

North Somerset Council

Report to the Council

Date of Meeting: 24th February 2026

Subject of Report: USING COUNCIL LAND FOR BIODIVERSITY NET GAIN: DELEGATION OF PLANNING ENFORCEMENT FUNCTION TO SECURE A LEGAL AGREEMENT PURSUANT TO S101 OF THE LOCAL GOVERNMENT ACT 1972

Town or Parish: All

Officer/Member Presenting: Cabinet Member for Planning and Environment/Director of Environment, Assets and Transport Services

Key Decision: No

Reason:

This is not a Cabinet report and it is within the jurisdiction of Full Council to arrange for the discharge of council functions by another authority and to accept arrangements for the discharge by North Somerset Council of another council's function.

Recommendations

To make arrangements (entering into a LGA1972 S101 agreement) for *the discharge* by neighbouring authorities (Bath and North East Somerset Council, Bristol City Council, Somerset Council, and South Gloucestershire Council), *of North Somerset Council's planning enforcement function* in so far only as it relates to enforcement of and entering into a S106 legal agreement for use of specific council-owned land as a habitat bank (e.g. biodiversity net gain (BNG) and North Somerset Nature Parks for bat mitigation).

To make arrangements (entering into a LGA1972 S101 agreement) for *the discharge by* North Somerset Council of the planning enforcement function of neighbouring authorities (Bath and North East Somerset Council, Bristol City Council, Somerset Council, and South Gloucestershire Council) in so far only as it relates to enforcement of and entering into a S106 legal agreement for use of their land as a habitat bank.

To confirm that no arrangement for the enforcement function or acceptance of such an arrangement from/to another Council shall take effect until that other Council has made a reciprocal Council decision and shall end as between NSC and the reciprocating Council as from the date either council revokes its discharge of function arrangement, save that any actions taken under any discharge or acceptance of the enforcement function entered into before the date of revocation of the enforcement function shall remain valid.

To note that a site specific S106 agreement will need to be agreed by officers for each habitat bank and the council is under no obligation to enter into a legal agreement with the named other councils following the endorsement of the proposed arrangement by NSC.

1. Summary of Report

The reports sets out how the reciprocal arrangements for discharge of planning enforcement duties to neighbouring authorities will enable North Somerset Council to enter into S106 agreements with those authorities to secure the management of our habitat bank sites. The S106 agreements are an essential part of the registration of NSC BNG sites with Natural England and will allow the subsequent efficient and cost-effective sale of BNG units to developments within North Somerset. S106 agreements will also secure the management of North Somerset Nature Parks sites in perpetuity for the benefit of horseshoe bats and permit the sale of bat mitigation units to developments within North Somerset.

The provision of habitat banks such as our BNG sites and Nature Parks not only provides protected habitats for wildlife and supports the outcomes of the Local Nature Recovery Strategy but also supports the delivery of development in North Somerset and generates income.

2. Policy

The decision will support the delivery of the Green Infrastructure Strategy and the Corporate Plan commitments to both protect our natural environment and encourage biodiversity whilst enabling sustainable development and supporting the delivery of housing.

3. Details

The Environment Act 2021 introduced the statutory framework for biodiversity net gain (BNG), requiring many developments to provide at least 10% BNG either on-site, off-site or by purchasing biodiversity units. This BNG must be secured by planning condition, S106 agreement/conservation covenant or both.

The legislation requires all BNG provided outside of a development to be recorded on Natural England's BNG register with a legal agreement signed by the landowner and an organisation enforcing the legal obligations.

North Somerset Council, as landowner, can use its land for off-site habitat bank provision. However, North Somerset Council, as Local Planning Authority, cannot enter into a S106 agreement with North Somerset Council as landowner to secure this habitat bank provision because there would be a conflict of interest between its role as both provider and that of the enforcing party. The legal 'agreement' needs to be between two separate organisations.

Section 101 of the Local Government Act 1972 allows a Council to arrange for the discharge of its functions by other local authorities as long as that function, also being a function of the other authority, is not the responsibility of the other authority's executive. Subject to that exception, the function of local planning authority could therefore be delegated to another local authority for the purposes of securing, monitoring and enforcing these S106 agreements for obligations on Council land. The proposal for discharge of planning enforcement function is solely to be used for council-owned land identified for development as a BNG habitat bank or Nature Park and entering into a S106 legal agreement for the land to be secured as a biodiversity net gain or Nature Park habitat bank.

NSC seeks endorsement to enter into reciprocal arrangements for discharge of planning enforcement functions with neighbouring authorities Bath and North-East Somerset Council, Bristol City Council, Somerset Council, and South Gloucestershire Council) for the

purposes only of entering into a S106 legal agreement for use of specific council owned land as habitat banks.

In the absence of a mechanism for securing biodiversity units from council land, the council as a developer will be less able to offset biodiversity impacts close to the impact area. This would both result in lost opportunity for biodiversity and delivering for local people linked to the area being impacted. In addition, using council land for BNG and Nature Parks provides a funding stream for maintaining the land, subject to an agreed management plan, for 30 and 80 years respectively.

It is proposed that by having S106 agreements in place for habitat banks on NSC-owned land and therefore the ability to register these units on the Natural England register, these units can be used by NSC's own development schemes and also sold to private developers. Therefore housing delivery and other schemes requiring off-site BNG/bat mitigation units will be able to reserve and legally secure specific off-site habitat delivery to enable the discharge of planning conditions and allow the commencement of development.

In the longer term another option to secure a legal agreement may become available with the West of England Mayoral Combined Authority (the MCA). The MCA have started the process of applying to become a 'responsible body' which would enable NSC to apply for a deed with a conservation covenant. This may become the preferred solution once established, but it is anticipated that the process to become a Responsible Body will be lengthy and is untested for the MCA. The process could take in excess of 12 months. Without the reciprocal arrangements proposed here it will be unviable for the council to use its land to provide BNG units because the private Responsible Bodies established so far are unaffordable for the council's BNG schemes.

Bath and North-East Somerset Council (BANES) have already approved the discharge function arrangements for enforcement duties for the purposes of managing habitat banks on BANES Council-owned land and this agreement would reciprocate this arrangement.

4. Consultation

Head of Planning Enforcement – Chris Nolan (26.11.25)

Head of EATS – Mickey Green (27.11.25)

Legal Department – Nick Brain and Ann Rich (1.12.25)

Cabinet Member for Planning and Environment – Cllr Waite (12.12.25)

PESC (16.1.26)

5. Financial Implications

There are no cost implications for the approval of this administrative process.

Whether to enter into a S106 agreement with another council for a specific site is a delegated decision to planning officers with advice from specialist officers, the likelihood of enforcement action is considered as part of the process.

All S106 agreements resulting from planning applications or otherwise carries a risk of enforcement action with associated cost. The S106 agreements for habitat banks will be between councils with a legislative biodiversity duty and therefore the risk of costs due to enforcement action is expected to be low.

The costs incurred in setting up a site as part of a council habitat bank are covered by the project and are expected to be recovered through the sale of biodiversity/Nature Park units.

The outcome will result in a new income stream to enhance and maintain council owned land for 30yrs+ (80+ for Nature Parks) contributing to Council ecological emergency objectives.

The outcome will also provide biodiversity/bat mitigation units for the council's own developments, reducing the need to purchase units from a private organisation, or outside the authority area which incurs a financial disincentive.

6. Legal Powers and Implications

The Natural Environment and Rural Communities Act 2006 (NERC Act) section 40 duty, provided for in the Environment Act 2021, extends the biodiversity duty on public authorities to include the enhancement of biodiversity. The use of council land as biodiversity net gain habitat banks will contribute to this duty.

The legal power to make arrangements for discharge of functions between councils arises from Section 101 of the Local Government Act 1972

The Local Government Act 1972 (section 101(1)(b)) states that "...a local authority may arrange for the discharge of any of their functions – [.....] (b) by any other local authority".

7. Climate Change and Environmental Implications

The arrangement for discharge of planning enforcement function will enable council land to be used as a habitat bank resulting in ecological mitigation and 10% biodiversity improvement being provided within the same local authority area as the development impacting biodiversity. This approach contributes to resilience of habitats within North Somerset to climate change.

8. Risk Management

Without a S106 in place NSC is unable to sell units for developments obligated by the 10% BNG requirement, or bat mitigation units for any of its habitat banks. NSC could continue to pursue the establishment of a Habitat Banking Vehicle through alternative means however this is considerably more of an administrative burden and requires the transfer of the lease of the land to the other party at a time when devolution is taking up a considerable amount of internal resource, it is suggested that the additional requirements for the NSC habitat banks would be better dealt with by avoiding this requirement.

9. Equality Implications

An EIA has not been carried out. The discharge of a regulatory function between councils will not result in a change to the function. An indirect outcome will be that due to the location of council owned land, biodiversity will be provided closer to communities and therefore increase public access to nature.

10. Corporate Implications

There are implications for the Ecology Team, Planning Enforcement and Legal teams. The Ecology Team will need to prepare all the habitat bank specific documentation for the Legal team to be able to create a S106 draft to share with the neighbouring local authority. The Planning Enforcement Team, albeit unlikely, may need to enforce on another local authority in the future if they fail to meet the obligations within the S106.

11. Options Considered

Option 1: Pursue a Habitat Banking Vehicle solution with a third-party organisation whereby the council's habitat banks are transferred to that party in order to allow a S106 to be established between the third party as landowner and NSC as planning authority. Option rejected due to considerable management, lease and legal arrangements being necessary to achieve this. Note: this had been the route that the Natural Environment Team had been pursuing in the absence of any other viable option however as Bath and North-East Somerset Council is now ready to offer S106 agreements with other authorities, this has overtaken as the most straightforward and cost-effective option and avoids the need to transfer the land ownership.

Option 2: It is possible to enter into a conservation covenant (deed) with a private registered 'responsible body' who can then enforce the covenant. Option rejected due to high costs which would make providing units for council-owned projects unviable and funds not available to cover the upfront fees. This is also a lengthy process which would lead to further delay in being able to sell units.

Option 3: Wait and see whether WECA are successful in an application to become a responsible body. Option rejected due to no timescales available and certainty of outcome.

Option 4: Solely using private habitat banks was considered, but this option would give less control over cost, when and where units are available and doesn't provide the additional benefits of co-locating nature where communities can access it. It would also not lead to the ecological enhancement of council-owned sites which would otherwise be unaffordable. Option Rejected.

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Appendices:

None

Background Papers:

None