

**CABINET – 18th MARCH 2025****SECTION 106 POLICY AND CHARGING SCHEDULE FOR OFFSITE
AND SIGNIFICANT ONSITE BIODIVERSITY NET GAIN (BNG)****REPORT OF THE CHIEF EXECUTIVE****PART A****Purpose of the Report**

1. The purpose of the report is to seek approval of the Section 106 Policy and Charging Schedule for monitoring offsite and significant onsite Biodiversity Net Gain (BNG), for use by County Planning Team and Local Planning Authority (LPA) partners within the BNG partnership.
2. The draft Strategy and Charging Schedule is attached as Appendix A to this report.

Recommendations

3. It is recommended that the Cabinet approves the Section 106 Policy together with the Charging Schedule, for use by the County Council and its partners within the Biodiversity Net Gain (BNG) partnership.

Reasons for Recommendation

4. The partners are currently unable to meet their statutory obligations without this monitoring process being in place. This will slow down or delay planning decisions because each Section 106 agreement between a landowner and the LPA requires a clause for the monitoring fee to be inserted. If this situation continues, it will put the BNG partnership at risk.
5. There is a risk to the Council of considerable loss of income if the policy is not approved. This is because the applicant should be charged for this monitoring compliance, and this charge cannot be secured without the partner LPA first inserting this monitoring fee into the Section 106 agreement.

Timetable for Decisions (including Scrutiny)

6. Subject to the Cabinet's approval, the necessary arrangements will be put in place as soon as is practicable.

Policy Framework and Previous Decisions

7. The Policy and Charging Schedule has been modelled on the Council's recently revised Planning Obligations Policy review.
8. The statutory BNG legislation and its introduction in Leicestershire and Rutland were considered by the Environment and Climate Change Overview and Scrutiny Committee on 9th September 2024.

Resource Implications

9. The Policy charges applicants for the monitoring service through a charging schedule. There is a staffing implication for setting up and running this monitoring service, which will be covered by the costing calculation.
10. The Director of Law and Governance and Director of Corporate Resources have been consulted on the contents of this report.

Circulation under the Local Issues Alert Procedure

11. None.

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PART B

Background

12. The new BNG legislation requires the monitoring of offsite and significant onsite BNG over a 30-year term as mandatory on every LPA as part of their statutory responsibilities, and the Council has committed to support this process through a Memorandum of Understanding (MoU) with each partner authority.
13. This policy will apply in two different situations: for the County Planning Team approvals, and for the seven Local Planning Authorities' planning approvals. Where it is being used for the Council's own purposes on county sites to monitor BNG for compliance, this document could potentially be agreed through a delegated decision as extending operational activity.
14. The Ecology Team is contractually committed to supporting the seven LPA partners in the BNG partnership to deliver the monitoring through the MoU. To ensure full confidence in the policy and its charging schedule, the partners have requested that the Council adopts the policy. This will enable them to use the policy as evidence in a planning appeal or Local Plan process.

Memorandum of Understanding

15. The Council has committed to support this process through the MoU with each partner authority in the following clause:
“S4A.1 The LCC Ecology and Biodiversity Service will provide the following support and advice to [Name of Partner Council] planning officers during the post-determination stage:
 - i. The assessment of evidence provided by applicants to discharge ecological and / or BNG aspects of planning conditions / obligations,*
 - ii. The provision of recommendations in relation to the discharge of ecological and / or BNG aspects of planning conditions / obligations*
 - iii. Review of BNG monitoring reports, site inspection visits and associated calculations at the specific intervals set out by national legislation and / or application specific planning conditions / obligations and provision of recommendations, including required actions for enforcement officers to implement, if required. This work will be carried out through a BNG S106 monitoring contribution, in accordance with a fee schedule set out within the legal agreement.”*
16. The MoU has been modelled on the Council's recently revised Planning Obligations Policy review, which includes the charging scheme methodology.

It has been developed through the officer level mechanisms of the Planning Officer Forum and its BNG subgroup.

Limitations of Policy

17. This policy applies to a Section 106 agreement between the applicant and the LPA, where there is offsite or significant onsite BNG which needs to be secured for a 30-year term.
18. This policy is not appropriate for the use of a Section 106 with a Habitat Bank. These are areas of land where new habitats, such as woodlands or grasslands, are created in order to compensate for habitats lost as a result of development proposals. These are outside the applicant's ownership and the applicant purchases units from the Habitat Bank provider to cover the amount of BNG unit shortage resulting from the development proposals. It is not a statutory requirement for an LPA to enter into a Section 106 to secure a Habitat Bank. The alternative route for Habitat Banks is through a conservation covenant with a responsible body.
19. The Council has been asked by partners to consider and investigate the feasibility of a process for Habitat Banks, using a Section 106 arrangement. This will be the subject of a future report.

Consultation

20. There is no statutory requirement to consult on this policy or charging schedule.
21. Partner authorities within the BNG partnership have been consulted on this document development through the above mechanism. They have also confirmed that they wish the document to be used to monitor offsite and significant onsite BNG in their Section 106 agreements directly with applicants.
22. Internal consultation has also been carried out with relevant officers in the Planning, Historic and Natural Environment team of the County Council and work has been carried out to ensure that the document aligns with the revised Planning Obligations policy.

Equality Implications

23. There are no equality implications arising from the recommendations in this report.

Human Rights Implications

24. There are no human rights implications arising from the recommendations in this report.

Appendices

Appendix A - Section 106 BNG Policy

Appendix B – Cost Summary and BNG Monitoring Costs

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