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**Report update: additional section to address S106 requirement**

Unilateral undertaking

10.90 As the scheme involves the implementation of a large-scale BNG scheme, it will be required to be monitored and assessed by the Local Authority's Ecology team over a period of thirty years. Despite the development, it is considered that, due to the position of the areas for BNG within the red line associated with the proposal, a Unilateral Undertaking will suffice in this instance to secure the monitoring fee only. The implementation of the BNG Scheme can be covered by condition. The following Heads of Terms are considered to be appropriate for this application:

Category/Type	Contribution	Amount and Trigger
BNG Monitoring Fee	Fee payable to NYC	£8355 monitoring fee  Plan of works to be submitted and implemented prior to commercial export and sale of electricity from development.

10.91 It is considered that the above UU Heads of Terms are necessary, directly related to the development and fairly and reasonably related in scale and kind to the development and that they could not be secured by condition and as such meet the test set out within Paragraph 58 of the NPPF.

**Legal advice from NYC legal team**

Use of Unilateral Undertaking - The Authority's Legal department have advised officers that the use of Unilateral Undertakings to secure the monitoring fee is acceptable where the area to provide the uplift to BNG is set within the red line. The fee has been calculated from the size of the BNG habitat gain area (approx. 35.5ha) and the technical difficulty of the habitat (Medium), which gives a fee requirement of £8335 within the 2026/2027 scale of fee (viewable here: [Biodiversity net gain monitoring fee guidance notes | North Yorkshire Council](#)).

Scope of Legal Agreement – Discussions with the Council's Legal and Ecology teams suggests that, again due to the BNG areas being set within the red line boundary of the site, the scope of the legal agreement should be limited to the request for a monitoring fee, as the remainder of the BNG contribution should be managed via condition. This approach is in accordance with Paragraph 56 of the NPPF, where it is stated that "Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition".

**Recommendation update: wording**

It is recommended that that Paragraphs 12.1 and 12.2 of the officer's report be changed to the following:

- 12.1 That planning permission be GRANTED subject to prior completion of a legal agreement and the conditions listed below.
- 12.2 A Unilateral Undertaking is required in order to allow for the BNG monitoring fee to be secured from the applicant.

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