



Habitat Bank Criteria – Buckinghamshire Council, November 2023 Version

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AIM

The aim of this document is to outline what information we need and be satisfied with regarding a Habitat Bank ahead of Buckinghamshire Council considering entering a legal agreement via s.106 with a habitat bank provider. Once signed, the habitat bank can apply to Natural England to be on the forthcoming Biodiversity Gain Site Register which will enable biodiversity units purchased by developers to achieve Biodiversity Net Gain as part of the planning process if off-site provision is required in Buckinghamshire.

DEFINITION OF STAGES

Stage 1: Prior to initial meeting or after initial meeting but before further information is submitted for review and subsequent detailed site visits / meetings take place

Stage 2: Detailed information required prior to signing the s.106 when the Habitat Bank becomes 'official'.

Potential Stage 3: Post Legal agreement: Procedures / timetable required regarding LPA monitoring including the notification procedure for Buckinghamshire Council sale of units that have been agreed at stage 2 need to be enacted and timescales between parties agreed (undertaken on a provider by provider basis)

Other definitions in the document

Habitat Bank Broker: The organisation brokering the unit sales etc on behalf of the landowner

Habitat Bank Broker / Owner	
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Name of Proposed Habitat Bank	
Date of completion	

Criteria	Criteria	Suggested documents required	Relevant Guidance
STAGE 1			
1	<p>The applicant must have legal control over the land.</p> <p><u>Ownership</u> Information on form of legal control over the land. Including conditional contract. <i>If the latter what are the conditions, are you in control and able to satisfy them?</i></p> <p><u>Tenant / Leasehold Considerations</u> Details of any leasehold agreement or tenancy agreement or any other contract that enables the habitat bank broker to deliver BNG on this land for a minimum of 30 years. <i>The habitat bank broker or landowner needs to be able to place a charge on the land.</i></p>	<p>Land Registry Title deed and plan of the land boundary from owner</p> <p>Charges register of title and plan</p> <p>Copy of Leasehold Agreement</p>	<p>PENDING: <i>Natural England BNG Register Guidance and Legal Agreement guidance – when available.</i></p>
2	<p>From January 2024 ONLY onwards: Have you already registered your Habitat Bank on the National BNG Register and sold units to developers? If so, please provide details including NE Register number and planning application numbers</p>	<p>Provision of NE Register Numbers and Planning application references if applicable.</p>	



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<p>3</p>	<p>No conflicting consents, licences or permissions for the site including extant restoration plans Are there any other legal barriers or consents / licences or permissions that are required to enter the site and undertake habitat management works over the specified 30-year period?</p> <p>Please provide details of any licences. E.g. (not an exhaustive list): shooting or mineral working rights, planning permissions, extant restoration plans, felling licences, aerodrome safeguarding considerations, rights of way issues, permit from Natural England on works to SSSIs (the latter only if government guidance confirms this is possible – BNG consultation response signposts to further guidance on this is forthcoming).</p> <p>LINKED TO CRITERIA 19</p>	<p>Statement of no conflicting consents are known and reasonable checks have been undertaken.</p> <p>Documents submitted if required</p>	<p>BNG Consultation Response</p> <p>PENDING: <i>Natural England Register Guidance, Legal Agreement Guidance and guidance on when and if SSSIs can be used for BNG or not – when available.</i></p>
<p>4</p>	<p>Contaminated land Is the site considered to be ‘contaminated land’ and if it is, what costed remediation measures are provided to ensure habitats proposed are feasible?</p> <p>If contaminated land exists, a costed remediation plan will need to be provided in stage 2.</p>	<p>Costed remediation plan if required or, statement confirming not required</p>	
<p>5</p>	<p>Is the landowner prepared to enter into a s.106 agreement with Buckinghamshire Council? <i>(based on Buckinghamshire Council’s Habitat Bank template S106) to agree the number/ type of biodiversity units available for developers and the</i></p>	<p>Statement of intent. Written consent from owner to broker to act on their behalf and</p>	<p>PENDING: <i>Natural England Register Guidance, Legal Agreement Guidance – when available.</i></p>



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	<p>management and maintenance schedule of the land for at least 30 years from the date of transfer/lease of each unit?</p> <p>Specify who needs to be a party to the s.106.</p>	<p>decision on who is a signatory of the s.106 agreement</p>	
6	<p>Additionality Can you prove Legal, Financial & Ecological Additionality for the BNG proposed at the site?</p> <p>Financial additionally includes: other funds for land management e.g. environmental stewardship, nutrient mitigation etc.</p> <p>Do you intend to sell other ecosystem services units from the land?</p> <p>Outline how you intend to stack and bundle any Nature market credits including Biodiversity units in line with Best Practice Guidance</p>	<p>Written confirmation of proof of additionality principles and compliance with stacking and bundling rules in line with guidance</p>	<p>Nature markets: A framework for scaling up private investment in nature recovery and sustainable farming - March 2023</p> <p>Combining environmental payments and BNG and nutrient mitigation – Feb 2023</p> <p>What you can count towards a development’s BNG – May 2023</p>
7	<p>Location Plan Location of the site provided Note: If a GIS layer / shape file is available then helpful but this is not essential</p>	<p>Map to be provided</p>	
8	<p>Buckinghamshire’s Interim Strategic Significance Guidance An assessment of how the proposals fit with Buckinghamshire Council’s current Interim Spatial Risk Guidance.</p>	<p>Justification text in a report and evidence of the Strategic Significance of habitats proposed in the bank.</p>	<p>Buckinghamshire Council’s Interim Strategic Significance Guidance for BNG in Buckinghamshire Council’s Local Planning Authority Area – February 2023</p>



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	Note: Provision of a brief assessment (e.g. a few short paragraphs at most) to ensure the conservation value in the landscape context of the site is being considered rather than unit delivery alone.		
9	<p>Site should deliver the best outcomes for biodiversity in Buckinghamshire In January 2023, The Environment Act 2021 further strengthened section 40 of the NERC Act duty with additional provisions to strengthen and improve the duty on public bodies to go beyond ‘have regard’ to ‘conserve and enhance biodiversity, including mandating a net gain in biodiversity through the planning system.</p> <p>We therefore only wish to act as an enforcement / defacto Responsible Body in relation to legally securing Habitat Banks where evidence has been provided that the Habitat Bank is delivering the best outcome for biodiversity within Buckinghamshire.</p> <p>We therefore require the applicant to demonstrate that the proposed habitat design proposed for the habitat bank demonstrates with supporting evidence, it has considered the best outcomes for biodiversity through habitat creation and enhancement appropriate to the site conditions and location?</p> <p>The Buckinghamshire Council BNG team will assess all BNG proposals to ensure Habitat Banks generate the best outcome for biodiversity in the Buckinghamshire Context, a paragraph with evidence to justify this is all that is required</p>	Justification text in a report of how plans aim to deliver best outcomes for biodiversity	<i>Note: More guidance on this may be forthcoming in the implementation regs and associated guidance in spring / summer 2023</i>



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10	<p>Adequate ecological baseline, habitat survey and condition assessments Provision of full baseline and condition assessment survey information (dates, personnel, methods) undertaken using UK Hab and the appropriate habitat condition assessment from the Defra metric 4.0 / the statutory metric (when approved)</p> <p>This must be undertaken in the correct survey season and by a competent ecologist. Limitations on survey methods and other assumptions made regarding proposed habitat creation and enhancement and their implications must be clearly explained.</p>	BNG Report, baseline habitat survey report, with metric excel spreadsheet and completed condition assessment spreadsheets provided	Metric 4.0 and Associated Guidance – March 2023
11	<p>Provision of achievable uplift in biodiversity value A full Defra metric completed for the site / phase of a habitat bank for which units are to be released. N.B. After January 2024 this MUST be using the statutory Metric</p> <p>Habitat creation and enhancement proposals within the Defra metric should be based on a realistic scenario (i.e. it is better to aim for habitats in worse condition that can later be upgraded, than an unachievable higher condition and face subsequent enforcement action).</p> <p>Have appropriate soil tests been undertaken (as per Buckinghamshire Council’s BNG and soil guidance – pending)</p> <p>LINKED to criteria 19</p>	Excel of 4.0 / statutory metric completed and justification text for why habitats of specific conditions are proposed	Metric 4.0 and Associated Guidance – March 2023 <i>PENDING – Buckinghamshire Council soil guidance</i>



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12	<p>Irreplaceable Habitats Confirmation that proposals will not negatively impact irreplaceable habitats or other features or species of existing conservation interest, including: protected and notable species and/or habitat.</p>	A statement in the text and provision of metric 4.0 which flags these in red.	<p>Metric 4.0 and Associated Guidance – March 2023</p> <p><i>PENDING – Guidance from NE / Defra on defining Irreplaceable Habitats</i></p>
13	<p>Competence Can the ecological advisors and others involved in the scheme provide proof of their competence in BNG?</p> <p>This should include brief paragraph of experience and skills to undertake relevant BNG surveys and provide appropriate habitat management recommendations as well as membership of an appropriate professional membership body that signs up to a code of professional conduct (e.g. CIEEM).</p> <p>Competence should be in line with definitions provided by CIEEM 2021, the British Standard on Biodiversity Net Gain (8683: 2021) and Natural England / Defra Guidance.</p> <p>Metric 4.0 User Guide defines competency as <i>‘someone who can demonstrate they have acquired through training, qualifications or experience, or a combination of these, the knowledge and skills enabling that person to perform specified tasks’</i>.</p>	We would expect a statement in the text to highlight the competence of all professional persons involved in the delivery of BNG as per Metric 4.0 definition on competency. This could include professional memberships, training and experience.	Note: More guidance on this is anticipated from Defra.



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	River Condition Assessment assessors must be trained and accredited in the River Condition Assessment methodology.		
STAGE 2			
14	<p>Sufficient cash flow / funding for 30 years</p> <p>Who is going to be responsible for the habitat management if different from the owner? What are the contingency plans should this / your firm fold or go into liquidation within the 30 years to ensure the habitat proposed will continue to be enhanced and maintained as proposed?</p> <p>Provision of proof of funds: including: third party bond, guarantee, Ring fenced fund etc.</p> <p>These must be sufficient to cover ‘up-front capital’ creation / enhancement works and the subsequent 30 years of management.</p> <p>Funds must be in held for duration of the agreement and held independently for large schemes. An appropriate payment schedule should be in place. All required prior to s.106 sign-off .</p> <p>Options to consider on case-by-case basis for proof of funds include:</p> <ul style="list-style-type: none"> • Submission of 30 year cash flow model for running and management of site for council assurance only to sense check creation/management costs (using Bucks C own bench mark calculator) but also from finance perspective in terms of underlying assumptions. 	<p>Discuss on a site by site basis</p> <p>Check</p> <p>Proof of funds which could include 30 year cash flow model, assurance of finance codes, and commitment to financial reporting</p> <p>Agree a payment schedule</p> <p>throughout the 30 year period</p>	<p>PENDING:</p> <p><i>Legal Agreement Guidance – when available</i></p>



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	<ul style="list-style-type: none"> • Assurance that separate code had been set up in your accounts i.e. ring fencing of funding in relation to habitat bank. • Potential to require the need to report on high level progress in line with cash flow model into the monitoring/reporting requirements in S106. • Remediation clause 		
15	<p>Method of unit sale from habitat bank</p> <p>If the habitat bank is going to be selling units in the future but starting the habitat management work now or prior to sale and (thereby increasing the units available for sale) the ‘habitat creation in advance’ function in the metric should be used and a procedure for calculating and auditing this must be agreed between the LPA and Habitat Bank provider.</p> <p>If the habitat bank is to be split into ‘phases’ for selling at different dates into the future, the LPA and Habitat Bank provider need to agree:</p> <ol style="list-style-type: none"> 1) When the baseline is calculated from for each phase and; 2) When the 30 years for habitat creation / enhancement starts for any one ‘phase’ <p>The above should be provided on a spatial plan as recommended by Defra.</p> <p>Will the broker / owner provide a certificate and Unique Transaction Number for each sale?</p>	<p>Case by case basis</p> <p>Statement on method of sale of units and how these will be calculated and sold in the future.</p> <p>Plans provided</p>	<p>PENDING: <i>National Register Guidance – when available</i></p>
16	<p>Sale of units outside of Buckinghamshire Council’s LPA remit</p> <p>Are you proposing to sell units outside of Buckinghamshire?</p>	<p>Statement of intent</p>	



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17	<p>Pay the council a monitoring fee for the habitat creation / enhancement for the duration of the Habitat Bank (at least 30 years) Agree to the provision of a Monitoring fee to be paid to the Council to monitor the establishment phase and on-going habitat maintenance agreement over a 30 year period</p>	<p>Statement of intent to pay Bucks Council’s monitoring fee Suitable Monitoring Plan for 30 years</p>	
18	<p>Provision of a detailed and costed Habitat Management and Monitoring Plan and consider other legal and environmental constraints This must set out the detailed prescriptions required that will be undertaken in both the ‘establishment’ phase as well as the monitoring phase to achieve the desired habitats.</p> <p>Dates of commencement of BOTH the establishment phase and the monitoring for 30 year phase to be agreed between parties before s.106 is signed.</p> <p>This shall take into account practical environmental constraints and be supported by evidence. Best Practice should be followed.</p> <p>Do the costs in the management plan look sufficient for the suggested quality and quantity of habitat using the Buckinghamshire Council calculator as a benchmark? – <i>N.B. This is a benchmarking process only – we are not looking to interfere with any unit sale costs but only need to be sure that proposals for habitats and predicted condition are adequately funded.</i></p> <p>Adequate plans showing all habitats proposed for enhancement and creation</p>	<p>Habitat Management and Monitoring Plan, Costed management plan</p> <p>Plans showing all habitats proposed for enhancement and creation</p> <p>Dates for commencement of ‘establishment’ and ‘monitoring’ phases agreed between parties</p>	DEFRA Guidance PENDING



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	<p>Ensure all maps are spatially accurate if using the GIS the same software should be used throughout the scheme. GPS should be used where possible to allow appropriate monitoring.</p>		
19	<p>Consideration of other environmental constraints Provider to have undertaken appropriate due diligence, surveys and assessments and considered <u>all other environmental constraints to achieving suggested habitat enhancement / creation prior to approaching the Council with a proposal.</u> e.g. (but not an exhaustive list).</p> <ul style="list-style-type: none"> • soil analysis data for specific habitat types (to be defined in separate guidance – to follow). This may include details of any specific nutrient/ soil stripping and remediation techniques that may be required and evidence that these methods have been adequately costed into the management plan to ensure feasibility. • Are the hydrological conditions suitable for habitats proposed for creation or enhancement (e.g. risk of flooding)? • Are there historic / archaeological / landscape constraints / arboricultural to proposed habitat works? These must have been adequately considered? Please provide evidence that these considerations have been considered appropriately and any mitigation required is proposed employing professional advice where required. 	<p>A check of information is provided, we expect the applicant to submit all information required and to undertake due diligence, Bucks C will not be liable for any missing information that prevents the habitat proposals being delivered as specified</p>	



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	<ul style="list-style-type: none"> • Access available for required on-site machinery, movement of and infrastructure for cattle and sufficient storage on-site for machinery or other habitat management aspects (e.g. storage of logs from coppicing or provision of corals for cattle – provide evidence that machinery and cattle can access the site as required). 		
20	<p>A monitoring plan Sets out when habitat surveys will take place as part of the 30 year monitoring plan for the Council for review over the 30 year period . Agree date for commencement.</p>	Monitoring Report for review and how frequently LPA will receive reports	DEFRA GUIDANCE PENDING
21	<p>Permission for Bucks C to enter the land for spot checks Permission for spot inspections by Bucks C staff or a subcontractor to ensure habitat management is being undertaken as promised</p>	Statement of compliance	
22	<p>Agreement on how to deal with a fundamental breach of management prescriptions The ability to enforce a breach if management prescriptions and targets promised are not delivered</p>	Statement of compliance	
23	<p>How does the site meet BNG Best Practice Principles Outline of how the habitat bank meets the 10 key principles of BNG as per CIEEM 2016 ¹ directly in relation to the habitat bank.</p>	Justification text in a report / statement of compliance	CIEEM / CIRIA / IEMA 2016 BNG Good Practice Principles for development.

¹ CIEEM – CIRIA – IEMA (2016). Biodiversity Net Gain – Good Practice Principles for Development, also listed in the CIEEM (2021). Biodiversity Net Gain – Report & Audit Templates Version 1.



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	<p>Is the Habitat Bank compliant with best practice as outlined in the British Standard BS 8683: 2021 and other subsequent guidance on habitat banks provided by Natural England / Defra that is available at the time of the agreement / survey and report production?</p> <p>Providers should provide brief written justification text to demonstrate how the proposals fit with best practice on BNG. Extent and detail of information required should be linked to size and complexity of habitats provided by the habitat bank.</p> <p>Evidence will need to include but not be limited to:</p> <ul style="list-style-type: none"> • All habitat parcels must be individually referenced and systematically measured with the same software throughout the lifetime of the project. • Management plans to have SMART targets. • Proportionate monitoring proposals for all Biodiversity Units, methods, frequency, timing and reporting procedures with procedures for remedial works if needed • Roles and responsibilities and competencies of all those involved in implementing the BNG MMP (including contractors) • Legal, financial, and other resource requirements for delivery of the detailed management plan including the need for any public or statutory or non-statutory consultation if required 		<p>BS 8683: 2021</p> <p>Table 2 in CIEEM's BNG Report and Audit Templates July 2021</p> <p><i>PENDING GUIDANCE to insert</i></p>
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24	Biological Records All Ecological Records from the Habitat Bank must be submitted to Buckinghamshire and Milton Keynes Environmental Records Centre (BMERC)	A statement to confirm this will be undertaken. and submitted to BMERC	
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