

Consultation Statement

**accompanying adoption of the following
Supplementary Planning Documents:**

Developer Contributions

Biodiversity Net Gain

Trees

Preparing a Soils Strategy

Development in the Green Belt (revised)

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Consultation Statement accompanying adoption of Supplementary Planning Documents July 2023

Introduction

1. This Statement accompanies the following Supplementary Planning Documents (SPDs):
 - Developer Contributions SPD
 - Biodiversity Net Gain SPD
 - Trees SPD
 - Preparing a Soils Strategy SPD
 - Development in the Green Belt SPD (revised)
2. A SPD must be prepared in line with the requirements of The Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended) (hereafter referred to as ‘the Regulations’).
3. Before adopting any SPD, local authorities are required¹ to prepare a ‘Consultation Statement’ setting out who was consulted in connection with the preparation of the SPD, the main issues raised in response to the consultation, and how those issues were addressed in finalising the SPD.
4. Once adopted, they are a material consideration which can be taken into account when determining planning applications.

Background

5. Rotherham’s Local Plan consists of:
 - Rotherham Core Strategy 2013 – 2028 (adopted September 2014)
 - Rotherham Sites and Policies Development Plan Document (adopted June 2018)
 - Barnsley, Doncaster and Rotherham Joint Waste Plan Core Strategy (adopted March 2012)
 - Dinnington St John’s Neighbourhood Plan (adopted May 2021)
 - Wickersley Neighbourhood Plan (adopted May 2022)
6. The Rotherham Local Plan provides the framework for determining planning applications. SPDs provide additional detail and guidance on how policies in the Local Plan will be applied when determining planning applications.

¹ Regulation 12 The Town and Country Planning (Local Planning) (England) Regulations 2012

7. Following adoption of the Local Plan, the Council is in the process of updating a number of existing planning guidance documents and preparing new guidance to provide further assistance and clarification to applicants when preparing planning applications.

Consultation

8. Preparation of the SPDs has been undertaken by, or in conjunction and consultation with, relevant services within the Council. The Council’s Development Management service within Planning has reviewed all the draft SPDs.
9. In October 2019 the Council adopted a revised Statement of Community Involvement, which sets out how and when people can influence new planning documents. Consultation on the draft SPDs has been undertaken in accordance with the guidance in this document.
10. The Council’s Cabinet approved public consultation on the draft Supplementary Planning Documents at its meeting on 11 July 2022.
11. A Members seminar was held on 04 October 2022 at the Town Hall and 11 Councillors attended.
12. Regulation 12(b) states that when seeking representations on draft SPDs, then all documents must be made available in accordance with Regulation 35. This requires the Council to make documents available at its principal office and other places within the area that the Council considers appropriate, and to publish the document on the Council’s website. The table below sets out the details regarding the consultation exercise.

Table 1: Consultation Plan

When were the SPDs consulted on?		Regulation 12(b) of the Regulations requires consultation over a minimum of four weeks. Consultation took place over a five week period, from 12 September to 17 October 2022.
What documents were published?		The following documents were made available as part of the consultation: <ul style="list-style-type: none"> • Developer Contributions SPD • Biodiversity Net Gain SPD • Trees SPD • Preparing a Soils Strategy SPD • Development in the Green Belt SPD (revised) • The consultation statement • Representation forms
Where were documents published?	Website	The draft SPDs were available to view on the Council’s consultation website: https://rotherham-consult.objective.co.uk/kse

		Links were also provided from the main Planning Policy webpage: https://www.rotherham.gov.uk/localplan https://www.rotherham.gov.uk/consultations
	Printed copies	Printed copies of the draft SPDs were available to view at the Riverside House library within opening hours. If a hard copy is required, this can be provided at a reasonable cost by contacting the Planning Policy Team.
How was the consultation publicised?	Notifications	The Council's Planning Policy team maintain a database of those persons and organisations interested in the preparation of the Local Plan and other planning documents (general and specific consultees). Consultees were notified of the consultation by email.
	Press notice	Notices publicising the consultation were placed in local newspapers and on the Council's website. <ul style="list-style-type: none"> • Rotherham Advertiser (08 September 2022) • Worksop Guardian (16 September 2022) • Council press release (07 October 2022)
How could people comment?	Website, email and post	Comments could be provided through our consultation website, by email or by post. Details of how to comment were set out in the press notice, on the website, in the consultation statement, and in consultee notifications.

13. The Council published a consultation statement alongside the draft SPDs, in line with the requirements of Regulation 12(a) of the Regulations. This statement has been updated post-consultation, setting out who was consulted in connection with the preparation of the SPDs, the main issues raised in response to the consultation, and how those issues were addressed in finalising the SPDs.

Consultation responses

14. The following table and sections summarise the main issues raised in representations received on each draft SPD and how they have been addressed in preparing the final SPDs. Tables 1 to 5 in Appendix 1 set out the details of representations from consultees, the Council's response, and any subsequent changes to SPDs.

Table 2: Number of representations received

Document	Number of representations received
Developer Contributions SPD	8
Biodiversity Net Gain SPD	13
Trees SPD	9
Preparing a Soils Strategy SPD	7
Development in the Green Belt SPD (revised)	11

Developer Contributions SPD

15. Table 1 in Appendix 1 sets out details of the representations received, the Council's response to these, and the proposed changes to the SPD as a result.
16. Representations received to this emerging draft SPD have been carefully considered, and in the light of the representations also received to the draft Trees and Biodiversity Net Gain +10% SPDs, appropriate amendments have also been made to the Developer Contributions SPD where this is considered necessary.
17. Whilst illustrative examples of costs have been provided within this emerging SPD; these are not necessarily the up-to-date costs that will be used to determine all contributions via S106 planning obligation but are illustrative of the methodology presented for seeking appropriate contributions. It is considered the methodology presented in the SPD is sound.
18. Issues raised regarding the viability of delivering planning obligations have been carefully considered by the Council in drafting the SPD, and it is considered that the methodology and approach set out in the SPD provides a robust basis for negotiating S106 planning obligations in accordance with the National Planning Policy Framework and its accompanying National Planning Policy Guidance.
19. In addition to changes as a result of representations received, the Council also revised the SPD in light of further comments from colleagues in the Transportation Team, reflecting changes in attitude over the last decade towards active travel and promoting walking, cycling and the use of public transport. The council through its Transportation Team will consider any potential enhancements to network rail infrastructure in the light of its commitment to Active Travel.

Biodiversity Net Gain SPD

20. Table 2 in Appendix 1 sets out details of the representations received, the Council's response to these, and the proposed changes to the SPD as a result.
21. Considerable representations were received to this draft SPD from a variety of organisations. All representations have been read and fully considered and subsequent changes made to the emerging draft SPD. This is a new field of work and from November 2023, each developer (with only a few exceptions for householder and other minor development schemes) will need to demonstrate that their proposals deliver 10 percent biodiversity net gain. Some of this net gain may be able to be delivered on site but there will also be a need to off-set biodiversity enhancements to other land that is not proposed to be developed.

22. Given the complexity and newness of these BNG+10% proposals the draft SPD, that was based on best practice guidance at the time of report drafting, and used guidance issued by Defra at that time, was consequently bound to attract substantial comment and representation. Following on from the consultation close, a number of further learning opportunities have presented themselves:
- Training has been offered by the Planning Advisory Service (on behalf of Defra and Natural England).
 - Through this training the work of other Councils involved in pilot projects over the last ten years was presented and shared with the network of other local authorities; this has clarified how other local government colleagues are approaching these issues and matters.
23. In the light of these learning opportunities, the Council's recently appointed ecologist along with Planning Policy team, has worked through all representations received and being mindful of emerging national guidance and secondary legislation, has amended the draft SPD to better reflect all current known requirements of the legislation, and to clarify and expand on areas and issues of concern raised through the consultation.
24. It is important to note that whilst representations raised concerns with some elements of the SPD, there was also significant support for this SPD to be adopted by the Council; and offers of help in re-drafting the report were received from Natural England, the Environment Agency and Sheffield and Rotherham Wildlife Trust.

Trees SPD

25. Table 3 in Appendix 1 sets out details of the representations received, the Council's response to these, and the proposed changes to the SPD as a result.
26. The main issues raised in the representations were:
- 'long established woodland' also warrant protection like other protected habitats
 - Heritage assets
 - Trees are an important part of wildlife corridors and habitats connectivity
 - Management plan
27. The Council appreciates the received representations have made some helpful recommendations to ensure the SPD is comprehensive on all aspects in relation to trees in development.
28. The reference to policies and legislation have been strengthened and clarified. This will help applicants and officers to consider not only the effects of proposed development on the trees but the associated impacts and mitigations on blue and green infrastructure, habitat, nature recovery and historic assets.

29. The Council also acknowledges the need for the SPD to emphasise the importance of general tree planting in development proposals and careful management as it will contribute to the enhancement of the natural environment and mitigating the impacts of climate change.
30. In addition to changes as a result of representations received, the Council has made changes to the layout and section of the SPD for clarity purpose.

Preparing a Soils Strategy SPD

31. Table 4 in Appendix 1 sets out details of the representations received, the Council's response to these, and the proposed changes to the SPD as a result.
32. The main issues raised in the representations were:
- Prevent invasive species being introduced to sites through imported soils
 - Additional reference to relevant national guidance
 - Lack of reference on contaminated and landfill soils including the reference to 'Definition of Waste: Development Industry Code of Practice (DoWCoP) published by Contaminated Land: Applications in Real Environments (CL:AIRE)
33. These representations have been carefully considered. Clarifications have been made to the SPD to include additional references acknowledging the requirement for statutory consultation with Natural England and to reflect available national guidance.
34. One respondent has raised issues with the wording provided in the Policy Guidance Notes. These issues have been carefully considered alongside the representations from the Environment Agency and Natural England.
35. The guidance within the SPD is specifically concerned with protecting the ecological quality of the soils and subsoil present for the wider benefit of biodiversity. The purpose of the SPD is not to provide guidance on contaminated and unstable land as covered by Local Plan policies CS27 'Community Health and Safety' and SP54 'Contaminated and Unstable Land'. In considering planning applications, with respect to this issue the views and guidance from the Council's Environmental Health Team will be sought.

Development in the Green Belt SPD (revised)

36. Table 5 in Appendix 1 sets out details of the representations received, the Council's response to these, and the proposed changes to the SPD as a result.
37. The main issues raised in the representations were:
- Clarify wordings in relation to buildings that are of historic interest
 - Agricultural businesses and economic diversification

- The effect of the High Court decision - Warwick District Council v Secretary of State (Eyre J, 12 August 2022)
 - Policies relate to infill development and replacement buildings
 - Green Belt allocation
38. The SPD has been prepared in line with the policies of the Core Strategy and Sites & Policies Documents and the proposed revision to the SPD is to clarify the definition of secondary buildings.
39. The High Court decision is significant to the interpretation of para.149(c) of the NPPF, exempting the construction of new building being inappropriate in the Green Belt where ‘the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building.’ The case concluded ‘*I am satisfied that [NPPF para.149(c)] is not to be interpreted as being confined to physically attached structures but that an extension for the purposes of that provision can include structures which are physically detached from the building of which they are an extension.*’
40. The Council has revised the SPD to give weight to this decision. Any secondary building that is more than 5 metres from the main building, may be counted as part of the volume of the original building. Similarly, any outbuilding that is more than 5 metres from the original building may be counted towards the overall volume of the original building. Each case will be considered on its own merit.
41. Some representations relate to specific issues regarding Green Belt allocations and policy; however the Council is not currently reviewing Green Belt boundary or policies in the Sites and Policies Document. These representations are not relevant to the proposed changes to the guidance in the SPD and therefore no changes have been made to the document.
42. In addition to changes as a result of representations received, the Council has updated the paragraph numbers relating to the NPPF to reflect the latest 2021 publication. The contents of the relevant paragraphs remain unchanged.

Adoption Statement

43. In accordance with Regulation 14 of the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended), notice is hereby given that the following Supplementary Planning Documents were formally adopted on 10 July 2023 by the Council:
- Developer Contributions SPD
 - Biodiversity Net Gain SPD
 - Trees SPD
 - Preparing a Soils Strategy SPD
 - Development in the Green Belt SPD (revised)
44. The adopted SPDs, along with the consultation statement and this adoption statement, can be viewed on the Council’s website: www.rotherham.gov.uk/localplan.

The documents are also available to view at the Council's principal offices: Riverside House, Main Street, Rotherham, S60 1AE.

45. Any person with sufficient interest in the decision to adopt the Supplementary Planning Documents listed above may apply to the High Court for permission to apply for judicial review of the Council's decision to adopt it. Any such application must be made promptly and, in any event, not later than 3 months after the date on which this Supplementary Planning Document was adopted (10 July 2023).

Appendix 1: Consideration of representations received

Table 1: Developer Contributions SPD

Consultee	Summary of representation
<p>Sheffield and Rotherham Wildlife Trust and Yorkshire Wildlife Trust</p>	<p>Section 3. Biodiversity Net Gain</p> <p>It has been confusing for us reading and commenting on the draft BNG SPD and then this draft SDP – there is a lot of overlap – it is our view that information in this document should be in the SPD (only) and information about contributions should be in this document but is currently in the SPD. The documents do not refer to each other so developers may only look at one.</p> <p>Throughout – replace Defra Metric 3.0 with ‘the latest version of the Defra Metric’ (you can then delete para 143). Also for consistency – stick with biodiversity (at the moment is a mix of bio-diversity and biodiversity)</p> <p>136 – do you need this?</p> <p>How does this relate to the RMBC BNG SPD? Much repetition between the documents (e.g. all the local policy refs)– could this reference the SPD more instead as it is unlikely to be read in isolation.</p> <p>145 – no it is not ‘an overall BNG’ - it is at least 10% gain in habitats, 10% in linear features and 10% gain in rivers (not all 3 may be present but they should not be combined as they are measured differently)</p> <p>146 and....</p> <p>147 –153 this should be in the SPD – the way it is written here is clearer and more succinct than the SPD</p> <p>154 – Outline applications and phased applications are not covered in the SPD and should be.</p> <p>155-160 Again this should be in the SPD – much clearer here though!</p> <p>160 UKHabs is recommended rather than translation from Phase 1</p> <p>161 and 164 – yes really good to see these here (although it should be in the SPD as we commented)</p> <p>What will RMBC do in terms of enforcement if the required units are not delivered by the developer or anyone they are working with? This needs to be covered here or in the SDP. 168-169 – do not seem strong enough as at what point will the planning condition be signed off –not after 30 years!</p> <p>171 – Not sure what Conservation Target Areas are – perhaps something in West Yorkshire that is not relevant in Rotherham? This is inconsistent to the wording in para 83 of the draft RMBC BNG SPD “All off-site BNG projects must be delivered as close to the development site as possible or at least within the Borough.”</p> <p>This document does not actually say how much the BNG developer contributions are? This is covered in the SPD which is not referred to?</p>
	<p>Council response</p>

	<p>Thank you for your representations on the emerging draft SPD. I have read your comments with interest and note the concerns raised. It is considered that many of these matters can readily be dealt with through minor changes to this chapter of the SPD.</p> <p style="text-align: center;">Changes to SPD</p> <p>The Council had amended the SPD to reflect the concerns raised by the Sheffield Rotherham Wildlife Trust and to aid clarity of the guidance within the SPD. Since publication of the consultation draft: Developer Contributions SPD, further guidance has been issued by Defra and Natural England that has provided greater clarity on the roles of Responsible Bodies; Conservation Covenants; and the need for monitoring of on-site Biodiversity Net Gain and the potential for enforcement action arising from non-delivery of the net gain agreed through planning condition, on-site over thirty years.</p> <p>In future, careful consideration will need to be given to the wording of any associated planning conditions for on-site Biodiversity Net Gain to meet the mandatory requirement for 10% net gain from November 2023.</p>
<p>Sheffield and Rotherham Wildlife Trust</p>	<p style="text-align: center;">Summary of representation</p> <p>Section 4. Trees</p> <p>We are supportive of valuing trees.</p> <p>This needs to be read in conjunction with the Trees SPD for it to make sense. Even so, there are some questions that require clarity which I have put in the Trees SPD</p> <p>Section 5. Outdoor sports & recreational provision, green space and green infrastructure</p> <p>209 and green policy box and paras 236 and 237. Can creation, enhancement and maintenance of accessible natural green space as part of Green Infrastructure be added as an important driver. For example in the box – the standards of provision could include the Natural England ‘Access to Natural Green Space Standards’ as part of their new Green Infrastructure Framework see links</p> <p>https://designatedsites.naturalengland.org.uk/GreenInfrastructure/Home.aspx https://designatedsites.naturalengland.org.uk/GreenInfrastructure/Map.aspx</p> <p>and the access to green space data from the South Yorkshire Natural Capital Mapping could also be used (the maps are referred to but it is unclear if this is in relation to the access to greenspace).</p> <p>239. Do S106 and CIL contributions need to be included in here?</p>

Council response

Thank you for your representations on the valuing of Trees, your comments are noted, and minor changes are proposed to clearly reference the Trees SPD within the Developer Contributions SPD.

With respect to Section 5. Outdoor sports & recreational provision, green space and green infrastructure, reference to the recently published: Introduction to the Green Infrastructure Framework - Principles and Standards for England January 2023 have also been included.

Changes to SPD

Reference to the Trees SPD has now been noted within the Developer Contributions SPD: A Trees SPD has been prepared that sets out in greater detail how to value amenity trees in development proposals. This emerging SPD has been consulted on at the same time as the Developer Contributions SPD; and a summary of the CAVAT system is presented within the Developer Contributions, given the use of S106 Planning Obligations to ensure the financial value and benefits of amenity trees is captured during the consideration of all planning applications.

The Developer Contributions SPD presents a consistent methodology for seeking financial developer contributions and ensures consistency between this SPD and the more detailed Trees SPD that provide fuller guidance on all aspects of valuing trees in the determination of planning applications.

Fitzwilliam
Wentworth
Estate

Summary of representation

Introduction

These representations are made on behalf of The Fitzwilliam (Wentworth) Estate. FWE have a significant land holding interest within the Borough of Rotherham and have been actively participating at all stages in the Local Plan process both in terms of the adoption of the Core Strategy as well as the Sites and Policies Document.

FWE have a broad range of sites and interests (including the Bassingthorpe Farm Strategic Housing Allocation) that we consider are both available and suitable for development to help contribute towards delivering the vision, objectives and spatial growth of the Borough and it is within this context we submit representation to the draft SPD regarding developer contributions.

Background

The Draft Developer Contributions SPD is a key document that will be influential in shaping the viability of all future development opportunity being promoted in Rotherham for the foreseeable future.

It covers a request for contributions for the following items and also provides detailed mechanisms as to how these are calculated and achieved:

- Education Provision (i.e. School Places);
- Library Provision and Library Space;
- Biodiversity Net Gain;
- Amenity Trees;
- Green Infrastructure, Green Spaces, Outdoor Sport and Recreational Provision;
- Transport and Related Infrastructure;
- Community Access Plans and other Management or Operational Plans; and
- Local Primary Health Care Provision (e.g. medical centres).

The pretext and justification behind this SPD is Policy CS32 of the adopted Core Strategy Local Plan which states: 'Development will be required to contribute to funding all or part of the items of infrastructure listed in the Infrastructure Delivery Schedule, through a combination of mechanisms such as a Community Infrastructure Levy (CIL) and S106 Planning obligations...'

The policy does however go on to acknowledge the following:

'It is acknowledged that in some instances there may be a need for negotiation and prioritisation of the overall developer contribution requirements (based on what is needed to make the development acceptable and what the development can afford to contribute). Any negotiation will need to take account of all policy requirements stemming from this plan, including requirements such as affordable housing and renewable energy generation.'

The Council also note there is a range of other policies in the Core Strategy that specifically cite the need for developers to mitigate for site-specific enabling infrastructure.

It is accepted the Council can seek 'reasonable benefits' from the development subject to them being:

- Necessary to make the development acceptable in planning terms;
- Directly related to the development;
- Fairly and reasonably related in scale and kind to the development;

Developer Contributions and Viability Considerations

The SPD makes reference to the Refreshed Appraisal Study in 2019 and it goes on to confirm that since that date, changes in new build house prices have outpaced build costs. Within this context the pretext for the SPD is confirmed at paragraph 66 which states:

‘Overall, this has improved viability as well as coinciding with housebuilders booking growing levels of profits which have, in many cases, exceeded the input rates of capital profits assumed in carrying out development viability appraisals.’

The SPD then seeks to rebase the original viability appraisals to current prices although as acknowledge in paragraph 70 ‘the balance of changes in the above variable inputs used in calculating a site’s worth and judging whether it is viable can only be confirmed by re-running all twenty-seven development appraisals for the sites included in the Refresh Appraisal Study where these sites do not have any grant of planning permission.’

It goes on to confirm that this research shall be conducted over the summer of 2022. However, we are not aware of this information being made publicly available as part of reviewing the draft SPD. To make key decisions about the proposed mechanisms and package of developer contributions set out within the SPD without them overburdening the viability of developments, we consider this information and evidence base is a vital and important element to review.

Until the results are known of the 27 development appraisals and these are formally released and properly scrutinised, we would express significant caution with regards to accepting the underlying reasoning found within paragraph 72 of the draft SPD which states:

‘Based upon our understanding of the internal logic of the appraisal methodology, the results are expected to demonstrate an improvement in the position of viability in Rotherham. If this is found to be the case, then the resultant (emerging) evidence shall serve and provide a strong base for the Council’s adopted Local Plans and its array of planning and housing policies.’

Our cautious view regarding the Council jumping to the conclusion that the evidence points to an improved position of viability in Rotherham is further exacerbated by the current levels of uncertainty in the economic and development market with rising construction costs and inflation. If the Council is to maintain its growth trajectory and its future economic growth objectives, we consider that an ever-expanding range of planning obligations proposed within

the draft SPD, particularly when combined with CIL, will have to give way in order to ensure development viability.

If you also add in the provision of affordable housing requirements and the costs for the provision of introducing low carbon sustainability measure, the burden of contributions will become too great. This will reduce land values and our experience is that landowners will simply choose not to sell land for development, which will have knock-on impacts in terms of maintaining an available supply to achieve the growth ambitions the Council is seeking to deliver.

Proposed Infrastructure Levy

The draft SPD seeks to introduce a range of different and complexed mechanisms for justifying a fair and reasonable approach to secure developer contribution. However, on 11 May 2022, the government announced details of a new Infrastructure Levy (IL) as part of the Levelling Up and Regeneration Bill.

The Levy is the Government's proposed new way of calculating developer contributions towards affordable housing and infrastructure and will look to replace current arrangements under Section 106 and the Community Infrastructure Levy.

The aim of this approach is to raise money for infrastructure whilst being more straightforward by seeking to remove the delay and uncertainty that is considered inherent in negotiating S106 Obligation agreements.

Whilst we appreciate the details of IL are currently limited, it does provide strong evidence of Governments' thinking in terms of introducing a more manageable and simple approach to raising developer contribution which is in marked contrast to the underlying complexity and level of detail set out in the draft SPD.

We consider that reference should be made as to how this draft SPD intends to align itself with the emerging IL.

Relationship Between the Developer Contributions and CIL Payments

If not carefully handled through the draft SPD there is a potential blurring and danger for the Council to request overlapping payments where the developer ends up paying twice towards the same infrastructure (commonly known as 'double dip') between their request for S106 obligation payments and the CIL payment.

This concern has become more apparent since the relaxation of the CIL Regulations in 2019 as LPA's are no longer restricted to spending CIL receipts on infrastructure that is specified in their Regulation 123 lists. Instead, an annual

infrastructure funding statement is published which sets out the infrastructure projects which the charging authority intends will be, or may be, wholly or partly funded by CIL. By removing Regulation 123, infrastructure can be funded by section 106 contributions once again. But the complexities around securing developer contributions within the draft SPD alongside these CIL payments has opened the door to double dipping and so greater transparency is required by the Council and this should be undertaken within the SPD.

Education Contributions

The Council propose an education contribution for all new housing development. This should not be the case and we suggest as an alternative there should be a threshold level for schemes of 15 houses or less where the contribution is not applied to avoid overburdening small scale schemes and the financial challenges faced by SME housebuilders.

In addition, the draft SPD requests a contribution although some catchment areas where the proposed development is situated may already have a surplus of pupil places which should not trigger a contribution unless a tipping point is reached as a result of the scale of the development.

Biodiversity Net Gains

There is a general assumption in both this SPD and the draft Biodiversity Net Gains SPD that the level of net gain should be at least 10% for every development proposal. However, the Environment Act (Nov 2021) doesn't come into force until November 2023 so such a requirement would be currently in excess of the policy requirement (Policy CS20) which only requires an enhancement which in theory could be as little as 1% BNG until the new regulations come into force. Both draft SPDs should be amended to reflect current adopted local policies and include for transitional arrangements.

Open Space provision

Similar to calculating the proposed education contributions, the assessment of a developer's open space contribution is not underpinned by the existing position of need in the local catchment area, so we object to this being an automatic requirement for developments. Instead, any requirement should be informed by an evidence based need assessment.

It is worth noting that the Council's Green Space Audit that would be used to assess local need is now over 17 years old, so we consider this evidence based work has become an unreliable and out of date. This evidence base should be updated before open space need contributions can be sensibly requested.

Summary

The amount of money that development proposals can contribute towards policy costs is limited if development is to remain viable. If the Council want to see growth accompanied with critical infrastructure and meet other sustainability objectives, then important decisions will have to be made about policy priorities and these comprises should be reflects in the draft SPD.

Council response

Thank you for your representations on the emerging draft SPD. I have read your comments with interest and note the concerns raised. It is important to note that work is ongoing to update the Affordable Housing Refresh Study July 2019 and currently published on the Council's web pages. This emerging SPD sets out the over-arching principles for securing development contributions through planning obligations to mitigate impacts arising from new development in Rotherham Metropolitan Borough Council. All costs included in this SPD are illustrative and are subject to change over time. They are provided as example costings at the time of preparation. Further clarification and up to date costs shall be sought by the applicant at the time of submission of the planning application.

As you note in your response, the aim of this approach is to raise sufficient finance to support key strategic and community infrastructure and seeks to remove the delay and uncertainty that some developers consider inherent in negotiating S106 Obligation agreements through the provision of a clear methodology and principles to be followed. This SPD sits alongside the previously adopted Affordable Housing and Developer Contributions SPDs.

Further consultation relating to the Infrastructure Levy has recently been published and the Council is aware of this. However, it is highly unlikely that the Infrastructure Levy will apply to all local authority planning decision-making in the near future. It appears that this most recent public consultation recommends the use of Pilot projects in a test and learn approach prior to its full implementation in the future from mid-2020's to end 2020's.

The Council publishes an annual Infrastructure Funding Statement that details the Community Infrastructure Levy payments that have been made by developers, or landowners; and the S106 planning obligations received over the year to March 31st. As no CIL has yet been spent in this Borough, although it has been distributed to the appropriate parish and neighbourhood groupings, there is no evidence of "double-dipping" within the Borough, and this will be avoided in the future. The setting of the CIL was based on a net neutral position. This means that the CIL has taken into account a specific proportion allocated to S106 contributions, so the total sum available for development

	<p>contributions was the same prior to the setting of the CIL rate and the subsequent seeking of the residual sum for S106 planning obligations (if these sums do not apply to each development then these sums return to the developer in the form of a higher level of profit, which is in line with the appraisal methodology). Consultants PBA provided this evidence base to support the setting of the CIL rates and its independent examination.</p> <p>Regarding Education Contributions there is no justifiable reason for only collecting contributions on development sites of 15 units or more.</p> <p>The Council notes that the mandatory requirement for 10% Biodiversity Net Gain on all major sites will not come into force until November 2023 and April 2024 for small sites. Currently the position is no net loss. However, it is important to note the support for the completion and adoption of the Biodiversity Net Gain+10% SPD has been significant, subject to appropriate amendments and there is a need for the LPA and developers to commence use of the most up to date Biodiversity Metric (currently BM4) now to ensure no net loss from the development site in accordance with the NPPF and Local Plan policies CS20 and SP33. This will enable the Council and developers to road test the use of BM4 prior to its mandatory use beginning in November 2023 and will enable problems and issues to be resolved before this date.</p> <p>For information, commencement of the preparation of a Borough-wide Playing Pitch Strategy is imminent.</p>
Changes to SPD	
	<p>There are no changes to the SPD arising from these representations; however, it is important to note the ongoing preparation of the refresh of the Affordable Housing Study which will be published later this year. The commencement of a Borough-wide Playing Pitch Strategy. In all pre-application discussions completion of the latest Biodiversity Metric 4 is being requested; the outcomes from such an assessment should demonstrate no net loss of biodiversity from any new development proposals in accordance with case law where there is no adopted Development Plan policy requirement to achieve a net gain of 10%.</p>
Network Rail	<p style="text-align: center;">Summary of representation</p> <p>Following assessment of the details provided, Network Rail have the following comments at this stage.</p> <p>Regarding developer contributions, specifically section 6 (Transport and Related infrastructure), we welcome the policy in principle, where emphasis has been made towards mitigation to be determined by the provision of a transport statement, should a planning application come forward. However, we would be grateful if further concessions could be made toward the policy, that provide more detail and mitigation for the operational rail environment. An addition to the policy should look to consider mitigation measures in relation to railway assets and</p>

infrastructure in order for Network Rail, as a statutory undertaker, to operate and develop Britain's railway infrastructure in a safe and reliable manner.

With specific mention to level crossings, where a development would create an increase in usage, we would expect the impact of the development on the operational railway to be assessed and appropriate measures be implemented to mitigate the increase in risk to rail safety. Such measures may include contributions towards protecting the railway boundary from trespass by erecting or improving lineside fencing; contributions towards level crossing improvement works to such as warning lights, upgrades to barriers, additional signage and improvements to crossing decks and/or identifying opportunities for diverting public rights of way which cross over a level crossing to enable closure of the crossing. For larger schemes it may be appropriate for contributions to be made towards funding the provision of footbridge(s) to enable level crossing closures.

Consideration should be given to enhancing station facilities to cope with the additional passengers should any development impact Rotherham station, Swinton Station, Kiveton Bridge Station or Kiveton Park Station. Contributions can for example include the enhancement of; cycle facilities, waiting facilities, customer information etc. and these should be discussed in collaboration with Network Rail and the respective TOC that manage the station.

In relation to point 6.2 (Approach to S106 Developer Contributions for Transport and Related Services), we would suggest specific detail within the contributions methodology for railway infrastructure. Part B of the methodology should look to include specific mention of 'rail network' as to be clear of what is to be assessed.

Council response

Thank you for your representations on the emerging draft Developer Contributions SPD. I have read your comments with interest and note the concerns raised. Whilst It is considered that these matters can be referenced in the Developer Contributions SPD, it is considered that in many instances it will be the responsibility of Network Rail and rail operators to provide the necessary infrastructure referenced in your responses.

Your suggested changes to the methodology not only require wording changes but a clear understanding of the costs associated with the mitigation measures noted. As clearly stated in the SPD, S106 Planning Obligations shall be directly related to the impacts arising from new development proposals. Whilst changes to the text of the SPD have been made, the changed wording is caveated to ensure that any funds sought, on behalf of Network Rail, are related to the determination of the planning application, and where action is required to mitigate the impacts arising from the development proposals.

	<p>There is a concern that Network Rail will not be able to demonstrate a robust need for such improvements to the rail network arising from new development proposals and that such improvements should be provided as part of the current remit of Network Rail</p>
<p>Changes to SPD</p>	
	<p>Limited changes have been made to the text of the emerging Developer Contributions SPD to reflect the comments received from Network Rail in response to promoting Active Travel and sustainable development. However only where a clear impact can be demonstrated as arising from new development, that is appropriate in scale and the request is reasonable will such requests be considered. The Council is mindful that S106 Planning Contributions do not render a development scheme unviable and adversely affect the delivery and implementation of the development scheme.</p>
<p>Sport England</p>	<p style="text-align: center;">Summary of representation</p> <p>Sport England has the following comments for your consideration relating to the draft Developer Contributions SPD:</p> <p>Section 5. Outdoor Sports and Recreational Provision, Green Space and Green Infrastructure Recognition of the importance of this category of infrastructure is welcomed. It is important for the long-term viability and sustainability of community sporting infrastructure that sufficient resources are provided for long-term management, maintenance and for a sink fund so that communities have continued access to facilities that provides them the opportunities to be, and remain, physically active.</p> <p>As stated at paragraph 197 a robust evidence base/audit for sporting and recreation provision is required. Paragraph 98 of the NPPF reiterates this requirement. Some of the evidence base documents, tools and approaches referenced by the Council are out of date in particular the Playing Pitch Strategy (PPS) which was produced in 2009. The production of a new PPS as outlined in paragraph 210 should be a priority for the Council in order to identify the current supply and demand issues for sport and recreation facilities in Rotherham Metropolitan Borough Council area based on quality, quantity and accessibility. This will enable the Council to provide practical proposals for securing investment into sport and open space and develop a means of calculating developer contributions to fund schemes to meet local needs.</p> <p>Sport England would be happy to engage with the Council to consider potential approach(es) to developer contributions, the evidence available to underpin requirements and the current tools that are available including Sport England's Calculator tool for certain sports.</p>

Sport – paragraphs 226-227

Paragraphs 226 -227 recognise the requirements of paragraph 99 of the NPPF (2021) that existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless a specified justification applies. There is a need for the wording in paragraph 226 to reflect the wording in the NPPF on this specified justification which is: “unless the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location.”

Sport England publishes costing for certain types of sports facilities. It is agreed that a contingency figure is required. It is also agreed that there is a need for maintenance to be covered and the latest Sport England’s Calculator takes this into account.

Provision of Outdoor Sport and Recreational Facilities: An illustration – paragraph 230 and Table 16

Paragraph 230 and Table 16 relate to the costings based at 2Q, 2020. These costings are out of date. Sport England’s Facility Costs based at Q3, 2022 have been published and are available on our web-site. A sentence should be added to ensure that the most up-to-date Facility Costs are used.

Section 6: Transport and related infrastructure

Sport England considers that the Transport and related infrastructure section has significant synergy to Sport England’s Active Design guidance which establishes a set of principles for designing and developing healthy and active communities and is relevant for both new and existing developments.

Council response

Thank you for your representations on the emerging draft Developer Contributions SPD. I have read your comments with interest and note the concerns raised. It is considered that many of these matters can readily be dealt with through minor changes to this chapter of the SPD.

Changes to SPD

Further wording and clarifications have been added to the emerging SPD in response to the representations received and to clarify that the costings used are illustrative only. Additional text has been included to recognise the benefits of physical activity on the health of people.

Text has been added to recognise that the original costings have now been updated to 3Q, 2022 and that at the time of determination of any forthcoming planning application the most up to date costings shall be used. Recognition is also made to the need for sufficient resources for the long-term management, maintenance of the facilities and for a

	<p>sink fund or dowry, to be provided so that communities have continued access to facilities that provides them the opportunities to be, and remain, physically active</p> <p>Reference to the recently published: Introduction to the Green Infrastructure Framework - Principles and Standards for England January 2023 has been included within the SPD.</p> <p>Reference to Sport England’s Active Design guidance has been included within the chapter on Transport and Related Infrastructure.</p>
South Yorkshire Integrated Care Board	Summary of representation
	p81-82, section 8: Local Primary Health Care Provision These are positive statements that reflect the need for increased investment in primary care infrastructure where developments place pressure on local services. In particular, recognition of the cumulative impact of individual applications is welcomed.
	Council response
	Thank you for your representations on the emerging draft Developer Contributions SPD. Your support for the emerging SPD is welcome.
	Changes to SPD
	None
North Yorkshire County Council	Summary of representation
	Having reviewed this material, North Yorkshire County Council does not have any comments to make on these SPDs.
	Council response
	Noted
	Changes to SPD
None	
Severn Trent	Summary of representation
	Thank you for giving Severn Trent an opportunity to comment on you Supplementary Planning Documents, We do not have specific comments to make regarding the SPD’s under consultation.
	Council response
	Noted
	Changes to SPD
None	
	Summary of representation

Canal & River Trust	The Trust does not wish to make comments on the SPD.
	Council response
	Noted
	Changes to SPD
	None

Other changes to the SPD by the Council

Following Comments from the Council's Transportation Planning Team a number of modifications have been made to the SPD to reflect changes in respect of Local Plan and Local Transport Plan policies at the Local Authority and SYMCA levels of governance. Specific changes to the SPD include references to the provision of necessary infrastructure to support public transport, walking and cycling opportunities. There is also an update regarding ongoing work to update transport forecasts.

General observations

The transport section appears to have a strong focus on a 'predict and provide' approach to infrastructure improvements and is heavily weighted to capacity improvement for private motors – with public transport, walking and cycling given limited status. This appears to be at odds with Core Strategy policies CS14 through CS16, as well as the Rotherham Transport Strategy. This also doesn't reflect Transport policy changes locally, regionally and nationally in recent years, which all give much greater weight to public transport and non-motorised travel. There is a need to move towards a 'predict and decide' approach, whereby developer contributions need to be for agreed mitigations for increase demand, which may not / often shouldn't be additional capacity.

There isn't anything on electric vehicle charge points in relation to housing developments or businesses – AIUI requirements for provision are elsewhere, but should provision of charging for the community be included as a potential option for contributions?

Paragraph 252 a more transparent definition, or examples, of 'severe impact' should be provided. The process of updating forecasts which could inform this is currently underway.

Paragraph 253 refers to 2020 Rotherham Infrastructure Delivery Study, it is important to note a refresh of forecasting transport data, in light of changes to the policy position, which is intended to support the above shift to 'predict and decide' is currently underway.

Paragraph 255 - the LCWIP for Rotherham is superseded by the SYMCA Active Travel Implementation Plan – which is anticipated to be superseded as part of the upcoming Local Transport Plan review. Also to reference to the Rotherham Cycling Strategy and priorities indicated within should be made.

Contribution methodology, page 74 – this needs to be more specific on developer contributions. Suggest this should be on the basis of number of trips to be generated by proposed development, routing through areas identified as requiring intervention.

Paragraph 265, there is a typo - 4th line funds should be fund. We also understand the s.106 sustainable transport contribution is currently £500 per dwelling, not £1,200 as specified. We should consider an inflationary increase.

Paragraph 265, final bullet – should read “local transport infrastructure off the highway and so not funded through section 278 agreements”

Paragraph 266 – is this meant to refer to the IDP? If so, note this is being reviewed in respect of transport. If it’s something else can we clarify.

Paragraphs 269 & 270 – To advise, the work undertaken previously (i.e. the 2013 Transport Impact Assessment) is now somewhat dated, and much has changed in respect of policy and travel behaviours. We are looking to update our forecasts and it would be helpful if, once available, this can be considered.

Table 2: Biodiversity Net Gain SPD

Consultee	Summary of representation
Canal & River Trust	<p>The Canal & River Trust who look after and bring to life 2000 miles of canals & rivers. Our waterways contribute to the health and wellbeing of local communities and economies, creating attractive and connected places to live, work, volunteer and spend leisure time. These historic, natural and cultural assets form part of the strategic and local green-blue infrastructure network, linking urban and rural communities as well as habitats. By caring for our waterways and promoting their use we believe we can improve the wellbeing of our nation. The Trust is a statutory consultee in the Development Management process.</p> <p>The Trust own and manage the Sheffield & South Yorkshire Navigation, which forms a significant green and blue infrastructure corridor through the borough. Impacts to biodiversity on neighbouring development sites can impact upon the effectiveness and strength of this corridor.</p> <p>The adoption of the SPD would help make Rotherham’s policies more effective in meeting the aims of several parts National Policy, as highlighted in paragraph 23 of the draft document.</p> <p>Reading the document, there is a risk that the SPD does require developments to be viewed in isolation, and the wider impacts of losing habitats within a site are not assessed. Waterways corridors could suffer particularly from this, for example the loss of a piece of willow scrub may be assessed as low value habitat and its clearance may be assessed as being of low/moderate impact, but if that boundary is a waterway and the patch of scrub is providing continuity of a wildlife corridor, it's clearance could sever the corridor and hence have wider implications.</p>

	<p>To help address the above concern, we would recommend that paragraph 70 is expanded to include the need for applicants to assess the impact on neighbouring blue or green infrastructure corridors.</p> <p>I note that designated nature corridors are included in areas that could be the target of off-site improvements. I've looked through this policy and it meets the general requirements of BNG.</p> <p style="text-align: center;">Council response</p> <p>Thank you for your representations on the emerging draft SPD. I have read your comments with interest and note the concerns raised. It is considered that many of these matters can readily be dealt with through minor changes to this chapter of the SPD.</p> <p style="text-align: center;">Changes to SPD</p> <p>The embedded mitigation hierarchy chapter has been expanded to encourage applicants to assess the impact of development on neighbouring blue and green infrastructure corridors.</p>
Forestry Commission	<p style="text-align: center;">Summary of representation</p> <p>The FC understands this SPD could provide more direction than the BNG User Guide and the CIEEM good practice guide. We recommend the SPD doesn't just repeat national policy as the User Guide for BNG that will become the Secretary of State (SofS) statutory guidance on BNG. The FC suggests Rotherham Council adopts the SPD when the SofS guidance is formally issued next year and not before to ensure Government policy and the SPD are aligned.</p> <p>The FC is concerned that the SPD reiterates much of version 3.0 of the guidance and doesn't include reference to the updates for compensatory habitat for woodlands included in version 3.1. (copied below). We note the postscript comment by Professor Stephen Walker but want to highlight this is of concern as without the approach set out in section 6.8 of the guide, it is likely that the compensation provided could result in an overall decline of tree and woodland cover not an increase.</p> <p>There is also no reference to the use of Conservation Covenants (CC'S) for securing compensatory habitat, which is in the Environment Act, so it might have been helpful to set out Rotherham Council's approach to accepting CC's. It would have been helpful if the SPD had suggested some standard wording around agreements for securing compensatory habitat (S.106).</p> <p>6.8. In England there is a presumption against the loss of woodland and a need to increase overall woodland cover (Defra, 2021)⁴² and (Forestry Commission, 2017)⁴³ . The metric trading rules support the delivery of this policy</p>

through requiring 'like for like' habitat replacement for all high distinctiveness woodland types. There are, however, three situations where biodiversity metric 3.1's rules permit losses of woodland area:

- Loss of the woodland habitat type 'other coniferous woodland' – this a 'low' distinctiveness habitat for which the trading rules state only that the same distinctiveness or higher distinctiveness habitat (i.e. not specifically woodland) are required. In this instance replacement of any losses with the same distinctiveness or higher distinctiveness woodland habitat should be considered, where appropriate, to avoid an overall loss of woodland cover.
- Loss of 'other woodland; broadleaved', 'other woodland; mixed' or 'Scots pine woodland' – these are 'medium' distinctiveness habitats for which the trading rules require replacement with habitat from the same broad habitat type ('woodland and forest') or any higher distinctiveness habitat. Again, replacement of any losses with the same distinctiveness or higher distinctiveness woodland habitat is preferred to avoid an overall loss of woodland cover.
- If loss of woodland habitats, as described in the two bullet points above occurs, and if replacement of losses in woodland habitat are delivered solely through enhancement of existing woodland there will be a reduction in the area cover of woodland habitat. Woodland creation should be considered, alongside enhancement, to avoid an overall loss of woodland cover. [The Biodiversity Metric 3.1 - JP039 \(naturalengland.org.uk\)](http://naturalengland.org.uk)

Council response

Thank you for your representations on the emerging draft SPD. I have read your comments with interest and note the concerns raised. There has been significant support for progressing to adoption of this SPD prior to the issuing of national guidance.

Given the complexity and newness surrounding the introduction of Biodiversity Net Gain (BNG+10%); the consultation draft SPD, was based on best practice guidance at the time of report drafting, and used guidance issued by Defra at that time. Following on from the consultation close, a number of further learning opportunities have presented themselves:

- Training has been offered by the Planning Advisory Service (on behalf of Defra and Natural England)
- Through this training the work of other Councils involved in pilot projects over the last ten years was presented and shared with the network of other local authorities; this has clarified how other local government colleagues are approaching these issues and matters.

In the light of these learning opportunities, the Council's recently appointed ecologist along with Planning Policy team, has worked through all representations received whilst being mindful of emerging national guidance and secondary legislation, and we have amended the draft SPD to better reflect all current known requirements of the legislation, and to clarify and expand on areas and issues of concern raised through the consultation.

	<p>References to Conservation Covenants have now been included throughout this SPD. However standard wording around agreements for securing compensatory habitat (S.106) has not yet been prepared. The Council is however mindful that such wording will be essential to the successful delivery of biodiversity net gain and will work towards preparing such wording for legal agreements, conservation covenants and planning conditions over the coming months.</p> <p>We note the reference to the distinct woodland habitat as referenced in the trading rules. All applications will be expected to demonstrate how they achieve the good practice principles. These issues and matters and will be dealt through application of the Biodiversity Metric and the presentation of results and the justification for decision-making in the corresponding Biodiversity Net Gain Report.</p>
	<p>Changes to SPD</p>
	<p>Added in mention of conservation covenants throughout and noting they will be used to secure off-site net gain. Changed references to the metric 3.0 to not mention a specific metric version. Greater emphasis has been placed on applicants demonstrating how they achieve the good practice principles set out in the BNG User Guide and other published good practice guidance.</p>
<p>National Farmers' Union</p>	<p>Summary of representation</p>
	<p>We note that both BNG have been subject to national consultation and we are still awaiting the outcome and formal response from the Government. This detail will also set out how BNG is calculated and recorded etc. and could be included in the SPD.</p>
	<p>Under BNG and when considering development that would be exempt, we note that the carrying out of agriculture along with any buildings or works which are reasonably necessary for the purposes of agriculture are covered in Part 6 of the GPDO 2015 as permitted development and as such are exempt from the BNG requirement. Other permitted development such as the Class Q (unused agricultural buildings to dwellings) are also exempt. We would welcome the clarification that these are considered within the SPD.</p>
	<p>Council response</p>
	<p>Thank you for your representations on the emerging draft SPD. I have read your comments with interest and note the concern raised. There has been significant support for progressing to adoption of this SPD prior to the issuing of national guidance.</p>
	<p>Changes to SPD</p>
	<p>We are awaiting the final guidance and secondary legislation to be issued later in the year by Defra. This Council will adhere to national legislation.</p>
	<p>Summary of representation</p>
	<p>Postscript – suggest throughout document change Defra 3.0/3.1 to ‘the latest version of the Defra Metric’</p>

Sheffield and
Rotherham
Wildlife Trust
and
Yorkshire
Wildlife Trust

2. No mention of the Environment Act and secondary legislation in section which talks about relevant legislation

8. Only 'have regard to these documents? These provide the strategic framework and local reference.

13. This definition does not match the one used by Natural England others and crucially misses out the word 'measurably'. Suggest replacing with the NE definition "Biodiversity Net Gain (BNG) is an approach to development and/or land management that leaves biodiversity in a measurably better state than before the development took place."

14. This is a very clunky paragraph and not easy to understand. What is 'extant nexus'? Has this been through a plain English check? It refers to the climate emergency but not the nature emergency? Please change bio-diversity to biodiversity as elsewhere in the document. "(the additional 10%)" is a minimum which does not come from NPPF 2019, but from the Environment Act which is not even mentioned.

15. The habitats are not just scored for their 'importance for wildlife' – does the author mean species using the habitats? Or the species making up the habitat? This paragraph does not say what the BNG Metric 3/3.1 is. i.e. it is a spreadsheet-based tool developed by Defra and Natural England with input from many specialists and has been through several rounds of testing and consultation with stakeholders in the ecological and development professional communities. The Metric has extensive guidance which should be followed and training in highly recommended. Need to include links to the Metric and guidance.

16. It says "as stated earlier that the expectation is that such net gains are delivered as a matter of course on-site but there may be circumstances where it might be more convenient to deliver these off-site, especially where a pooling of contributions are required because of scale economies" but where 'earlier' does it actually say this? What is the LPA's policy for on or off site? What circumstances will it be more appropriate to deliver off site. Feel like this should be a key point of the SPD to give developers. The draft SDP says "It is likely, that cross-boundaries working, liaising and co-ordination shall occur; in these situations, a strategic plan and management setting priorities and impact analysis shall guide activity and provide accountability with regard to developer contributions, spending and impact for donors and partner organisations on an annual basis."

Yes, that but developers need actual guidance, not theory, in this document – what is the strategic plan? What are the priorities? Who should they liaise with? This is especially important for anyone trying to complete a Metric who needs to understand 'strategic significance' in the Metric (see 3.5 of the Doncaster BNG SPD). This needs to refer to the forthcoming South Yorkshire Local Nature Recovery Strategy and South Yorkshire Natural Capital Maps. And yes how to work across boundaries in South Yorkshire. The Doncaster SPD talks developers through the process in a much clearer way.

17. Why only for major large/new build development? This is incorrect. It should be for everything requiring planning permission under TCPA. More detail is required about the legislation in the Environment Act (it is not just an intention). Also RMBC should not be 'seeking to achieve' (sounds like a vague ambition) it is required to achieve.

18. This says small sites should use metric but doesn't say that have to deliver at least 10% BNG. There is a need to start this section (from para 16) to make it clearer which forms of development are required to result in at least 10% net gain, which Metric should be used to measure this in which circumstances and which types of development are exempt (as there are some like permitted developments and householder applications but these are not mentioned). There needs to be clarity for the reader what is required when from the Environment Act (ie what will be statutory from Nov 2023 e.g. the minimum 10% net gain and to secure those gains for a min of 30 years) and what RMBC are requiring before then, perhaps earlier in this document. E.g. see here <https://www.local.gov.uk/pas/topics/environment/biodiversity-net-gain-local-authorities/biodiversity-net-gain-now-and-future>

The information about the Small Sites Metric is incomplete and is missing crucial information. The Small Sites User Guide actually says "The SSM can only be used when **both of these criteria are met**:

1. The development is either;

a. A residential development: where the number of dwellings to be provided is between one and nine inclusive on a site having an area of less than one hectare

b. Where the number of dwellings to be provided is not known, there is a site area of less than 0.5 hectares

c. For all other development types where the site area is less than 0.5 hectares or 5000 square metres.

2. **There is no priority habitat¹, within the development area.** (excluding hedgerows and arable margins)

The SSM must not be used for **assessing** biodiversity outside the development area. Any habitat creation or enhancement outside the site area must be assessed using Biodiversity Metric 3.1.

If the above criteria are met the SSM can be used. If this is not the case (i.e. the site is above the size threshold, there is priority habitat present, excluding hedgerows and arable margins, or the development includes the assessment of off-site habitat enhancement or creation) then the site should be scored using the Biodiversity Metric 3.1 and will require the services of a suitably qualified ecologist."

¹ Also called Habitats of Principal Importance. A list and definition for these habitats can be found at UK BAP Priority Habitats | JNCC - Adviser to Government on Nature Conservation

The reader should be referred to the latest version of the Small Sites Metric and User Guide (again provide a link). The User Guide also explains who can carry out the assessment using the Small Sites Metric (a Competent Person which is defined).

<http://nepubprod.appspot.com/publication/6047259574927360>

19 and 20 This is misleading guidance for small sites the Small Sites Metric must be followed including the 'Principles' and 'Rules' set out in the User Guide. It may be appropriate to refer reader to the RMBC Natural Environment SPD and Rotherham BAP for locally specific examples of habitat etc but if listing suggestions/habitats in this document it needs to be made clear that these would need to be entered into the Metric to see if a BNG is achieved following the principles and rules.

28. What does *inter alia* mean? Again Plain English would be helpful.

29. S106 and conservation covenants are the primary mechanism for the delivery of BNG (see PAS information <https://www.local.gov.uk/pas/topics/environment/biodiversity-net-gain-local-authorities>).

33. References large development sites. BNG of ALL TCPA development sites will be mandatory and this guidance should reflect this. The paragraph could actually be deleted and replaced with one stressing the importance of following the mitigation hierarchy.

34 and 35. still requires BNG. If negligible impacts still needs to demonstrate BNG. Doncaster MBC BNG SPD contains a good example for how to deal with this.

36. Commitment to minimum 10% net gain rather than just net gain.

38. References Appendix E and F but appendices are numbered not lettered.

41. Apply mitigation hierarchy – yes! Paras 40 and 41 should be merged and the mitigation hierarchy moved up to the top.

The whole 'General Principles' section is repetitive and not very clear for a developer to follow. It should be highlighted that the earlier that BNG is considered, the better.

The DMBC BNG SPD is clearer in terms of what the LPA expects to be submitted and when and what will change as more Government guidance and information becomes available.

Also it should refer to the CIEEM/CIRIA Good Practice Principles and Guidance for BNG and the CIEEM BNG Report Template (see DMBC for good wording about the guidance that is available now and what is expected) (see also para 55). This is referred to in para 55 but it is not just about the Metric – it is about the principles of BNG as a whole – the metric is just a tool to use as part of this and -this has got a bit lost in this guidance.

It could also recommend consulting with the RMBC Ecologist for advice to get it right - this is referred to in para 59 which is quite late in the day and it is not just advice about the calculation (however, if this guidance is clear enough then it will reduce the amount of advice that is required).

Table 1.

Metric just one part of process – demonstrate good practice principles

ancient woodland might be better as a separate category. Also, worth mentioning that ancient woodland isn't the only irreplaceable habitat.

Supportive of the guiding principles on Table 1 and signposting to CIEEM templates. This is also repeated at Para 97 so perhaps just include in one place.

As quality of surveys and reports can be an issue – this policy needs to address it. Either here or in a section about who should be carrying out the assessments (or in para 54)– it needs to be included that the Metric 3.1 requires an assessment using UKHabs and that this should be carried out by a qualified (e.g. min FISC level 3 in botany and min of ACIEEM or equivalent) and experienced Ecologist. See earlier comments about the Small Sites Metric and Competent Person.

44-49. This is really vague – developers need more guidance and clarity. There is no mention of the South Yorkshire Natural Capital Maps and emerging Nature Recovery Network and how these or other policies and maps relate to strategic significance or where any off-site BNG may be best directed.

53. Again refers only major developments, this is incorrect.

57. The metric does not account for indirect impacts, but these should be considered in the EclA and or BNG report anyway. In the same way, BNG for species could be included in the EclA or a BNG report as the metric does not measure BNG for species.

59 and 95. The Environment Bank should not be referenced here by name. There are (or will be) other providers and singling one out is not in line with the Government's expectation of it being essentially a free market with purchasing units from national Government stator credits being a last resort – this is not even mentioned. Do RMBC have plans or ambitions or offer off-setting units themselves for example? (see para 86) Does RMBC Planning Policy Officer and/or Ecologist have to capacity to assist with completion of metrics and if not, best to remove to be realistic.

The Metric should be submitted to RMBC in Excel format to allow proper scrutiny of the numbers and the whole Metric and not just headline results in a report. Maps should accompany the BNG Report and Metric. It is very confusing reading this and this the developer contributions draft SPD as some of the information is in there (like in what format information should be submitted) and some is in here and they do not reference each other

60. We would like to reference that translating from another habitat survey methodology to UKHabs is not the preferred option. C. Condition is really important - stress this and refer the reader to the appropriate guidance

62. This is incorrect as it is suggesting that habitats that meet LWS criteria should be input as high/very high distinctiveness but distinctiveness is set by the metric which has been developed by national ecological expertise and consultation. Also there is a Rotherham LWS criteria, but not a South Yorkshire-wise one. It may be

appropriate to classify a LWS as being of high strategic significance but this would need discussing with the RMBC Ecologist.

63. All habitats are covered by the guidance so this is not relevant.

64. This is incorrect! How familiar is the author with using the Defra Metric and its guidance?

65. Yes – support this.

70. Support the repeated emphasis on applying the mitigation hierarchy and specifically the questions presented here to be addressed within submissions, but this comes late in the guidance (which is getting rather repetitive – the document could be much shorter – for example the DMBC SPD is 21pages).

72. Could General Principles of BNG be misinterpreted as Good Practice Principles? Better to re-name?

81. Ok so the LNRS and natural capital maps are mentioned here - again quite late – can you make it easier for developers to find these resources?

83. Clear message that anywhere in Rotherham acceptable but there is different wording in the commuted sum SDP so it is confusing what RMBC's position is.
Footnote 10 – it's promising that RMBC are open to this idea, as nature does not operate across LPA boundaries. The issue of who would be the enforcing LPA is something they will need to establish, though not necessary for inclusion here.

85. This is the first mention of monitoring. There needs to be a section about what is expected by RMBC in terms of management, monitoring and reporting over the 30 years (even is some detail is still to come in secondary legislation). National register?

88. In advance of determination?

89-97. What developers and their consultants are expected to do is spread out across this document in different places – it could be much more condensed into clear sections – some of the comments we made earlier are addressed in this section, but it was unclear there was more detail later.
Worth highlighting about high distinctiveness habitats requiring bespoke compensation.
Also make it really clear that the minimum 10% BNG is separately for habitat/linear features (hedgerows) and rivers. They cannot be combined or mixed or matched (eg. cannot hedgerows to make up the shortfall in habitat).
Add in section about the impacts of compensation habitats created in advance or delayed (see Metric 3.1 for details).

89. Point about the term 'major development' again. Small sites not mentioned here – if this is made clear earlier on then it will not have to be repeated a few times throughout the document.

95. See earlier point about Environment Bank. You have already said that a consultant ecologist needs to complete the BNG assessment. You may want to make a different point that local partners and stakeholders may be able to assist with off-site options.

96b. – see earlier point about UKHabs being by far the most preferred option. Again, lot of repetition.

97. Yes! But reference this much earlier on – if people follow this then you need less in the SPD. See Commuted sum draft SPD for example.

98. Section heading – point about major developments again.

99. Developers will want to know more about this.

101. Is planning condition appropriate? S106 or conservation covenant likely to be legal mechanism for delivery.

103. £1,200 per unit – this needs to be made clear this is not a fee to deliver biodiversity units (as it is far too low for this), but is for the administration work only. Will this cover 30 years? How might some be passed onto partners? How does this relate to the £7000 in the last column of Table 2? Unclear

Table 2– needs reviewing as refers to accelerated succession which is no longer part of metric. Or is it suggesting this approach will still be used even though no longer part of metric?

Table 2 and 107. The unit prices here are very low and risk undercutting other providers - not the Govt's intention. Barnsley and Doncaster MBC are 'charging' £25,000 per unit (for all habitat types). Illustrative? But also, very precise?

116. Or conservation covenant.

119. Same as para 20, therefore our comments are the same.

Glossary – include commuted sum, S106 and conservation covenant in glossary. See earlier comments about specific reference to the Environment Bank. Other providers will be available – should the SPD specify any one particular provider.

Appendix 1 and 2 – useful info but is this within the scope of a BNG SPD. Could this info be lost within this SPD and would it be more suitable on website or in the Natural Environment SPD? Perhaps instead a sentence saying how a BNG report links with other Ecological Reports.

Note 2 – SINC – is not a term that is used anymore – replaced by Local Wildlife Sites

Appendix 3 –Table 2 repeated unnecessarily from earlier in doc (in part).

Woodland. Remove reference to accelerated succession. Biodiversity Unit – you are suggesting changing grassland to woodland?

Repeat of Table 2

Appendix 4 – reference this earlier to set the scene as it is only referenced once in para 75

Appendix 5 and 6 – likely to rapidly become out of date as working documents? Better to include links and or revise when Rotherham develops own version (Para 38)

General

Some repetition within the document. e.g. paras 57 & 93 and 58 & 94. Removing would make it more concise.

Also make it clear that 10% is a *minimum* and that a greater gain is more likely to lead to a successful ecological outcome and will be viewed favourably.

There needs to be a section about being realistic about what can be achieved in terms of habitat type and condition especially on-site (for example it will not be possible to create a very good condition meadow next to houses where there will be a lot of impact from people, pets and pollution). See DMBC BNG SPD for an example. Confusingly this is covered in the Commuted Sum draft SPD with which there is a lot of overlap (was much of that taken from West Yorkshire policies but not cross referenced to this document?). As a result, we suggest the structure and content of both documents needs substantial review. It is not appropriate for us to do so in this consultation response, but I (Nicky, SRWT) would be willing to meet with RMBC and go through it in more detail if this would be helpful and welcome.

Council response

Thank you for your representations on the emerging draft SPD. I have read your comments with interest and note the concerns and matters raised. Thank you also for your support for progressing this SPD to adoption prior to the issuing of national guidance. This is welcome.

Given the complexity and newness surrounding the introduction of Biodiversity Net Gain (BNG+10%); the consultation draft SPD, was based on best practice guidance at the time of report drafting, and used guidance issued by Defra at that time. Following on from the consultation close, a number of further learning opportunities have presented themselves:

- Training has been offered by the Planning Advisory Service (on behalf of Defra and Natural England)

- Through this training the work of other Councils involved in pilot projects over the last ten years was presented and shared with the network of other local authorities; this has clarified how other local government colleagues are approaching these issues and matters.

In the light of these learning opportunities, the Council's recently appointed ecologist along with Planning Policy team, has worked through all representations received whilst being mindful of emerging national guidance and secondary legislation, and we have amended the draft SPD to better reflect all current known requirements of the legislation, and to clarify and expand on areas and issues of concern raised through the consultation.

The embedded mitigation hierarchy chapter has been expanded to encourage applicants to assess the impact of development on neighbouring blue and green infrastructure corridors.

References to Conservation Covenants have now been included throughout this SPD. However standard wording around agreements for securing compensatory habitat (S.106) has not yet been prepared. The Council is however mindful that such wording will be essential to the successful delivery of biodiversity net gain and will work towards preparing such wording for legal agreements, conservation covenants and planning conditions over the coming months.

Changes to SPD

The council has amended the SPD to reflect the concerns from Sheffield Rotherham Wildlife Trust and to improve the clarity of guidance provided. Stronger emphasis is now placed on the Mitigation Hierarchy and references to Conservation Covenants have also been included throughout.

The draft SPD has been restructured to remove and decrease the repetition of certain elements and improve the succinctness of the SPD.

Edits have been made to mention the need for 10% net gain throughout and further emphasise the requirement for developers to consider the mitigation hierarchy.

It has been noted that our costings for habitat units were at the low end of the spectrum and these prices have been removed. Further work will be undertaken over the coming months and in the light of best practice and benchmarking with other Local Authorities, to determine the most appropriate costings for habitats, their ongoing management and monitoring costs both on and off-site. Such details will in the future be issued at pre-application stage to each potential applicant for planning permission.

	<p>Edits have been made through out to remove references to a specific metric version and update the SPD with the latest information and guidance released from DEFRA and Natural England and remove links to guidance such as the consultations in appendix 5 & 6 that are likely to become out of date rapidly.</p>
<p>Environment Agency and Natural England</p>	<p style="text-align: center;">Summary of representation</p> <p>Thank you for your consultation on your draft Supplementary Planning Documents (SPDs). The Environment Agency and Natural England are providing a joint response regarding the draft Rotherham Biodiversity Net Gain SPD.</p> <p>We welcome the development of a specific Biodiversity Net Gain SPD for Rotherham and the aspiration to require a measurable 10% net gain in biodiversity, which supports national legislation and the objectives to enhance biodiversity through the development process. The following comments are therefore provided to ensure the approach outlined within the SPD aligns with national policies and guidance whilst reflecting local priorities.</p> <p>For ease of reading, we have provided our comments following the order of the content within the document.</p> <p><u>Page 5 P8 Provision of a map</u> States that the applicant should “have regard to the Council’s Biodiversity Action Plan, and any other studies, such as Nature Recovery Strategies, natural capital mapping and including the priorities as set out in the inset maps of the Core Strategy and Sites and Policies Local Plan.”. Natural England would recommend that further guidance on the interpretation of these evidence bases, plans and maps be provided in regard to achievement of a Biodiversity Net Gain. It is also noted that no map is provided within the SPD, including a map is best practice and aids help to clearly demonstrate the relationship between development sites and opportunities for biodiversity net gain. See subsequent comments under Pages 15- 16 “Identifying Relevant Assets” for further detail. The Environment Agency would also recommend that the relevant River Basin Management Plan and Catchment Plan are also included within this list.</p> <p><u>Page 6 P13 Reference to NPPF</u> Refers to NPPF (2019a), the NPPF was updated in 2021 and therefore this version should be referenced as such throughout the SPD.</p> <p><u>Page 6 P15</u></p>

Refers to most recent update of the metric as 3.1. To avoid confusion and to ensure that the SPD doesn't become out-dated, we recommend that references to specific version(s) of the metric are removed from the SPD, and that reference is only made to "the most up to date version of the Biodiversity Metric".

The paragraph also refers to example habitats which are assessed within the Biodiversity Metric – the river and stream habitat has been omitted and should be included. We also recommend that river habitat is also listed within this paragraph – this will help ensure that the inclusion of river habitat within the Biodiversity Metric and BNG objectives is made clear early within the SPD.

Page 6 P16 On and off-site delivery

We welcome the recognition of a preference for on-site delivery of a BNG, however recommend that the wording "where it might be more convenient to deliver these off-site" be strengthened to reflect application of the mitigation hierarchy to determine the best route for BNG deliver. The SPD should make it clear that development should attain BNG on-site in the first instance, through habitat retention, enhancement and creation – preferably with consideration to local priority habitats and nature-based solutions. Where it is clearly demonstrated that this is not possible, alternative locations may be sought with a preference for those in the immediate vicinity, followed by strategic landscape biodiversity initiatives, such as the Local Nature Recovery Strategy, Nature Recovery Network or Green/Blue Infrastructure (where appropriate).

Page 6 P16 "Pooling of contributions"

Refers to "pooling of contributions", further clarity regarding this statement is recommended. As further guidance and legislation on mandatory BNG is expected, it may be good practice to acknowledge that certain things might change in the SPD and schedule a review to ensure alignment with the mandatory approach in due course as these emerge.

Page 6 P17

This paragraph also refers to Biodiversity Metric 3.0, recognising that the Biodiversity Metric is periodically updated, we recommend the wording is altered to reference the "most up to date version of the Biodiversity Metric".

Page 6 P18 "small-scale development / small sites metric"

The criteria for 'minor development' as set out in the draft SPD is not consistent with the criteria for the small sites metric, as set out in the latest Biodiversity Metric guidance. We recommend that the criteria for minor development is updated to match that of the latest guidance for the small sites metric – e.g.

“Such sites are defined (for the purposes of this Small Sites Metric) as small sites where BOTH of the following criteria are met:

1. Development sites where;

- For residential developments the number of dwellings to be provided is between one and nine inclusive on a site having an area of less than one hectare
- Where the number of dwellings to be provided is not known the site area is less than 0.5 hectares
- For all other development types where the site area is less than 0.5hectares or less than 5,000sqm

2. Where there is no priority habitat present within the development area (excluding hedgerows and arable margins)”.

Clarity should also be provided that it is not appropriate to use the Small Sites Metric to calculate offsite losses and gains.

Paragraph 17 states that “major/large” new build development must demonstrate a 10% biodiversity net gain however no clarity is given regarding the percentage increase for “minor/small-scaled development”. In accordance with the Environment Act 2021, we would recommend that this paragraph should clearly state at least a 10% minimum requirement.

Page 6 P19 Locations of “Suggested Habitats”

The suggestions of further wildlife features and habitat enhancements available to applicants is welcomed, however we recommend that the statement “Of course, the most suitable and locally appropriate enhancement measures will vary depending on the location and type of new development” be further supported and strengthened by relating these to aforementioned plans (e.g. natural capital mapping and including the priorities as set out in the inset maps of the Core Strategy and Sites and Policies Local Plan) and outlining priority interventions for specific areas within the district.

Page 7 P20 “Suggested habitats” inclusion in the metric

It should be noted that some of the suggested habitats can and should be included in calculations utilising the metric, such as ponds and wildflower meadows. See subsequent comments under “Pages 15- 16 Identifying Relevant Assets”.

Page 8 - P20 “Suggested habitats”

Could this section be updated to include improvements to riverine habitats where a river or other water body lies within the site boundary. A few examples of such features would include woody debris, berms, artificial refuges,

bank naturalisation etc. In heavily urbanised areas where such features may be lacking the reinstatement of such features can provide valuable habitat for fish and other aquatic species.

Page 13 P32

We recommend this paragraph could also include the Salmon and Freshwater Fisheries Act (1975) and the Eels Regulations (2009). These acts define the requirements to protect fish species and grant powers to address barriers to fish passage.

Page 14 Table 1

Row 1: Have the right support – accessing ecological expertise. We recommend that this row is updated to highlight that the rivers and streams condition assessment requires users to be trained and accredited. Where river habitat falls within a development site and needs to be assessed within the Biodiversity Metric, river condition is assessed using the River Condition Assessment (River MoRPh survey methodology) and this requires a suitably qualified person who is trained and accredited in undertaking River MoRPh surveys.

Row 4: Refers to impacts to irreplaceable habitats being excluded from BNG and gives examples of irreplaceable habitat such as ancient woodland. We recommend that, as per Rule 3 in the Biodiversity Metric User Guide, that this is extended to habitats of very high distinctiveness. It would also be beneficial to highlight other irreplaceable/ high distinctiveness habitats found within the local area within this section.

See extract of the Biodiversity Metric 3.1 User Guide below:

“Rule 3: ‘Trading down’ must be avoided. Losses of habitat are to be compensated for on a ‘like for like’ or ‘like for better’ basis. New or restored habitats should aim to achieve a higher distinctiveness and/or condition than those lost. Losses of irreplaceable or very high distinctiveness habitat cannot adequately be accounted for through the metric.”

Pages 15- 16 “Identifying Relevant Assets”

The evidence and information available to assist applicants in assessing the value of “ecological assets” is welcomed and supported, however further guidance and local interpretation of the relevance of these to Biodiversity Net Gain is recommended. For example, the Biodiversity Metric includes a strategic significance multiplier which “...utilises published local strategies and objectives to identify local priorities for targeting biodiversity and nature improvement...”.

Development should be encouraged to target habitat enhancement where it will have the greatest local benefit, therefore clarification on the level of strategic significance to be applied to specific areas and habitats, such as those within mapped ecological networks or priority local habitats (e.g., those identified within Rotherham's Biodiversity Action Plan or Policy CS 20 of the Core Strategy) should be included within this section and on Page 21. See subsequent comments under "Other Comments: b)

Identifying local opportunities and priorities should also be used to support the types of habitat creation and enhancement recommended, such as in the list of biodiversity enhancements provided under "suggested habitats" and those listed on Page 29 P119. It should be made clear which biodiversity enhancements will contribute to a net gain measured by the metric and which are additional to aid ecological functionality. It may be useful to refer back to recommendations made within Rotherham's Supplementary Planning Document No. 11: Natural Environment to ensure join up between the SPDs.

Describing and identifying the priorities for habitat creation or enhancement by BNG in different parts of the plan area would further support and align with the approach outlined in Paragraph 179 of the current NPPF.

Page 17 P54 "Approved ecological consultant"

Refers to "appointing an approved (ecological) consultant", elsewhere in the document a "suitably qualified ecologist" is referred to. Is there a distinction between these two terms if so, whom must an ecologist be approved by? Further definition could aid clarity for applicants. Please also see comments under "Page 14 Table 1" regarding the differing requirements for ecologists undertaking terrestrial or river BNG assessments.

Page 17 P55

There is no reference to strategic significance here. See subsequent comments within "Other comments: b)". We recommend that it also be clear to applicants that submission of excel copies of the biodiversity Metric calculations are required as part of a Biodiversity Net Gain Report.

Page 18 – "Biodiversity Net Gain Calculations"

We recommend adding a note to this section to flag the importance of assessing riverine habitats. This is often something that is missed off from site boundaries in planning applications where there is a clear need to at least consider the implications for these habitats. For example:

"As well as accounting for area based (terrestrial) habitats, the Biodiversity Metric 3.0 also includes two distinct supplementary modules for linear habitats (A: Hedgerows and lines of trees & B: Rivers and streams). For sites where a water body bisects the proposed development site the BNG assessment should include the river and stream module and the proposed development should deliver measurable net gain for this habitat."

And:

Paragraphs 60 and 61 refer to the red line boundary. We recommend this section makes explicit reference to situations where applicants will need to apply the river metric in scenarios where river habitat falls within or immediately adjacent to a proposed development site's red line boundary – e.g., the Biodiversity Metric guidance states:

“The riparian zone is an intrinsic part of the ecological functioning and natural processes occurring in the river. Where the red line boundary of the development encompasses the riparian zone, either whole or in part, but excludes the channel of the watercourse, the rivers and streams metric (including the condition assessment) must be applied. This applies to rivers, streams and canals as the riparian zone is used to calculate its condition. The riparian zone of a ditch is not used to influence condition, therefore would not apply. By applying the river metric in this scenario, information will be required that is outside of the red line boundary (as it includes the banks, channel and bed of the river)”.

The above statements may be relevant to further sections as well. Paragraph 63 refers to assessment of habitat condition. We recommend that this paragraph is updated to highlight that the condition of area-based and linear-based habitats are measured differently within the Biodiversity Metric – and that the rivers and streams condition assessments are not completed by using standard condition score sheets, but instead a detailed rivers and streams condition assessment is required. The field component of the rivers and stream condition assessment requires the River MoRPh survey methodology to be used (for which a trained and accredited person must be employed).

Paragraph 65 refers to how to deal with a site that has been cleared resulting in the loss of habitats in advance of a biodiversity metric calculation being undertaken. We support this methodology, and recommend the following is considered / included within the SPD:

Please note that within Schedule 14 of the Environment Act, which sets out the biodiversity gain condition for development, measures are included that allow planning authorities to recognise any habitat degradation since 30th January 2020 and to take the earlier habitat state as the baseline for the purposes of biodiversity net gain. To ascertain the habitats, present and their condition on 30th January 2020, aerial imagery or data sets from that time could be used.

Paragraph 81

This list should include opportunities that contribute to the objectives and actions of the relevant River Basin Management Plan and Catchment Plan.

Environment Bank Paragraphs 59 & 95

We are not sure about the two references to the Environment Bank as a provider, our understanding is that they are a commercial provider and there may well be other providers of habitat banks available locally. Also, we're not sure that the Environment Bank provide a service with Metric calculations, and that their focus is about delivering off-site.

- BNG Calculations Paragraph 59: applicants are advised to seek assistance from ... the Environment Bank...
- How to complete the metric calculation Paragraph 95: applicants are advised to seek assistance from ...the Environment Bank ...

Page 20 P75 "off-set Register"

States that all on and off-site habitat creation must be "included on an off-set register". Currently all off-site net gain will need to be registered on the National Biodiversity Gain Site Register when BNG is mandatory, if the SPD requires habitat enhancement also to be entered onto another register, this should be made clear.

Page 22 P87 On-site BNG monitoring

Clarification regarding the party responsible for and undertaking on-site biodiversity net gain monitoring is recommended.

Page 22 P88 "Habitat Banks"

This states that habitats are expected to be in place in advance of a planning application if they are to be created by a "Habitat Bank". A definition of a habitat bank is provided in the glossary of the SPD (Page 31); however, it should be noted that not all off-site BNG may be facilitated directly by a "habitat bank provider". Furthermore, clarity regarding the stage habitats are expected to be in place upon application should be provided. For example, this could mean, once the legal agreement is in place or following inclusion on the Biodiversity Gain Site Register etc.

It is highlighted that this statement does not align with the approach outlined in the SPD on Page 25 P102.

Page 24 P96

The listed information within this paragraph change from numbered points to bullet points – this appears to be an error. We recommend this is updated to be numbered points from 1 to 5.

Page 27 Table 2 Developer contributions (off-setting)

While we support the application of different / varied prices per biodiversity unit, depending on the type of habitat, we also have concerns over the proposed pricing strategy (though we note it is, at this point, illustrative). Our main concerns, which we recommend are addressed within the SPD, are as follows:

a) The table only includes three broad habitat types – woodland, grassland, and wetland. It fails to consider / include river or stream habitat. River and stream habitat (River Units) are assessed and reported separately within the Biodiversity Metric. It would not be appropriate to apply the unit cost pricing strategy for another broad habitat type to river or stream habitat.

a. How will river and stream habitat be addressed?

b) Linked to point 1, we recommend that a separate/different (appropriate) monetary unit value is applied depending on the habitat unit type being compensated for and that river and stream habitat unit value should be included within the table.

- We feel that the SPD (& associated BNG off-setting contribution structure) should recognise the cost associated with delivering units for certain habitat types (e.g., river habitat units or very high distinctiveness area habitat units) is likely to outweigh the cost of delivering others (e.g., the majority of area-based terrestrial habitat units).

- There is a risk that applying a single monetary value to all units regardless of the habitat type, or applying a monetary value that is too low, may result in developers taking advantage – i.e., deciding that it's cheaper / easier to make monetary contributions rather than delivering on or off-site net gains as part of their development.

For example, if a development site contains a culverted river watercourse, there would be a requirement to for that development to deliver net gain in River Units. Though, culverted watercourses have a low condition and distinctiveness value within the Biodiversity Metric, and so the baseline number of River Units within the development site may be relatively low (& this may be compounded in sites where the total length of river is low).

When we factor in feasibility, design, and construction costs, it is likely that culvert removal and restoration of a river channel (even if only over a short length) will cost (per river unit) significantly more than the figures provided within table

2. Without suitable unit cost values, there could be scenarios where a proposed offsetting contribution value offers no incentive for developers to deliver on-site (or off-site) net gains for River Units. Instead, it may actively discourage developers from doing so – as a contribution of £XXX per unit, may be far easier / cheaper option.

c) How have the illustrative price per biodiversity unit values listed in table 2 been arrived at?

a. Are these means tested / a reflection of real-world valuations?

b. Any pricing strategy must be robust and should also reflect the 30yr management and maintenance costs and the monitoring and evaluation costs.

c. The values provided seem low, particularly when compared to other unit costs that have been referred to by others (including other LPAs). In some instances, we have seen costs of £25,000 per unit.

d) The approach to woodland creation refers to calculations based on accelerated succession which was a feature of the Biodiversity Metric 2.0.

This aspect of the tool has since been removed since 2021 (from Metric 3.0 and beyond). Therefore, we recommend that any contributions are based on the latest BNG guidance at the time of writing.

Page 29 “Incorporation of additional features for biodiversity enhancement” - P117

Could this section be updated to include improvements to riverine habitats where a river or other water body lies within the site boundary. A few examples of such features would include woody debris, berms, artificial refuges, bank naturalisation etc. In heavily urbanised areas where such features may be lacking the reinstatement of such features can provide valuable habitat for fish and other aquatic species.

Page 42 – “Appendix 2: Ecological Survey and Mitigation Timetable”

Could this section include some information on the timings for fish species that will be impacted by in channel works? Timings to avoid fish spawning seasons should be reviewed as part of a PEA where works are required in or around a watercourse.

Typically, for salmonid rivers we would not permit works between October – May (inclusive) and for coarse fish rivers March – June (inclusive). Therefore, on rivers where both groups are expected in channel works may not be permitted between October – June. **Please note these times are a catch all to cover the times when most specimens in this group will be spawning, in reality some species will spawn earlier or later, and timings may be tweaked accordingly. The local area fisheries officer is always the best person to inform on when works will be permitted based on local understanding of the river catchments and species present.**

It may also be useful to cross reference with the Natural Environment SPD.

Other comments

a) We recommend that the SPD is updated to specifically acknowledge the requirement a minimum of 10% net gain to be demonstrated separately for all types of biodiversity unit / habitat (Area Habitats, Linear Hedgerow Habitat and Linear Rivers & Stream Habitat) present within a proposed development site.

As per the Biodiversity Metric guidance, “it is an important rule of the metric that the three types of biodiversity units described above [Area Habitats, Linear Hedgerow Habitat and Linear rivers & Stream Habitat] are unique and

cannot be summed, traded or converted (Rule 4). When reporting biodiversity gains or losses with the metric, the three different biodiversity unit types must be reported separately and not summed to give an overall biodiversity unit value. For example, a scheme would report a gain of 3 area habitat units, a loss of 1 hedgerow unit and a loss of 1 river unit rather than an overall combined gain of 1 unit”.

b) No information is provided on how applicants should apply strategic significance values to habitats assessed within the Biodiversity Metric. We recommend that the SPD is updated to outline how strategic significance will be applied, particularly for rivers and stream habitat. e.g. The Biodiversity Metric also requires strategic significance to be determined for rivers and streams, with either a ‘high’ or ‘low’ strategic significance being assigned in the Biodiversity Metric. If a habitat (present either pre or post development) can be considered to be helping towards the delivery of river restoration actions within the relevant plans or strategies (listed in the table below) then it should be given high strategic significance. In a similar manner as set out for area and linear habitats, how strategic significance is defined for rivers and streams may be updated in due course as a Local Nature Recovery Strategy is developed.

Strategic significance

9.30. The purpose of the strategic significance multiplier is outlined in Chapter 5. For rivers and streams use the delivery of identified actions within River Basin Management Plans, Catchment Plans and Local Plans to determine high strategic significance.

TABLE 9-5: Strategic significance multipliers for rivers and streams

Strategic Significance	Description of multiplier	Strategic multiplier
High	Delivery of river restoration actions within: <ul style="list-style-type: none"> • Local Plans; • Local Nature Recovery Strategies; • River Basin Management Plan; • Catchment Plans; • Catchment Planning System; or • Priority Habitats for Restoration⁵⁴ 	1.15
Low	Low potential / action not identified in any plan.	1

c) We recommend that a clear local approach for all sites which currently possess a negligible biodiversity is outlined within the SPD. This could include setting a small target improvement utilising the metric via features such as rain gardens, natural SuDS, green roofs or native soft planting around the site.

Council response

Thank you for your representations on the emerging draft SPD. I have read your comments with interest and note the concerns and matters raised. Thank you also for your support for progressing this SPD to adoption prior to the issuing of national guidance by Defra. Your comments are welcome.

Given the complexity and newness surrounding the introduction of Biodiversity Net Gain (BNG+10%); the consultation draft SPD, was based on best practice guidance at the time of report drafting, and used guidance issued by Defra, CIEEM, CIRIA at that time. Following on from the consultation close, a number of further learning opportunities have presented themselves:

- Training has been offered by the Planning Advisory Service (on behalf of Defra and Natural England) this has provided excellent learning opportunities for officers in this Council.
- Through this training the work of other Councils involved in pilot projects over the last ten years was presented and shared with the network of other local authorities; this has clarified how other local government colleagues are approaching these issues and matters.

In the light of these learning opportunities, the Council's recently appointed ecologist along with Planning Policy team, has worked through all representations received whilst being mindful of emerging national guidance and secondary legislation, and we have amended the draft SPD to better reflect all current known requirements of the legislation, and to clarify and expand on areas and issues of concern raised through the consultation embedded mitigation hierarchy chapter has been expanded to encourage applicants to assess the impact of development on neighbouring blue and green infrastructure corridors.

References to Conservation Covenants have now been included throughout this SPD. However standard wording around agreements for securing compensatory habitat (S.106) has not yet been prepared. The Council is however mindful that such wording will be essential to the successful delivery of biodiversity net gain and will work towards preparing such wording for legal agreements, conservation covenants and planning conditions over the coming months.

Thank you for your specific comments and the request for greater mention of riverine habitats and habitats of strategic significance is made within the SPD.

A Local Nature Recovery Strategy is to be prepared across the South Yorkshire Region and the South Yorkshire Mayoral Combined Authority will be the responsible body for leading on the preparation of this Strategy. It is

	<p>anticipated that the LNRS will determine which habitats are of strategic significance and will guide delivery of nature's recovery and biodiversity net gain.</p> <p style="text-align: center;">Changes to SPD</p> <p>I have reviewed each of your comments in turn and where possible have amended this draft SPD to better reflect the issues and matters raised where currently feasible. However, there may be some areas where this Council does not yet have an agreed position, and therefore no changes can, at this time, be made to the SPD. If over time, it is apparent that changes are required to this SPD, we will consider re-visiting its content and re-issuing a further draft for consultation prior to its adoption we will await the finalisation of the LNRS and implementation of net gain to achieve maximum understanding.</p> <p>The suggestions to include further references to river habitats, and habitats of strategic significance, to survey methodology and species have now been included throughout the SPD.</p> <p>Edits have been made to mention the need for 10% net gain throughout and further emphasise the requirement for developers to consider the mitigation hierarchy.</p> <p>It has been noted that our costings for habitat units were at the low end of the spectrum and these prices have been removed. Further work will be undertaken over the coming months and in the light of best practice and benchmarking with other Local Authorities, to determine the most appropriate costings for habitats, their ongoing management and monitoring costs both on and off-site. Such details will in the future be issued at pre-application stage to each potential applicant for planning permission.</p> <p>Edits have been made through out to remove references to a specific metric version and update the SPD with the latest information and guidance released from DEFRA and Natural England and ensure definitions used are correct.</p>
<p>Fitzwilliam Wentworth Estate</p>	<p style="text-align: center;">Summary of representation</p> <p>Introduction</p> <p>These representations are made on behalf of The Fitzwilliam (Wentworth) Estate. FWE have a significant land holding interest within the Borough of Rotherham and have been actively participating at all stages in the Local Plan process both in terms of the adoption of the Core Strategy as well as the Sites and Policies Document.</p> <p>FWE have a broad range of sites and interests that we consider are both available and suitable for development to help contribute towards delivering the vision, objectives and spatial growth of the Borough and it is this context we submit representation to the draft SPD regarding Biodiversity Net Gain.</p>

Background

This SPD provides guidance on achieving Biodiversity Net-Gain (BNG) from new development. BNG is achieved when a development site creates an increase in biodiversity, compared to what was on the site prior to development.

The core purpose of this SPD is to provide information about the provision of and/or contributions towards the delivery of biodiversity net gain in new development and sets out the circumstances where such provision, including financial contributions, shall be sought through planning obligations (i.e. S106 legal agreement).

Planning Policy

A core principle of achieving sustainable development is securing biodiversity net gain through the planning system. These are important policy requirements set out within the National Planning Policy Framework and the Rotherham Local Plan within the Core strategy and the Sites and Policies Local Plans

The general objective of these policies is to require all development to positively contribute to the conservation and enhancement of biodiversity and establishes a requirement to protect biodiversity.

The Council requires applicants to increase biodiversity through their developments, and, through their planning applications, to demonstrate that the measures being put forward will achieve this. If applicants satisfy this requirement, they will ensure their schemes are compliant with the relevant policies of the adopted Local Plan.

Biodiversity Net Gain Plus 10%

The draft Supplementary Planning Document sets out the agreed methodology that applicants shall follow to assess and calculate the Biodiversity Net Gain plus 10% arising from proposed new development in Rotherham Metropolitan Borough Council.

The Council are seeking to achieve a minimum of 10% biodiversity net gain as a requirement of planning permission for development, demonstrated using the Biodiversity Metric 3.0.

Whilst this approach accords with the Government's intention to introduce a 10% biodiversity net gain as a mandatory requirement in England through the Environment Act (2021), the Act includes transitional arrangements

for delivery of at least a 10 per cent net gain in biodiversity over pre-development levels, and this will apply to new planning applications from November 2023.

Under the current planning system there is a patchwork of policy and guidance on biodiversity. The National Planning Policy Framework requires planning policies and decisions to minimise impacts on and provide net gains for biodiversity, including by establishing coherent ecological networks, but it stops short of setting a national minimum. The Rotherham Local Plan does not include a policy minimum standard of improvement either.

As recognised by in the National Planning Policy Guidance, SPDs should build upon and provide more detailed advice or guidance on policies in an adopted local plan. As they do not form part of the development plan, they cannot introduce new planning policies into the development plan. Furthermore, the guidance confirms they should not add unnecessarily to the financial burden on development.

We consider that the requirement for the Council to request in this draft SPG at least a 10% BNG for all developments is currently unreasonable as the policies only allow for the general enhancement of biodiversity which could entail achieving less than 10% increase and still be policy compliant. Until the Act come into force, the draft SPG is not consistent with the current Local Plan policies in that it requests a minimum of 10% BNG. Therefore, we consider an appropriated transitional arrangement should be introduced into the draft SPD to reflect this issue and prevent unnecessarily overburdening development in financial terms.

Council response

Thank you for your comments on the emerging draft SPD. I have read your comments with interest and note the concerns raised.

The Council notes that the mandatory requirement for 10% Biodiversity Net Gain on all major sites will not come into force until November 2023 and April 2024 for small sites. Currently the position is no net loss. However, it is important to note the support for the completion and adoption of the Biodiversity Net Gain+10% SPD has been significant, subject to appropriate amendments and there is a need for the LPA and developers to commence use of the most up to date Biodiversity Metric (currently BM4) now, to ensure no net loss from the development site in accordance with the NPPF and Local Plan policies CS20 and SP33. The SPD refers to the dates that 10% BNG becomes mandatory.

Changes to SPD

No changes to the SPD have been made arising from the representations. The use of the latest Biodiversity Metric 4 is being requested in all pre-application enquiries and that this should demonstrate no net loss of biodiversity from

	any new development proposals in accordance with case law where there is no adopted Development Plan policy requirement to achieve a net gain of 10%.
Sport England	<p data-bbox="363 180 2032 224" style="text-align: center;">Summary of representation</p> <p data-bbox="363 224 2032 639">Thank you for consulting Sport England. Sport England has an established and important role in the planning system where we are a statutory consultee on planning applications that would prejudice the use, or lead to the loss of use, of playing fields as defined in The Town and Country Planning (Development Management Procedure) (England) Order 2015 (Statutory Instrument 2015 No. 595) in that it is on land that has been used as a playing field within the last five years, and the field encompasses at least one playing pitch of 0.2 hectares or more, or that it is on land that allocated for the use as a playing field in a development plan or in proposals for such a plan or its alteration or replacement. Further detail on Sport England’s role and objectives within the planning system can be found at https://www.sportengland.org/how-we-can-help/facilities-and-planning/planning-for-sport Sport England would wish to avoid a situation where an adopted SPD encourages certain types of planning applications which Sport England later has to object to as they are not consistent with our Playing Fields Policy.</p> <p data-bbox="363 688 2032 764">Sport England’s Playing Fields Policy contains five exceptions where we will not object to a planning application which prejudices the use of playing fields. These exceptions are:</p> <ul data-bbox="426 776 2032 1451" style="list-style-type: none"> • E1 - A carefully quantified and documented assessment of current and future needs has demonstrated to the satisfaction of Sport England that there is an excess of playing field provision in the catchment, and the site has no special significance to the interests of sport. • E2 - The proposed development is ancillary to the principal use of the site as a playing field or playing fields, and does not affect the quantity or quality of pitches or adversely affect their use. • E3 - The proposed development affects only land incapable of forming, or forming part of, a playing pitch and does not result in the loss of or inability to make use of any playing pitch (including the maintenance of adequate safety margins), a reduction in the size of the playing area of any playing pitch or the loss of any other sporting/ancillary facilities on the site. • E4 - The playing field or playing fields that would be lost as a result of the proposed development would be replaced by a playing field or playing fields of an equivalent or better quality and of equivalent or greater quantity, in a suitable location and subject to equivalent or better management arrangements, prior to the commencement of development. • E5 - The proposed development is for an indoor or outdoor sports facility, the provision of which would be of sufficient benefit to the development of sport as to outweigh the detriment caused by the loss of the playing field or playing fields.’

Sport England's Playing Fields Exceptions reflect paragraph 99 of the NPPF which states:

"Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:

- 1 a) an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or
- 2 b) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or
- 3 c) the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use."

Paragraph 16 – Comment -

This paragraph references the Council's commitment to delivering biodiversity net gain on site. It is necessary that any planning application should clearly annotate where any on site biodiversity net gain is proposed on the site. With the provision of biodiversity net gain on site this has the potential to trigger a statutory consultation on a planning application with Sport England where previously a consultation would not be required. This relates to planning applications where any biodiversity net gain is proposed on a playing field and as such could lead to the loss of, or prejudice the use of, the playing field. An example could be an extension to a school on a tarmac playground where the resulting biodiversity net gain is then proposed on the school's playing field. The extension itself (having no impact on the playing field) would not trigger a statutory consultation with Sport England, however, the resulting on-site biodiversity net gain on playing field could potentially trigger a consultation. In such circumstances, where there is an impact on playing field, the applicant would need to meet exception E1 or E4 above. Where the applicant is unable to meet Sport England's exceptions or paragraph 99 of the NPPF, this would result in an objection from Sport England.

Paragraphs 43, 44 and 81 - Comment -

The SPD includes a list of known ecological assets and green and blue infrastructure with paragraph 81 listing areas where any necessary off-site habitat provision should be directed. Green infrastructure can include playing fields. Depending on the location of the biodiversity net gain, this could prejudice the wider use of a playing field. For example, just planting a single tree in the centre of a playing field could prevent the entire playing field from being marked out with pitches as the tree would represent an obstruction, thereby prejudicing the whole playing field.

Resolution

	<p>Sport England would suggest that there should be a list of exception land uses within the SPD where on site and off site biodiversity net gain is not encouraged. Playing field should be one of these land uses.</p> <p>The issue in relation to playing field could also have similar impacts on other non-playing field land uses associated with the use of the playing field, for example, where biodiversity net gain results in the loss of current on-site car parking thereby creating a potential highways safety issue through on street parking.</p> <p>If there is no choice but to provide biodiversity net gain on a playing field or other sport facility, the SPD should make it specifically clear that any net gain needs to comply with the policies in the NPPF, in the case of playing field this would be paragraph 99.</p>
	<p>Council response</p>
	<p>Thank you for your comments on the emerging BNG SPD. We have read your comments with interest.</p>
	<p>Changes to SPD</p>
<p>South Yorkshire Badger Group</p>	<p>In light of these comments, we have made mention to the fact that biodiversity net gain should not compromise land use requirements for sports pitches, facilities and playing fields and that requirements for net gain needs to comply with all policies in the Local Plan and the NPPF.</p> <p style="text-align: center;">Summary of representation</p> <p><u>Sites and Policies Document Local Plan 2018</u> <i>29. Though planning conditions are the preferred route (???) through which the LPA shall seek and secure BNG, S.106 legal agreements shall augment and be used in appropriate cases, for example, in order that off-site requirements and measures, including land transfers and commuted sums are secured satisfactorily to not only deliver the BNG but ensure that these are maintained in the long term for the benefit of residents and visitors to Rotherham.</i></p> <p>I don't understand the term 'preferred route' I'm unsure of the S.106 legal requirement stated but it appears that it is accepted that some carry out work that is detrimental to the site and before Planning Permission is sought. It seems to our group (SYBG) and others that Retrospective Planning Permission is a route used by those who clear areas of woodland/urban land that has been disused and taken over by nature and species and that only after subsequent cutting down of mature trees, removal of wildflower meadow, disturbance and possible death of bats roosting, destruction of badger setts, <u>only then is Planning Permission sought</u>. There seems to be little appreciation that clearing an area/site ready to seek Planning Permission is not acceptable and that incidences of 'Retrospective planning permission' being sought is often applied for once the damage to the site has been done, carried out in ignorance, and that it is being seen as an 'option' to gain approval once an area has been cleared. This cannot be acceptable. That RPP is sometimes being granted and that RMBC and wildlife groups have to try and keep uncover what is happening on sites being cleared without permission shows no deterrent to those who, sometimes</p>

knowingly, undertake damaging work in clearing an area and causes local authorities expense and inconvenience in having to deal with such land owners/developers.

I note the following clause: *Establishing the Value of Assets using the Biodiversity Metric 3.0 Survey Work 65. If a development site has been cleared with the resulting loss of habitats in advance of a biodiversity metric calculation being undertaken the baseline for the metric is to be taken as the habitats present prior to site clearance. The biodiversity value of the habitats lost is to be estimated based upon a desk-based assessment and professional judgement. In this regard, the precautionary principle shall be applied where the distinctiveness or condition of the habitats lost is uncertain. It is important to note that the Council is mindful of and shall apply all legislation affecting protected species and habitats.*

This appears to undermine Planning Permission and the biodiversity present in an area, that it is somehow acceptable to review the area on the basis of being able 'to start again' is this so long as BNG afterwards can be seen to be achieved? This would be an opportunity to abuse the intention of protecting sites, nature and biodiversity and provides the option of RPP. It seems clear that RPP should be made less of an opportunity 'to get it past the planners' it should be that those causing this situation are heavily fined as a message/deterrent to those who do not have permission. It should be possible to make land owners aware before clearing a site that the intention of applying for permission later, after the groundwork has been done, is not acceptable so it is clear that PP MUST NOT be sought after clearance work has already been done. This is a root of the problem of land clearance and development.

Biodiversity Net Gain in Minor Applications 119 a - k

Thank you! It will be significant that all applications will benefit from a better consideration for nature, birds, insects and mammals. Ponds are significant and needed to benefit wildlife using them to live in or by.

Fruit trees have been long needed to provide wildlife with much needed additional food before the winter months in particular and I have often made this request of Ecologists and the Council when landscaping of areas are specified but plants are often ornamental and not beneficial to wildlife.

Appendix 3: Guidance on Commuted Sums

Habitat creation options Hedgerow creation

This option will be aimed at creating hedgerows with a mix of approximately 5 native species adapted to the local area. Hedgerows will be double fenced unless this is not appropriate for the location

Hedgerows with fencing can sometimes not make allowances for mammals to enter/leave areas, can this not be possible as is being done for hedgehog highways? Double fenced hedgerows could be prohibiting to roaming and movement of larger mammal species.

Comment:

Larger mammals seem to be being overlooked – deer have been spotted in some areas (a Rotherham Park for instance early in the morning) although how they came to be there without using busy roads is unclear they are clearly in the area. Wildlife corridors need to be maintained to avoid animals having to use busy main roads and should be maintained if not increased in number. Deer, badgers and foxes are all more common in urban areas due to sprawl of development and the need for habitat and corridors need to be present and maintained to avoid conflict with vehicles and maintain access to areas they can live and feed in. Fencing can sometimes be problematic to this access and can push animals towards crossing/being on roads. Gaps in fencing for animals to access areas are needed and not be fenced in or out, please.

Council response

Thank you for your comments on the emerging draft SPD. I have read your comments with interest and note the concerns raised. I note your concerns about retrospective works and seeking of retrospective planning permission for authorised activity. This legislation will in future enable LPAs to consider any harm or damage occurring on site from January 2020 in the consideration of any planning application submitted. Currently we can ensure no net loss of biodiversity until mandatory in November 2023.

The Council has already adopted a Natural Environment SPD, that notes specific habitats supporting protecting species and provides further details. This SPD is concerned with the delivery of Biodiversity Net Gain only.

Changes to SPD

The draft SPD has been amended to mention conservation covenants as another way of securing BNG alongside section 106 planning obligations and use of planning conditions on-site.

Summary of representation

These comments are based on my involvement in Rotherham wildlife conservation issues since the mid 1980s. Member – Sheffield Bird Study Group, Sorby Natural History Society, Rotherham Ornithological Society, Yorkshire Wildlife Trust. (Have been a Senior Officer in most of these organisations)
Member of the Rotherham Environmental/Biodiversity Forum since 1992 and the Rotherham Local Wildlife Sites Panel since 2016.

- The whole document seems long winded and far too complicated for developers, that have little interest in wildlife. Could have been a lot shorter and to the point. I appreciate that there are legal implications in this document.
- I presume Professor Stephen Walker wrote this paper for the use of more than one local authority and not specifically Rotherham?

- Rotherham has been very weak on wildlife conservation in recent decades partly due to RMBC only having the bare minimum of staff, involved with the subject. At the same time a declining interest in conservation from the voluntary sector.
- Its good there is a focus on nationally protected species, some of which are increasing locally such as Otters, on their own with no help from the conservation sector. My concern is that there is no effort to protect and enhance Rotherham habitats and wildlife that are off the radar of national targets. Examples are Redshank, which as far as I am aware failed to breed in Rotherham in 2022. The common Swallow is also struggling around Rotherham, mainly due to barn conversions, where the protection of this species has been ignored by planners and developers. Swallows could soon go the same way as species such as Snipe, Turtle Dove, Hawfinch and Corn Bunting and become extinct in Rotherham. Many former tips that have naturally regenerated have been some of Rotherham's most productive wildlife sites, but also top of the list for development with no mitigation for the unique wildlife that has been lost.
- Too much reliance has been placed on ecological consultants, usually from outside the Rotherham area. While they usually do a reasonable job on surveying, on a site to be developed, they often do not have the local knowledge of the current state of local wildlife. Its been very easy on sites such as Orgreave/Waverley to say the ground nesting birds will go elsewhere, when this is clearly not the case. There has been little or no effort to involve local naturalists/birdwatchers who know the area by consultants/council.
- The 'Rotherham Biodiversity Action Plan' is now well out of date and has achieved very little since its publication. Local Wildlife Sites urgently need
- A discussion is needed with local naturalists/birdwatchers over the current state of woodlands particularly ones planted in recent decades over their biodiversity value. My own experience is that woodland birds are declining probably due to the woods having closed canopies, compared to the more open/managed woods of the past. New woodlands can be good for birds in the early stages, but eventually the trees lose all their lower branches and leafs making a very poor habitat. New woodlands need trees to be planted further apart or heavily thinned some years into the future. Developers should be compelled to remove plastic guards once trees are established. On the Orgreave/Waverley site these have ended up on the floodplain and washed into the river!

Council response

Thank you for your comments on the emerging draft SPD. I have read your comments with interest and note the concerns raised on wider environmental and protected species issues within this Borough. The net gain requirements and legislation will in future enable LPAs to consider any harm or damage occurring on site from

	<p>January 2020 in the consideration of any planning application submitted. Currently we can ensure no net loss of biodiversity until mandatory in November 2023.</p> <p>As you are aware, a Local Nature Recovery Strategy is to be prepared across the South Yorkshire Region and the South Yorkshire Mayoral Combined Authority will be the responsible body for leading on the preparation of this Strategy. It is anticipated that the LNRS will determine which habitats are of strategic significance and will guide delivery of nature's recovery and biodiversity net gain. It is envisaged that local naturalists and groups will be engaged in the delivery of such a strategy.</p> <p>At the moment it is not envisaged that the Rotherham Biodiversity Action Plan (RBAP) will be refreshed in the near future, as we await the preparation of and input to the LNRS.</p> <p>The Council has already adopted a Natural Environment SPD, that notes specific habitats supporting protecting species and provides further details. This current SPD is concerned with the delivery of Biodiversity Net Gain only.</p>
	<p style="text-align: center;">Changes to SPD</p>
	<p>The SPD has been clarified and condensed to make it more concise and readable for developers.</p>
<p>North Yorkshire County Council</p>	<p style="text-align: center;">Summary of representation</p>
	<p>Having reviewed this material, North Yorkshire County Council does not have any comments to make on these SPDs.</p>
	<p style="text-align: center;">Council response</p>
	<p>Noted</p>
	<p style="text-align: center;">Changes to SPD</p>
	<p>None</p>
<p>Severn Trent</p>	<p style="text-align: center;">Summary of representation</p>
	<p>Thank you for giving Severn Trent an opportunity to comment on you Supplementary Planning Documents, We do not have specific comments to make regarding the SPD's under consultation.</p>
	<p style="text-align: center;">Council response</p>
	<p>Noted</p>
	<p style="text-align: center;">Changes to SPD</p>
	<p>None</p>
	<p style="text-align: center;">Summary of representation</p>
	<p>The Coal Authority have no specific comments to make on this consultation document.</p>

The Coal Authority	Council response	
	Noted	
	Changes to SPD	
	None	

Other changes to the SPD by the Council

Within the amended SPD there remain some areas where the Council does not yet have an agreed position, and therefore no changes can, at this time, be made to the SPD. It is intended that the Council adopts the SPD as currently drafted but remains aware that over time, application of the Biodiversity Metric, the preparation of Net Gain Reports and HMMPS (Habitat and Management Monitoring Plans) for on- and off-site net gains may require further changes to the SPD. The Council needs to remain alert to re-visiting its content and re-issuing a further draft for consultation (if necessary) prior to its adoption a refreshed SPD. We will await the finalisation of the LNRS and implementation of net gain to achieve maximum understanding of the procedures and protocols required.

Table 3: Trees SPD

Consultee	Summary of representation
Canal & River Trust	<p>The Trust own and manage the Sheffield & South Yorkshire Navigation, which forms a significant green and blue infrastructure corridor through the borough. Impacts to biodiversity on neighbouring development sites can impact upon the effectiveness and strength of this corridor.</p> <p>We wish to raise the following comments on the document:</p> <ol style="list-style-type: none"> 1. Paragraphs 36, 37, 41, 48, 49, 50, 51, 54, 87 refer to BS5837. We request that it should be clarified in the document that the document is referring to BS5837: 2012 (and any subsequent documents). This would help avoid confusion with BS5837: 2005. 2. With respect to replacement tree planting (paragraphs 61-63), we request that the impact of tree removals (and replacements) with respect to the potential impact on neighbouring blue and green infrastructure corridors would need taking into account. For example, the loss of some trees (and relocation elsewhere) could impact a neighbouring wildlife corridor, should they be part of the wider corridor (e.g. form part of a wider body of trees). We request that paragraph 62 should be expanded to include reference to wildlife corridors. For example: “Where the AIA has highlighted the need for replacement planting the applicant must take into account the number; sizes and species of the trees lost, and their impact on neighbouring blue and green infrastructure corridors, when suggesting replanting...” This would help make the document more effective in meeting the aims of the National Planning Policy Framework (e.g. paragraph 20 part d).
	Council response
	<ol style="list-style-type: none"> 1. Suggestion noted and changes will be made accordingly. 2. Suggestion noted and changes will be made accordingly.
	Changes to SPD
	<ol style="list-style-type: none"> 1. Amendment to all reference of BS5837 and title of Appendix 2 referring to BS5837:2012. 2. Amendment to paragraph 62: “Where the AIA has highlighted the need for replacement planting the applicant must take into account the number; sizes and species of the trees lost, <u>and their impact on neighbouring blue and green infrastructure corridors, when suggesting replanting.</u>”
Environment Agency	<p style="text-align: center;">Summary of representation</p> <p>We also welcome the development of the Trees SPD.</p> <p><u>Irreplaceable habitats (para.45 and 46)</u></p> <ol style="list-style-type: none"> 1. We would note that until the Environment Act/BNG regulations are published in their final form, but it's possible that other types of woodland habitat with high distinctiveness, along with "Long Established Woodland", could

be included in their definition of "irreplaceable habitats". For consistency, it would be beneficial to use some wording that references these other irreplaceable habitats and affords them similar consideration to ancient woodland and veteran trees.

2. We note that Para 46 refers to "ancient and veteran trees" but not to "ancient woodland" (as in the NPPF) – this feels like an important omission, as individual trees within an ancient woodland are important even if the trees themselves are not veteran. Therefore, reference should be made explicitly to ancient woodland.

Green Infrastructure

3. Separately, we note that the importance of trees as "green infrastructure" wildlife corridors, particularly along rivers and other linear landscape features, has not been highlighted in the document. We note that there are mentions of this benefit of trees in Para 20 ("Integrating Habitats: Biodiversity can be enhanced through facilitating habitats and routes for wildlife") and Para 32 ("Nature conservation and habitat connectivity") but we would consider it would be beneficial to highlight this in a separate paragraph wherever that's appropriate in the document to highlight its importance.
4. In biodiversity terms, tree corridors can be particularly important as commuting habitat for bats – much more so than the sum of the assessed values of each individual tree. Habitat connectivity is recognised as important for biodiversity more widely in the government's 25 Year Environment Plan, which references the Lawton Review (2010) priorities, "More, bigger, better and joined".
5. (Para.48 and 49) We would highlight that it would be beneficial for these surveys to consider that being part of a strategic wildlife corridor for a protected species (e.g. bats) should qualify a tree as being category A for retention, "Trees, groups or woodlands of significant conservation, historical, commemorative or other value", and for other species as category B, "Trees with material conservation or other cultural value", and should be retained wherever possible. We think it would be useful to highlight this factor explicitly in this section so that it's not missed. This priority (to maintain and recreate wildlife corridors/ habitat connectivity) should also be made explicit in the Replacement Trees Planting section (page 17).

Nature Recovery (para.65)

6. We would highlight that a reference within this section to support the aims of the Local Nature Recovery Strategy here would be beneficial.

Council response

The Council appreciates the comments and suggestions, the SPD has been revised accordingly.

Changes to SPD

Paragraphs relates to irreplaceable habitats have been amended.

Included further government guidance and highlight the importance of wildlife corridors in the section of National Planning Policy, Tree Categorisation and Replacement Tree Planting.

Summary of representation

Forestry Commission	<p>The FC supports the development of a Trees SPD in Rotherham and sees this as key to delivering part of the aspirations of the South Yorkshire Woodland Partnership which Rotherham Council are members of.</p> <p>We note the updated the National Planning Policy Framework (NPPF) Paragraph 180c has been mentioned in the SPD, including the strengthening of protections for irreplaceable habitats such as ancient woodland. It would also be worth noting in the SPD the recent government policy “Keepers of Time” that sets out the importance of ancient woodland, ancient and veteran trees, Long Established Woodland, (woodland present since at least 1893), and semi natural woodlands. Keepers of time: ancient and native woodland and trees policy in England</p> <p>The England Trees Action Plan – also sets out importance of ancient and long-established woodlands, and 3.12 commits to introducing ‘Long Established Woodland’ designation England Trees Action Plan 2021 to 2024</p> <p>We think it would have been beneficial to see more direction around the use of management agreements (rather than creating compensatory habitats) to assist bringing ancient woodland into good ecological condition in the SPD. Para 13 should also refer to when FC should be consulted and not just Natural England. Para 46 should also refer to the need to avoid and mitigate any impacts on ancient and veteran trees, and reiterate that any loss/deterioration of ancient or veteran trees should only occur where there are wholly exceptional reasons and a suitable compensation strategy exists.</p> <p>The FC is very supportive of the CAVAT valuation and commuted sums covered in the SPD along with the tree planting, pruning maintenance, Arboricultural Method Statements (AMSs) and Tree Protection plans. My national FC Urban Forestry Advisor colleague also commented that Rotherham Council had evidently put a lot of time into the development of the SPD and is of high quality in comparison to other SPD documents being developed across England.</p> <p style="text-align: center;">Council response</p> <p>Thank you for the support of the Tree SPD. The Council acknowledges the importance of long-established woodland as referred in the recent Government policies and guidance, the SPD has been revised to reflect this.</p> <p style="text-align: center;">Changes to SPD</p> <p>Both government’s policy papers ‘Keepers of Time’ and ‘England Trees Action Plan’ are referenced. The suggested reference in para.13 and 46 have also incorporated in the SPD.</p>
Historic England	<p style="text-align: center;">Summary of representation</p> <p>P.10, para.25, Local Planning Policy</p>

Trees can contribute to the significance of designated heritage assets either directly, such as trees within a Conservation Area or Registered Park and Garden, or indirectly, as an element of their setting. The loss of existing trees, or the planting of trees as part of the landscape proposals for new development, can have a positive or negative effect on the significance of designated heritage assets, or may affect the ability to appreciate that significance.

1. We would therefore request that the following Local Plan policies are added to the list under paragraph 25:
 - SP 40 Listed Buildings
 - SP 42 Archaeology and Scheduled Ancient Monuments
 - SP 44 Historic Parks, Gardens and Landscapes

P.25, para.98-111, Part 4: TPO

2. We welcome the inclusion of this section dealing with works to trees protected by a TPO or within a Conservation Area. However, the title of this part of the SPD could make it clearer what is covered, especially to those scanning the content page. As such, we request that the title of Part 4 is changed to: 'Tree Preservation Orders and Conservation Areas'.

P.11 and 19, Part 1: Existing Trees – Design Stage and Part 2: New Tree Planting

As highlighted above, trees can make a direct or indirect contribution to the significance of designated heritage assets. Development proposals affecting a heritage asset(s), where works to existing trees and/or new tree planting is proposed, should assess (as part of the Design and Access Statement and/or Heritage Statement as appropriate) the impact of the proposals on the significance of the heritage asset(s).

The contribution that trees can make to the significance of heritage assets, and the need to assess the affect that proposed works to existing trees/new planting as part of new development can have on heritage assets, should be reflected in the SPD.

Council response

Thank you for the supportive comments and suggestions.

Changes to SPD

The suggested amendments have been incorporated in the SPD.

Summary of representation

Whilst the are aware the ETAP is the beginning of many plans for trees, from the NFU's perspective ETAP had: little reference to farming, despite the fact farmers are crucial to delivering the targets. Makes little provision for

National Farmers' Union	<p>agricultural tenants to play a fuller role in tree or woodland planting. Not referenced permanency element of tree planting. Committed to ELMs funding for woodland creation and management, which the NFU believes would benefit from a separate scheme to ELMs due to woodland complexity. We therefore hope the council will consider the above and our suggestions:</p> <ul style="list-style-type: none"> • The need to consider factors such as the tree species, appropriate sourcing to match the location and the long-term objectives- the “right tree in the right place.” • Support to incentives to bring existing woodlands back into management (including new infrastructure on site) and this should be a priority over new plantings. • Assurance that land managers that decide to plant trees must have made that decision voluntarily. • Consider the existing policy barriers, crucially the existing tenancy clauses which prevent 30% of our agricultural land from engaging in tree planting. • Consider the permanency element of planting trees which is currently a barrier. Where tree planting is permanent land use change, and the impact on food production. • Would like to see increased recognition for trees outside of woodlands. These contribute enormously to our natural environment and landscape features. They act as important carbon sinks. <p style="text-align: center;">Council response</p> <p>Thank you for the comment and the Council acknowledges the raised issues. The Council recognises the importance of woodland management and constraints of trees planting on agricultural land. However, these matters fall outside the purpose of the SPD to include great details.</p> <p style="text-align: center;">Changes to SPD</p> <p>A new subsection on management plan is included in Part 3.</p>
Sheffield and Rotherham Wildlife Trust	<p style="text-align: center;">Summary of representation</p> <p>We are supportive of RMBC emphasising the value of trees and writing policies to back this up. We just have a few questions/points to make below that require some clarity. We read the Developer Contribution draft SPD first and it does not make sense without reading the Trees SPD too – as with the draft BNG and Developer Contribution docs though there is a lot of overlap between the documents. It is not easier to have all the information relating to trees (including the developer contributions) in one SPD? Rather than having the figures in both but the explanation of where they have come from only in one?</p> <p>Points on paragraph numbers</p> <ol style="list-style-type: none"> 1. 18 – could just signpost to the BNG SPD 2. 32/33 – repeat of last point of 32 and point 33 3. 57-58 – Is this for Category C trees only as it suggests in para 49 or could it also be used for cat A/B trees that cannot be retained? Clarity required. 4. Costs £396 – plant and maintain cost – maintain for how long? Seems low for the lifetime of a tree 5. 73 – Can RMBC suggest suitable tree species to add to this paragraph?

	<p>6. 77-99 – Commuted sum is this £78/year? How does this relate to the £396? Not all trees will require a crown lift and prune annually? What about cost of inspection? What about trees on private land? Any protection from owners felling them?</p>
	<p>Council response</p>
	<p>Thank you for the support of the SPD as a guidance on trees in development.</p>
	<p>While there are some cross references between documents, the Council intends to provide specific guidance on trees in development while the Developer Contribution SPD provides an overview of financial contributions via S106 planning obligations to mitigate impacts arising from the development.</p>
	<p>The illustrative examples of costs have been provided within the SPD, these figures would be indexed link that would be updated annually and published on the Council's website.</p>
	<p>The Council considers the decision on suitable tree species in development should be determined on case-by-case basis when pre-application advice is sought or when a planning application is submitted. However, the Council's Landscape Design Guide Appendix A is an approved species list of trees and soft landscaping.</p>
	<p>Changes to SPD</p>
	<ul style="list-style-type: none"> • Deleted para.33 due to repetition. • Clarified the RTRS apply to all affected trees. • Reference to the Landscape Design Guide in the SPD
<p>North Yorkshire County Council</p>	<p>Summary of representation</p>
	<p>Having reviewed this material, North Yorkshire County Council does not have any comments to make on these SPDs.</p>
	<p>Council response</p>
	<p>Noted</p>
	<p>Changes to SPD</p>
	<p>None</p>
<p>Severn Trent</p>	<p>Summary of representation</p>
	<p>Thank you for giving Severn Trent an opportunity to comment on you Supplementary Planning Documents, We do not have specific comments to make regarding the SPD's under consultation.</p>
	<p>Council response</p>
	<p>Noted</p>
	<p>Changes to SPD</p>

	None
Coal Authority	Summary of representation
	The Coal Authority have no specific comments to make on this consultation document.
	Council response
	Noted
	Changes to SPD
None	
Other changes to the SPD by the Council	
N/A	

Table 4: Preparing a Soils Strategy SPD

Consultee	Summary of representation
Environment Agency	<p>We welcome the development of a Soils Strategy SPD and consider the following paragraphs to be very important and they should remain.</p> <p>26 - Site restoration requires an understanding of the soil and ecological conditions in nearby surrounding landscapes to guide the correct course of action.</p> <p>27 - It is important to understand the existing soil conditions and the kinds of vegetation and habitats the existing soils can sustain. Restoration projects should use the existing properties and distribution of soils to guide opportunities for habitat restoration.</p> <p>28 - Examples of good practice include choosing appropriate native plant species to encourage and enhance biodiversity and developing links between habitats in the landscape through the creation of Green Infrastructure corridors or “stepping stones”.</p> <p>We also welcome the sections on soil protection and storage, and the requirement for Soil Resource Plans to help prevent loss of soil function and biodiversity.</p> <p>Our main comment with regards to this SPD is if there should be specific mention of ensuring that imported soils are free of seeds and other plant reproductive materials, so that these species aren’t introduced to development sites. We consider that given there are known such problems throughout South Yorkshire with invasive species that this would be a sensible approach and reference to make within the SPD.</p>
	Council response

	<p>Comments of support are noted. The Council appreciates the comment regarding the condition of imported soil and the SPD would be revised accordingly.</p> <p style="text-align: center;">Changes to SPD</p> <p>Amended Policy Guidance 6 with appropriate wordings to reflect the comment.</p>
National Farmers Union	Summary of representation
	<p>Considering BMV, it would be useful to make is clear that this is Grade 1 to 3a and that sites impacting greater than 20ha must consult Natural England https://www.gov.uk/government/publications/agricultural-land-assess-proposals-for-development/guide-to-assessing-development-proposals-on-agricultural-land</p>
	Council response
	<p>Comment noted and the SPD would be revised accordingly.</p>
	Changes to SPD
	<p>- Included additional reference of 'A Green Future: Our 25 Year Plan to improve the Environment' in the National Policy section.</p> <p>- Included additional guidance on consultation in Soil & Development section.</p>
Sheffield and Rotherham Wildlife Trust	Summary of representation
	<p>We are supportive of the recognition of the importance of soils and this SPD.</p> <ol style="list-style-type: none"> 1. Policy Guidance note 5: Suggest the following addition. "If areas of wildflower are proposed, low nutrient soils are more appropriate than compost/fertiliser. An suitably qualified and/or experienced Ecologist or Landscaper should be consulted to ensure the soil conditions are optimal for any sowing or planting planned." 2. Reference could be made to this strategy https://www.gov.uk/government/publications/safeguarding-our-soils-a-strategy-for-england
	Council response
	<p>Comment noted and the SPD would be revised accordingly.</p>
	Changes to SPD
	<p>- Included guidance on wildflower planting in Policy Guidance Note 5</p> <p>- Included additional guidance in the National Policy section</p>
County Planning Ltd.	Summary of representation
	<p>We act on behalf of a number of developers and interested parties in the borough, and respond on their joint behalf.</p> <p>Background</p> <p>The role of Supplementary Planning Documents is defined in the Annex to the National Planning Policy Framework which states: "Supplementary planning documents: [Are] Documents which add further detail to the policies in the</p>

development plan. They can be used to provide further guidance for development on specific sites, or on particular issues, such as design. Supplementary planning documents are capable of being a material consideration in planning decisions but are not part of the development plan.”

It is important to recognise that to be adopted, the SPD must limit itself to matters only of explanation and interpretation of local plan policies. It cannot impose new or stricter requirements than parent policies in the development plan already stipulate. Requiring details, actions or investigations that are not already allowed for in the local plan would lead to conflict with Part 4, Regulation 8 of the Town and Country Planning (Local Planning) (England) Regulations 2012.

Comments on the Draft Soil Strategy SPD

In principle, we have no objection to the adoption of a guidance document. However, in consultation with a soils scientist acting on behalf of our clients, we suggest that in order to be compliant with national and local policy, the following amendments should be made to the draft:

General – the SPD needs to appropriately consider the safe sustainable re-use of man-made ground on or within site of origin. For example, where the arisings of excavations are proposed for re-use on site. In particular, the SPD needs to refer to and explain the significance of the CL:AIRE Definition of Waste CoP (DoWCoP), U1 waste exemptions, etc, that permit sustainable, proper and safe re-use of surplus natural soils off-site.

Para 13 – There are a range of Phytotoxic heavy metals such as copper, nickel & zinc that occur in natural soils and can affect plant growth. It should be acknowledged that the baseline for assessment and mitigation is not necessarily “zero trace” but rather restoration to a condition which is representative of the soil conditions naturally occurring in that locality / wider surrounds.

Para 18 - BS3882 provides a specification for topsoil placed in developments. Whilst the planning system should not duplicate other controls, it could be appropriate to mention this standard within the SPD in order to guide and assist developers on the expectations.

Para 32 - Geo-Environmental and Geo-technical Engineers are rarely qualified as Soil Scientists. As such, the inclusion of a requirement for a SRS and SRP should not be within the remit of geo-env' and geo-tech' reports. It must not be added within the standard contaminated land remediation conditions.

Policy Guidance Note 2 – in most cases, topsoil is usually stripped and stockpiled for future use. And so, this comment appears to relate to subsoils. Unlike top soils, subsoils do not normally detrimentally compact. Also, where a site is known or suspected to contain contamination then a remediation strategy will already discuss and propose measures for storage and avoiding cross-contamination and so duplication is not necessary or reasonable. It could also cause errors or conflicts. Therefore, adding a barrier or protection to such soils is not

required as part of the soils management plan unless it is specified in the remediation strategy; unnecessary protection would increase costs of development and could impact deliverability.

Policy Guidance Note 4 – In relation to engineered fill. This would usually be compacted to 95% air voids in order to safely support building foundations. It is not feasible to swap and change the degree of compaction between areas under houses and areas under adjacent gardens and landscaping (where less compaction might be desirable to aid plant growth). As such, this criterion should be reviewed to make it clear where lesser compaction is required in landscaped and external areas not immediately adjacent to new buildings.

Policy Guidance Note 6 – The criteria already set out in the DoWCoP should be mentioned instead here. These SPD requirements unnecessarily duplicate the requirements that already exist within DoWCoP relating to the re-use of natural topsoil and subsoil. BS8601 (Subsoil) should also be mentioned as this is relevant too. Additionally, it needs to be made clear that guidance Note 6 cannot and must not seek to duplicate existing and proposed requirements identified in remediation strategies / investigation reports. National policy and guidance is clear in the need for decision makers and guidance documents to avoid duplication of non-planning legislation and environmental controls.

Soil Placement, Page 18 - It must be made clearer that this requirement relates only to new / imported soils to be placed on development sites. Imposing these requirements on sites where soil re-use is proposed (and hence where reliance on DoWCoP is occurring), it is inappropriate and disproportionate to require testing, certification or adaptation of non-imported/on-site soils.

Actions required

Noting the above, we submit that amendments to the SPD are required so as to ensure that it complies with the relevant guidance and legislation. These are:

1. The requirements in para 32 of the SPD must be reviewed and amended to remove referenced to soil scientists. Development Management practitioners must be given training to ensure the judicious use of conditions relating to soil management plans and how these differ from contaminated land remediation strategies.
2. Policy Guidance Note 2, bullet point 1 must be amended to read “Soil protection up to the point of completion of built development and where appropriate, implementation of landscaping should comprise a physical barrier and/or ground protection to prevent compaction and contamination.”
3. Policy Guidance Note 4 should be amended, as per the above comments.
4. Policy Guidance Note 6 should be amended, as per the above comments.
5. Soil Placement, Page 18 must be amended, as per the above comments.

Council response

	<p>Thank you for the comprehensive comments which predominantly relate to development of sites and dealing with issues of contamination.</p> <p>The scope of DoWCoP has implications for the redevelopment of land containing historical landfills. The views of specialist officers within the Council have been sought with respect to your submitted comments, and we are mindful of all the concerns raised by you.</p> <p>Throughout the SPD reference is made to Soil Scientist or other suitably qualified professional; it is not unreasonable, for the council to expect a suitably qualified person to prepare the necessary and appropriate information to support the submission of a planning application.</p> <p>In the preparation of planning conditions, the Local Planning Authority is mindful of best practice, the use of appropriate model planning conditions and seeks support from specialists in other teams of the Council, including Landscape Team and Environmental Health in the drafting of planning conditions to support grant of any planning permission.</p> <p>Policy Guidance Note 2 has been amended.</p> <p>The Council considers that a number of the comments raised, fall outside the purpose of this SPD which is specifically concerned with protecting the ecological quality of the soils and subsoil for the wider benefit of biodiversity. Comments received from the Environment Agency have been particularly supportive of the preparation of this SPD.</p>
	Changes to SPD
	Included reference of British Standard on topsoil and subsoil.
The Coal Authority	Summary of representation
	The Coal Authority have no specific comments to make on this consultation document.
	Council response
	Noted
	Changes to SPD
	None
North Yorkshire	Summary of representation
	Having reviewed this material, North Yorkshire County Council does not have any comments to make on these SPDs.

County Council	Council response
	Noted
	Changes to SPD
	None
Severn Trent	Summary of representation
	Thank you for giving Severn Trent an opportunity to comment on you Supplementary Planning Documents, We do not have specific comments to make regarding the SPD's under consultation.
	Council response
	Noted
	Changes to SPD
	None
Canal & River Trust	Summary of representation
	The Trust does not wish to make comments on the SPD.
	Council response
	Noted
	Changes to SPD
Other changes to the SPD by the Council	
None	

Table 5: Development in the Green Belt SPD (revised)

Consultee	Summary of representation
Historic England	<ol style="list-style-type: none"> <u>P.9, para.33 bullet point 6, Replacement Buildings</u> Core Strategy Policy SP 6 Replacement Buildings in the Green Belt states that: “replacement buildings will not be permitted where they would result in the loss of a building which makes a positive contribution to the surrounding landscape character or the building is of local architectural or historic interest”. The final bullet point under paragraph 33 deviates somewhat from this policy position. We would request that this bullet point is amended to more closely reflect the policy wording in order to ensure that the guidance is not misleading and avoids potential conflicts with Policy SP 6. <u>P.13, para.41, Converting Existing Buildings</u> We welcome the references made in this section of the draft SPD to ensuring that conversions will only be appropriate where alterations are minimised, and the design is sympathetic to the character of the building and

	<p>the surrounding landscape. We would however suggest the following change to the final sentence of paragraph 41 is made to reflect that this section is about the conversion of buildings and not their replacement: “...unless it is desirable to retain the building in its current form because of the historic value or visual amenity that it provides.”</p> <p style="text-align: center;">Council response</p> <p>The Council acknowledge Historic England’s comment and consider the suggested amendment would clarify the guidance.</p> <p style="text-align: center;">Changes to SPD</p> <p>Para.33 – deleted ‘unless keeping the building as it is has proved not to be possible.’ Para.41 – insert ‘in its current form’ in the last sentence.</p>
National Farmers’ Union	<p style="text-align: center;">Summary of representation</p> <p>We note the proposals for agricultural business, but would welcome further support to meet the ongoing climate emergency. As such, many agricultural businesses are keen to adopt some form of renewable technology, and these should be encouraged as part of diversification.</p> <p style="text-align: center;">Council response</p> <p>Policy SP7 ‘New Agricultural or Forestry Buildings or Structures in the Green Belt’ and Policy CS30 ‘Low Carbon & Renewable Energy Generation’ would be relevant should agricultural business wishes to adopt renewable technology as part of their business. However, this would be assessed on case-by-case basis and the Council does not have further guidance at this stage.</p> <p style="text-align: center;">Changes to SPD</p> <p>None</p>
Kiveton Park Steel Ltd	<p style="text-align: center;">Summary of representation</p> <ol style="list-style-type: none"> 1. I agree with para 38 " ... the partial or complete redevelopment of previously developed sites (brownfield land) is not considered to be inappropriate development". However, this is a lukewarm endorsement of a sensible policy (double negatives!) and is restricted to a small number of named villages. It should apply to all villages / settlements throughout the area and be re-worded: " the partial or complete redevelopment of previously developed sites (brownfield land) is considered to be appropriate development" 2. This para 38 directly contradicts Para 34 "If the building that is to be replaced by the proposed development has already been demolished or has not been used for a long period (and is considered to be abandoned) its use will have ceased and a planning application will be necessary. It is unlikely under such circumstances that planning permission would be granted".

	<p>Para 34 should be re-worded as "If the building that is to be replaced by the proposed development has already been demolished or has not been used for a long period (and is considered to be abandoned) its use will have ceased, and a planning application will be necessary. It is likely under such circumstances that planning permission would be granted for a development not exceeding the size and elevations of the previously developed land".</p> <p>3. Para 35 is needlessly restrictive " ... replacement of a building does not allow for a change of use and the new building should be used for the same purpose as the original building. Where a change is proposed this would result in inappropriate development and "very special circumstances" would need to be demonstrated". Para 35 should be reworded: " ... replacement of a building may involve a change of use. Where a change is proposed this should be justified and an explanation given as to why the new use is more appropriate than a continuation of the former use and better enhances the Green Belt."</p>
	<p>Council response</p>
	<p>1. The Council currently is not in position to review Policy SP8 which set out a list of villages for its application and para.38 of the SPD is in line with the adopted policy.</p> <p>2. Para.34 relates to replacement building while para.38 relates to infill dwellings, as which the Council does not consider they are contradicted.</p> <p>3. Para.35 is in line with the NPPF (para.149 d: the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces).</p>
	<p>Changes to SPD</p>
	<p>None</p>
<p>Fitzwilliam Wentworth Estate</p>	<p style="text-align: center;">Summary of representation</p> <p>Introduction</p> <p>These representations are made on behalf of The Fitzwilliam (Wentworth) Estate. FWE have a significant land holding interest within the Borough of Rotherham and have been actively participating at all stages in the Local Plan process both in terms of the adoption of the Core Strategy as well as the Sites and Policies Document. FWE have a broad range of sites and interests that we consider are both available and suitable for development to help contribute towards delivering the vision, objectives and spatial growth of the Borough and it is this context we submit representation to the draft SPD regarding Green Belt.</p> <p>Background and Case Law</p>

The draft SPD seeks to refine elements of the wording of the guidance specifically in respect of extension to existing building and replacement of buildings. There is no specific justification given by the Council toward these proposed changes.

However, we note there has been recent case law around these two aspects of Green Belt
- Warwick District Council v Secretary of State (Eyre J, 12 August 2022):

As you will be aware, you don't have to demonstrate "very special circumstances" where specific exceptions in paragraph 149 of the NPPF apply. Two of the relevant exceptions are as follows:

"c) the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;

d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;"

Within the Warwick case the relevant extracts are follows:

"The Second Defendant's property is in Vicarage Road in Stoneleigh. The village of Stoneleigh is "washed over" by the West Midlands Green Belt. The Second Defendant's property consists of a Grade II timber-framed cottage ("the Cottage"), a garden, a garage, and a currently disused timber structure.

That structure has a footprint of 10.2m² and appears to have been originally used as the garage for the property but that use has been superseded by a more recently-built garage.

This timber structure is in the garden of the Cottage but is approximately 20m from the Cottage itself. The Second Defendants sought permission to demolish the timber structure and to replace it with a garden room/home office with a footprint of 16m²."

Warwick District Council had refused the application, taking the position that paragraph 149 (c) did not apply. On appeal, the inspector disagreed:

"9. Framework paragraph 149 (c) permits the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building. The existing building was the original garage to the house and as such could reasonably be considered to have been a normal domestic adjunct to it. Likewise, the proposed outbuilding would be used for purposes clearly related to the occupation of the dwelling. It would be in the same location on the site, relatively close to the dwelling and within a group of buildings closely

associated with it. Therefore, I am satisfied that the proposed outbuilding can be considered as an extension to the dwelling.

10. The evidence before me is that there have been various extensions to the original building and a detached garage. Planning permission has recently been granted to replace the rear single storey extension with something similar in scale and the garage is relatively small in relation to the dwelling. The proposed outbuilding would be located behind this building and would be much smaller in scale compared with the host dwelling. Given the modest scale of these existing additions and the limited additional footprint from the proposed outbuilding, I find that the proposal, in combination with previous additions, would not result in disproportionate additions to the host dwelling.”

The inspector allowed the appeal and the Council challenged the decision. Eyre J concluded as follows, after analysis as to the normal meaning of the word “extension” and then the policy context within which it is used in paragraph 149 (c) (the Council = Claimant, the Secretary of State = First Defendant):

“Looking at the matter in the round no one of the points advanced is conclusive by itself but I am persuaded by the combined weight of the points advanced by the First Defendant. It is right to note that if the language of [149(c)] were to be considered in isolation from its context then the Claimant’s interpretation of the words used would be the more natural reading of those words. It is not, however, the only legitimate reading of the words and the First Defendant’s interpretation that an extension of a building can include a physically detached structure is also a tenable reading of the words used. The First Defendant’s interpretation is, in my judgement, the reading which accords considerably more readily with the content and purpose of the relevant part of the NPPF. While the Claimant’s interpretation has the potential to lead to artificial distinctions which would do nothing to further the purposes of the Green Belt whereas that advanced by the First Defendant would remove the risk of that artificiality without jeopardising those purposes. Accordingly, I am satisfied that [149(c)] is not to be interpreted as being confined to physically attached structures but that an extension for the purposes of that provision can include structures which are physically detached from the building of which they are an extension.

If, as I have found, an extension can be detached from the building of which it is an extension the Inspector did not err in law in granting planning permission and this claim fails.”

Green Belt Guidance 2 - Extensions of Buildings

The amendments to the text to clarify that the guidance at paragraph 18 relates more broadly to all buildings rather than residential is welcomed.

The revised text now assumes there can be primary and secondary buildings on the site. However, in some cases there may be two or more main activities operating within the planning unit on the site such as a farmhouse (domestic) and the farm buildings (agricultural) relating to a farmstead. It should therefore be acknowledged in these cases that each building has the potential to be a 'main' building which could be extended individually from its original volume size having its own 33% extension 'limit'.

Reference to the secondary building having to be within 5 metres of the main building is too arbitrary and it is much more restrictive when considered in the context of the recent Warwick case law where the timber garage structure was over 20m from the main house. We would recommend that provided the structure/secondary building is within the main curtilage then any secondary building can count towards the volume of the original building.

For consistency of the proposed revised terminology, the Council may wish to consider reviewing paragraph 20 in terms of reference to 'outbuilding' rather than the amended 'secondary' buildings found in paragraph 18.

Green Belt Guidance 3- Replacement Buildings

Within the context of the proposed amendments found with paragraph 30 we make similar comments to those in relation to Guidance No 2 regarding the extensions to buildings namely:

- There may be two or more main activities operating within the planning unit on the site such as a farmhouse and the farm buildings relating to a farmstead. It should therefore be acknowledged in these cases that each building has the potential to be a 'main' building with its own volume.
- Any secondary building having to be within 5 metres of the main building is too arbitrary and it more restricted when considered in the context of the recent Warwick case law.

Leading on from the conclusions of the Warwick case, the revised text does acknowledge that replacement of outbuildings can rely on paragraph 149(c) of the NPPF and guidance No 2 of the SPD which would allow in theory a development greater than 10% as the provision can include structures which are physically detached from the building of which they are an extension.

The draft SPD should be amended to accommodate this recent legal interpretation of paragraph 149 of the NPPF.

Economic diversification in rural areas

Paragraph 83 of the draft SPD differentiates between promoting the diversification of farming businesses on the one hand but resisting economic diversification in rural areas on the other.

We object to this approach as it is contrary to the spirit of NPPF which is seeking to support a prosperous rural economy in general. Paragraph 84 of the NPPF confirms that planning policies should enable:

- the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed new buildings;
- the development and diversification of agricultural and other land-based rural businesses; and
- sustainable rural tourism and leisure developments which respect the character of the countryside;

Paragraph 85 of the NPPF goes on to confirm that planning policies should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport.

The positive policy framework at national level in support of achieving a prosperous rural economy should also been seen in the context of the significant uncertainty and financial pressures current affecting the local and national economy. We therefore consider that developments relating to improving economic diversification in a rural area should be give the same level of policy support within the draft SPD as those measures that support diversifying farming businesses.

Council response

Council considers the guidance given in the SPD is not overly restrictive and reasonable, however, the Council acknowledges that the importance of the Warwick High Court decision and has included additional guidance in the document.

Should there be multi-activities within the site, consideration will be given on the nature of the proposed development whether it falls on particular use and assess appropriately.

Green Belt Guidance 2: para.20 relates to an outbuilding 'that was built after the original dwelling'. This is not constituting a secondary building 'where built at the same time as the original building'.

Para.83 of the SPD sets out the local context of Rotherham where no part of the Green Belt is far away from a built-up area and with the purpose of the planning system is to contribute to the achievement of sustainable development,

	the Council considers non-agricultural business should initially consider urban area unless justification is demonstrated.
	Changes to SPD
	Include additional guidance for the purpose of calculating volume of the buildings in response to the Warwick High Court decision.
The Coal Authority	Summary of representation
	The Coal Authority have no specific comments to make on this consultation document.
	Council response
	Noted
	Changes to SPD
Canal & River Trust	None
	Summary of representation
	The Trust does not wish to make comments on the SPD.
	Council response
	Noted
North Yorkshire County Council	Changes to SPD
	None
	Summary of representation
	Having reviewed this material, North Yorkshire County Council does not have any comments to make on these SPDs.
	Council response
Severn Trent	Noted
	Changes to SPD
	None
	Summary of representation
	Thank you for giving Severn Trent an opportunity to comment on you Supplementary Planning Documents, We do not have specific comments to make regarding the SPD's under consultation.
	Council response
	Noted
	Changes to SPD
	None
	Summary of representation

	<p>Please see our emails sent under subject 'Rotherham Local Plan (Sites and Policies 2018) Five Year Review' attached.</p> <p>The Draft Development in the Green Belt SPD cannot be complete as changes are desperately required to 'Green Belt Guidance 4' 'Infill Dwellings in Green Belt villages'.</p> <p>However, the issue here is that this guidance in the SPD is required to relate directly to its 'key policy reference', the Sites and Policies 2018 'Policy SP 8 Infilling Development within the Green Belt. And it is this Policy that requires updating, as it becomes 5 years old in just 9 months' time.</p> <p>The Development in the Green Belt SPD should be kept as a Draft until a consultation is held to deliver an update to the Sites and Policies 2018 'Policy SP 8 Infilling Development within the Green Belt. Only then can the SPD be accurately updated, without this there is no scope to correctly bring the SPD up to date.</p> <p>We strongly believe that 'Policy SP 8 Infilling Development within the Green Belt' requires updating to conform with National Planning Guidance. We would like the opportunity to have representations made to discuss the matter and have it considered by the local authority. We have amassed a lot of case law particularly on infill development within the green belt which has assisted other local authorities in keeping up with their housing targets and we believe Rotherham would benefit also.</p> <p>Although the guidance on greenbelt infill development from the NPPF has not changed, we believe Rotherham's Policy SP 8 is overly restrictive and this is apparent from the fact there have been no successful planning applications for infill development sites in Rotherham's green belt villages in the past 5 years. This in itself should justify the need to review the policy, as the policy becomes purposeless if it is unable to be successfully applied by any applicant.</p>
	Council response
	<p>Comment is not relating to the proposed changes to the SPD.</p> <p>The Council currently has no confirmed timeframe to review the policies in the adopted Sites and Polices Documents.</p>
	Changes to SPD
	None
	Summary of representation
	<p>There is no justification for building on Green Belt land and a much tougher stance should be done to deter this – especially when there is an abundance of Brownfield land available throughout the borough.</p>

	<p>When considering any development on greenbelt land, thought must be given to the views of local residents, especially when it comes to issues such as local amenities (school places, GP surgery availability, etc). Impact upon the road infrastructure - not just the immediate roads covered in the planning application as well as looking holistically at the cumulative impact of these developments.</p> <p>For example, the removal of green belt status on Brecks Lane, Sheep Cote Road and Lathe Road, all in isolation, according to RMBC's traffic officers will have a limited impact when looked at on their own merits. Yet these new homes will all rely upon the same roads, all rely upon the same GP surgeries and send their children to schools which just don't have the capacity.</p> <p>Can we have a bit of common sense applied when removing land from the green belt please?</p>
	<p>Council response</p>
	<p>Comment is not relating to the proposed changes to the SPD. The Council current has no timeframe to review Green Belt allocation within the Plan.</p>
	<p>Changes to SPD</p>
	<p>None</p>
	<p>Summary of representation</p>
	<p>I have just received your mail regarding updated green belt ruling but obviously this is a complex document to follow. I can see the land in our road comes under comments SP8 and refers to gaps on the frontage of the plots. No idea what that means regarding this land. It is not near the main road being Moor Lane North and is set back in a plot behind the existing houses on our road.</p> <p>I can see it quotes not spoiling the effect of the countryside. I think there are plans for about ten houses now that the old allotment is happily back in use. We just hope now three storey houses will not be allowed. They would completely spoil the view of the woods we have from our bedroom windows.</p> <p>We are already suffering of over building in Ravenfield with the huge Redrow project underway. Sad to see the hedgerows they removed.</p> <p>Do not know how our village will cope with the excess traffic. We have a small school where the parking is chaotic. We have one small shop. It's just crazy.</p>
	<p>Council response</p>
	<p>Comment is not relating to the proposed changes to the SPD.</p>
	<p>Changes to SPD</p>
	<p>None</p>
<p>Other changes to the SPD by the Council</p>	
<p>Amended reference of the NPPF paragraph numbers to reflect the 2021 published version.</p>	

Table 6: Non-specific Comment

Consultee	Summary of representation
	Are there any planning updates to the land adjacent to Lodge Lane in Aston?
	Council response
	Responded via email separately.
	Changes to SPD
	None
	Issue with accessing the consultation documents.
	Council response
	Resolved via email during the consultation period.
	Changes to SPD
	None