



**TOWN AND COUNTRY PLANNING ACT 1990**

**EXAMINATION OF THE BATH AND NORTH EAST SOMERSET LOCAL PLAN  
(CORE STRATEGY AND PLACE MAKING PLAN) PARTIAL UPDATE  
MATTER 5: OTHER DISTRICT POLICIES**

**HEARING STATEMENT  
IN ASSOCIATION WITH LAND ADJOINING ODD DOWN, BATH  
KNOWN AS SULIS DOWN**

**ON BEHALF OF  
THE HIGNETT FAMILY TRUST**

**JUNE 2022**

**REF: PF/10160**



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## **APPENDICES**

**Appendix 1** Comprehensive Masterplan Land adjoining odd Down, Bath

## 1.0 BACKGROUND

1.1 This Hearing Statement is submitted on behalf of The Hignett Family Trust (HFT) in respect of Land adjoining Odd Down, Bath, known as Sulis Down. The land is identified in the B&NES District's Core Strategy as a strategic Site allocation to meet part of the District's housing need. The strategic Site is allocated for a residential development under Planning Policy B3a.

1.2 The land at Odd Down is one of four strategic housing Sites removed from the Green Belt in the Core Strategy. In respect of the land at Odd Down, the Planning Inspector (PI) concluded in his report (paragraph 164) following the Examination of the Core Strategy, that if the Council's placemaking principle (included in the proposed policy wording) were met:

*'Overall, there would be a loss of Green Belt, localised harm to the AONB (nonetheless great weight should be attached to protecting this landscape); only slight harm to the Wansdyke SM, with a small benefit from planned positive management measures; and limited and localised harm to the setting of WHS (paragraph 164)'*

1.3 The PI noted at paragraph 164 that there were no acceptable alternative Sites within Bath which could replace the contribution to housing that the Odd Down Site could make. The PI confirmed that the Council's decision to allocate the Site represented positive planning and was justified.

1.4 The PI further concluded that there were exceptional circumstances to justify the removal of the land from the Green Belt, and for major development within the AONB (paragraph 165 of the PI Report).

*'I consider that there are exceptional circumstances to justify removing land from the Green Belt and for major development within the AONB. The need for housing and the benefits of additional housing in this location at Bath outweigh the harm that would arise, taking into account the great weight that must be given to protecting the AONB and heritage assets (paragraph 165).'*

1.5 The PI at paragraph 163 stated that the text in the planning policy should make clear that, if all the placemaking principles could be met, the housing number (300) is not a cap on capacity.

*'PP1 refers to development of around 300 dwellings. This capacity reflects the Council's view that substantial parts of the allocated area are not suitable for built development and my assessment above largely endorses that approach. The text should make clear, however, that this figure is not a cap on capacity if all the place-making principles can be met (paragraph 163).'*

### **Planning Progress of the Site Allocation B3a – Land adjoining Odd Down, Bath**

1.6 Since the adoption of the Core Strategy and Placemaking Plan, a Comprehensive Masterplan of the strategic allocation (**Appendix 1**) was submitted to the Council in 2018. The Masterplan subdivides the allocation into 4 Phases: Phase 1 consists of land to the west of Sulis Manor, Phase 2 consists of Sulis Manor, and Phases 3 and 4, land to the east of Sulis Manor. In 2019 a detailed planning permission was granted for Phase 1 for 171

dwellings (Planning Ref: 17/02588/EFUL) with access off Combe Hay Lane. Phase 1 is currently being built out.

- 1.7 A hybrid planning application was submitted to the Council in May 2022 for the residential Phases 3 and 4 and an extension to spine road approved for Phase 1. The application is under consideration by the Council. The application description is set out below:

*'Hybrid planning application on land adjacent to Odd Down, Bath, known as Sulis Down, comprising:*

- (i) Outline application for Phases 3 and 4 for up to 300 dwellings; landscaping; drainage; open space; footpaths and emergency access; all matters reserved, except access from Combe Hay Lane via the approved Phase 1 spine road (details of internal roads and footpaths reserved);*
- (ii) Detailed application for the continuation of the spine road (from Phase 1), to and through Sulis Manor and associated works comprising: the demolition of existing dilapidated buildings and tree removal; drainage; landscaping; lighting; and boundary treatment; to enable construction of the spine road; and;*
- (iii) Detailed application for landscaping; mitigation works; allotments; including access; on the field known as Derrymans.'*

- 1.8 The site allocation Policy B3a includes a series of placemaking principles that provide a set of robust expectations related to the development to be delivered through the policy. The hybrid planning application has demonstrated that Phases 3 and 4 and the proposed access arrangement can be delivered in accordance with the placemaking principles, both in terms of the specific impacts and cumulatively across the entire allocation.
- 1.9 It is anticipated that Phases 1, 3 and 4 will deliver 471 dwellings across the allocation. At the time of writing there is no certainty of the timescale or number of dwellings for Phase 2. The number of dwellings for Phase 2 could be 'up to 50 dwellings'. Phase 2 will not be delivered within the Plan period and have therefore not been considered in this Hearing Statement.
- 1.10 The HFT submitted representation to both the Regulation 18 and 19 consultations of the Local Plan Partial Update (LPPU). This Hearing Statement should be read in conjunction with these submissions. The rest of this Hearing Statement addresses the specific matters raised by the Planning Inspector: Matter 5: Other District Policies.

## **2.0 MATTER 5: OTHER DISTRICT POLICIES**

### **Policy SCR6 Sustainable Construction Policy for New Build Residential Development**

*Q.87. What is the justification for the requirement for new residential dwellings to demonstrate a space heating demand less than 30kWh/m<sup>2</sup>/annum, total energy use less than 40kWh/m<sup>2</sup>/annum, and on-site renewable energy generation to match the total energy use, with a preference for roof mounted solar PV?*

*Q.89. How do the proposed energy use requirements compare to the (transitional) requirements as currently set out in Part L of the Building Regulations?*

*Q.90. What is the justification for seeking a financial contribution where the use of onsite renewables to match total energy consumption is demonstrated to be not technically feasible or economically viable? Is this element of the Policy consistent with paragraph 57 of the NPPF and*

*Regulation 122(2) of the Community Infrastructure Levy Regulations 2010, and would it be effective?*

- 2.1 Policy SCR6 seeks to revise the construction polices with an aim to achieve net zero in the construction of new dwellings. To facilitate this, the LPPU propose that policies CP2 of the Core Strategy and SCR1 of the Placemaking Plan are replaced with the policy SCR6. The new policy seeks to remove the threshold for the energy consumption to be delivered by renewable (10%) and to match on-site renewable provision to the total energy consumption of a proposed development.
- 2.2 The proposed new policy does not take account of the Government's intention to introduce a Future Homes Standards (FHS) by 2025. The FHS intends to deliver net zero carbon emissions by 2050 through the Building Regulation process. Interim Building Regulations will be issued in July 2022, which will require new buildings to be constructed with 30% less CO2 emissions than current standard. These interim measures have been put in place to allow the construction and housing sectors time to adapt to the 80% carbon emission reduction requirement by 2025.
- 2.3 Policy SCR6 is not in accordance with the energy hierarchy. The energy hierarchy places greater emphasis on fabric first, where the priority of reducing energy at its source through high levels of airtightness and other 'fabric first' approaches, should be prioritised rather than a reliance on specific renewable energy technologies. Policy SCR6 is in direct conflict with Building Regulations that include building fabric energy standards to ensure that developments adopt a fabric first approach.
- 2.4 An over reliance of renewable energy technology to the detriment of energy resilience through the building fabric may lead to inappropriate technology specification, component quality and lifespan issues, which may have a detrimental long-term cost and use implications. As well as the need to ensure that the correct technology solutions are specific in terms of energy generation provision, it is important to consider the quality of the construction of the building delivered for occupation, as this will also play its part in reducing CO2 emissions.
- 2.5 The LPPU has acknowledged, but not addressed, the changes at national level to address CO2 emissions and climate change. The Council seeks to make immediate changes to policy in its Climate Change emergency ahead of national changes to Building Regulation through the FHS that will allow the construction sector time to prepare for these new standards.
- 2.6 Policy SCR6 includes a provision for a financial contribution where the use of on-site renewables to match total energy consumption is not viable. The Council's evidence base does not explain how this contribution will be calculated, or how any contributions received will be used.
- 2.7 Paragraph 57 of the NPPF sets out when planning obligations can be sought. Policy SCR6 seeks a contribution for something that is not technically feasible on a development. In this scenario, as the on-site renewable energy is not achievable, it cannot be necessary to make the development acceptable in planning terms.

- 2.8 For the reasons above; the conflict with Building Regulations and the conflict with paragraph 57 of the NPPF, Policy SCR6 is not justified or effective. To make the LPPU sound, Policy SCR6 should be deleted.

#### **Policy SCR8 Embodied Carbon**

*Q.96. What is the justification for the size thresholds for the application of the Policy, and the requirement that an Embodied Carbon Assessment that demonstrates a score of less than 900kg/sqm of carbon can be achieved within the development for the substructure, superstructure and finishes?*

*Q.97. What effect would policy SCR8 have on the delivery of new buildings?*

- 2.9 The HFT has already identified that the requirement for developments to ensure that the use of materials is carefully considered to reduce their environmental impact is included in The National Design Code:

*'Well-designed proposals for new development use materials carefully to reduce their environmental impact. This may be achieved in many different ways, for instance through materials that are locally sourced, high thermal or solar performance; or designs based on the typical dimensions of materials to reduce waste.'*

- 2.10 The requirement to submit an embodied carbon assessment to demonstrate that a score of less than 900 kg/sqm can be achieved within the development for the substructure, superstructure and finishes goes above the standards required by the National Design Guide. The policy does not accord with national planning policy. The HFT position remain that Policy SCR8 renders the LPPU unsound. To make the LPPU sound, Policy SCR8 should be deleted.

#### **Policy CP4 District Heating**

*Q.98. Would the requirement in Policy CP4 that development will be expected to incorporate infrastructure for district heating, and will be expected to connect to existing systems where and when this is available, unless demonstrated that this would render development unviable, be effective in reducing carbon emissions, and is the requirement justified in the context of the aims of the Plan?*

- 2.11 The three key priorities in the Districts' response to climate change are set out in page 59 of the LPPU and includes 'A rapid and large-scale increase local renewable energy'. Policy SCR6 sets out a requirement for on-site renewable energy to match the total energy use. As this is the case, Policy CP4 is required and is not justified.
- 2.12 Further, the HFT consider that the District heating schemes are not the most effective approach to reducing carbon emissions. The building regulations update in June 2022 include adjusted carbon factors that will more accurately represent the carbon emissions associated with different fuels.
- 2.13 Due to the decarbonisation of the grid, the carbon factor for electricity is being more than halved. This makes electrical heating less carbon intensive and therefore heating systems such as heat pumps become preferable to combustion led heating schemes such as district heating.

- 2.14 The HFT position remain that Policy CP4 renders the LPPU unsound. To make the LPPU sound, Policy CP4 should be deleted.

### **Policy NE3a Biodiversity Net Gain**

*Q.106 What are the implications of the Environment Act 2021 for the Policy?*

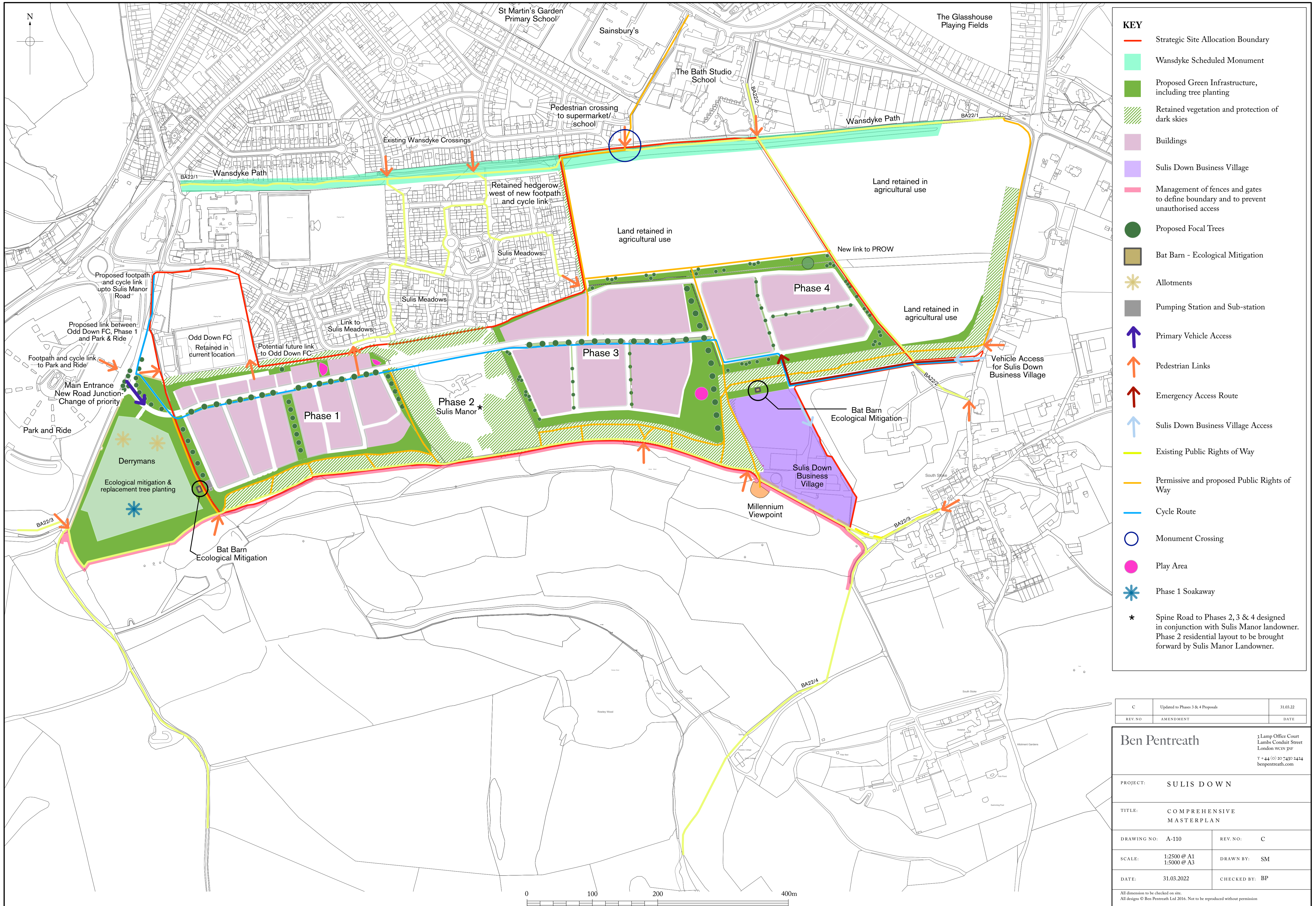
*Q.107 Is the Policy justified in not setting out a transition period for the implementation of the requirement for Biodiversity Net Gain?*

- 2.15 The Environment Act 2021 (EA) received royal assent in November 2021. The Act includes a 2-year transition period between royal assent and its provisions coming into force. Para 2(3) of Schedule 14 of The Environment Act 2021 (EA) requires development to demonstrate an ‘up lift’ in the Biodiversity Net Gain (BNG) of a Site using the Biodiversity Net Gain Metric, currently at version 3.1. Paragraph 105 (1) requires a ‘Local Nature Recovery Strategy’ for an area to be prepared.
- 2.16 The transition period allows for secondary legislation, the Town and Country Planning Act 1990 to be amended, to make the BNG provision have statutory force. The requirement for at least 10% BNG to be demonstrated in developments will not be mandatory until November 2023.
- 2.17 The EA makes provision for ‘Biodiversity credits’, a process where a developer, unable to meet its BNG on site, may purchase biodiversity credits from an offsite habitat market. Natural England will be responsible for managing a national register of net gain delivery sites, where biodiversity credits will be available. A LPA may also set up and manage a local register of net gain delivery sites, where biodiversity credits will be available. The timeframe for setting up the Natural England national register will be winter 2022, ready to register sites and make credits available by Spring 2023.
- 2.18 When the mandatory BNG comes into force (Autumn 2023) the approach by B&NES to delivering BNG will need to meet the minimum requirements set in the EA. In terms of offsite and BNG achieved through Biodiversity credits, B&NES will have to identify land in their ownership, or other land, to offer off-site biodiversity units (unless the developer/landowner identifies land). Such land must be registered in the biodiversity gain register. It is unknown whether B&NES will be progressing this approach to ensure that their housing delivery targets are not compromised by difficulties in developments achieving a 10% BNG.
- 2.19 The EA places a specific duty on all local authorities to have regard to Local Nature Recovery Strategies (LNRS). It is expected that LNRS will be used to assist in informing where Biodiversity Net Gain should be delivered. The LNRS can be used to target offsite BNG so that it contributes to the Nature Recovery Network. LNRS can be used to determine the ‘strategic significance’ score, that gives additional unit values to habitats that are located in preferred locations for biodiversity and other environmental objectives. It is not clear how far B&NES is progressing this element of the Biodiversity Net Gain.
- 2.20 The Biodiversity Net Gain Topic Paper acknowledges at paragraph 3.5 that the 10% BNG requirement by the EA will require significant changes to the development management process.



- 2.21 The Topic Paper states that a BNG Supplementary Planning Document (SPD) will be prepared to outline how BNG will be implemented through the development management programme. Consultation on the BNG SPD was anticipated in December 2021 with adoption in June 2022, both deadlines have not been met (Local Development Plan (2021-2024)).
- 2.22 The HFT has concerns over local planning authority resources in terms of ecologists with the correct training to be able to deal with the increased workload and complexities associated with BNG. The District has yet to set up a Register of land where Biodiversity Credits will be available for sites unable to deliver an on-site BNG, where BNG Credits would be the most appropriate route to the delivery BNG.
- 2.23 The complexities of attaining BNG and the timeframe for planning application determination could result in delays in planning approvals and the potential for housing targets to be undermined, increasing the risk of development coming forward in unsustainable locations. The Council has failed to take account of the EA transition period to allow the development sectors as well as Local Authorities to be able to implement the requirements of the EA in an effective manner.
- 2.24 Paragraph 2.1 of the Biodiversity Net Gain Topic Paper states that '*Biodiversity Net Gain (BNG) is the achievement of measurable gains for biodiversity through new development and occurs when a development leaves biodiversity in a better state than before*' Both national and local planning policy contain provisions to deliver biodiversity enhancements.
- 2.25 The NPPF at para 174 requires developments to '*(d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.*' Local Plan Policy CP6 states '*The quality extent and robustness of protected sites and valued habitats will be enhanced, and networks of valued habitat will be restored or created...*'
- 2.26 Current local and national planning policy will ensure that a BNG is delivered across development sites in the EA transition period (either on-site or off-site) until the BNG threshold of 10% BNG becomes mandatory in the Autumn of 2023.
- 2.27 As such, Planning Policy NE3a is not justified. To make the LPPU sound, HFT request that that during the transition period of the EA, the requirement for 10% BNG should be removed from the policy wording.

**Appendix 1**  
**Comprehensive Masterplan**



- KEY**
- Strategic Site Allocation Boundary
  - Wansdyke Scheduled Monument
  - Proposed Green Infrastructure, including tree planting
  - Retained vegetation and protection of dark skies
  - Buildings
  - Sulis Down Business Village
  - Management of fences and gates to define boundary and to prevent unauthorised access
  - Proposed Focal Trees
  - Bat Barn - Ecological Mitigation
  - ✳ Allotments
  - Pumping Station and Sub-station
  - ↑ Primary Vehicle Access
  - ↑ Pedestrian Links
  - ↑ Emergency Access Route
  - ↑ Sulis Down Business Village Access
  - Existing Public Rights of Way
  - Permissive and proposed Public Rights of Way
  - Cycle Route
  - Monument Crossing
  - Play Area
  - ✳ Phase 1 Soakaway
  - ★ Spine Road to Phases 2, 3 & 4 designed in conjunction with Sulis Manor landowner. Phase 2 residential layout to be brought forward by Sulis Manor Landowner.

C	Updated to Phases 3 & 4 Proposals	31.03.22
REV. NO.	AMENDMENT	DATE

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PROJECT: **SULIS DOWN**

TITLE: **COMPREHENSIVE MASTERPLAN**

DRAWING NO: **A-110**      REV. NO: **C**

SCALE: **1:2500 @ A1**      DRAWN BY: **SM**  
**1:5000 @ A3**

DATE: **31.03.2022**      CHECKED BY: **BP**

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