

Onsite

PAS Biodiversity Net Gain (BNG)

Legal Agreement Template Version ~~1.0~~2.0

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 terms.
- This template requires judgement and does not constitute legal advice. It is essential to consult with your legal teams to review and modify the content.
- Local Planning Authorities (LPAs) and other parties to the agreement should collaborate with their legal teams to modify the template as needed for each specific development.

This template includes drafting notes to explain options of drafting and usage.

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Check for updates to this template on the PAS website	

Agreement pursuant to Section 106 Town and Country Planning Act 1990 and Other Powers

relating to the land known as [**]

[Purpose: securing financial contribution for on-site BNG monitoring, where BNG is secured by condition]

Dated

[**]
(the Council)

[**]
(the Owner)

[[**]
(the Mortgagee)]]

PAS On-Site BNG Template

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DRAFTING NOTES

Scope: This template is a Section 106 agreement to **secure a monitoring contribution** in respect of biodiversity net gain monitoring. It is intended to be used where a development will deliver some biodiversity net gain on-site and the maintenance and monitoring of any biodiversity is secured by a condition imposed on development.

Mortgagee: Reflecting general practice for S106 obligations, this template provides for acknowledgement that any mortgagee acknowledgement will be bound by the obligations should (and only if) it takes possession of the Site.

Between

- (1) [**] of [**] (the **Council**); and
- (2) [**] (company registration number [**]) whose registered office is situated at [**] (the **Owner**); [and
- (3) [**] (company registration number [**]) whose registered office is situated at [**] (the **Mortgagee**)].

Mortgagee Drafting Note: If including a Mortgagee, include this text.

Recitals

- A The Council is the Local Planning Authority for the purposes of the 1990 Act for the area in which the Development is situated;
- B The Owner is registered as the freehold owner of the Site at the Land Registry under Title Number [**]; and
- C [The Mortgagee is the beneficiary of a charge dated [**] in respect of the [freehold/ leasehold] title registered at the Land Registry under title number [**]].

Mortgagee Drafting Note: If including a Mortgagee, include recital C.

1 ~~4~~ Definitions and Interpretation

- 1.1 For the purposes of this Deed the following expressions shall have the following meanings unless the context requires otherwise:

1990 Act means the Town and Country Planning Act 1990 (as amended).

Biodiversity Gain Plan means the plan submitted to, and approved by the Council, to satisfy the development's biodiversity net gain requirements pursuant to Schedule 7A of the 1990 Act.

Biodiversity Gain Land Monitoring Contribution means the sum of £[**] (*[number to be written out]*) Index Linked to be paid by the Owner to the Council under 4 of this Deed to be applied by the Council as a financial contribution towards the Council's costs of monitoring compliance with [as required by condition [**] of the Planning Permission] and approved by the Council.

Drafting Note: Review the proposed conditions and amend this definition as needed so it reflects what the monitoring contribution will fund.

Commencement Date means the date upon which the Habitat Creation and Enhancement Works have commenced.

Deed: this deed.

[Default Interest Rate: [**]% per annum above the basic lending rate of the Council's bank.]

Drafting Note: This definition should reflect the Council's general approach to default interest.

Development: the development of the Site authorised by the Planning Permission to [**].

Habitat Creation and Enhancement Works means the habitat creation and enhancement works set out in the Habitat Management and Monitoring Plan (excluding any management or monitoring activities specified in the Habitat Management and Monitoring Plan).

[Habitat Management and Monitoring Plan or HMMP means the document titled 'Habitat Management and Monitoring Plan' as required by condition [**] of the Planning Permission and approved by the Council.

Drafting Note: The condition may specify another plan instead of the HMMP. Review the draft conditions to ensure they are consistent. A Habitat Management and Monitoring Plan, or its equivalent may not be

Plan 1 means the site location plan with drawing number [**] appended to this Deed at Schedule 1.

Planning Permission: the planning permission granted in respect of a planning application submitted with reference [**].

Site means the land edged [red] on Plan 1.

- 1.2 Clause headings shall not affect the interpretation of this Deed.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors and permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to **writing** or **written** excludes faxes and e-mail.
- 1.11 A reference to **this Deed** or to any other deed or document referred to in this Deed is a reference to this Deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.

- 1.12 References to Clauses and Schedules are to the Clauses and Schedules of this Deed.
- 1.13 An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.14 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.15 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.
- 1.16 This deed shall not be enforceable against statutory undertakers or tenants of individual commercial units.

2 ~~2.~~ **Legal Basis**

- 2.1 This Deed is made under Section 106 of the Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 with intent that it creates planning obligations binding the Owner's interest in the Site.
- 2.2 No person shall be liable for any breach of any provisions of this Deed after it shall have parted with its entire interest in the Site or the part of the Site in relation to which the breach relates but without prejudice to its liability for any subsisting breach arising prior to parting with such interest and for the purposes of this clause a person parts with an interest in the Site notwithstanding the retention of easements or the benefit of covenants, restrictions or reservations which shall not constitute an interest for the purposes of this clause.

3 ~~3.~~ **Conditionality**

- 3.1 Subject to Clauses 3.2 and 3.3, this Deed is effective on the date hereof.
- 3.2 Clause 4 is effective from the date on which the Planning Permission is granted.
- 3.3 This Deed shall cease to have effect (insofar only as it has not already been complied with) or if the Planning Permission it is modified by any statutory procedure or expires before the Development is Commenced or is at any time revoked this Deed shall forthwith determine and cease to have effect but the Council will not be required to repay any monies to the Owner (to the extent that any such sums have been paid by them) which have been received and expended (or committed to be expended).

4 ~~4.~~ **The Owner's Covenants**

[Drafting Note: Local authorities should consider whether a monitoring contribution is justified/ appropriate and what payment arrangements and Index Linking are appropriate. Local authorities should consider whether the monitoring contribution is in respect of monitoring compliance with the condition as a whole or whether it is only in respect of the 30-year maintenance period.](#)

[The template provides three options, but these are examples and are not intended to be prescriptive; other arrangements may be appropriate/ justified.](#)

[OPTION 1:](#)

[Some LPAs may prefer setting a one-off fee that accounts for inflation at a particular point in time instead of receiving an annual contribution. LPAs should consider whether a single lump sum, even if adjusted for expected inflation, carries a risk of underestimating future inflation or changes in the cost structure for meeting maintenance](#)

requirements that could lead to inadequate funds for effective monitoring. Additionally, the nature of the works and their complexity or difficulty may be a factor in this.

OPTION 2:

In this option, the Biodiversity Gain Land Monitoring Contribution is a yearly annual contribution rather than a lump sum. This option is drafted so that the Biodiversity Gain Land Monitoring Contribution is in respect of monitoring compliance during the maintenance period which begins after the completion of the development (however so defined between the LPA and the developer for the purpose of the condition).

OPTION 3:

Some LPAs align the payment of annual or periodic contributions to a particular date for ease of monitoring. In this option the Biodiversity Gain Land Monitoring Contribution is a yearly annual contribution at a standardised date and is in respect of monitoring compliance during the maintenance period which begins after the completion of the development (however so defined between the LPA and the developer for the purpose of the condition).

4.1 The Owner covenant with the Council to pay the Biodiversity Gain Land Monitoring Contribution to the Council:

4.2 [OPTION 1: within 10 Working Days of ~~the start of the maintenance period under the condition~~.]

4.3 [OPTION 2:

- (a) within 10 Working Days of ~~the~~ ~~[Commencement Date~~ start of the maintenance period under the condition]; and
- (b) thereafter annually on each anniversary of ~~the~~ ~~Commencement Date~~ start of the maintenance period under the condition] until (but not including) the anniversary falling 30 years from that date.

Drafting Note: Local authorities should consider whether a monitoring contribution is justified/ appropriate, what payment arrangements, and Index Linking it will seek from the Owner.

4.4 [OPTION 3:

- (a) on the [Date] immediately following [the start of the maintenance period under the condition]; and
- (b) thereafter annually on [Date] until the date falling 30 years from [the start of the maintenance period under the condition], with the final payment due on [Date] in the year following expiry of that period.

4.5 The payment in paragraph 4.4(a) shall be a pro-rata amount to reflect the period between the ~~the start of the maintenance period under the condition~~ and ~~[Date~~].

4.6 The final annual payment in paragraph 4.4(b) shall be made following the completion of the 30-year period and shall be a pro-rata amount reflecting the period between the last full annual payment and the conclusion of the obligation.]

5. ~~5.~~ Council's Covenants

5.1 The Council covenants to use the Biodiversity Gain Land Monitoring Contribution for no other purpose than the purpose of monitoring implementation and ongoing compliance of the Biodiversity Gain Plan

6 ~~6.~~ **Indexation**

- 6.1 All financial contributions payable to the Council shall be Index Linked.
- 6.2 Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this Deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Owner in writing.

7 ~~7.~~ **Interest on late payment**

- 7.1 If any sum or amount has not been paid to the Council by the date it is due, the Owner shall pay the Council interest on that amount at the Default Interest Rate. Such interest shall accrue on a daily basis for the period from the due date to and including the date of payment.

8 ~~8.~~ **Ownership**

- 8.1 The Owner agree with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan.

9 ~~9.~~ **Miscellaneous**

- 9.1 The Owner shall pay to the Council the Council's reasonable and proper legal costs incurred in the preparation, negotiation and completion of this Deed prior to the date of this Deed.
- 9.2 Where the agreement, approval, consent or expression of satisfaction is to be given by any Party or any person on behalf of any Party hereto under this Deed such agreement, approval or consent or expression of satisfaction:
- (a) shall not be unreasonably withheld or delayed;
 - (b) shall be given in writing; and
- may be validly obtained only before the act or event to which it applies.
- 9.3 Where any payment of costs or other payments are to be made by the Owner to the Council such costs and other payments shall be deemed to be reasonable and proper.
- 9.4 This Deed shall be deemed a Local Land Charge and will be registered as such by the Council.
- 9.5 The Parties do not intend any person to have the benefit of the Contract (Rights of Third Parties) Act 1999.
- 9.6 If any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable, such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provision of this Deed.
- 9.7 Nothing contained or implied in this Deed shall prejudice or affect the rights, powers, duties and obligations of the Council in the exercise of its functions in any capacity (including in

particular its capacities as highway authority and local planning authority) and the rights, powers, duties and obligations of the Council under private, public or subordinate legislation may be effectively exercised as if it were not a Party to this Deed.

10 ~~40.~~ **Waiver**

10.1 No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants, terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

11 ~~41.~~ **Agreements and declarations**

11.1 The parties agree that:

- (a) nothing in this Deed constitutes a planning permission or an obligation to grant planning permission; and
- (b) nothing in this Deed grants planning permission or any other approval, consent or permission required from the Council in the exercise of any other statutory function.

12 **[Mortgagee]**

12.1 The Mortgagee consents to the Owner entering into this Deed.

12.2 Subject to Clause 12.3, the Mortgagee acknowledges that the [part of the] Site over which the Mortgagee has a charge shall be bound by the planning obligations in this Deed.

12.3 The Mortgagee (and any other future mortgagee or chargee of any part of the Site) shall have no liability under this Deed unless it takes possession of the Site in which case it shall be bound by the obligations in Clause 4 as a person deriving title through the Owner.]

Drafting Note: If there is no Mortgagee as a party, this clause can be deleted.

13 ~~43.~~ **Value added tax**

13.1 Each amount stated to be payable by the Council or the Owner to the other under or pursuant to this Deed is exclusive of VAT (if any).

13.2 If any VAT is at any time chargeable on any supply made by the Council or the Owner under or pursuant to this Deed, the party making the payment shall pay the other an amount equal to that VAT as additional consideration on receipt of a valid VAT invoice.

14 ~~44.~~ **Governing law**

14.1 This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

Drafting Note: Insert the attestation clauses for the parties.

Executed as a deed by affixing the seal of
[**] in the presence of:

Authorised Signatory

Executed as a deed by)
[**] acting by a Director and its)
Secretary)
or by two Directors)

Director Name: (Capitals))

Director Signature:)

Director/Secretary Name (Capitals))

Director/Secretary Signature:)

Schedule 1 - Plan 1

PAS On-Site BNG Template

Summary report:	
Litera Compare for Word 11.9.1.1 Document comparison done on 11/04/2025 15:23:54	
Style name: Default Style	
Intelligent Table Comparison: Active	
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Delete	30
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Table Delete	0
Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	91