councils are taking action to facilitate the creation and enhancement of natural habitats where possible and appropriate.

Establishing habitat banks within the districts will ensure an efficient planning process, provide best value for developers looking to discharge mandatory planning requirements, and deliver habitat creation and enhancement in areas subject to development pressure.

This guidance note outlines the council's approach and requirements of landowners and/or brokers wishing to propose land for habitat banking.

### **Background**

The Environment Act 2021 and associated regulations will amend the Town and Country Planning Act 1990 (TCPA) to make biodiversity net gain (BNG) a mandatory condition of planning permission. Major TCPA development will be subject to mandatory BNG from 12 February 2024 onwards, and all other TCPA development will be subject to BNG from 2 April onwards (subject to exemptions).

Relevant developments will need to demonstrate that proposals can deliver a minimum 10% uplift in biodiversity value, when compared to the pre-development biodiversity value of the application site. Uplift is calculated with the statutory biodiversity metric. Development cannot commence until BNG has been demonstrated.

To achieve this, developers will need to submit a biodiversity gain plan (BGP) to local planning authorities for approval. The BGP document will evidence what measures are being provided to achieve the required uplift in biodiversity value. Under the Environment Act 2021, only three measures are permitted to deliver BNG:

1. Onsite habitat creation;
2. Registered offsite biodiversity gain; and

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<sup>1</sup> Priority 2 of the Vale of White Horse District Council [Corporate Plan](#), Strategic Theme 1 of the South Oxfordshire District Council [Corporate Plan](#).

<sup>2</sup> [Section 40](#) of the Natural Environment and Rural Communities Act 2006 (as amended) places a statutory duty on public authorities to conserve and enhance biodiversity.

### 3. Purchase of statutory biodiversity credits.

It will not always be possible for developments to deliver the required BNG onsite (within the red line boundary of the planning application), even when applying the mitigation hierarchy. Statutory biodiversity credits are a measure of last resort and have purposefully been priced to be unattractive to developers. As such, it is anticipated that there will be demand for ‘registered offsite biodiversity gain’, within the districts, to enable developers to meet mandatory BNG requirements.

## **Habitat Banks**

Habitat banks are areas of land where habitats have been created or enhanced, in advance, to provide an uplift of biodiversity units. Surplus biodiversity units can be sold to developers to meet their BNG requirements. The sale of surplus biodiversity units will give landowners a return on their investment in creating or enhancing habitats.

Habitat banks can qualify as ‘registered offsite biodiversity gain’ and surplus biodiversity units sold to developers to help meet BNG requirements. Under the Environment Act 2021, to qualify as registered offsite biodiversity gain, 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. Have surplus biodiversity units formally recorded in the [statutory biodiversity gain site register](#) operated by Natural England.

Legal agreements will oblige landowners to implement an approved [Habitat Management and Monitoring Plan](#) (HMMP) and record the habitat bank on the statutory register.

The councils have not yet made a decision about becoming a responsible body for the purposes of agreeing and monitoring conservation covenants. As such, for the immediate future, habitat banks within South Oxfordshire or Vale of White Horse will be secured with legal agreements permitted under section 106 of the TCPA, also known as planning obligations.

Further guidance on BNG for land managers can be found [here](#).

## **Council Criteria for Habitat Banks**

The councils will not enter into planning obligations with landowners, for the purposes of habitat banking, unless certain criteria are satisfied. Evidence will need to be produced to demonstrate compliance with the criteria. These criteria will likely evolve and adapt over time, but initially the councils will only consider habitat bank proposals where:

### **1. The applicant has the legal right to sell biodiversity units for the purpose of mandatory BNG.**

*This usually means that the applicant:*

- *Owns the freehold of all relevant land*
- *Is the long-term tenant (>35 years) of all relevant land, with permission from the landowner to sell biodiversity units*
- *There are no restrictions (permissions, consents, licences, designations, etc.) on the land likely to prohibit or limit the creation/enhancement of habitats and sale of biodiversity units*

### **2. The habitat creation/enhancement proposals are appropriate and likely to succeed.**

*Habitat bank proposals must be informed by suitable baseline ecological assessments and follow best practice. Providing habitat banks within areas likely to become part of the Local Nature Recovery Strategy, or within the current network of [Conservation Target Areas](#), is strongly supported. Habitat bank proposals which are considered likely to fail, and therefore require enforcement action from the council, will not be supported. Proposals developed with or involving local environmental groups will be looked on favourably.*

*At the appropriate stage, a detailed and costed HMMP will be required for review and approval. Outline habitat creation/enhancement proposals are useful initially. Proposals for habitat creation/enhancement will be assessed for their practicality, likelihood of success and viability.*

*Applicants may also be required to evidence a robust financial position to demonstrate that agreements can be funded for the entire length of agreements. This may include up front capital and cash flow projections.*

### **3. The uplift in biodiversity units proposed must be additional.**

*Additionality is a fundamental principle of BNG. Habitats proposed for creation/enhancement must be created/enhanced for the purpose of delivering surplus biodiversity units. For example, woodland creation required by a Forestry Commission restocking notice or included within ELMs/other stewardship agreements will not be accepted. Proposals which involve the ‘stacking’ or ‘bundling’<sup>3</sup> of natural capital benefits will be assessed on a case-by-case basis. Full disclosure of any intent to ‘stack’ or ‘bundle’ is required.*

### **4. The applicant must agree to the council’s legal, monitoring, remediation, and enforcement provisions.**

*The councils will monitor the establishment, development and overall success of biodiversity units secured as part of habitat banks for the entire length of the legal agreement. To do this, landowners will be required commission an independent ecological expert to produce and submit monitoring reports to the council at pre-agreed monitoring intervals. These monitoring reports will contain an assessment as to whether the extent and condition of habitats present at that time are in accordance with the approved HMMP. The council will review the monitoring reports, attend the habitat bank site as necessary and confirm whether any further action is required<sup>4</sup>.*

*The council retains remedial and enforcement powers should HMMP or legal agreement requirements be breached and habitat banks fail to deliver the required number of biodiversity units within the lifetime of the agreement. These provisions would be detailed in the agreed planning obligation, but may include obliging landowners to undertaken remedial habitat works or purchasing biodiversity credits as a last resort.*

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<sup>3</sup> ‘Stacking’ is where a single activity yields multiple natural capital benefits, and those benefits are sold separately to different buyers. ‘Bundling’ is where a single activity yields multiple natural capital benefits, and those combined benefits are sold to the same buyer. Further information is available in the [Nature Markets Framework](#).

<sup>4</sup> The review of habitat bank monitoring reports will be undertaken by the council’s Ecology Team within the Planning Department, as BNG is a mandatory planning function.

## **Costs**

The council has a statutory obligation to monitor and report on the success of measures used to implement mandatory BNG<sup>5</sup>. The council incurs costs when securing, monitoring and reporting on BNG legal agreements. To recover these costs applicants will be required to pay the council's legal fees (when a draft legal agreement is submitted) and a BNG monitoring fee (upon completion of the legal agreement), as is the case with planning obligations.

### **Legal Fees:**

The council's Legal Department incur costs when setting up planning obligations which need to be covered. Initial council legal fees, payable when a planning obligations are being drafted and reviewed, will cost applicants between £3,150-£5,250, depending on the complexity of the agreement. Where legal costs exceed the initial fee, payment of additional costs are payable at completion. These fees are set by the Legal Department.

### **Monitoring Fee:**

The habitat bank monitoring fee is determined by the cost schedule below, with an explanation provided in Appendix 1. The habitat bank monitoring fee is reviewed annually.

<b>Habitat Bank Size (ha)</b>	<b>Monitoring Fee</b>
Up to 50ha	£11,435.78
Between 50ha and 100ha	£17,153.67
Greater than 100ha	£22,871.55

Where the council considers it justified (e.g. very large areas of land >200ha), a bespoke approach to calculating the BNG monitoring fee will be taken.

## **Process**

For landowners or brokers interested in establishing a habitat bank within South Oxfordshire or Vale of White Horse, an initial information pack should be submitted to [ecology@southandvale.gov.uk](mailto:ecology@southandvale.gov.uk). Having regard for the habitat bank criteria listed above, the initial information pack should contain:

- A cover letter briefly explaining landowner intent, statement of compliance with council criteria and understanding of costs
- Evidence of land ownership/tenancy, with land registry title deed(s) and plan(s)

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<sup>5</sup> [Section 40A\(4\)](#) of the Natural Environment and Rural Communities Act 2006 (as amended) requires local planning authorities to record and report on biodiversity gains resulting from mandatory planning functions.

- Baseline ecological surveys, plans showing the extent of the proposed habitat bank (1:1250 and 1:2500), and other relevant information
- Outline details of habitat creation/enhancement proposals or draft HMMP

Officers will acknowledge the submission, provide a timescale for response, review the initial information pack and confirm whether further detailed discussions will take place. Habitat bank proposals are reviewed by a panel of officers within the council using a standardised approach.

**N.B.** It is important to note that agreeing to habitat banks is not a statutory requirement of the council. There is no framework that governs this discretionary process, unlike considering planning applications. As such, the council cannot be held to any specific deadlines or timings, process or decision-making protocol. The council will endeavour to deal with communications, submissions and proposals in a timely manner, but in periods of high workload this may take some time.

## **Appendix 1: Habitat Bank Monitoring Fee**

South Oxfordshire and Vale of White Horse District Councils recover the costs of administration and monitoring of planning obligations ('section 106 agreements') by securing monitoring fees. The council's supporting statement on general section 106 monitoring can be found [here](#).

With regards to habitat banking for the purpose of mandatory BNG, planning obligations need to secure 'registered offsite biodiversity gain' for a minimum of 30 years (after the completion of establishing habitat works). The habitat bank monitoring fee is calculated to account for the administration and monitoring of compliance with the planning obligation for the entire length of the agreement. Where planning obligations are proposed for different lengths of time, the BNG monitoring fee will be proportionally varied.

Each year the BNG monitoring cost schedule will be reviewed and refined as necessary.

### **How the Monitoring Fee is Calculated**

#### **1. Hourly Rate**

The review and assessment of BNG monitoring reports, plus associated visits to habitat bank sites, must be undertaken by a suitably qualified and experienced ecological professional. The councils' Senior Ecology Officer is the appropriate officer to undertake the review of BNG monitoring reports. Referring to the Planning Department's bespoke fees/costs calculator, the Senior Ecology Officer has an hourly rate of **£71.07**.

#### **2. Frequency of Monitoring Intervals**

Each habitat bank planning obligation will include a minimum of eight monitoring intervals throughout the length of the agreement. These typically will take place at years 1, 2, 5, 10, 15, 20, 25, and 30. Planning obligations of differing lengths may require more or fewer monitoring intervals, or monitoring on different years. This will be assessed on a case-by-case basis.

#### **3. Time per Monitoring Interval**

Monitoring intervals are likely to require the Council to engage in: general administration, review of monitoring reports, site visits, and statutory data

collection/reporting. The length of time spent per monitoring event will depend on the size of the habitat bank. Three size classes of habitat bank are accounted for below, with an estimation for review time taken per monitoring interval.

Habitat Bank Size	Time per Monitoring Interval
Up to 50ha	8 hours
Between 50ha and 100ha	12 hours
Greater than 100ha	16 hours

#### 4. Inflation

Habitat bank planning obligations are required to secure created/enhanced habitat for a minimum of 30 years (after the completion of establishing habitat works). It is necessary for the council to ensure that the habitat bank monitoring fee will cover the costs of monitoring intervals in the future. The habitat bank monitoring fee, which will cover the entire length of the agreement, is secured at the point that the planning obligation is agreed. This requires assumptions to be made as to the future level of inflation. The habitat bank monitoring fee will be reviewed annually, with the RPI for April of that year (taken from the Office of National Statistics) assumed for each successive year of the planning obligation. At the time of writing (November 2023), the RPI is **6.1%** for October 2023. This rate will be assumed until review in each financial year 2024.

#### 5. Cost Schedule

Taking the above hourly rate, frequency of monitoring intervals, time required per monitoring interval and inflationary allowance, the below cost schedule is produced for the three size classes of habitat bank. The total BNG monitoring calculation is shown on the next page, with the final fee being the sum of the cost of monitoring intervals (shaded rows).



<b>Habitat Bank Size Class</b>				
	<b>Year</b>	<b>Up to 50ha</b>	<b>Between 50ha and 100ha</b>	<b>Greater than 100ha</b>
Monitor →	1	£568.56	£852.84	£1,137.12
Monitor →	2	£603.24	£904.86	£1,206.48
	3	£640.04	£960.06	£1,280.08
	4	£679.08	£1,018.62	£1,358.16
Monitor →	5	£720.51	£1,080.76	£1,441.01
	6	£764.46	£1,146.69	£1,528.91
	7	£811.09	£1,216.63	£1,622.18
	8	£860.57	£1,290.85	£1,721.13
	9	£913.06	£1,369.59	£1,826.12
Monitor →	10	£968.76	£1,453.14	£1,937.51
	11	£1,027.85	£1,541.78	£2,055.70
	12	£1,090.55	£1,635.82	£2,181.10
	13	£1,157.07	£1,735.61	£2,314.15
	14	£1,227.65	£1,841.48	£2,455.31
Monitor →	15	£1,302.54	£1,953.81	£2,605.08
	16	£1,382.00	£2,073.00	£2,763.99
	17	£1,466.30	£2,199.45	£2,932.60
	18	£1,555.74	£2,333.61	£3,111.49
	19	£1,650.64	£2,475.96	£3,301.29
Monitor →	20	£1,751.33	£2,627.00	£3,502.66
	21	£1,858.16	£2,787.25	£3,716.33
	22	£1,971.51	£2,957.27	£3,943.02
	23	£2,091.77	£3,137.66	£4,183.55
	24	£2,219.37	£3,329.06	£4,438.74
Monitor →	25	£2,354.75	£3,532.13	£4,709.51
	26	£2,498.39	£3,747.59	£4,996.79
	27	£2,650.80	£3,976.19	£5,301.59
	28	£2,812.49	£4,218.74	£5,624.99
	29	£2,984.06	£4,476.08	£5,968.11
Monitor →	30	£3,166.08	£4,749.13	£6,332.17
	<b>Total:</b>	<b>£11,435.78</b>	<b>£17,153.67</b>	<b>£22,871.55</b>