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Dentons & Planning Advisory Service

Launch: BNG Templates

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Grow | Protect | Operate | Finance

Introduction



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Today's Session

1. Introduction
2. Creating the Templates
3. The Application and Use of the Templates
4. Questions

A close-up photograph of fresh green basil leaves, showing their characteristic serrated edges and vein structure. A semi-transparent purple shape is overlaid on the right side of the image, containing the text.

Creating the Templates

Pathway to Production



Why did we get involved?

- The Dentons Planning & Public Law Team is ranked as one of the UK's leading planning law practices in the Planning Resource, Legal 500 and Chambers Directories.
- We aim to balance our work for both the public and private sectors: Our strength is in seeing development from all sides, with an ability to broker legal and commercial solutions that work for all parties.
- The team was heavily involved during the BNG transition period on matters such as:
 - BNG-related judicial review proceedings;
 - planning appeals concerning BNG;
 - negotiating options or agreements to purchase BNG units; and
 - drafting bespoke conditions to deliver BNG and EIA mitigation.

Our Starting Points

- **R&D** - We built our own in-house database of successful BNG planning appeals during the transition period. We reviewed planning appeal decisions, BNG conditions, planning obligations, and ecological (metric) analysis.
- **Inconsistent Practices** - There were significant variances in how BNG was secured. Issues with the transition period approaches:
 - legal certainty;
 - no longer compliant; and
 - inconsistency.

Scenarios



Development delivering BNG onsite only



Development delivering BNG onsite and offsite



Habitat Banking

Choices and Challenges



Challenges

- Do not set policy
- Multiple scenarios & development types
- Bleeding edge



Decisions

- Plain English
- Condition-first approach
- Secure BNG as 'business as usual'



Solutions

- Includes optionality but do not all cover all scenarios
- Drafting notes on options

Templates



Condition to secure onsite BNG (non-phased)



s.106 agreement for onsite BNG (the “Onsite s.106”)



s.106 for a development delivering BNG onsite and offsite (the “Offsite s.106”)



Habitat bank s.106 agreement

Feedback Received and Responses

More front-end drafting notes to explain usage and optionality

- Include optionality
- Avoid setting policy positions



Feedback with Environment Bank and MHCLG, on condition and all three s.106 agreement templates

Include more drafting notes to explain usage and optionality

A close-up photograph of vibrant green leaves, likely basil, with prominent veins. A large, solid purple shape is overlaid on the left side of the image, containing the title text. The purple shape has a pointed right edge that tapers towards the center.

The Application and Use of the Templates

How to consider the templates through the application process

Pre-application

- Outline or full planning application?
- How much BNG, if any, is proposed onsite?

Planning permission granted

- Condition: prior to commencement, submit a biodiversity gain plan for approval.
- Condition: secures maintenance and monitoring of onsite biodiversity net gain for 30 years from the completion of development.

Prior to commencement

- The biodiversity gain plan is submitted for approval, setting out amount of onsite and offsite BNG.

Commencement and onwards

- Onsite BNG is maintained pursuant to the conditions.

How are the templates used?




Development
delivering BNG onsite
only



Development
delivering BNG
onsite and offsite



Habitat Banking



BNG Condition
PAS Biodiversity Net Gain (BNG)
Condition Version 1.0

The Planning Advisory Service (PAS) commissioned [Dentons](#) to create a suite of sample agreement templates to facilitate securing biodiversity gains in the various ways allowed for by the Environment Act.

Onsite
PAS Biodiversity Net Gain (BNG)
Legal Agreement Template Version 1.0

The Planning Advisory Service (PAS) commissioned [Dentons](#) to create a suite of sample agreement templates to facilitate securing biodiversity gains in the various ways allowed for by the Environment Act.

This template is provided for council legal teams to modify according to their council's standards and the specific requirements of individual developments. This template is aimed at providing a streamlined approach, enhancing the efficiency in drafting agreements, and benefitting all stakeholders involved.


Important Notes:

- This document is a template and serves as an initial guide or heads of

Offsite
PAS Biodiversity Net Gain (BNG)
Legal Agreement Template Version 1.0

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Habitat Bank
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Features

Condition

- Statutory condition is purely informative – reflected in drafting notes
- Refined drafting notes to reflect what is legally required versus duties on local authorities

Onsite s.106 Agreement

- Indexation – multiple options available. Template could be amended to have pro-rata indexation in year one to align indexation to a specific date.

Offsite BNG s.106 agreement

- *Why use this over the habitat bank agreement?*
- Consider monitoring contribution and any reliance on conditions.
- First Allocation – Not included as an option

Features

Habitat Bank s.106 agreement

- Optionality – Who is carrying out the works? “Gain Site Operator” vs “Freeholder”
- Optionality – Mortgagee
- Optionality – Bond to secure obligations during the maintenance period
 - *Consider impact on indexation*
- Optionality – Statement of Achievability



Habitat Bank

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Questions?

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Thank you

Across over 80 countries, Dentons helps you grow, protect, operate and finance your organization by providing uniquely global and deeply local legal solutions. Polycentric, purpose-driven and committed to inclusion, diversity, equity and sustainability, we focus on what matters most to you. www.dentons.com.

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