

CABINET

**Tuesday, 6 September 2016 at 5.30 p.m.
C1, 1st Floor, Town Hall, Mulberry Place, 5 Clove Crescent, London,
E14 2BG**

SUPPLEMENTAL AGENDA

The meeting is open to the public to attend.

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see the main agenda.

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5 .11 Adoption of Revised Regulation 123 List and Planning Obligations Supplementary Planning Document (SPD)	366 - 477	All Wards

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Agenda Item 5.11

Cabinet Decision	 TOWER HAMLETS
6th September 2016	
Report of: Director of Development and Renewal	Classification: Unrestricted

Adoption of Revised Regulation 123 List and Planning Obligations Supplementary Planning Document (SPD)

Lead Member	Councillor Rachel Blake, Cabinet Member for Strategic Development
Originating Officer(s)	Owen Whalley
Wards affected	All
Key Decision?	Yes
Community Plan Theme	A great place to live

REASONS FOR URGENCY

Due to a failure of the Committee administrative software, the report was published five days in advance of the meeting but not five clear days. Therefore, as pursuant to Rule 6.1 of the Access to Information Procedure Rules before the item can be considered, the Mayor needs to be satisfied that by reasons of special circumstances the item should be considered as a matter of urgency.

The Mayor believes that it is necessary for this particular report to be considered on 6th September as any delay would have detrimental consequence's on the Council's capacity to secure S106 obligations which mitigate the impact of a particular development. The special circumstances being in this instance that failure to proceed after 6th September without a revised Regulation 123 List and Planning Obligations SPD will mean that the Council not having an up to date foundation upon which to continue to apply S106 obligations within the limitations set out in the CIL Regulations.

1. EXECUTIVE SUMMARY

- 1.1 The Infrastructure Planning Team is seeking approval from Cabinet on 6th September 2016 on the revisions made to the Community Infrastructure Levy (CIL) Regulation 123 List and Planning Obligations SPD.
- 1.2 The Planning Obligations SPD (2016) is intended to replace the current Planning Obligation SPD (2012). The revised CIL Regulation 123 List will replace the current list (April 2015).
- 1.3 The revised Planning Obligations SPD sets out the Council's approach in securing Planning Contributions, outlining the restrictions of CIL Regulations

123 and 122 in order to understand the relationship and differences between CIL and Planning Obligations (also known as S106 obligations).

2. RECOMMENDATIONS

2.1 The Mayor in Cabinet is recommended to:-

1. Approve the adoption of the revised Regulation 123 List and Planning Obligations SPD (as set out in Appendix A and B).
2. Formally withdraw the previous Regulation 123 List adopted by the Council on 25th February 2015.
3. Formally revoke the Planning Obligations SPD adopted by the Council on 11th January 2012.

3. REASONS FOR THE DECISIONS

3.1 The proposed documents set out the Council's approach to securing and spending CIL and S106 resources and the relationship between both types of funding. The Planning Obligations SPD explains the Council's approach to infrastructure provision in general and explains which mechanisms will be used to mitigate the impact of development and to secure specific types of infrastructure.

4. ALTERNATIVE OPTIONS

Do Nothing and Retain Current Planning Obligations SPD

- 4.1 Failure to proceed with a revised Regulation 123 List and Planning Obligations SPD could mean that the Council does not have a sufficiently up to date foundation upon which to continue to apply S106 obligations within the limitations set out in the CIL Regulations.
- 4.2 Without a revised Regulation 123 list and Planning Obligations SPD the Council would continue operating under those already in place, however there would be a potential lack of clarity between the use of CIL and S106 obligations. The revised documents are considered to provide more certainty to the development industry which also benefits the Council in negotiations.
- 4.3 The Council's capacity to secure S106 obligations which mitigate the impact of a particular development, and defend planning appeals where this is an issue, would be more limited and negotiations would be more protracted.

5. BACKGROUND

5.1 Following Tower Hamlets' CIL Charging Schedule adoption on 1st April 2015, the use of S106 Obligations has been significantly scaled back and

CIL has become the principal mechanism for securing contributions from development towards much needed community infrastructure. The following paragraphs explain in detail the relationship between CIL and S106. Summarily, CIL is now the system for collecting contributions towards social, green and physical infrastructure needed to support development. The S106 system still exists, but its remit is severely restricted to a number of matters not considered as infrastructure.

- 5.2 Regulation 123(2) of the CIL Regulations provides, insofar as is relevant that:

"A planning obligation may not constitute a reason for granting planning permission for the development to the extent that the obligation provides for the funding of relevant infrastructure."

- 5.3 "Relevant infrastructure" refers to the infrastructure included on the charging authority's Regulation 123 List of infrastructure types or projects that it intends will be, or may be, wholly or partly funded by CIL. In practical terms, this means that those types of infrastructure included in the revised Regulation 123 List, cannot be the subject of a financial contribution through a S106 agreement. The purpose of this provision is to prevent 'double dipping', whereby developers are required to pay twice for the same item of infrastructure both through CIL and S106 obligations.
- 5.4 The Council is still able to negotiate S106 obligations, but only where the contribution is towards matters not included on the Regulation 123 List. This includes affordable housing and could also include other matters such as carbon offset measures and employment & training. S106 obligations can also still be used where infrastructure will serve only the development in question and is not therefore considered to be contributing to infrastructure improvements across the wider Borough.
- 5.5 Additionally, for a S106 obligation to be acceptable, it must accord with Government policy on the application and use of S106 obligations contained within the CIL Regulations 2010 (as amended) and the National Planning Policy Framework (NPPF). It is unlawful for S106 obligations to be taken into account when determining a planning application for a development, or any part of a development if the S106 obligation does not meet all of the following tests:
- (a) necessary to make the development acceptable in planning terms;
 - (b) directly related to the development; and
 - (c) fairly and reasonably related in scale and kind to the development.

6. PROPOSAL

The Mechanism for Securing and Use of CIL and S106 Obligations

- 6.1 The revised Planning Obligations SPD first went to Cabinet on the 10th April 2013 for approval to go out to public consultation alongside the CIL Revised Draft Charging Schedule, in October 2013.
- 6.2 Further amendments were made to the Planning Obligations SPD to ensure that developers, other stakeholders and local residents had a clear understanding of what contributions and obligations can be secured through CIL and S106. When adopting the CIL Charging Schedule it was recognised that further amendments to the Planning Obligations SPD were required. Therefore the SPD went to Cabinet again on 5th April 2015 for approval to go out to public consultation regarding amendments made.
- 6.3 Following consultation in April and May 2015 on the revised Planning Obligations SPD, the Council sought outside counsel advice on its Regulation 123 List and SPD. CIL is still a relatively new system and the intricate workings as set out in the relevant regulations have been amended many times by central Government. Therefore it was necessary to seek counsel advice to clarify the most appropriate way to implement the council's position. As a result of the advice received, small amendments have been made to the SPD to further clarify what infrastructure will be secured under CIL and that which will be secured under S106. The advice also required a number of small amendments to be made to the Regulation 123 List to ensure clarity.
- 6.4 A consultation on the revised documents was undertaken in May and June 2016 on the amendments required by counsel. 6 consultees responded making a total of 16 comments and resulting in 2 minor amendments correcting factual errors. These comments and the Council's response to them are set out in the Consultation Statement attached as Appendix E.
- 6.5 A minor amendment has also been made to the Regulation 123 List (not as a result of the consultation), amending the item "Health facilities" to read as "Health and social care facilities". It is not considered that this amendment makes a material change to the Regulation 123 List. Social care facilities were already covered in the list under the items "Health Facilities" and "Community facilities", the amendment simply clarifies this position by explicitly including the additional wording.

7. COMMENTS OF THE CHIEF FINANCIAL OFFICER

- 7.1 Following the completion of the public consultation process, this report asks the Mayor in Cabinet to formally approve the adoption of the revised Regulation 123 List and Planning Obligations Supplementary Planning Document (as set out in Appendices A and B).
- 7.2 The Regulation 123 List identifies categories of strategic infrastructure that can be paid for using the Community Infrastructure Levy (CIL). CIL has replaced elements of the previous Section 106 planning process although

site specific Section 106 agreements will continue to be negotiated where the impact is not covered through the CIL process.

- 7.3 The Authority has historically realised substantial resources via the Section 106 system. Although CIL will now generate the more significant levels of funding, it is important that future Section 106 obligations are set at a realistic level that enable the provision of community resources in tandem with the delivery of viable developments. The Council will continue to use Section 106 legislation to ensure the delivery of Affordable Housing.
- 7.4 CIL and Section 106 resources must be used to finance specific separate infrastructure needs. It is essential that records continue to be maintained to closely monitor the use of these resources.
- 7.5 The costs of the statutory consultation process were met from within existing budgets.
- 7.6 The Council's Capital Programme, which is currently approved annually, should include all proposed capital expenditure however financed including that financed either party or fully by S106 & CIL resources. There is a need to both develop the Council's Capital Strategy so that it reflects Members' priority outcomes for capital expenditure which will in turn inform development of a strategic capital programme spanning a number of years. In this way Members will be able to see how projects which are supported by S106/ CIL are being planned to ensure that resources are used as effectively as possible and avoid a situation where resources could be at risk from expiry.
- 7.7 Alongside this there is also a need to ensure that the processes for developing capital schemes and including them in the programme, following Members approval, are as efficient as possible to allow schemes to be added over the course of the programme.

8. LEGAL COMMENTS

- 8.1 This report recommends that Cabinet adopt an amended Regulation 123 List and an updated Planning Obligations SPD.
- 8.2 In terms of consultation on a Supplementary Planning Document ('SPD'), the Development Plan Regulations 2012 require that prior to adoption the Local Authority must prepare a statement setting out who was consulted, the main issues raised and how those issues were addressed, known as a consultation statement. This statement is attached as appendix E.
- 8.3 In terms of consultation on revision to a Regulation 123 List, the National Planning Policy Guidance advises (at paragraphs 096 and 098) that when charging authorities wish to revise their Regulation 123 List, they should ensure that these changes are clearly explained and subject to appropriate local consultation.

- 8.4 The Council should therefore give formal consideration to the outcome of the consultation before adopting the final version of the Regulation 123 List and Revised Planning Obligations SPD.
- 8.5 In terms of the effect of the documents which Cabinet are recommended to adopt, Regulation 123 allows the Council as Charging Authority to publish a list of infrastructure projects or types of infrastructure that it intends will be, or may be wholly or partly funded by CIL (“relevant infrastructure”). Where such a list has been published a planning obligation may not constitute a reason for granting planning permission for the development to the extent that the obligation provides for the funding or provision of relevant infrastructure.
- 8.6 Supplementary Planning Documents (SPD) provide detail to support policy in higher level Development Plan Documents. Once the SPD is adopted it will be considered to be a material consideration to be taken into account in the development control process.
- 8.7 When considering whether to adopt the amended Regulation 123 List and Planning Obligations SPD, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who don't (the public sector equality duty). An equality analysis is required which is proportionate to the functions in question and the potential impacts and to this end an Equalities Impact Analysis is attached at Appendix C.

9. ONE TOWER HAMLETS CONSIDERATIONS

- 9.1 The revised Regulation 123 List and Planning Obligations SPD will allow the Council to ensure that any negative impacts of development which cannot be avoided or mitigated through planning conditions will be mitigated to the fullest extent allowable through S106 obligations. Site mitigation secured through S106 agreements may include works that will contribute to the One Tower Hamlets objectives of reducing inequalities; ensuring community cohesion; and strengthening community leadership.
- 9.2 The revised Planning Obligations SPD will set out how the Council will secure a local employment and enterprise benefit for local residents and businesses. Training initiatives provide local residents with valuable skills which enhance opportunities to enter the workforce. The revised Planning Obligations SPD policy on Affordable Housing sets out the Council's approach to the delivery of affordable homes through S106 agreements. These elements of S106 obligations support the objectives of One Tower Hamlets.
- 9.3 The Council has undertaken an Equalities Analysis Screening to identify any impacts resultant from the proposed changes to the operation of CIL and S106 obligations which is appended to this report. The revised Planning Obligations SPD and Regulation 123 List are considered to have a neutral

impact on equalities strands however, as the SPD is designed to mitigate negative impacts of development that are directly related to the development, the revised Planning Obligations SPD has a positive impact upon all residents who may, in the absence of the SPD, experience negative impacts from development.

10. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 10.1 The Council's Regulation 123 List allows the Council to secure CIL contributions that can be used to support strategic energy and sustainability infrastructure. S106 obligations can also be used to support a greener environment and aid sustainable development to mitigate negative impacts caused specifically by the relevant development.
- 10.2 A Strategic Environmental Assessment Screening (SEA) outlining environmental impacts is appended to this report.

11. RISK MANAGEMENT IMPLICATIONS

- 11.1 The proposed revised Regulation 123 List and Planning Obligations SPD clearly communicate the Council's approach to the funding and delivery of infrastructure. Developers will be able to refer to the revised Planning Obligations SPD to identify any financial considerations arising from their scheme and address these prior to the application stage. There is therefore a benefit of certainty and transparency by having an adopted revised Regulation 123 List and Planning Obligations SPD alongside the CIL Charging Schedule as this reduces scope for developers failing to meet the expectations of the borough.
- 11.2 Unlike CIL, S106 obligations are negotiable. The risk associated with this is that in circumstances where an individual scheme cannot meet both the full CIL requirement and requirements of S106 obligations, for reasons of viability, the negotiable element of S106 obligations could be reduced. However the Council CIL Charging Schedule has been through Public Examination, where it was found that development could accommodate both CIL and S106 contributions.

12. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 12.1 The revised Planning Obligations SPD seeks to ensure that any impacts directly related to the development are mitigated. Whilst not specifically intended to reduce crime and disorder, the SPD sets out the Council's approach to mitigating impacts of development. This may include works which are complementary to the reduction of crime and disorder.
- 12.2 The Regulation 123 List also includes infrastructure dedicated to public safety, such as CCTV coverage, which are also complementary to the reduction of crime and disorder.

13. EFFICIENCY STATEMENT

- 13.1 The operation of the revised Planning Obligations SPD will place an administrative burden on the Council. The Council intends to charge developers a monitoring fee, proposed at £500 for each one of the Heads of Terms within the S106 agreement.

14. APPENDICES

Appendix A: Planning Obligations SPD (September 2016)

Appendix B: Regulation 123 list (September 2016)

Appendix C: Equalities Impact Analysis

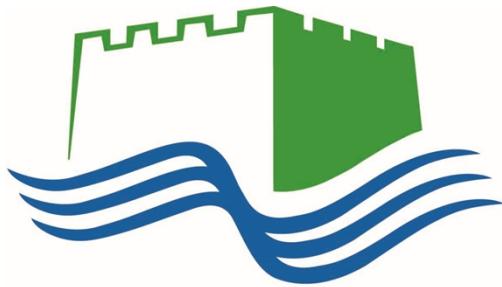
Appendix D: SEA Screening

Appendix E: Consultation Statement

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TOWER HAMLETS

PLANNING OBLIGATIONS SUPPLEMENTARY PLANNING DOCUMENT (SPD)

September 2016



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Overview

Introduction

Tower Hamlets Council has introduced its own Community Infrastructure Levy (CIL) on 1st April 2015. This has significant implications for how the Council plans for the delivery of infrastructure and how Planning Obligations are secured from new development. This Supplementary Planning Document (SPD) sets out Tower Hamlets Council's proposed policy for securing planning obligations in respect of new developments that require planning permission.

This SPD provides additional guidance on matters covered in Tower Hamlets Core Strategy (2011) and the Managing Development Document (2013). It is not part of the statutory Development Plan; however it is a material consideration in determining planning applications.

Relationship with Other Planning Documents

The Planning Obligations SPD operates on a borough-wide scale where the Council acts as Local Planning Authority (LPA). It sits alongside the portfolio of Local Plan documents to support and add detail to the relevant Development Plan Documents (DPDs), particularly Spatial Policy 13 of the Core Strategy. It replaces the Planning Obligations Supplementary Planning Document adopted in January 2012.

As the leading Local Plan document, the Core Strategy (adopted 2010) sets out the spatial strategy for the borough until 2025.

The relevant policies of the London Plan and the Mayor's planning guidance will continue to apply to development in the borough.

Purpose of the Planning Obligations SPD

The purpose of this SPD is to:

- Explain the Council's approach to using planning obligations to local residents, developers and the wider community;
- Explain the relationship between the Community Infrastructure Levy (CIL) and S106 Planning Obligations
- Explain the circumstances under which the Council will secure planning obligations to mitigate the impacts of a development on the borough's infrastructure;
- Improve transparency in the priority and calculation of planning obligations;
- Provide applicants with greater certainty on when planning obligations will be sought;
- Take into account the cumulative impact of development in the borough and explain how this will be dealt with through the use of planning obligations and CIL.

Who is it for?

This SPD has been prepared for use by the Council, developers, the general public and other stakeholders as a guide to the Borough's position on the use of S106 planning obligations.

How Should it be Used?

This SPD should be used as a framework for calculating S106 planning obligations associated with developments in the London borough of Tower Hamlets (LBTH). In areas of the borough where the Council does not act as Local Planning Authority, such as parts of the borough within the London Legacy Development Corporation (LLDC), the relevant authority's guidance should be followed. As a whole, the document should provide more certainty to all parties involved in the development process.

It will be utilised by the Council as a material consideration when assessing planning applications and will be reviewed and updated as and when necessary. Developers should draw on the document to assist in their costing and inclusion of S106 planning obligations in their financial planning and to help reduce time required negotiating and agreeing obligations with the Council.

The planning obligations outlined in the SPD are not exhaustive. As new policy requirements emerge and change, the SPD will need to be revised to reflect these changes. In some instances, for example in areas of intense redevelopment and regeneration, or in certain site specific locations, additional planning obligations outside the scope of this SPD may be sought.

This SPD should be read in tandem with the CIL Charging Schedule, or subsequent publications.

1. Introduction

- 1.1 This Supplementary Planning Document (SPD) provides detailed guidance on the use of section 106 planning obligations alongside the Community Infrastructure Levy (CIL). This is to ensure that the development industry and others have a clear view on the likely combined level of the Borough CIL and Section 106 planning obligations, which they will have to meet to ensure that any proposed development is acceptable and also makes a reasonable contribution to the infrastructure needs of the borough.
- 1.2 CIL was introduced by the Planning Act 2008 and came into force through the CIL Regulations 2010 (as amended) on 6 April 2010. Local Planning Authorities (LPAs) adopting CIL are required under CIL Regulation 123 (Reg 123) to prepare and publish a list of those items or types of infrastructure to fund through CIL. Regulation 123(2) of the CIL Regulations 2010 (as amended) provide, insofar as is relevant that:

“A planning obligation may not constitute a reason for granting planning permission for the development to the extent that the obligation provides for the funding of relevant infrastructure.”
- 1.3 Relevant infrastructure refers to the infrastructure included on the LPAs Regulation 123 List of infrastructure types or projects that it intends will be, or may be, wholly or partly funded by CIL. The purpose of this is to prevent ‘double dipping,’ whereby developers are required to pay twice for the same item of infrastructure both through CIL and S106 obligations. In practical terms, this means that if an infrastructure project or type of infrastructure is included in the Regulation 123 List, the local planning authority cannot secure S106 obligations in respect of that project or type.
- 1.4 Section 106 obligations will be used where the identified pressure from a proposed development cannot be dealt with by Planning Conditions and the infrastructure requirement relates specifically to that particular development and is not covered by CIL. The Community Infrastructure Levy Regulations 2010 (as amended) set out three statutory tests for the use of planning obligations, which are as follows (Regulation 122):

“A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is:

 - (a) necessary to make the development acceptable in planning terms;
 - (b) directly related to the development; and
 - (c) fairly and reasonably related in scale and kind to the development.”
- 1.5 Regulation 123 of the Community Infrastructure Levy Regulations 2010 (as amended) further requires that, from 6th April 2015, or the adoption of a Community Infrastructure Levy (whichever is sooner), the pooling of contributions towards a specific type or piece of infrastructure will be limited to not more than five planning obligations. From this date, the Community Infrastructure Levy will be the principal

means of generating developer contributions towards new infrastructure provision, and Section 106 obligations will be restricted to site-specific matters, described in more detail below. This limit on pooled S106 contributions does not apply to contributions for affordable housing.

Community Infrastructure Levy (CIL)

- 1.6 The CIL is a new, non-negotiable charge which will raise infrastructure funds on new developments. CIL takes the form of a charge per square metre of floorspace applied to most new developments that involve an increase of 100 square metres or more of gross internal floor space or that involves creating a dwelling even where this is below 100 square metres. The CIL charges are based on the size and type of the new development. Some developments are exempt from paying the levy such as developments of qualifying social housing, developments by charities of buildings used for charitable purposes and development that are self-build: new home, extension or residential annex.
- 1.7 There will be two CIL charges payable on qualifying development in the borough:
 - Borough-level CIL
 - Mayoral CIL

Borough- level CIL

- 1.8 From 1st April 2015, the London Borough of Tower Hamlets' CIL came into operation, the Council, as Local Planning Authority, is entitled to charge a 'Community Infrastructure Levy' (CIL) on new developments, which is set out in Tower Hamlets Adopted Charging Schedule, available at: http://www.towerhamlets.gov.uk/lgsi/501550/register_of_planning_decisions/section_106_planning_obligatio/community_infrastructure_levy.aspx
- 1.9 The CIL Regulations allows local authorities in England and Wales to raise funds from developers undertaking new building projects in their area. The secured funds can be used to support the provision, improvement, replacement, operation and maintenance of a wide range of local and strategic infrastructure that is needed to support growth and development in the borough. This includes infrastructure projects such as strategic transport facilities, strategic flood defences, schools and other educational facilities, medical facilities, sporting and recreational facilities and open spaces.
- 1.10 The government's view is that CIL *provides* the best framework and the preferred means of pooling funding for the infrastructure required to support new development. It will allow for a better understanding of development costs earlier in the process and therefore provide more certainty.

Mayoral CIL and Mayoral Section 106 Planning Obligations for Crossrail

- 1.11 From 1 April 2012 the Mayor of London's CIL came into operation. The purpose of this levy is to contribute to the funding package for the construction of the Crossrail line. The Council is responsible for collecting this charge on all new development within the borough over 100sq m and all new dwellings (excluding affordable housing and development by charities for charitable purposes).
- 1.12 From April 2012, the Mayoral CIL charge for new development in Tower Hamlets is £35 per sq m of qualifying development. The details of the current charging rate can be found at: <http://www.london.gov.uk/priorities/planning/mayoral-community-infrastructure-levy>
- 1.13 Having regard to the impact on development viability, pursuant to Supplementary Planning Guidance the Mayor of London also requires a Section 106 financial contribution from office, retail and hotel developments where there is a net increase of 500m² or more in floorspace, measured by Gross Internal Area (GIA),
- 1.14 From July 2010, the Section 106 charge for those parts of Tower Hamlets which are in the Central London Area, Isle of Dogs and Rest of London can be found in Table 1, below.

Table1: Indicative Level of Charge per sq.m, by land use and location as at July 2010

Development Type	Central London Area (within a 1 kilometre radius of Liverpool Street station that fall within the Borough boundary)	Isle of Dogs Contribution Area	Rest of London (Including approximate 1 km indicative radius outwards around the proposed Canary Wharf station at West India Quay north of the Poplar DLR lands as well as such radii around all other stations outside the Central Contributions Areas)
Office	£140	£190	£31
Retail	£90	£121	£16
Hotel	£61	£84	-

- 1.15 The Mayor of London's CIL will be offset against Crossrail planning obligations payments. This means that where the Mayor's CIL is higher than the Crossrail planning contribution, only the Mayor's CIL will be payable. However, where the Crossrail planning contribution amount is greater than the Mayor's CIL then the "top up" or balance (being the difference between the Mayor's CIL and the planning contribution) will also be payable. For further details see the Mayor's Supplementary Guidance on the Use of Planning Obligations in the Funding of Crossrail and the Mayoral Community Infrastructure Levy (2013). Further information can be found via the following link.

<https://www.london.gov.uk/sites/default/files/Crossrail%20SPG%20April%202013.pdf>

2. Approach to Development Mitigation and Infrastructure Delivery

- 2.1 The priority areas for Section 106 agreements as set out in this document are not exhaustive and the Council may wish to negotiate other forms of planning obligations depending on the individual circumstances of a site and proposal, where obligations are necessary, directly related to the development and fairly and reasonably related in scale and kind to the development in question. When considering planning matters, the Council will use a range of planning tools as follows:
- By working with developers, the Council will seek to ensure that most design and mitigation requirements are delivered as part of the initial development proposal. In cases where an initial proposal does not meet the Council's policy and/or objectives, planning conditions will be used to ensure that the final proposal meets the Council's requirements.
 - Details relating to highways improvement will be set out in a Section 106 and/or Section 278 agreements, where necessary.
 - Where a proposal directly necessitates the provision of infrastructure to mitigate/enable development that is not within the scope of the Regulation 123 list, the Council may seek a contribution through Section 106.
 - Section 106 agreements will not be used to secure infrastructure that has already been identified for delivery and investment from CIL funds through the Regulation 123 list.
- 2.2 Contributions may be financial or 'in kind' (where the developer builds or provides directly the matters necessary to fulfill the obligation) negotiated as part of planning applications. In many cases provision in kind is preferable and suitable, especially where this reduces management costs and/or where finding land for a facility is a problem. Where provision is made within developments, this will be credited to the scheme and would off-set financial contributions that may otherwise be sought. but other contributions may be secured for reasonable fitting out and infrastructure costs. These would ensure that providers of community services necessitated by the development have facilities suitable for their needs and provided at nominal rents and service charges.

3. Legislative and Policy Context

Legislative Context

- 3.1 The legislative basis for planning obligations is set out in Section 106 of the Town and Country Planning Act 1990, as amended by later legislation including Section 12 of the 1991 Planning and Compensation Act and the Planning Act 2008.
- 3.2 CIL was introduced by the Planning Act 2008 and came into force through the CIL Regulations 2010 (as amended) on 6 April 2010. As of that date Regulation 122 made it unlawful for a planning obligation to be taken into account when determining a planning application for development, or any part of a development, if the obligation does not meet all of the following tests:
 - It is necessary to make the development acceptable in planning terms;
 - It is directly related to the development; and,
 - It is fairly and reasonably related in scale and kind to the development.
- 3.3 The purpose of Regulations 123 and 122 is distinguish the types of infrastructure or projects that can be secured under CIL and Section 106 and clarify the different roles that both CIL and planning obligations have when used together to support new development. The CIL Regulations 2010 (as amended) also specify that upon the adoption of a CIL, or by 6th April 2015, whichever is the sooner, the use of planning obligations must be scaled back. This means that a planning obligation cannot be used to fund a project or type of infrastructure if there have been 5 or more separate obligations on or after 6 April 2010 which fund that project or type of infrastructure.

National Planning Policy Framework (2012)

- 3.4 The National Planning Policy Framework (NPPF) sets out the Government's economic, environmental and social planning policies for England. Taken together, these policies articulate the Government's vision of sustainable development, which should be interpreted and applied locally to meet local aspirations.
- 3.5 Paragraphs 203 to 206 of the NPPF set out the Government's policy on planning obligations. These paragraphs reiterate the tests for planning obligations set out in the CIL Regulations; restate the principle that planning conditions are preferable to planning obligations; require local authorities to take into account changes in market conditions over time in policies and planning obligations and make sure they are sufficiently flexible to prevent planned development from being stalled.
- 3.6 Paragraph 176 of the NPPF recognises that "where safeguards are necessary to make a particular development acceptable in planning terms... the development should not be approved if the measures required cannot be secured through appropriate conditions or [obligations through] agreements." The NPPF also sets out in paragraph 173 that it is important that the scale of obligations does not threaten

the ability of a site to be developed viably.

Core Strategy (2010)

- 3.7 The Core Strategy 'Delivery and Monitoring' section sets out the Council's strategic objective to secure planning obligations between the LPA and developers to mitigate, compensate and prescribe matters relating to development in order to facilitate the granting of planning permission. The strategy also states that the Council may pool contributions relating to significant infrastructure, including transport, education and health, reflecting the regional policy direction.
- 3.8 Policy SP13 of the Core Strategy further sets out the Council's priorities for planning obligations. These are: Affordable Housing; sustainable transport; open space; education; health; training employment and enterprise; biodiversity; community facilities; highway works and public realm.

Managing Development Document (2013)

- 3.9 The Managing Development Document sits under the Core Strategy as part of the borough's Local Plan and has the same status in terms of the determination of planning applications.
- 3.10 A summary of the key aims and objectives of the DPD is provided below.
 - Identifies sites for important services – primary and secondary schools, Idea Stores, Leisure Centres, waste management facilities and open space – and sites capable of accommodating 500+ homes;
 - Defines boundaries for planning policy areas including town centres and employment areas; and
 - Includes detailed development management policies against which planning applications will be assessed.

4. Negotiating Planning Obligations

- 4.1 The process for negotiating and securing planning obligations is set within the framework of national, regional and local policy guidance and legislation. When carrying out these negotiations for planning obligations, the Council must meet the statutory tests set out in the 2010 CIL Regulations.

Pre-application Stage

- 4.2 Applicants, agents and developers are encouraged to seek pre-application advice prior to the formal submission of major development proposals within the borough. The pre-application process offers a valuable service for proposed schemes and allows dialogue to resolve any initial concerns which officers envisage may arise during the formal application stage. Pre-application meetings can deter applications with little or no prospect of success. Details of the development proposed should be submitted to relevant officers at pre-application stage. Officers will make an assessment of the impacts of the development and will provide guidance regarding the planning obligations that are likely to be required.
- 4.3 Applicants should use this SPD alongside an analysis of their proposed works to consider the impacts of the proposed scheme and any planning obligations likely to be required to mitigate the impacts of development. These details should be submitted as a draft 'Heads of Terms' document alongside the pre-application submission documentation, to allow officers sufficient time to consider the details contained within the draft 'Heads of Terms'.
- 4.4 During the course of pre-application discussions, where negotiations fail to result in agreement on the draft 'Heads of Terms', the applicant is invited to provide alternative proposals and related justification which will be taken into consideration during the assessment of any future application.

Application Stage

- 4.5 Applicants are advised in the Council's Development Control Advice Note 2009 (required to validate a planning application) to submit details of planning obligations within their Impact Statement.
- 4.6 In some cases, such as for strategic applications, it may be more appropriate that this information is submitted as a separate Planning Obligations Statement alongside a draft 'Heads of Terms' document. The Planning Obligations Statement should evaluate how the impacts of the development are to be addressed within the context of this SPD as well as other local, regional and national guidance.
- 4.7 Applications which are submitted without a Planning Obligations Statement/Draft Heads of Terms will not be validated until this information is provided.

- 4.8 Details of the applicant's solicitor must be submitted at the time an application is made. The following solicitor details should be provided;
- Name of company
 - Postal address
 - Contact name
 - Telephone number (preferably direct dial)
 - Email address
 - Website
- 4.9 Details of the land title should also be provided alongside details of all parties (including charges) with an interest in the land as they will also be required to enter into the agreement. Should details of other parties not be available before an application is submitted, it should be identified early on in the process to avoid a delay in completion of the agreement. Any charges on the property should also be identified.
- 4.10 During the planning application process, initial advice provided with regard to contribution requirements may be subject to alterations. This is often due to changes following formal consultation and any issues which may arise during the course of an application. 'Heads of Terms' must be agreed prior to planning committee meetings and within an appropriate timescale of delegated applications to allow them to be determined and decisions issued by officers within the statutory target periods.
- 4.11 If the Council and the applicant are unable to come to an agreement on planning obligations after reasonable negotiation, then officers may prepare a recommendation for refusal of the planning application.
- 4.12 In the case of delegated applications, if the 'Heads of Terms' are agreed between the LPA and the applicant/agent where the application is considered acceptable on all other grounds, a draft decision notice will be prepared by officers. The applicant/landowner must enter into and complete the S106 agreement prior to the LPA issuing the decision notice for any delegated application.
- 4.13 In the case of an application referred to a Tower Hamlets planning committee, the 'Heads of Terms', which have been agreed, will be included within the committee report for information. Should members recommend approval of the planning application with planning obligations; this approval will be subject to the completion of the S106 agreement. Following the planning committee, the applicant/agent must complete the S106 agreement in order for the decision notice to be issued.

Viability

- 4.14 Development viability forms part of the national, regional and local policy framework in the consideration of planning applications that trigger the delivery of s.106 obligations. This is reflected in national guidance and policy in the form of the NPPG

and NPPF, regional guidance, in the form of the London Plan, and local policy in the form of the Core Strategy and the Managing Development DPD.

- 4.15 In circumstances, where the full range of planning obligations cannot be met It is recommended that applicants seek pre-application advice from the LPA including the informal submission of a viability report prior to the formal submission of a planning application.
- 4.16 At Planning Application Stage, proposals where the full range of planning obligations cannot be met must be submitted with a full Viability Assessment to enable the viability of the scheme to be comprehensively assessed.
- 4.17 There are currently a number of sources of guidance relating to development viability. These guidance notes take a range of approaches to certain aspects of development viability. It is for the Council to determine the most appropriate approach to be taken in each case. Applicants and their agents should discuss this with the Council at an early stage.
- 4.18 A Viability Assessment must be completed in accordance with the guidelines set out in the GLA 'Affordable Housing Development Control Toolkit' 2010 or an alternative Toolkit as approved by the Council. Detailed guidance on the information required to enable the Council to scrutinise viability assessments will be provided in due course.

Viability Review Mechanisms

- 4.19 For all applications where policy requirements are not met in full at the time permission is granted and where the departure is justified as a result of the submission of a Financial Viability Assessment, provisions for viability review mechanisms will be required to be incorporated within Section 106 agreements.
- 4.20 Viability review mechanisms will be triggered and undertaken according to the circumstances in each case but based on the following principles.
 1. For all schemes requiring a review (see paragraph 4.19 above), an advanced stage review will be carried out. These reviews should be undertaken on sale of 75% of market residential accommodation, or within a three month period prior to practical completion, whichever is earlier.
 2. For all schemes requiring a review, where a scheme has not been implemented within 12 months of the relevant application decision date, a pre-implementation review will be required.
 3. For phased schemes requiring a review, mid-term reviews will be necessary where the second (or subsequent phases) are not implemented within 12 months of the decision of the application to which the originally submitted Financial Viability Assessment relates.

Post Decision

- 4.21 Following the decision to grant planning permission subject to a s106 legal agreement, the Council's solicitor and planning officers in liaison with the applicant's solicitor will complete the setting out of the planning obligation(s) in the form of a binding legal agreement. The agreement will set out the detail of the planning obligations, including the trigger mechanisms for payment of financial contributions, viability re-assessments schedules of works and other commitments to be undertaken by the developer, as well as obligations upon the Council.
- 4.22 On completion and signing of a Section 106 legal agreement, planning permission is formally issued. The legal agreement is placed on the statutory register and is publically available online together with the decision notice.
- 4.23 The signed agreements are registered as a local land charge against the land, copies of which can be provided to the public on payment of an administration fee to the Council. The Section 106 obligation agreement is registered on the Council's planning obligation database, which is used for monitoring and project management purposes. A pre-commencement letter is normally sent to developers reminding them of their obligations and the trigger mechanism for payment.

5. Standard Obligations and Charges

- 5.1 This section sets out how the Council will use S106 planning obligations necessary to make development acceptable. A variety of planning obligations may be necessary, therefore the topics covered below are not exhaustive and each development will be considered on a case by case basis and in line with relevant, available evidence, guidance, or policies. In line with the CIL Regulations 2010 (as amended), these S106 planning contributions must meet the restrictions of Regulation 123 and 122 in that the obligation cannot be within the scope of the Council's Regulation 123 list and must meet the three statutory tests set out in Regulation 122.
- 5.2 For each obligation, the threshold and contribution requirements are provided. In line with the CIL regulations 2010 (as amended), these are taken into consideration when determining where a proposed development should be subject to planning obligations and to estimate those obligations likely to be required by the Council.

Affordable Housing and Wheelchair Accessible Housing

- 5.3 Although Tower Hamlets consistently delivers more affordable housing than any other London borough, there is still a pressing requirement for more affordable housing especially for families.
- 5.4 The Council has set an overall strategic target of 50% of new homes across the borough to be affordable until 2025. This is being delivered through negotiations as a part of major residential schemes, as well as through a range of public initiatives and effective use of grant funding.

Threshold and Contribution Requirements

Planning obligations relating to Affordable Housing and Wheelchair Accessible Housing will be sought for:

- Residential developments of more than 10 units or with a combined gross floorspace of 1,000 sqm (gross internal area) or more.
- Commercial floorspace of 1,000 sqm (gross internal area) or more.

Affordable Housing

The Council will require the provision of 35%-50% affordable housing on sites providing 10 or more new residential units. The level of affordable housing and the tenure and mix will be considered on a site by site basis subject to viability having regards to the Council's policies.

Forms in Which Contributions Should be made

In accordance with policy, affordable housing should normally be provided on-site. In accordance with London Plan Policy 3.12 and Council Policy DM3, only where exceptional circumstances exist and where the Council is satisfied that it would deliver a better outcome, will off-site provision be accepted. Where exceptionally, housing cannot be provided on or off-site, a commuted sum will be required in lieu of provision to secure delivery of affordable housing on sites elsewhere. The acceptability of off-site provision and/ or commuted sums are entirely at the discretion of the Council.

Wheelchair Accessible Housing

In line with Core Strategy requirements, 10% of all new housing must be wheelchair accessible, or easily adaptable, as defined in the Managing Development Document. In exceptional circumstances, and where it can be demonstrated that this is not achievable, the Council will require a financial contribution from the developer to adapt an equivalent number of appropriately located homes elsewhere in the borough to wheelchair accessible standard. The level of any such contribution will be determined on a case by case basis commensurate with the cost of adapting homes elsewhere in the borough. The acceptability of the use of an off-site payment is entirely at the discretion of the Council.

Student Housing Development

- 5.5 BNP Paribas Real Estate's 'CIL Viability Study (August 2013)' identifies two separate types of student accommodation in the borough. One type of accommodation is market student housing which charges unrestricted rents and generate sufficient surplus residual values to absorb the borough CIL. The other type, is usually tied to a university and restricts rents at lower than market levels and are identified as being unviable.
- 5.6 As of April 2015 Tower Hamlets' Student Housing CIL rate of £425 will not apply to University led student accommodation with below market rents and a planning obligation will be sought to secure the reduce rent levels.
- 5.7 The University in question will be required to have at least one teaching facility in Tower Hamlets' CIL Charging Area or any developer undertaking development on behalf of a University must enter into a formal nomination agreement, or the equivalent, with the university in question.

Threshold and Contribution Requirements

Planning obligations will be sought for:

- Where a Student Housing development fulfills the criteria for a nil CIL rate.

University-led Student Housing

When considering a nil CIL payment for University led student housing development, the Council will require a Planning Obligation to secure student accommodation let at below market rent level. The discount, to make the rent 'below market' must, over a 7 year period, as a minimum, equate to the CIL liability that would be applicable to 'Student Housing Let at Market Rents'. A valuation should be carried out by an independent person, at the cost of the applicant, to establish this.

The planning obligation will be set for a period of at least 7 years (with 7 years being equivalent to the relevant period for securing CIL charitable relief as set out in the CIL Regulations 2010 [as amended]).

For monitoring purposes, the Council will also require an 'Owners Covenant' to be secured in the obligation, to inform the Council each year of the rent level to be charged for the new academic year for the 7 year period. (CPI indexed yearly from date of planning permission)

Employment, Skills, Training and Enterprise

5.8 Tower Hamlets is in a unique position with regards to its economy. The borough hosts a significant financial services sector and also a large number of small and medium enterprises (SMEs). Maximising employment for local people is a major priority for the Council, and employment opportunities arising from development in the borough must be accessible to its residents to increase employment levels and help to tackle poverty and social exclusion. That relies on a healthy and growing economy for Tower Hamlets which in turn means that the borough must support and retain a wide mix of enterprise and commercial spaces.

5.9 Tower Hamlets has an above average unemployment level within Greater London, with a very low proportion of Tower Hamlets' residents finding employment within the borough. Currently, only 15%¹ of residents are working within Tower Hamlets. There is also a skills mis-match, with many new employment opportunities demanding skills which few people who live in the borough currently have. Employment opportunities from new developments must be accompanied by training to up skill residents so that they can compete for the jobs.

¹ The percentage of working age residents in Tower Hamlets employed within the borough according to the 2011 Census, NOMIS.

- 5.10 For all new development in the borough the construction phase provides opportunities for local employment, apprenticeships and work experience placements. Commercial developments within the borough also bring new employment, apprenticeship and work-experience opportunities for residents during the end-user phase. This adds increased pressure on the Council to provide access for residents to appropriate employment and skills training. Apprenticeships and work experience placements will enable residents to develop an appropriate skill-set for existing and future employment opportunities within the borough, from an early age.
- 5.11 The Council will seek to ensure that jobs are provided for local people, both in the construction phase of development and, in commercial development, by the end users. To enable local people to benefit from development growth the Council, with partners, has introduced a number of programmes to support job brokerage, employer-led training, construction skill training and apprenticeships, and traineeship and work experience placements.

Employment and Skills Training

Threshold and Contribution Requirements

Planning obligations relating to Employment and Skills Training will be sought for:

- Residential developments of more than 10 units or with a combined gross floorspace of 1,000 sqm (gross internal area) or more
- All major commercial development

Job Brokerage

The Council will seek to secure a minimum of 20%² of the total jobs, created by the construction and end-user phases of new development above the set threshold, to be advertised exclusively to local residents through the Council's job-brokerage services for a specified minimum period. It is expected that all reasonable endeavors be used to ensure that a target of 20% employment of local residents is achieved in both the construction and end-user phases.

The Developer will be required to supply the Programme of Works for the scheme to allow the employment team to forecast the training needs of residents, to be work ready as the development progresses through the various construction phases.

² Tower Hamlets currently has an overall 68% employment rate from which 15% are working within the borough. An aspirational target of 20% local labour has been set in order to create an achievable uplift in these figures.

Formula – Construction Phase Skills and Training

For all major developments the Council will also seek to secure training opportunities for residents. A financial contribution will be sought to support and provide the training and skills needs of local residents in accessing the new job opportunities in the construction phase of all new development. This contribution will be used by the Council to provide and procure the support necessary for local people who have been out of employment and/or do not have the skills set required for the jobs created.

£4³ x sqm of the total new development floorspace (GIA)

= Required Financial Contribution

For example: When applying the formula to a Development consisting of total 7099.8 Sq.m of new floor space (GIA) - £4 x sqm (7099.8) = £28,399.2 is obtained in contributions.

Where appropriate the Council may consider whether a developer's in-house training programme can be utilised in lieu of the construction phase skills and training contribution, on the basis that the local residents achieve a minimum requirement as secured through an in-kind obligation. The appropriateness of the in-house training will be assessed by the Council on a case by case basis.

Formula – End User Phase Skills and Training

For the end-user phase of commercial developments the Council will also seek to secure a financial contribution to support and provide the training and skills needs of local residents in accessing the new job opportunities created by the development. This contribution will be used by the Council to provide and procure the support necessary for local people who have been out of employment and/or do not have the skills set required for the jobs created.

Employee yield of the development⁴

X

Tower Hamlets aspirational local labour target (20%)

X

Cost of training and support per person (£2,040)⁵

= Required Financial Contribution

³ Calculated using the HCA Employment Densities Guide. 2nd Edition 2010 or subsequent updated document.

⁴ Average cost per unit of NVQ Level 2 Framework = £1,700 + 20% overheads.

⁵ For example, Construction Line and East London Business Place (ELBP)

Apprenticeships and Work Placements

For the construction phase of all new development and the end-user phase of commercial development, the Council will seek to ensure that a proportion of the jobs secured for local residents provide apprenticeships where appropriate. Apprenticeships are jobs with an accompanying skills development programme designed by employers in the relevant sector to allow the apprentice to gain technical knowledge and practical experience along with functional and personal skills required for their immediate job and future career. Skills are acquired through a mix of learning in the workplace and formal offsite training. Apprentices are given the opportunity to practice and embed new skills in a real work context. Skills and qualifications gained should be equivalent to those offered in apprenticeships facilitated by the National Apprenticeships Service or trade specific accreditation bodies. Work experience placements for local residents, for a minimum of two weeks per placement, will also be sought from these developments where appropriate. Public liability insurance may need to be amended to reflect this.

Local Enterprise

- 5.12 In order to support local businesses to benefit from new development within the borough, the Council will require a commitment from developments to engage local businesses through the supply chain. This will allow local businesses to compete in the local market and also encourage sustainable supply systems.
- 5.13 The Developer is required to submit to the Economic Development team their Tender Event Schedule (T.E.S) detailing the list of packages being offered for competitive tender including time frames, values of packages and framework agreements in the supply chain.
- 5.14 Any additional health & safety requirements are to be detailed in the T.E.S.
- 5.15 Enterprise monitoring information will be required to be submitted each time a package is awarded, detailing the list of tenderers per package, identifying the successful tenderer with values of packages secured and postcodes. The developer will be required to submit the official order of any package secured locally which can be quantified by value and quantity.
- 5.16 The monitoring will allow the principal contractor to track their performance against the enterprise commitment and gauge performance against any targets, as well as capturing the developer's "endeavours" to engage with local suppliers.
- 5.17 All information supplied to the council's Economic Development Team will be treated

as private & confidential and not passed to any third parties.

Threshold and Contribution Requirements

Planning obligations relating to Local Enterprise will be sought for:

- Residential developments of more than 10 units or with a combined gross floorspace of 1,000 sqm (gross internal area) or more.
- All major commercial development

The Council will seek to secure a minimum 20% of the total value of contracts, which procure goods and services during the construction phase of the development, to be achieved using firms located within the borough. This will be subject to competition rules. The developer will be expected to work with the Council and organisations⁶ it may choose to nominate, in order to maximise the opportunities for local firms to win contracts through established procurement procedures.

The Council will seek to secure the provision of flexible workspace within commercial developments, to mitigate the loss of such space through the development process and to support new and existing SMEs within the borough.

Transport and Highways

- 5.18 The provision of a safe, accessible, efficient, sustainable and integrated transport network is important to ensuring everyone has access to services within and outside the borough. The Council is committed to promoting high quality public transport services and delivering an attractive, well-designed street network that reduces the need for travel by private modes of transport.
- 5.19 New development in the borough will place additional stress on the borough's transport and highway networks including public transport infrastructure, bus services and local cycle routes. New development also increases the need for pedestrian and cycle safety education and training, travel awareness publicity, sustainable freight activities and interchange accessibility improvements.
- 5.20 CIL funds will be used to address the cumulative impacts of development on the strategic transport network. In certain cases, where a transport disbenefit is directly related to the development and it is necessary to outweigh that disbenefit to make the development acceptable, the Council will use S278 agreements or S106 agreements to secure such obligations.
- 5.21 Developments in the borough should provide the necessary additional transport/highway improvements to mitigate the impact of the travel demand they generate. Any necessary alterations to the transport/highway network within or in the vicinity of new development will be expected to be incorporated within proposals, and

permission will be refused if the developer is unwilling or unable to provide the necessary solutions. The scope of any off site works required to make the development acceptable in planning terms, are directly related to the development and do not fall under the Council's Regulation 123 List will be secured under a S278 agreement and will be carried out by the Council with the developer responsible for meeting all costs associated with the design and implementation of schemes. Where a S278 agreement is insufficient, mitigation will be secured through a S106 agreement. This will be particularly relevant to developments that are larger in scale or are associated with intensive or increased travel demand.

- 5.22 The Council may also seek to secure non-financial obligations to mitigate the impact of a development proposal, proportionate to the scale and impact of the development.
- 5.23 In addition planning contributions to fund Crossrail will be negotiated in line with the Mayor of London's requirements as set out in the Use of Planning Obligations in the Funding of Crossrail, and the Mayoral Community Infrastructure Levy (2013) and policy 6.5 of the London Plan 2011.

Threshold and Contribution Requirements

In instances where a Transport Assessment is required for the development, in accordance with Managing Development Document policy DM20, the site-specific highway and transport works required will be informed by that assessment.

The Council may also seek to secure non-financial obligations to mitigate the impact of a development proposal. Non-financial obligations will include:

- Car and Permit Free Agreements - which restrict residents from applying for on-street car parking permits. Car and Permit Free Agreements will be sought for residential development in accordance with policy DM22 of the Managing Development Document, i.e. where the Public Transport Accessibility Level (PTAL) is 4 or above and/or there is existing parking stress.
- Car Clubs - provide on-site car parks for car club use, providing marketing about the availability of the car club and free membership for a period of years for residents of the development.
- Electric Vehicle Charging – provision of electric charging points.
- Travel Plan - preparation, submission and subsequent monitoring to ensure compliance

Public Access and Children's Play Space

- 5.24 Publicly accessible open space is a key resource in an urban area such as Tower Hamlets, providing vital recreation, relaxation and wellbeing benefits, as well as a focal point for community interaction. Investment in public open space on sites will generally be met through CIL receipts as this provides the most appropriate and flexible source for income. However where on site open space is required specifically to provide public access on that site and has been identified as necessary to make the development acceptable in planning terms and can be provided within a proposed development, an agreement to safeguard the area's on-going use as publicly accessible open space and future maintenance to an appropriate standard will be required.
- 5.25 The provision of facilities for children and young people is important in facilitating opportunities for play and physical activity and the development of movement and social skills. London Plan Policy 3.6 and Core Strategy policy SPO2 require that residential and mixed use developments make provision for children's play and informal recreation space. The London Plan states that the amount of provision should be proportionally based on the number of children expected to occupy the development and an assessment of future needs. Summarily, the Mayor of London concludes that new development that creates a child yield of 10 children or more is expected to provide a minimum of 10 m² of play and recreation space on site for every child regardless of age.
- 5.26 The Mayor of London's Shaping Neighbourhoods: Play and Informal Recreation SPG (2015) requires that future provision of play space is accessible within reasonable and safe walking distances of new residential developments. Provision for under 5s is required to be within 100m walking distance of the residential unit, with provision for 5-11 year olds within 400m and provision for 12 year olds and above within 800m.
- 5.27 The Council's Regulation 123 List includes a range of strategic infrastructure types, such as open space, leisure facilities and community facilities. Where strategic infrastructure projects fall under the infrastructure types in the Regulation 123 List, financial planning obligations will not be sought for the same project. Children's Play Space provision that is not covered by the Council's Regulation 123 List and is deemed necessary to the particular development to mitigate specific impacts of that development will be dealt with by planning condition or if this is not possible, by financial and/or non-financial planning obligation.

Threshold and Contribution Requirements

Planning obligations relating to Public Access and Children's Play Space will be sought for:

- Any development where applicable

Public Access

- Where open space suitable for public access has been identified and can be provided within a proposed development, an agreement to safeguard the area's on-going use as publicly accessible open space and future maintenance to an appropriate standard will be required. In some instances, if the Council agrees to manage the space, the ownership of the land should be transferred to the Council at no cost and a commuted sum for maintenance will be required. A land transfer arrangement will normally only be considered, however, for areas of open space larger than one hectare which do not serve a dual function as access to properties.

Children's Play Space

- Applicants must assess the needs arising from a development by following the benchmark standards outlined in the Mayor's Shaping Neighbourhoods: Play and Informal Recreation SPG (2012). The Council policy DM4 and the Mayor's SPG require all developments with an estimated child occupancy of 10 children or more to ensure there is appropriate play provision (well-designed play and recreation space) to meet needs arising from the development.*
- All new development with an estimated child occupancy of 10 children or more must provide a minimum of 10 s.q.m per child, regardless of age. The Council expect provision for children's play space to be delivered on site and only where exceptional circumstances exist and the Council is satisfied that it would deliver a better outcome will off-site provision be accepted. In such circumstances provision will be required to comply with the maximum walking distances identified in the Mayor of London's Shaping Neighbourhoods: Play and Informal Recreation SPG. Where direct delivery is not possible, an equivalent financial contribution will be required to be made to an existing new off-site provision. This could include off-site provision of, or improvements to, an existing adjacent or nearby playground or improvements to access arrangements from the development to the playground. Further details are set out in the Mayor's Shaping Neighbourhoods: Play and Informal Recreation Supplementary Planning Guidance (2012).

* Child Yield figures can be found in the LDF Tower Hamlets Planning for Population Change and Growth, Capital Assessment-Baseline Report, Final Report, August 2009 (or any subsequent updated version).

Environmental Sustainability

5.28 The promotion of renewable, sustainable forms of energy and enhancements to wildlife biodiversity within Tower Hamlets is important to ensuring the borough is environmentally sustainable.

Energy

5.29 To ensure that the ability of future generations to enjoy the borough is not compromised by the energy requirements of today, it is essential that new developments are as energy efficient as they can be and contribute to reducing energy demands and pollution.

5.30 New development increases the demand for energy supply and requires solutions and innovation to reduce consumption and thereby promote and provide new renewable energy sources and sustainable development.

Threshold and Contribution Requirements

Planning obligations relating to Energy will be sought for:

- Residential developments of more than 10 units or with a combined gross floorspace of 1,000 sqm (gross internal area) or more
- All major commercial development

CO2 Reduction

Where officers consider all opportunities to meet the relevant Development Plan carbon reduction targets on-site have been exhausted, contributions to a carbon offsetting fund will be sought to meet the shortfall.

Contributions will be placed in the carbon offsetting fund and will be used by the Council to reduce carbon dioxide emissions in projects elsewhere in the borough. Details of the fund will be set out in the Council's Carbon Offsetting Study.

5.31 The Council strongly supports the development of energy efficient buildings and ensuring all new homes are built to zero carbon standards (as defined by CLG) by 2016 and all new non-domestic developments are built to zero carbon standards by 2019.

Formula – Carbon offsetting

Carbon Offset Contribution = $(T - (R \times 0.55)) \times Y \times Z$

Where:

T is the energy efficient design baseline which comprises the regulated CO₂ emissions assuming the development complied with Part L of the Building Regulations using Building Regulations approved compliance software (see references to SAP and SBEM below) following application of Be Lean, Be Clean and Be Green measures.

R is the baseline being Part L of the Building Regulations Compliant Development. This comprises the regulated CO₂ emissions assuming the development complied with Part L of the Building Regulations 2013 using Building Regulations approved compliance software (see references to SAP* and SBEM** below).

Y is the number of years for which the contribution is payable, being [30] years;

Z is £60 per tonne of carbon dioxide, being the cost of carbon per tonne taken from paragraph 10 of the Mayor's published Energy Planning: Greater London Authority Guidance on Preparing Energy Assessments (April 2014).

**SAP means the Department of Energy & Climate Change's Standard Assessment Procedure published 22 January 2013 which is the methodology used by the Government to assess and compare the energy and environmental performance of dwellings.'*

***SBEM means Simplified Building Energy Model being a software tool developed by the Building Research Industry for the Department for Communities and Local Government that provides an analysis of a building's energy consumption.*

Biodiversity

- 5.32 The quality of the physical environment is under increasing pressure in Tower Hamlets with a growing population and significant development demands. The Council recognises the importance of responding to the impacts of climate change and an increasingly dense cityscape by maintaining and encouraging biodiversity within the Borough.
- 5.33 The Council's Regulation 123 List includes a range of strategic infrastructure types, such as open space, sustainability infrastructure and community facilities. Where strategic infrastructure projects fall under the infrastructure types in the Regulation 123 List, financial planning obligations will not be sought for the same project. Biodiversity measures that are not covered by the Council's Regulation 123 List and are deemed necessary to the particular development to mitigate specific impacts of that development will be dealt with by planning condition or if this is not possible, by

financial and/or non-financial planning obligation.

Threshold and Contribution Requirements

Where it is deemed necessary by the Council to secure Planning Obligations relating to Biodiversity, the threshold will be:

- Residential developments of more than 10 units or with a combined gross floorspace of 1,000 sqm (gross internal area) or more
- All major commercial development

Biodiversity

Where it is considered unfeasible for a development to provide adequate on-site biodiversity enhancements, or where projects in nearby open spaces, or enhancements to nearby rivers or water bodies, offer better opportunities to enhance biodiversity and/or access to nature, the Council will seek an equivalent financial contribution to off-site projects which will be secured for enhancements which help to deliver the Tower Hamlets Biodiversity Action Plan.

- 5.34 Tower Hamlets has a number of strategies and studies in place that present clear options to help mitigate the impacts of development on biodiversity.

Flood Risk

- 5.35 There are extensive areas in Tower Hamlets that have been identified as being at risk of flooding. Flood risk in the borough arises from rivers, canals, basins, sewers, surface water and groundwater.
- 5.36 The Council's Core Strategy and Managing Development Policies documents seeks to ensure that developers demonstrate that account has been taken of flood risk from all sources, and that the proposed development incorporates mitigation and management measures appropriate to the use and location. The Council also requires developers to improve water efficiency and reduce surface water run-off through the use of a range of Sustainable Drainage Systems (SUDs) appropriate to the various parts of the Borough.
- 5.37 The Council's Regulation 123 List includes strategic flood defences and where strategic infrastructure projects fall under this description, financial planning obligations will not be sought for the same project. Flood defence measures that are not covered by the Council's Regulation 123 List and are deemed necessary to the particular development to mitigate specific impacts of that development will be dealt with by planning condition or if this is not possible, by financial and/or non-financial planning obligation.

Threshold and Contribution Requirements

Planning Obligations relating to Flood Risk will be sought for:

- Any development where applicable

Flood Risk

It must be demonstrated that any new development will reduce the risk of fluvial, tidal and surface water flooding and manage residual risks through appropriate flood risk measures. Measures to mitigate flooding from ground water and sewers should also be included.

Provision of flood risk mitigation measures such as Sustainable Drainage Systems (SUDS) are expected to be provided on-site and secured through conditions or a S106 agreement.

6. Monitoring and Implementation

- 6.1 The requirement on the Council to monitor all aspects of S106 agreements carries a financial cost that constitutes an impact from new development. Accordingly, the Council will require a monitoring fee as a financial contribution for each S106 agreement. All planning obligations, whether financial or in-kind, require monitoring to ensure the obligation is fully complied with and in line with the trigger date as well as the relevant legal requirements.
- 6.2 This monitoring fee excludes all legal costs associated with the preparation of S106 agreements.

Threshold and Contribution Requirements

Planning Obligations relating to Monitoring and Implementation will be sought for:

- All developments requiring a S106 agreement.

The Council will require a contribution of £500 for each one of the Heads of Terms within a S106 Agreement.

For exceptionally detailed agreements, (for example, variations to existing agreements or those that are complex to monitor and implement) the Council may request a contribution above the standard charge.

7. Procedure & Management

- 7.1 The Council starts managing and monitoring each S106 agreement from the moment it is signed. This is a complex process which covers over a thousand legal documents, all with multiple trigger points and obligations. Tower Hamlets Council employs S106 officers dedicated to overseeing this complex programme and ensuring the successful delivery of the obligations secured through S106 agreements.
- 7.2 An internal, cross-directorate panel, chaired by the Corporate Director of Development and Renewal, oversees the process of determining and approving S106 funding.

Trigger Points

- 7.3 During the negotiation process, trigger points for each obligation will be agreed upon between the developer and the Council. There are established trigger points which are suitable for S106 agreements and triggers selected in each case will be based on the nature of the obligation and the stage at which the mitigation is required. The established trigger points are:
 - Upon the date that the agreement is signed;
 - Upon or prior to commencement of the development;
 - Upon or prior to practical completion of the development; and,
 - Upon or prior to occupation of the development
- 7.4 The Council will encourage the use of these four identified triggers in negotiations, with the commencement of the development being the preferred point for an obligation to be delivered upon.

Interest Bearing Accounts

- 7.5 When a financial contribution is received it will be placed within an interest bearing account from the date of its receipt. The interest accrued will be applied by the Council to the related S106 project(s).

Penalty Clause and Enforcement of Obligations

- 7.6 Trigger points will vary for each individual obligation within the S106 agreement. The developer is bound within each S106 agreement to notify the Council upon commencement of the development. Where the Council is not notified and obligations become overdue the Council will seek to enforce the obligation and will activate the penalty clause.

- 7.7 A clause included in the S106 agreement will ensure prompt payment by inserting a financial penalty requiring interest to be paid where payments are overdue. As a final recourse, where obligations are not subsequently complied with, the Council will take legal action against those in breach of a S106 agreement. Non-financial obligations are also legally binding and where not provided according to the terms of the S106 agreement may be legally enforced by the Council.

Complying with Planning Obligations – the Developer’s Role

Complying with Financial Obligations

- 7.8 Where a S106 agreement contains a financial obligation, details of how to make the payment to the Council are provided. A payment form as standard will be appended to the agreement and any payments should be made using this form, following the instructions provided. The payment can be made through BACS/CHAPS, cheque or postal order. Once received, the payment will be logged onto the Council’s systems. A breakdown of received financial contributions is published on the Planning Obligations Webpage (found at www.towerhamlets.gov.uk) on a quarterly basis.

Index Linking Payments

- 7.9 Financial contributions will be index linked in order to allow for the fluctuation of prices between the date the agreement is signed and the date the payment is made. This is calculated based on the indexation adjustment of the relevant index, from the date the S106 agreement is signed to the expected date of payment. The additional amount paid on top of the financial contribution adjusts the contribution in accordance with inflation.
- 7.10 The method of indexation should be specified within the legal agreement and will usually either be the Retail Price Index (RPI) published by the Department of Trade and Industry (DTI), the Building Cost Information Service Index (BCIS) published by the Royal Institution of Chartered Surveyors (RICS) or the Consumer price index (CPI) published by the Office for National Statistics, depending on the nature of the contribution. In the event that the index shall decrease, the contribution shall not fall below the figure set out in the S106 agreement.
- 7.11 The Council will endeavour to provide updated costs for the standard charges provided throughout the Document as and when necessary.

Complying with In-kind Contributions

- 7.12 Where an in-kind obligation is required through a S106 agreement the developer should provide evidence of compliance with the obligation to the Council, as outlined in the terms of the specific clauses. This evidence should be provided to the Council's Planning Obligations Officer. If approval is required from the Council on an element of the in-kind obligation, the Planning Obligations Officer should be the first point of contact.

Monitoring and Delivery of Planning Obligations – the Council's Role

Non-Financial Obligations

- 7.13 The delivery of non-financial contributions, or in-kind obligations, will be monitored by the appropriate service areas responsible for project delivery. For example, where there is an Affordable Housing element to a legal agreement, the Affordable Housing Team will monitor this section of the agreement to ensure that it is complied with.

Financial Contributions

- 7.14 Once a financial contribution is received by the Council the service area or organisation with the responsibility for delivery of the S106 project will be informed. Projects funded through planning contributions will be selected through strategic objectives, which identify the infrastructure needed within the borough through public consultation and work undertaken by the individual service areas in the Council.

Glossary of Terms

Affordable Housing

As defined in The London Plan (2011) in Chapter 3 at Policy 3.10 and paragraph 3.61.

Community Infrastructure Levy (CIL) – Tower Hamlets

A Levy charged on new development in the Borough, by the London Borough Of Tower Hamlets in order to fund infrastructure that is needed to support growth in the area.

Community Infrastructure Levy (CIL) – London

A Levy charged on new development in London by the Mayor of London since the 1st April 2012 to fund strategic transport. This Levy is in addition to the LBTH Borough's CIL.

Community Infrastructure Levy Regulations

Regulations approved by the House of Commons in accordance with section 222(2)(b) of the Planning Act 2008.

Community Plan

A document prepared by the Tower Hamlets Partnership setting out how the quality of life in the borough will be improved in the period to 2020 and in accordance with four overarching themes.

Core Strategy

The primary document of the Local Plan, the Core Strategy sets out the long-term spatial strategy to deliver the aspirations set out in the Community Plan 2020 through broad areas and principles of where, how and when development should be delivered across the borough to 2025.

Development Plan Document (DPD)

A document which is part of the Local Plan and sets planning policy in local authority areas.

Green Grid

A network of interlinked, high-quality and multi-functional open spaces, waterways and other corridors (see Tower Hamlets Green Grid Strategy).

Habitable Room

A room within a dwelling, the main purpose of which is for sleeping, living or dining and meeting minimum room sizes set out in London Housing Design Standards. It is any room with a window that could be used to sleep in, regardless of how it is used. It excludes toilets, landings, halls, lobby areas and kitchen diners with an overall floor area of less than 13m².

Heads of Term

The different topic areas under which planning obligations might be identified in a Section 106 Agreement, for example Affordable Housing or Employment and Enterprise.

Idea Store

A strategic facility in Tower Hamlets which provides library facilities, a wide range of adult learning courses, computer access and activities and events.

Infrastructure Delivery Plan (IDP)

A schedule listing the key pieces of infrastructure required by the Core Strategy over the lifetime of the plan.

Local Implementation Plan (LIP)

Statutory transport plans produced by London Boroughs bringing together transport proposals to implement the Mayor of London's Transport Strategy at the local level.

Local Plan

Is the term for the Council's Development Plan Documents comprising the adopted Core Strategy and the Managing Development Document and Fish Island Area Action Plan.

Major Commercial Development

Any commercial development, including hotels, creating 1,000sqm or more of commercial floorspace.

Major Residential Development

Any residential development, including student housing, creating 10 or more units.

Managing Development Document

The Managing Development Document forms part of Tower Hamlets Local Plan. The document is the planning tool to help meet the policies and objectives identified in the Core Strategy.

Material Consideration

A legal term describing a matter or subject which is relevant (i.e. material) for a local authority to consider in assessing development proposals and when using its powers under planning law.

Regulation 123 List

Under Regulation 123 of the CIL Regulations 2010 (as amended), a Charging Authority is required to provide a Regulation 123 list, which sets those projects or types of infrastructure that it intends to fund through the Levy. .

Section 278 Agreement

A legal agreement completed between the developer and the Local Planning Authority, under section 278 of the Highways Act 1980, where a development requires works to be carried out on the existing adopted highway. These agreements provide a financial mechanism for ensuring delivery of mitigation works identified and determined as necessary for planning permission to be granted.

Transport Assessment (TA)

A document which accompanies a planning application, and is used by planning authorities and highways authorities to determine whether the impact of a new development on the transport network is acceptable. It should identify what measures may be required to deal with the predicted transport impacts and to improve accessibility and safety, especially for pedestrians, cyclists and public transport users.

Viability Assessment

An assessment of the financial viability of a development, taking into account a range of different factors such as location, type of site, size of scheme and scale of contributions to infrastructure and facilities.

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Community Infrastructure Levy (CIL)

Regulation 123 List

September 2016

Regulation 123 List

List of Infrastructure Projects

September 2016

The list below sets out those types of infrastructure projects that Tower Hamlets Council intends will be, or may, be wholly or partly funded by CIL.

The inclusion of a type of infrastructure in this list does not signify a commitment from the Council to wholly or partly fund it through CIL.

Types of strategic* infrastructure (including new provision, replacement or improvements to existing infrastructure, operation and maintenance): -**

- **Community facilities**
- **Electricity supplies to all Council managed markets**
- **Employment and training facilities**
- **Energy and sustainability (including waste) infrastructure**
- **Flood defences**
- **Health and social care facilities**
- **Infrastructure dedicated to public safety (for example, wider CCTV coverage)**
- **Leisure facilities such as sports facilities, libraries and Idea Stores**
- **Open space, parks and tree planting**
- **Public art provision**
- **Public education facilities**
- **Roads and other transport facilities**

* For the purposes of the CIL Regulation 123 List, 'strategic' is defined as infrastructure that is designed to serve more than those residents or workers within one particular development by contributing to infrastructure improvements across the wider Borough.

** The above list excludes infrastructure required by the Council's Managing Development Document on the Wood Wharf, Westferry Printworks, Bishopsgate Goods Yard and London Dock sites.



Revised Regulation 123 List and Planning Obligations Supplementary Planning Document

EQUALITIES ANALYSIS SCOPING REPORT

April 2016



Equality Analysis (EA) Scoping Report

Section 1 – General Information (Aims and Objectives)

Name of the proposal including aims, objectives and purpose:

(Please note – for the purpose of this doc, ‘proposal’ refers to a policy, function, strategy or project)

London Borough of Tower Hamlets Revised Regulation 123 List and Planning Obligations
Supplementary Planning document

Who is expected to benefit from the proposal?

The local community, which includes local residents, businesses and organisations within Tower Hamlets, through the mitigation of site-specific and negative impacts of development and provision of affordable housing and opportunities to the local workforce and local business.

Service area:

Planning and Building Control

Team name:

Infrastructure Planning

Service manager:

Owen Whalley (Planning & Building Control Service Head)

Name and role of the officer completing the EA Scoping Report:

Anna McGill, Planning Obligations Officer

Section 2 – Evidence (Consideration of Data and Information)

What initial evidence do we have which may help us think about the impacts or likely impacts on service users or staff?

The Revised Regulation 123 List sets out the relevant infrastructure types the Council intends will be, or may be, wholly or partly funded by the Community Infrastructure Levy (CIL). The Revised Planning Obligations SPD is a tool for negotiating contributions to mitigate any negative site-specific impacts of development. The Revision is required because some of the impacts of development on the borough’s infrastructure (such as education, health, open space and transport needs) will now be mitigated through a locally set Community Infrastructure Levy. CIL regulations do not allow the Council to collect both CIL and S106 for expenditure on the same infrastructure items. Following the adoption of CIL it will no longer be possible to negotiate S106 Planning Obligations using the adopted Planning Obligations SPD and therefore a revised SPD, with a narrower focus, is required. The adopted Planning Obligations SPD passed through a period of consultation and Cabinet approvals prior to adoption and included an Equalities Analysis. The adopted SPD was not considered to have any negative impacts on any particular equalities groups.

Section 3 – Assessing the Impacts on the 9 Groups

How will what you’re proposal impact upon the nine Protected Characteristics?

For the nine protected characteristics detailed in the table below please consider:-

- **What is the equality profile of service users or beneficiaries that will or are likely to be affected?**

The resident population of London Borough of Tower Hamlets is estimated to be approximately 254,100 in 2011 according to the census. In respect of the protected characteristics detailed in the Equalities Act 2012, the information below , sourced from 2011 census and GLA 's population projections data, provide general information of equality profiles for various groups that will or likely to be affected by the LBTH CIL.

Population

The 2011 census showed that Tower Hamlets has had the fastest growing population of any Local Authority in the country over the last 10 years. At 254,100 usual residents, the population has increased by 29% since 2001 (57,990 additional residents).

Age

The main driver of the growth since the 2001 Census has been in the working age population (aged 20 to 64). Residents in the 20 to 64 age group have increased from 122,070 in 2001 to 176,400 in 2011, an increase of over 44.5% (54,330 residents).

Race

More than two thirds (69 per cent) of the borough's population belong to minority ethnic groups (ie not White British): 55 per cent belong to BME (Black and Minority Ethnic) groups and a further 14 per cent are from White minority groups.

The borough's three largest groups are the Bangladeshi (32 per cent), White British (31 per Cent) and 'Other White' populations. Considered together, people from these three ethnic groups make up around three-quarters of the Tower Hamlets population.

A number of other ethnic groups in the borough, though smaller in population size, have also seen quite fast growth (relative to the overall growth rate for the borough of 30 per cent). The following groups have more than doubled in size: Mixed ethnic groups (+113 per cent); Indian (+126 per cent); Chinese (+127 per cent); Other Asian (+227 per cent) and Black Other (+312 per cent).

Religion or Belief

The Borough's largest faith groups are Muslim and Christian. The 2011 census shows that 34.5 per cent of residents identified themselves as Muslims and 27.1 per cent residents identified themselves as Christian.

There have been significant changes in the faith composition of the population over the last ten years. Most notably, there has been a decline in the number of Christians and an increase in the number of people reporting no religion at all. These trends have been evident both locally and nationally.

Disability

By August 2010, there were more than 10,000 claimants of disability living allowance in Tower Hamlets. 52 per cent were male and 48 per cent were female. Among them, over 7,000 people had claimed disability living allowance for 5 years and over. People between the ages of 25-49 accounted for the highest number of claimants of disability living allowance.

Disabled people often face significant employment barriers; only one third population of this group are in employment, this compares against almost two thirds of non-disabled people of the same age profile.

Gender Reassignment

The Council does not have demographic information on gender reassignment. However, this group of people are taken to be represented in Tower Hamlets population.

Gender

The 2011 Census shows that the population of Tower Hamlets is 51.5 % men and 48.5 % women - a gender ratio of 106 male residents per 100 female residents. There are some significant imbalances in specific age bands – with the greatest imbalance in the 40-44 age range, where it reaches 132 males for every 100 females and is significantly different from London and National averages.

Sexual Orientation

The Council does not have demographic information on sexual orientation. However, this group of people are taken to be represented in Tower Hamlets population.

Marriage and Civil Partnerships

At the time of the 2011 Census, there were more single persons (aged 16 and over) than married/re-married persons living in the Tower Hamlets, which was about 34.6% against 23.7%.

Pregnancy and Maternity

From January to December 2010, the total birth in Tower Hamlets was about 4,600. Over 50 per cent were males and about 48 per cent were females.

Socio Economic

There has been a rapid population growth in Tower Hamlets in recent years. This trend is expected to continue over the next 15 years. As a result of this growth, there is a pressing need to improve the provision of local infrastructure, which can help enhance people's quality of life in the Borough. Accessing affordable housing and the job market are the two main issues in Tower Hamlets.

- **What qualitative or quantitative data do we have?**

1. A profile of the Tower Hamlets Population (2010)
2. Census 2011 Briefings
3. Population – key facts research briefing (2011)
4. Infrastructure Delivery Plan (2009) and updated report (2011)
5. Tower Hamlets Planning for population change and growth: capacity assessment baseline report (2009)
6. Equalities Analysis for London Borough of Tower Hamlet's Development Plan Documents (2011)
7. Sustainability Appraisal for London Borough of Tower Hamlet's Development Plan Documents (2011)
8. Planning Obligations Supplementary Planning Document (2012)
9. Consultation and engagement reports for London Borough of Tower Hamlets' Development Plan Documents, Local Development Framework (2011)
10. Tower Hamlets Local Development Framework Annual Monitoring Report (2011)
11. Strategic Housing Market and Needs Assessment (2009)
12. Planning for a healthier urban environment in Tower Hamlets (2011)
13. Tower Hamlet's Parking stress study (2011)
14. Managing Travellers' Accommodation (2011)

15. London Borough of Tower Hamlets - London Heat Map Study (2011)
16. Tower Hamlets Green Grid Strategy (2010)
17. The Cycling Plan for Tower Hamlets (2009)
18. Tower Hamlets Strategic flood risk assessment (2012)
19. Tower Hamlets Primary school site selection and summary table (2012)
20. Tower Hamlet's Transport Planning Strategy 2011 – 2031 (2011)
21. Tower Hamlets Public transport capacity assessment (2006)
22. The walking plan for Tower Hamlets 2011-2021 (2011)
23. London Borough of Tower Hamlets Waste evidence base report update (2011)
24. Multi-faith burial site for Tower Hamlets – Criteria for site identification (2009)
25. Character area assessments (2006)

- **Equalities impact on staff**

The development of the Revised Planning Obligations SPD is a process which involves other teams across directorates. The SPD itself does not have a direct impact on staff but improved infrastructure as a result of Planning Obligations will affect staff in the same way as other residents and employees in the borough.

- **Barriers**

Communication – Many local residents in the Tower Hamlets are from BME groups. English may not be their first language. This may cause difficulty to understand the Revised Planning Obligations SPD and how it may impact their lives. Any consultation will be compliant with the Council's Statement of Community Involvement approved in 2009. If requests are received the consultation material can be translated.

- **Recent consultation exercises carried out**

The Revised Planning Obligations SPD has been developed in consultation with key internal stakeholders to ensure any impacts resulting from the revision of the SPD are addressed and, where deleterious, avoided. Within the Council, an Infrastructure Planning Steering Group has been set up to discuss infrastructure requirements, costs and funding sources for the Borough on a quarterly basis. Discussions have also been held with the Mayor of Tower Hamlets and the Lead Members for Housing and Resources on the proposed approach to the continued use of S106 and CIL.

The Revised Planning Obligations SPD along with the SEA and EQIA was first consulted on in October 2013. No negative impact have been identified or contested in both the EQIA and SEA at public consultation.

Following approval by Cabinet, the Council will submit the Revised Planning Obligations SPD to a five week period of consultation, in accordance with the approach outlined in the Statement of Community Involvement.

- **Additional factors which may influence disproportionate or adverse impact?**

The Planning Obligations SPD provides guidance on when the Council is likely to secure site mitigation measures through a S106 agreement to make a development acceptable. The Council's proposed use of S106 agreements is in line with national, regional, and local planning policy. In all instances where a S106 agreement is sought the objective is to mitigate site-specific negative impacts of development. The Revised Planning Obligations SPD will therefore not have any disproportionate impacts upon any group as all measures are universally positive. Failure to adopt a Revised Planning Obligations SPD may, however, have disproportionate and adverse impacts on some of the borough's residents because some adverse impacts of development may not be appropriately mitigated.

- **The Process of Service Delivery**

Securing site-specific development mitigation through S106 will assist service delivery in helping the Council achieve its major objectives including ensuring Tower Hamlets is a Great Place to Live.

Target Groups	Impact – Positive or Adverse What impact will the proposal have on specific groups of service users or staff?	Reason(s) <ul style="list-style-type: none"> • Please add a narrative to justify your claims around impacts and, • Please describe the analysis and interpretation of evidence to support your conclusion as this will inform decision making <p>Please also how the proposal will promote the three One Tower Hamlets objectives?</p> <ul style="list-style-type: none"> -Reducing inequalities -Ensuring strong community cohesion -Strengthening community leadership
Race	Neutral	<p>The BME groups are expected to continue to rise over the next 15 years in the Borough. Within this group, unemployment levels are generally higher than the national average.</p> <p>S106 Planning Obligations will not have direct equality impacts on this target group as it is predominantly a financial document and therefore it is not considered it will have a disproportionate effect on the targeted group. However, some developments will be expected to make a contribution towards local employment and enterprise, which will benefit residents of all ethnicities. Equalities needs are assessed by relevant service areas and planning officers when assessing whether a S106 Agreement would be appropriate for a specific development.</p> <p>Evidence from the 2011 Census showed that BME residents were more likely to be in need of social housing and living in overcrowded households. S106 agreements will continue to be used to secure affordable housing which will have a positive outcome to residents in need of social housing, regardless of need.</p>
Disability	Neutral	<p>People with disabilities face significant employment barriers, as disabled people are three times more likely to be unemployed than people with no disabilities.</p> <p>S106 Planning Obligations will not have direct equality impacts on this target group as it is predominantly a financial document and therefore it is not considered it will have a disproportionate effect on the targeted group. However, some developments will be expected to make a contribution towards affordable housing, wheelchair access, local employment and enterprise, transport, public realm, public access and environmental sustainability which will benefit all residents and is particularly important for people in this equalities group. Equalities needs are assessed by relevant service areas and planning officers when assessing whether a S106 Agreement would be appropriate for a specific development.</p>
Gender	Neutral	<p>The 2011 census figures show that the number of men outnumbers females significantly within the 35-54 age groups in the Borough. Women outnumber men among the 20-24 age group, and again in the 65 – 69 age</p>

		<p>group.</p> <p>S106 Planning Obligations will not have direct equality impacts on this target group as it is a financial document and therefore it is not considered it will have a disproportionate effect on the targeted group. Equalities needs are assessed by relevant service areas and planning officers when assessing whether a S106 Agreement would be appropriate for a specific development.</p>
Gender Reassignment	Neutral	<p>The targeted group is taken into consideration as part of the profile of the Tower Hamlets population, although the data is unavailable at this stage.</p> <p>S106 Planning Obligations will not have direct equality impacts on this target group as it is a financial document and therefore it is not considered it will have a disproportionate effect on the targeted group. Equalities needs are assessed by relevant service areas and planning officers when assessing whether a S106 Agreement would be appropriate for a specific development.</p>
Sexual Orientation	Neutral	<p>The targeted group is taken into consideration as part of the profile of the Tower Hamlets population, although the data is unavailable at this stage.</p> <p>S106 Planning Obligations will not have direct equality impacts on this target group as it is a financial document and therefore it is not considered it will have a disproportionate effect on the targeted group. Equalities needs are assessed by relevant service areas and planning officers when assessing whether a S106 Agreement would be appropriate for a specific development.</p>
Religion or Belief	Neutral	<p>Residents in Tower Hamlets profess a wide range of faiths. Significantly represented faiths include Islam and Christianity, however many other religious, and non-religious, belief systems are represented across the borough.</p> <p>S106 Planning Obligations will not have direct equality impacts on this target group as it is a financial document and therefore it is not considered it will have a disproportionate effect on the targeted group. Equalities needs are assessed by relevant service areas and planning officers when assessing whether a S106 Agreement would be appropriate for a specific development.</p>
Age	Neutral	<p>The older age group is expected to increase the most over the next fifteen years in the Tower Hamlets as is the peak of residents currently in their late twenties and early thirties. Working age residents (aged 16 to 64) make up 74.1% of the usually resident population in Tower Hamlets.</p> <p>S106 Planning Obligations will not have direct equality impacts on this target group as it is predominantly a financial document and therefore it is not considered it will have a disproportionate effect on the targeted group. However, some developments will be expected to make a contribution towards affordable housing, wheelchair access, local employment and enterprise, transport, public realm, public access, play space and environmental sustainability which will benefit all residents and is particularly important for people in this equalities group. Equalities needs are assessed by relevant service areas and planning officers when assessing whether a S106</p>

		Agreement would be appropriate for a specific development.
Marriage and Civil Partnerships.	Neutral	<p>At the time of the 2011 Census, there were more single persons (aged 16 and over) than married/re-married persons living in the Tower Hamlets, which was about 34.6% against 23.7%.</p> <p>S106 Planning Obligations will not have direct equality impacts on this target group as it is a financial document and therefore it is not considered it will have a disproportionate effect on the targeted group. Equalities needs are assessed by relevant service areas and planning officers when assessing whether a S106 Agreement would be appropriate for a specific development.</p>
Pregnancy and Maternity	Neutral	<p>The targeted group is taken into consideration as part of the profile of the Tower Hamlets population.</p> <p>S106 Planning Obligations will not have direct equality impacts on this target group as it is predominantly a financial document and therefore it is not considered it will have a disproportionate effect on the targeted group. However, some developments will be expected to make a contribution towards affordable housing, wheelchair access, transport, public realm, public access, play space and environmental sustainability which will benefit all residents and is particularly important for people in this equalities group. Equalities needs are assessed by relevant service areas and planning officers when assessing whether a S106 Agreement would be appropriate for a specific development.</p>
Other Socio-economic Carers	N/A	N/A

Section 4 – Mitigating Impacts and Alternative Options

From the analysis and interpretation of evidence in section 2 and 3 - Is there any evidence or view that suggests that different equality or other protected groups (inc' staff) could have a disproportionately high/low take up of the new proposal?

No

If yes, please detail below how evidence influenced and formed the proposal? For example, why parts of the proposal were added/removed?

(Please note – a key part of the EA Scoping Report process is to show that we have made reasonable and informed attempts to mitigate any negative impacts. An EA Scoping Report is a service improvement tool and as such you may wish to consider a number of alternative options or mitigation in terms of the proposal.)

Section 5 – Quality Assurance and Monitoring

Have monitoring systems been put in place to check the implementation of the proposal and recommendations?

Yes

How will the monitoring systems further assess the impact on the equality target groups?

The EqIA will be reviewed annually to assess impact of equality target groups of the Revised Planning Obligations SPD

Does the policy/function comply with equalities legislation?

(Please consider the OTH objectives and Public Sector Equality Duty criteria)

Yes

If there are gaps in information or areas for further improvement, please list them below:

How will the results of this Equality Analysis feed into the performance planning process?

The results of this EA Scoping Report will be used to ensure that:

1. The Council is clear on any future use of S106 Planning Obligations
2. The Revised Planning Obligations SPD is consulted again on for a period of five weeks prior to adoption.

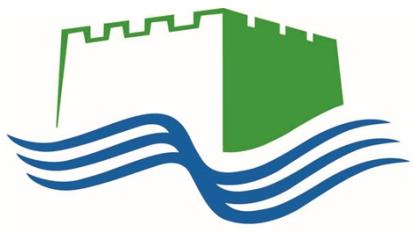
Section 6 - Action Plan

As a result of these conclusions and recommendations what actions (if any) **will** be included in your business planning and wider review processes (team plan)? Please consider any gaps or areas needing further attention in the table below the example.

Recommendation	Key activity	Progress milestones including target dates for either completion or progress	Officer responsible	Progress
<ul style="list-style-type: none">The local community, key stakeholders are consulted appropriately as required by the Statement of Community Involvement and Government legislation	Undertake further 5 weeks consultation	April - May 2015	Planning Obligations Officer	Consultation to begin following approval from the Mayor in Cabinet

Section 7 – Sign Off and Publication

Name: (signed off)	Matthew Pullen
Position:	Infrastructure Planning Team Leader
Date signed off: (approved)	



TOWER HAMLETS

**Draft SEA Screening Determination Letter and
Sustainability Appraisal Review**

**Revised Regulation 123 List and Planning Obligations
Supplementary Planning Document**

April 2016



1. Background

- 1.1 Following the adoption of the Core Strategy in September 2010, the Council produced and adopted a Planning Obligations Supplementary Planning Document (SPD) in January 2012. The adopted Planning Obligations SPD includes guidance on the S106 planning contributions that the Council seeks, to mitigate adverse effects of development on the borough's infrastructure, as well as adverse effects of development at the site-specific level.
- 1.2 From April 2015, the Council has charged a Community Infrastructure Levy (CIL) to mitigate any borough-wide impacts of development and therefore the scope for negotiating Planning Obligations Agreements will become more limited to infrastructure requirements that are site specific in nature and not covered by CIL. The Council therefore needs to update the Planning Obligations SPD to address these changes.
- 1.3 The Council sought outside counsel advice on its Regulation 123 List and Revised Planning Obligations SPD. Following this advice, amendments have been made to both documents.
- 1.3 This document considers whether the proposed Revised Regulation 123 List and Planning Obligations SPD should be subject to a Strategic Environmental Assessment (SEA) and provides a Sustainability Appraisal Review (SA). This document constitutes the Council's Determination Letter and accompanying Statement of Reasons.

2. The Revised Regulation 123 List and Planning Obligations SPD

- 2.1 The Revised Regulation 123 List sets out the relevant infrastructure types the Council intends will be, or may be, wholly or partly funded by the CIL.
- 2.2 In line with the Regulation 123 List, the Revised Planning Obligations SPD sets out guidance on how the Council will continue to apply planning obligations (also known as S106) with the introduction of CIL. Future use of Planning Obligations will be in accordance with Regulation 122 of The CIL Regulations 2010. Therefore, a Planning Obligation may only be entered into where the obligation is:
 - (a) necessary to make the development acceptable in planning terms;
 - (b) directly related to the development; and
 - (c) fairly and reasonably related in scale and kind to the development.
- 2.2 Funds to support the delivery of local and strategic infrastructure that is required as a result of new development such as transport schemes,

open spaces, schools and community facilities, will now be secured through CIL.

3. Purpose of this SA Review

- 3.1 An SA considers the potential impacts of a planning policy document on the environment, the economy, and society. It does this by assessing the extent to which the planning document will help achieve a set of objectives that cover a range of issues, including air quality, landscape, water, health and the population. The SA also has to satisfy the requirements of the EC Directive 2001/42/EC on the assessment of the effects of certain planning documents and programmes on the environment (known as the Strategic Environmental Assessment [SEA] Directive).
- 3.2 There is no longer a statutory requirement for the Council to produce an SA for Supplementary Planning Documents (SPD), however, the requirement remains for Development Plan Documents (DPD). An SA was undertaken for the Council's Core Strategy 2025, and the emerging Managing Development DPD.
- 3.3 Although it is not a statutory requirement to prepare an SA for SPDs, in pursuing best practice the Council has undertaken an SA Review for the Planning Obligations SPD. This SA review does not constitute an SA satisfying the EC Directive 2001/42/EC (or accompanying regulations), however, it will enable the Council to ensure that the social, economic and environmental impacts of the draft Planning Obligations SPD have been considered and that the SPD is a robust and coherent document that considers all aspects of sustainability. This document will also provide an efficient method of determining if the SPD is compatible with the sustainability objectives established in the SA for the Core Strategy.
- 3.4 This SA Review draws heavily on the SA review undertaken as a part of the evidence base for the adopted Planning Obligations SPD. The Revised Planning Obligations SPD is also supported by an Equalities Analysis (EA) Scoping Report. Following an external consultation on the SPD, between April to May 2015, any required changes which impact the Sustainability Appraisal will be reassessed.

4. SEA Screening Determination

Legislation

- 4.1 An SEA is an assessment of the likely effects of a plan or programme on the environment. The requirement for SEA is set down in the EU Strategic Environmental Assessment Directive (2001/42/EC) which was transposed into UK law in 2004 through The Environmental Assessment of Plans and Programmes Regulations 2004 (known as the 'SEA Regulations').

- 4.2 The Revised Planning Obligations SPD is considered to be a plan/programme as defined by the SEA Regulations. Regulation 9 of the SEA Regulations require the responsible authority (in this case LBTH) to determine whether or not a plan or programme is likely to have significant environmental effects and would therefore be subject to an SEA.

Previous SEAs

- 4.3 The Council has previously undertaken a Sustainability Appraisal for the Core Strategy. The Sustainability Appraisal for the Core Strategy also satisfied the requirements of the EC Directive 2001/42/EC and SEA Regulations on the assessment of the effects of certain plans and programmes on the environment.
- 4.4 The adopted Planning Obligations SPD is a supplementary document to the Core Strategy. The adopted Planning Obligations SPD was therefore considered to be in-keeping with what had already been assessed within the Core Strategy Sustainability Appraisal and therefore an SEAs not required.
- 4.5 Following consultation on the determination with the statutory environmental bodies (Environment Agency, English Heritage and Natural England) as defined in Regulation 4(1) of the SEA Regulations, responses were received from the Environment Agency and Natural England (previously English Nature), both of whom confirmed that the Planning Obligations SPD does not require an SEA to be undertaken as the SPD was considered to be an elaboration of an existing plan and is therefore a ‘minor modification’ of that plan as defined by Regulation 5(6) of the SEA Regulations, and is unlikely to have significant effects.

5. Decision (Determination Letter)

- 5.1 This Determination Letter considers the Revised Planning Obligations SPD in relation to the previous assessments, to determine whether there would be any new likely significant effects.
- 5.2 Consideration has been given to the likely significant effects on the environment, including on issues, such as biodiversity, population, human health, fauna, flora, soil, water, air, climatic factors, material assets, cultural heritage including architectural and archaeological heritage, landscape and the interrelationship between the above factors.
- 5.3 Regulation 5(6) identifies when an environmental assessment does not need to be carried out, which is either the use of a small area at local level, or for a minor modification to a plan or programme, unless it has

been determined that it is likely to have significant environmental effects.

- 5.4 The Revised Planning Obligations SPD does not introduce new mechanisms under which a S106 contribution shall be required, rather it refines the Council's approach by removing the requirement to mitigate some forms of development impacts through S106 in favour of CIL.
- 5.5 LBTH has determined that an SEA is not required as the Revised Planning Obligations SPD is a 'minor modification' of a previous plan and significant effects are not likely.
- 5.6 Regulation 9 (3) of the SEA Regulations requires that where it has been determined that a plan or programme is unlikely to have significant effects (and accordingly does not require an environmental assessment) a Statement of Reasons should be prepared. This is set out in Table 3.

6. Consultation

- 6.1 A copy of this SEA Determination Letter and Statement of Reasons can be viewed online here:
http://www.towerhamlets.gov.uk/lgsi/501-550/register_of_planning_decisions/section_106_planning_obligatio.aspx
- 6.2 A copy will also be available for inspection by the public at the Town Hall, Mulberry Place, 5 Clove Crescent, London E14 2BG.
- 6.3 If you require any further assistance, please contact the Infrastructure Planning Team on 020 7364 1666/6363 or email
CIL@towerhamlets.gov.uk

7. Revised Planning Obligations SPD Context

7.1 Table 1 below provides an overview of the Revised Planning Obligations SPD. For further details, please refer to the Revised Planning Obligations SPD.

Legislative Context	<ul style="list-style-type: none"> Review of the Town & Country Planning Act 1990. Review of Community Infrastructure Levy Regulations 2010 (Regulation 122 and Regulation 123).
Policy and Guidance Context	<ul style="list-style-type: none"> Review of national guidance contained within Planning Policy Statement 1 and Planning Policy Statement 12. Focus on guidance contained within Circular 05/2005 which details the use of Planning Obligations. Review of Regional Policy, the Draft Replacement London Plan 2010. Review of Local Policy and Guidance including the Council's Community Plan 2008/2009, emerging Development Plan Documents and Area Actions Plans and the Unitary Development Plan saved policies 1998.
Approach to Infrastructure Delivery	<ul style="list-style-type: none"> Summary of the Approach to development mitigation and Infrastructure Delivery Summary of the Council's proposed use of CIL Summary of the Council's proposed use of S106
Negotiating Planning Obligations	<ul style="list-style-type: none"> Liaising with the Council at the pre-application stage. Submission of Planning Obligation details at application stage. Where application is unable to provide the contributions, a Viability Assessment is required to be submitted alongside a planning application.
Standard Obligations and Charges	<ul style="list-style-type: none"> This section sets out the standard Planning Obligations that the Council will seek. Each Planning Obligation has been set out individually with 'justification', 'threshold' and 'approach'.
Procedure and Management	<ul style="list-style-type: none"> Information relating to monitoring and managing planning agreements including details of; <ul style="list-style-type: none"> monitoring fees trigger points pooling of contributions interest bearing accounts penalty clause and enforcement of obligations complying with planning obligations monitoring and delivering planning obligations

8. Sustainability Appraisal Review

- 8.1 The objectives from the Core Strategy's SA have been used to assess the adopted Planning Obligations SPD and the Revised Planning Obligations SPD. The purpose of this exercise is to identify any negative impacts in the Revised Planning Obligations SPD, and where appropriate identify mitigation measures. The results of this assessment are set out in Table 3: Statement of Reasons.
- 8.2 In general, it is considered that the Revised SPD will contribute to achieving the principles of sustainable development and is aligned with the SA objectives established in the Core Strategy. It performs well against the SA objectives and no instances were identified where the Revised Planning Obligations SPD would conflict with the SA objectives.
- 8.3 Table 3 presents the results of the assessment against each SA objective using the key below in Table 2. Effects are permanent and of borough wide significance unless indicated otherwise in the commentary box.

Table 2: Criteria for Determining Significance of the Effect

Potential for significant positive effect	++
Potential for a minor positive effect	+
No relationship	
Potential for a minor negative effect	-
Potential for significant negative effect	--
Uncertainty	?

Table 3: Statement of Reasons

Sustainability Objective and Questions to Consider <i>As set out by the Sustainability Appraisal of the Core Strategy (2009)</i>	Objective Met?	Comments	Recommendations / Mitigation
<i>Environmental</i>			
<p>Biodiversity: To conserve and enhance natural habitats and wildlife and bring nature closer to people.</p> <ul style="list-style-type: none"> • Will it conserve and enhance habitats and species in accordance with the Local Biodiversity Action Plan. In particular, will it avoid harm to national or London priority species and designated sites and habitats and species identified in the Local Biodiversity Action Plan? • Will it provide for the long-term management of natural habitats and wildlife? • Will it improve the quality and extent of designated and non-designated sites with the intention of achieving a net gain in biodiversity? • Will it provide opportunities to enhance the environment and create new conservation assets (or restore existing wildlife habitats) for example by integrating the creation of new habitats into the design of new buildings and areas? • Will it protect and enhance the borough's water bodies to achieve a good ecological status? • Will it promote, educate and raise awareness of 	+	<p>The Council will seek contributions towards enhancements to Biodiversity from all major residential and commercial developments. Where it is considered unfeasible to provide adequate on-site enhancements the Council will seek an equivalent financial contribution for off-site projects.</p>	<p>The Biodiversity measures respond to the impacts of climate change and an increasingly dense cityscape by maintaining areas of biodiversity value and encouraging appropriate biodiversity enhancements within the borough.</p>

<p>the enjoyment and benefits of the natural environment?</p> <ul style="list-style-type: none"> • Will it bring nature closer to people, especially in the most urbanised parts of the borough, for example through the use of green and brown roofs? • Will it improve access to areas of biodiversity interest? • Will it enhance the ecological function and carrying capacity of the green space network? 			
<p>Water Quality & Water Resources: To improve the quality of surface waters and groundwater and to achieve the wise management and sustainable use of water resources.</p> <ul style="list-style-type: none"> • Will it reduce discharges to surface and groundwater? • Will it support sustainable urban drainage? • Will it improve the water systems infrastructure (e.g. water supply/sewerage)? • Will it reduce abstraction from surface and groundwater sources? • Will it reduce water consumption? • Will it encourage the consideration of the water cycle? 	+	<p>Through the Environmental Sustainability section of the SPD, obligations may be secured towards site specific flood risk mitigation measures such as Sustainable Urban Drainage systems (SUDs)</p>	<p>Further assessment to be provided at the detailed planning application stage, to mitigate any adverse impacts on water quality and resources.</p>
<p>Natural Resources: To minimise the global, social and environmental impact of consumption of resources by using sustainably produced, harvested and manufactured local products.</p> <ul style="list-style-type: none"> • Will it reduce the demand for natural resources and raw materials from unsustainable sources? • Will it encourage the prudent and efficient use of natural resources? 		<p>The principle of the objective falls outside of the Revised SPD.</p>	<p>Further assessment to be provided at the detailed planning application stage and through the negotiation of planning obligations, to minimise impact of</p>

<ul style="list-style-type: none"> • Will it encourage the use of local sustainable products? • Will it reduce the extraction of minerals? • Will it reduce the borough's ecological footprint per capita? 			development upon natural resources.
<p>Climate Change: To address the causes of climate change through minimising the emissions of greenhouse gases and ensuring that London is prepared for its impacts.</p> <ul style="list-style-type: none"> • Will it minimise emissions of greenhouse gases? • Will it help London meet its emissions targets? • Will it reduce the numbers of cars entering London's congestion charge zone? • Will it protect the borough from climate change impacts? • Will it avoid exacerbating the impacts of climate change? • Will it help the borough adapt to the impacts of climate change? • Will it minimise the risk of flooding from rivers and watercourses to people and property? • Will it manage existing flood risks appropriately and avoid new flood risks? 	+	<p>Through the Environmental Sustainability section of the SPD, financial obligations may be secured to mitigate the impacts of climate change.</p>	<p>Further assessment to be provided at the detailed planning application stage and through the negotiating of planning obligations, to minimise impacts of development on climate change.</p>
<p>Air Quality: To improve air quality</p> <ul style="list-style-type: none"> • Will it improve air quality? • Will it help to reduce emissions of PM10, NO₂? • Will it reduce emissions of ozone depleting substances? • Will it help to achieve national and international standards for air quality (for example, those set out in the Air Quality Regulations 2000 and 	+	<p>Through the Sustainable Transport section of the SPD, both financial or non-financial obligations may be secured to mitigate the impacts of air quality through Car Free agreements and sustainable transport</p>	<p>Further assessment to be provided at the detailed planning application stage and through the negotiating of planning obligations, to minimise impacts of development on air</p>

(Amendment) Regulations 2002? (See objective 10 for further details on transport criteria including the provision of infrastructure to achieve a modal shift)		measures.	quality.
<p>Energy: To achieve greater energy efficiency and to reduce reliance on fossil fuels for transport, heating, energy and electricity.</p> <ul style="list-style-type: none"> • Will it reduce the demand and need for energy? • Will it promote and improve energy efficiency (e.g. buildings)? • Will it increase the proportion of energy both purchased and generated from renewable and sustainable resources? 	+	Through the Environmental Sustainability and Sustainable Transport sections of the SPD, obligations are secured to mitigate the impacts of energy inefficiency.	Further assessment to be provided at the detailed planning application stage and through the negotiating of planning obligations, to minimise impacts of development on energy efficiency.
<p>Waste: To minimise the production of waste across all sectors and increase reuse, recycling, remanufacturing and recovery rates.</p> <ul style="list-style-type: none"> • Will it minimise the production of household and commercial waste? • Will it promote reuse and recycling (e.g. in the design of housing or promoting recycling schemes in existing building stock etc) particularly in high density developments? • Will it help the borough achieve its statutory waste recycling targets? • Will it help to promote a market for recycled products? 		The principle of the objective falls outside of the Revised SPD.	Planning applications to provide details of waste and waste management.

<p>Built and Historic Environment: To enhance and protect the existing built environment (including the architectural distinctiveness, townscape/landscape and archaeological heritage), and ensure new buildings are appropriately designed and constructed in a sustainable way.</p> <ul style="list-style-type: none"> • Will it protect and enhance sites, features and areas of historical, archaeological and cultural value/potential and their settings? • Will it conserve and enhance the townscape/cityscape character including the protection of views and landmark buildings? • Will it promote access to the historic environment and also contribute to better understanding of the historic environment? • Will it promote high quality design and sustainable construction methods? • Will it respect visual amenity and the spatial diversity of communities? • Will it enhance the quality of the public realm? • Will it protect and enhance areas of open space? • Will it promote the creation of new accessible local parks and facilities on the City Fringe? • Will it improve access to open space and improve the quality and quantity of publicly accessible greenspace? 		<p>Through the Public Realm, Public Access and Play Space section of the SPD, obligations would be secured where applicable for</p> <ul style="list-style-type: none"> • restoration and enhancement works to buildings linked to development within conservation areas or with listed status • safeguarding an area's on-going use as publicly accessible open space and future maintenance to an appropriate standard • appropriate play provision (well-designed play and recreation space) to meet the needs arising from the development. 	<p>Planning applications will be required to submit a Design Statement to ensure development does not have a significant adverse impact on the built environment, but enhances and protects it.</p>
<i>Social Objectives</i>			
<p>Housing: To ensure that all Londoners have access to good quality, well-located, affordable housing that</p>	+	<p>Through the Affordable Housing, Employment,</p>	<p>Further assessment to be provided at the</p>

<p>promotes liveability.</p> <ul style="list-style-type: none"> • Will it reduce homelessness? • Will it reduce the number of unfit homes, including those owned by Registered Social Landlords? • Will it reduce overcrowding? • Will it increase the range and affordability (both upfront and over its lifetime) of housing (taking into account different requirements and preferences of size, location, type and tenure)? • Will it ensure that appropriate services and facilities are in place for the new population? • Will it provide housing that ensures a good standard of living and promotes a healthy lifestyle? • Will it increase the number of Local Authority dwellings that meet the 'decent homes' standard? • Will it increase use of sustainable design and sustainable building materials in construction? • Will it improve energy efficiency and insulation in housing to reduce fuel poverty and ill health? • Will it provide housing that encourages a sense of community and enhances the amenity value of the community? 		<p>Skills Training and Enterprise, Transport and Highways, Public Realm, Public Access and Children's Play Space and Environmental Sustainability sections of the SPD, obligations may be secured for:</p> <ul style="list-style-type: none"> • increasing the range and affordability of housing • increasing the use of sustainable design and sustainable building materials in construction • improving energy efficiency and insulation in housing to reduce fuel poverty and ill health? • providing housing that encourages a sense of community and enhances the amenity value of the community 	<p>detailed planning application stage and through the negotiating of planning obligations on a site by site basis subject to viability.</p>
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<p>Liveability and Place: To create and sustain liveable, mixed use physical and social environments that promote long- term social cohesion, sustainable lifestyles and a sense of place.</p> <ul style="list-style-type: none"> • Will it create and sustain vibrant and diverse communities and encourage increased engagement in recreational, leisure and cultural activities? • Will it increase the provision of culture, leisure and recreational activities for all: this could include quality, affordable and healthy food, as well as cultural, sporting, or leisure opportunities including those associated with the Olympic legacy? • Will it provide opportunities for people to choose an active, fulfilling life? • Will it increase the provision of key services, facilities and employment opportunities? • Will it positively enhance and promote the perceived sense of place held by the community? • Will it protect and enhance the provision of open space? • Will it encourage a mix of land uses? • Will it reduce the urban heat island effect associated with increasingly dense development? 	+	<p>Through the Employment, Skills Training and Enterprise , Transport and Highways , Public Realm, Public Access and Children's Play Space and Environmental Sustainability sections of the SPD, obligations would be secured where applicable for:</p> <ul style="list-style-type: none"> • Increasing employment opportunities • protecting and enhancing the provision of open space • enhancing and promoting sense of place held by the community? • reducing the urban heat island effect associated with increasingly dense development 	<p>The Council can also use CIL receipts to fund strategic improvements to Liveability and Place</p>
<p>Education and Skills: To maximise the education and skills levels of the population.</p> <ul style="list-style-type: none"> • Will it increase the opportunities for educational and vocational goals to be achieved through 	+	<p>The SPD requires applicants to make a contribution towards local employment opportunities</p>	<p>The Council will use CIL receipts to support delivery of infrastructure which</p>

<ul style="list-style-type: none"> • employment and entrepreneurial opportunities? • Will it provide the infrastructure to help increase the levels of participation and attainment in education? • Will it improve overall achievement of the borough's primary and secondary school children? • Will it help improve employee education/training programmes? • Will it help improve the qualifications and skills of young people? • Will it help promote lifelong learning activities? • Will it help support the voluntary sector and promote volunteering? • Will it help promote sustainable development education? • Will it help reduce skills shortages? • Will it help to reduce the disparity in educational achievement between different ethnic groups? • Will it promote multiple uses of schools? 		<p>and skills acquisition commensurate with the proposed scheme. Obligations include commitments to engage local labour and provide training associated with the construction and end user stage of the development.</p> <p>Education falls outside the SPD remit and impacts of development will be mitigated through planning conditions and CIL.</p>	<p>enhances local education and skill acquisition</p>
<p>Ownership and Participation: To promote civic participation, ownership and responsibility and enable individuals, groups and communities to contribute to decision-making at neighbourhood, borough and regional levels in London.</p> <ul style="list-style-type: none"> • Will it promote social cohesion and encourage engagement in community activities? • Will it increase the ability of people to influence decisions? • Will it support civic engagement and encourage the involvement and participation of a diverse range of stakeholders? 		<p>The principle of the objective falls outside of the Revised SPD</p>	<p>Developers are encouraged to undertake community engagement with local residents and stakeholders.</p> <p>The Council also undertakes consultation with local residents and stakeholders during the Planning</p>

<ul style="list-style-type: none"> • Will it promote community spirit and encourage community networks? • Has consideration been given to cross boundary issues and the potential for working in conjunction with other authorities? 			Application stage.
<p>Health and Well-being: To maximise the health and well-being of the population and reduce inequalities in health.</p> <ul style="list-style-type: none"> • Will it reduce poverty and health inequalities? • Will it improve mental wellbeing? • Will it improve access to high quality public services (including health facilities)? • Will it address the causes of key health issues including high rates of cardio-vascular disease and lung cancer? • Will it create an environment that will promote and support physical activity and other healthy behaviours?? • Will it improve access by active travel means such as walking, cycling and public transport? 	+	<p>Through the Public Realm, Public Access and Play Space section of the SPD, obligations would be secured where applicable for :</p> <ul style="list-style-type: none"> • creating an environment that will promote and support physical activity and other healthy behaviours • improving access by active travel means such as walking, cycling and public transport? 	The Council will also mitigate the impacts of new developments on the borough's health facilities using CIL receipts following an assessment of local needs.
<p>Safety and Security: To enhance community safety by reducing crime, antisocial behaviour and the fear of crime.</p> <ul style="list-style-type: none"> • Will it help reduce the number of vehicle crimes? • Will it help reduce the number of burglaries? • Will it help reduce the number of racial incidents? • Will it reduce the fear of crime? • Will it reduce antisocial behaviour? • Will it reduce actual noise levels and disturbances 		<p>The principle of the objective falls outside of the Revised SPD.</p>	Planning applications will be required to submit a statement to ensure development does not have a significant adverse impact on the safety and security of the existing and proposed

from noise? • Will it reduce the risk of terrorist attack?			built environment.
Equality and diversity: To ensure equitable outcomes for all communities, particularly those most liable to experience discrimination, poverty and social exclusion. • Will it reduce poverty and social exclusion in those areas and communities most affected? • Will it promote a culture of equality, fairness and respect for people and the environment? • Will it promote equality for black and minority ethnic communities, women, disabled people, lesbians, gay men, bisexual and transgender people, older people, young people, children and faith groups? • Will it benefit the equality target groups listed above?	+	Securing contributions through Affordable Housing, Employment, Skills Training and Enterprise, Transport and Highways, Public Realm, Public Access and Children's Play Space and Environmental Sustainability sections will assist in improving social cohesion and help towards achieving positive equality outcomes throughout the borough.	The thrust of Equality and Diversity policies are held within the adopted Core Strategy and Managing Development DPDs. The Revised Planning Obligations SPD is also supported by Equalities Impact Analysis which identifies no negative effect on equalities groups.
<i>Economic Objectives</i>			
Accessibility / Availability (Transport): To maximise the accessibility to key services and amenities and increase the proportion of journeys made by public transport, by bicycle and by foot (relative to those taken by car). • Will it encourage a modal shift to more sustainable forms of travel as well as encourage greater efficiency (e.g. through car-sharing and use of waterways)? • Will it provide the infrastructure required to achieve a modal shift to more sustainable forms of transport? • Will it reduce the overall need for people to travel	+	The Sustainable Transport and Public Realm, Public Access and Children's Play Space sections of the SPD will improve accessibility and encourage a modal shift to more sustainable forms of travel	Strategic transport requests will be submitted during the Planning Application stage by Transport for London. These include contributions towards provision of an improved public transport system.

<p>by improving their access to the services, jobs, leisure and amenities in the place in which they live?</p> <ul style="list-style-type: none"> • Will it reduce traffic volumes and traffic congestion? • Will it reduce the length of commuting journeys? • Will it help to provide a more integrated transport service from start to finish i.e. place of residence to point of service use or place of employment? • Will it increase the capacity of public transport? • Will it increase the number of sub-regional and orbital public transport routes that reduce reliance on the car? • Will it promote locally-based employment? • Will it improve accessibility to work by public transport, walking and cycling? • Will it reduce road traffic accidents? • Will it promote inter-borough connectivity? 			
<p>Regeneration & Land Use: To stimulate regeneration and urban renaissance that maximises benefits for the most deprived areas and communities and to improve efficiency in land use through the sustainable reuse of previously developed land and existing buildings.</p> <ul style="list-style-type: none"> • Will it provide a viable network of complementary centres? • Will the regeneration have immediate and long-term benefits for deprived areas? • Will it help to make people feel positive about the area they live in? • Will it help to create a sense of place and ‘vibrancy’? 	+	<p>Securing contributions through the Affordable Housing, Employment, Skills Training and Enterprise, Transport and Highways, Public Realm, Public Access and Children’s Play Space and Environmental Sustainability sections may make people feel positive about the area they live in and help to create a sense of place</p>	<p>A full assessment will be considered during the detailed Planning Application stage.</p>

<ul style="list-style-type: none"> • Will it help reduce the number of vacant and derelict buildings? • Will it minimise the loss of soils to development? • Will it improve soil quality and tackle contamination? 		and 'vibrancy'.	
<p>Employment: To offer everyone the opportunity for rewarding, well-located and satisfying employment.</p> <ul style="list-style-type: none"> • Will it generate satisfying and rewarding new jobs? • Will it help to provide employment in the most deprived areas and stimulate regeneration? • Will it reduce overall unemployment, particularly long-term unemployment? • Will it help to improve levels of income and help to deliver a living wage to all? • Will it encourage flexibility of work, including voluntary and part-time work? • Will it encourage volunteering and promote the value of unpaid work? • Will it encourage the development of healthy workplaces? • Will new employment opportunities be well served by public transport? 	+	<p>The Employment, Skills Training and Enterprise section of the SPD seeks to provide new employment opportunities and training.</p>	Further assessment of employment options are to be considered during the Planning Application stage.
<p>Stable Economy: To encourage a strong, diverse and stable economy and to improve the resilience of businesses and their environmental, social and economic performance.</p> <ul style="list-style-type: none"> • Will it improve sustainable business development? • Will it improve the resilience of business and the economy? 	+	<p>The Employment, Skills Training and Enterprise, section of the SPD seeks to provide new employment opportunities and to protect existing and provide for new facilities for small and medium</p>	Whist major residential and commercial developments will be required to provide employment opportunities and provision of Small and

<ul style="list-style-type: none"> • Will it help to diversify the economy? • Will it prevent the loss of indigenous businesses? • Will it encourage business start-ups and support the growth of businesses? • Will it encourage ethical and responsible investment? • Will it reduce levels of deprivation? • Will it safeguard the best of the employment land portfolio? 		<p>enterprises.</p>	<p>Medium Enterprise (SME) units for start up businesses where appropriate, the SPD does not in itself facilitate a 'sustainable economy'.</p> <p>Applications are able to submit viability assessments should they consider that a scheme cannot be delivered with the provision of all Planning Obligations.</p>
<p>Creativity and Innovation: To promote creativity and innovation in the environmental and social economy (including new clean technologies, renewable energy, pollution control and the skills sector).</p> <ul style="list-style-type: none"> • Will it help to diversify the economy? • Will it encourage investment in new technologies, new solutions, new plans and new ideas that contribute to achieving progress towards sustainability? • Will it boost the green technology sector? 	+	<p>The Environmental Sustainability section of the SPD encourages the use of new technologies that contribute towards achieving sustainable environments.</p>	<p>Further assessment to be provided at the detailed planning application stage and through the negotiating of planning obligations, to promote sustainable creativity and innovation.</p>

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Revised Regulation 123 List and Planning Obligations Supplementary Planning Document

Consultation Statement

July 2016



Summary

- 1.1 The revised Planning Obligations SPD first went to Cabinet on the 10th April 2013 for approval to go out to public consultation alongside the CIL Revised Draft Charging Schedule, in October 2013.
- 1.2 Consultation responses were primarily received regarding the CIL Revised Draft Charging Schedule, however feedback regarding the SPD was considered and taken in to account when drafting the subsequent version of the SPD.
- 1.3 Further amendments were made to the Planning Obligations SPD to ensure that developers, other stakeholders and local residents had a clear understanding of what contributions and obligations can be secured through CIL and S106. When adopting the CIL Charging Schedule it was recognised that further amendments to the Planning Obligations SPD were required. Therefore the SPD went to Cabinet again on 5th April 2015 for approval to go out to public consultation regarding amendments made.
- 1.4 **12 consultees** responded to the consultation of April and May 2015 making a total of **62 comments** and resulting in **21 amendments**. These comments and the Council's response to them are set out in Table 1.
- 1.5 Following consultation in April and May 2015 the Council sought outside counsel advice on its Regulation 123 List and SPD. CIL is still a relatively new system and the intricate workings as set out in the relevant regulations have been amended many times by central Government. Therefore it was necessary to seek counsel advice to clarify the most appropriate way to implement the council's position. As a result of the advice received, small amendments have been made to the SPD to further clarify what infrastructure will be secured under CIL and that which will be secured under S106. The advice also required a number of small amendments to be made to the Regulation 123 List to ensure clarity.
- 1.6 A further consultation on the revised documents was undertaken between May and June 2016 on the amendments required by counsel. **6 consultees** responded making a total of **16 comments** and resulting in **2 minor amendments** correcting factual errors. These are set out in Table 2.
- 1.7 Amendments made to the SPD and Regulation 123 List made as a result of consultation responses are detailed in Tables 1 and 2. Where appropriate these are shown as track changes, with struck through text indicating deleted wording and underlined text indicating added wording.

Table 1: April - May 2015 Consultation

Respondent	Representations	Council's Response	Amendments made to S106 SPD / Reg 123 List
Environment Agency	We welcome the inclusion of Biodiversity within the planning obligation SPD	Support noted	N/A
Environment Agency	Developer contributions should also be sought via planning obligations wherever reasonable and/or practicable to deliver Water Framework Directive objectives as detailed within the Thames River Basin Management Plan	Noted. The Council do not feel that there is a need to make specific mention to this in the SPD. The SPD is not an exhaustive list of any possible obligations; it is an indication of common requirements.	N/A
Environment Agency	As the Flood Risk section states, extensive areas of the borough are identified as being at risk of flooding. However, much of the borough is protected by flood defences. Where developments are in close proximity to any main rivers within the borough, such as the River Lea or River Thames, planning obligations may be used to reduce flood risk by improving flood defences and operational access to them for maintenance and repair	Noted. The Council do not feel that there is a need to make specific mention to this in the SPD.	N/A
Highways England	no comments	N/A	N/A
Canal & River Trust	The Trust notes that the Tower Hamlets CIL Regulation 123 list does not set out any infrastructure projects that specifically relate to the operation, replacement or improvement of the waterways. The Trust therefore considers it critical that the Planning Obligations SPD addresses the local and strategic role of the waterways and the need for developments to contribute to their enhancement, improvement, management and maintenance.	The Council consider that works to waterways are generally covered by the Regulation 123 List. The SPD also covers some matters such as carbon reduction, biodiversity and flood risk matters. Should exceptional circumstances exist requiring the use of planning obligations, the SPD as drafted does not preclude it. The SPD is not an exhaustive list of any possible obligations; it is an indication of common requirements.	N/A
Canal & River Trust	Within the infrastructure table set out on page 8 of the SPD the Trust would consider our waterways and environs to fall within the following categories: <ul style="list-style-type: none"> • Transportation measures; • Site specific public realm improvements; • Carbon reduction measures; • Biodiversity measures/initiatives; • Site related flood mitigation measures. Transportation measures <p>Our waterways provide opportunities for sustainable transport. These include passenger transport by boat and waterborne freight for materials and waste removal. Our canal towpaths also provide an excellent resource for shared use for walking and cycling, but this requires management and maintenance to keep surfaces maintained, vegetation clear and the waterway environment accessible.</p> Site specific public realm improvements	The Council consider that the SPD makes provision for carbon reduction, biodiversity and flood risk measures. Transportation and public realm matters are covered by the Regulation 123 List.	N/A

Respondent	Representations	Council's Response	Amendments made to S106 SPD / Reg 123 List
	<p>Canalside developments can have a significant impact upon the public realm, which includes the towpath and waterways. Where developments have an impact upon the canal or dockside public realm the Trust would expect a contribution towards improvements and maintenance.</p> <p>Carbon reduction measures</p> <p>The Trust has several examples around our network of canal water being successfully used as part of carbon reducing heating or cooling systems, including the Britannia Hotel within the docklands. These benefits can be secured by way of planning obligations.</p> <p>Biodiversity measures/initiatives</p> <p>We are happy for enhancements to be sought for schemes to improve biodiversity and ecological habitats within our waterspace, provided this is managed and does not hinder navigation. We have numerous examples of successfully managed biodiversity enhancements, such as planting up of waterway walls (in a way that does not damage the fabric of the wall) and integrated landscaping as part of pontoons.</p> <p>The following examples highlight the types of waterway related improvements and contributions that can be secured via planning obligations:</p> <ul style="list-style-type: none"> • Maintaining and enhancing the towpath and canal environment; • New and refurbished bridges; • New and refurbished waterway infrastructure e.g. locks; • New wharves, boatyards and other essential facilities; • Freight by water; • New moorings and marinas; • Restoration of historic basins and other features; • Habitat restoration, creation and management plans; <p>Commuted sums for ongoing maintenance.</p>		
Natural England	<p>As far as Natural England is concerned the main area where funds from planning obligations should be spent is the natural environment and as such the section on Environmental Sustainability is where the most gain can be realised. It would be best of course if all new development were to include enhancements to the environment as part of their plans however it is understandable that this isn't always possible given the central location of the borough and the fixed amount of open space already in existence. The idea of then requiring contributions to fund off-site improvements is the next best step and this will need to be targeted so as to ensure the areas chosen are where the funds can go the furthest and have the best outcome for the local biodiversity.</p>	Commented noted	N/A
DS2 LLP	<p>Review Mechanisms:</p> <p>At paragraph 4.17 POSPD states that;</p> <p>"Where the original viability assessment of a scheme was used to justify an offer which falls short of the Council's policy requirements in full, the Council may require a commitment to re-appraise the scheme viability (on one or more occasions) to be incorporated into the Section 106 agreement".</p> <p>There are a number of circumstances where the Council will require a new viability appraisal to be undertaken when the original application did not provide the Council's headline requirement in terms of the quantum and tenure mix of affordable housing including;</p>	<p>The Council has reviewed the Viability Review Mechanisms section of the SPD considering the comments received as part of the consultation, the Mayor of London's Housing SPG and the developing planning appeal and case law context. The resulting revised paragraphs 4.19 and 4.20 of the SPD reflect the</p>	<p>Old paragraphs 4.17 – 4.20 deleted and replaced by following wording:</p> <p><u>4.19 For all applications where policy requirements are not met in full at the time permission is granted and where the departure is justified as a result of the submission of a Financial Viability Assessment, provisions for viability review mechanisms will be required to be</u></p>

Respondent	Representations	Council's Response	Amendments made to S106 SPD / Reg 123 List
	<ul style="list-style-type: none"> • Where there is a delay in starting on-site normally two years • Where an application for renewal of permission is submitted • Where a large scheme is built out in phases, or over a long period <p>At the end of the development to assess whether the development can deliver the maximum reasonable level of affordable housing and to inform future negotiations. The viability appraisal will be carried out after the completion of sales of at least 80% of the private units.</p> <p>Where it is concluded that the scheme can sustain a greater quantum of affordable housing and/or a more policy compliant affordable housing tenure mix can be provided, the Council will elect to seek the following or a combination of the following;</p> <ul style="list-style-type: none"> • A higher proportion of affordable housing • Amend the tenure mix for the affordable housing element (where the scheme design permits) • A cash in lieu contribution <p>The London Plan (2015) broadly recognises appropriate use of pre-implementation review mechanisms, however it specifically states that the provision of review mechanisms is intended for large, phased developments and that they should only be carried out prior to implementation.</p> <p>The full context of the Mayor's application of 'contingent obligations' is set out at Policy 3.12 B) and states; 'Negotiations on sites should take account of their individual circumstances including development viability, the availability of public subsidy, the implications of phased development including provisions for re-appraising the viability of schemes prior to implementation ('contingent obligations'), and other scheme requirements.'</p> <p>The Mayor's draft Housing SPG (May 2015) provides further clarification in relation to review mechanisms at paragraph 4.4.34.</p> <p>"are used to maximise affordable housing output by putting in place provisions for re-appraising the viability of schemes or phases prior to implementation in whole or in part".</p> <p>Consequently, the circumstances in which it is proposed that review mechanisms are appropriate within POSPD are contrary to London Plan policy and the Mayor's draft SPG.</p> <p>The full context of the Mayor's application of 'contingent obligations' is set out at Policy 3.12 B) and states; 'Negotiations on sites should take account of their individual circumstances including development viability, the availability of public subsidy, the implications of phased development including provisions for re-appraising the viability of schemes prior to implementation ('contingent obligations'), and other scheme requirements.'</p> <p>The Mayor's draft Housing SPG (May 2015) provides further clarification in relation to review mechanisms at paragraph 4.4.34. "are used to maximise affordable housing output by putting in place provisions for re-appraising the viability of schemes or phases prior to implementation in whole or in part".</p> <p>Consequently, the circumstances in which it is proposed that review mechanisms are appropriate within POSPD are contrary to London Plan policy and the Mayor's draft SPG. Furthermore, the guidance set out within the NPPG elects to exclude any provision for review</p>	Councils consolidated position.	<p>incorporated within Section 106 agreements.</p> <p><u>4.20 Viability review mechanisms will be triggered and undertaken according to the circumstances in each case but based on the following principles.</u></p> <ol style="list-style-type: none"> 1. For all schemes requiring a review (see paragraph 4.16 above), an advanced stage review will be carried out. These reviews should be undertaken on sale of 75% of market residential accommodation, or within a three month period prior to practical completion, whichever is earlier. 2. For all schemes requiring a review, where a scheme has not been implemented within 12 months of the relevant application decision date, a pre-implementation review will be required. 3. For phased schemes requiring a review, mid-term reviews will be necessary where the second (or subsequent phases) are not implemented within 12 months of the decision of the application to which the originally submitted Financial Viability Assessment relates.

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	<p>mechanisms which indicates that review mechanisms should not be imposed as a blanket approach, as they add unnecessary uncertainty and risk, ultimately adversely impacting on the delivery of development.</p> <p>The POSPD provides no justification as to why a review mechanism should take place after implementation.</p> <p>The NPPG states at paragraph 017 that; 'Viability assessment in decision-taking should be based on current costs and values. Planning applications should be considered in today's circumstances'</p> <p>The approach proposed by POSPD is contrary to this, and the idea that viability should be re-assessed after implementation is directly contrary to instruction in the NPPG that the appropriate time to assess viability is at the time of the planning application, and on a current day basis.</p> <p>Notwithstanding the comments above and the contradiction with London Plan policy, it should be noted that the housing market, is by its nature, cyclical. Recent house price growth is a small part of a larger economic cycle and it is unreasonable to seek to impose new development plan policies 1) through an SPD and 2) based on a short-term assessment of a fundamentally indeterminate and ever-changing medium. National Planning Policy within paragraph 174 of the NPPF states that the cumulative impact of all policies "should not put the implementation of the Plan at serious risk, and should facilitate development throughout the economic cycle".</p> <p>Consequently, the proposal within the POSPD is contrary to National Planning Policy. The introduction of a requirement to carry out review mechanisms after implementation creates uncertainty for developers and funders alike, and therefore places doubt over funding availability for schemes that include this type of review.</p> <p>Forcing developers to agree to terms in S106 agreements that render planning permissions undeliverable is directly contrary to the key theme of the NPPF; to deliver sustainable development. It is also misaligned with the Government's national driver to unfetter the planning system and encourage the delivery of more residential development.</p> <p>POSPD should also be considered in the context of professional best practice guidance. The RICS Financial Viability in Planning (2012) provides further clarification as to the appropriate application of review mechanisms. It supports London Plan policy stressing that re-appraisals should always be undertaken prior to the implementation of the scheme or phase.</p> <p>It goes on to state that post-implementation reviews, otherwise known as 'overage' arrangements are not considered appropriate as development risk at the time of implementation cannot be accounted for. The impact of post-implementation review mechanisms on development viability in the context of National Planning Policy is considered at paragraph 3.6.43 which states; 'It also undermines the basis of a competitive return as envisaged by the NPPF by introducing uncertainty post the implementation of the development.'</p> <p>In light of the above, the proposals regarding viability re-appraisal at the end of the development within Section 5 on page 16 of POSPD should be deleted. This represents a significant departure from the intent of National and Regional Policy, would result in a material change to the way in which development viability is assessed and work in direct contravention to the promotion of the delivery of local sustainable development.</p>		
TfL	The Revised Draft Planning Obligations SPD sets out within the table in para 2.3 how the relative	The Council have removed the	The table at paragraph 2.3 has been

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	<p>infrastructure in respect of planning obligations and CIL will be secured. The practical application of this table is detailed in paras 5.20 & 5.21 and there is some potential confusion between the former which states that 'CIL funds will be used to address the cumulative impacts of development on the sustainable transport network', and the latter which indicates securing site specific mitigation via a s278 or s106 agreement.</p> <p>In practice, it appears that Tower Hamlets officers believe site-specific mitigation cannot be secured for transport infrastructure. Borough officers have advised TfL that 'because our CIL Regulation 123 List states that the Council intends to use CIL to fund 'Roads and other transport facilities'. The CIL Regulations do not allow the Council to seek S106 contributions for items which are included on the Regulation 123 List as applicable for CIL funding'.</p> <p>The approach that Borough CIL (BCIL) is the vehicle for all development mitigation is wrong. It would result in a situation where securing all necessary transport infrastructure would rely on an appropriate overall level of BCIL funds being available and appropriately dedicated at the proper level of funding, programmed at a suitable time, and committed via legally robust arrangements</p>	<p>table at paragraph 2.3 as it was felt that it was causing more confusion than it was providing clarity.</p> <p>The section of the SPD regarding Transport and Highways details that there may be circumstances where S278 or S106 contributions may be appropriate to mitigate against the disbenefits of the development on the transport network or local highways. Any funding or works secured through S278 or S106 will be required to not fall under the the Council's Regulation 123 List (as stated in paragraph 5.21), in particular the definition of "strategic roads and other transport facilities" in the list.</p> <p>The Council consider that Borough CIL is the vehicle to address the cumulative impacts of development on the strategic road and transport network (from a developer contribution perspective). S106 and S278 may be required to be used where appropriate for matters not covered by the Regulation 123 List. This position is supported by legal advice.</p>	<p>removed.</p> <p>Paragraph 5.20 has been amended to provide clarity.</p>
QUOD on behalf of the Berkeley Group	<p>1. Introduction</p> <p>We welcome the fact that the introduction now has a focus on Regulations 122 and 123 of the CIL regulations which govern the future use of Section 106 agreements. In relation to the section on Mayoral CIL (MCIL) and the Crossrail SPD it may be useful to provide links to the relevant documents on the GLA website for ease of reference.</p>	<p>The following wording has been added to paragraph 1.14</p>	<p>Further information can be found via the following link, https://www.london.gov.uk/sites/default/files/Crossrail%20SPG%20April%202013.pdf</p>
QUOD on behalf of the Berkeley Group	<p>2. Approach to Development Mitigation and Infrastructure Delivery</p> <p>We regard this section as adopting broadly the right approach. We would suggest however that paragraph 2.2 on 'In Kind' requirements might be slightly clearer. In our view there are four types of in kind requirements – those for the provision of sites for infrastructure (eg. schools) identified in the Managing Development DPD, those for works such as highway works or public realm, those for</p>	<p>For clarity minor amendments have been made to the wording in paragraph 2.2 of the SPD. Please find the wording in the next column.</p>	<p>Contributions may be financial or provision 'in kind' (where the developer builds or provides directly the matters necessary to fulfil the obligation) negotiated as part of planning applications. There may be cases</p>

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	<p>buildings (to shell and core), and those for a level of 'fit out' to those buildings. Which of these requirements is necessary will depend on the impacts of the individual development whereas the current paragraph 2.2 implies that fitting out costs will generally be required. This could helpfully be clarified.</p> <p>Subject to our comments below on individual items we regard the table on page 8, showing where Planning Obligations or Conditions might be required and where CIL will pay for infrastructure, as helpful and an appropriate split between the two.</p>		<p>where provision in kind is preferable and suitable, such as where finding land for a facility is an issue. Where provision in-kind is made, contributions will be secured for reasonable fitting out costs and to ensure that providers of community services necessitated by the development have facilities suitable for their needs and provided at nominal rents. In many cases provision in kind is preferable and suitable, especially where this reduces management costs and/or where finding land for a facility is a problem. Where provision is made within developments, this will be credited to the scheme and would off-set financial contributions that may otherwise be sought, but other contributions may be secured for reasonable fitting out and infrastructure costs. These would ensure that providers of community services necessitated by the development have facilities suitable for their needs and provided at nominal rents and service charges.</p>
QUOD on behalf of the Berkeley Group	<p>3. Legislative and Policy Context</p> <p>This section provides a comprehensive description of the legislative and policy context. To this we would suggest that reference might be added to paragraphs 173 to 177 of the National Planning Policy Framework (NPPF) which deal with how planning obligations relate to viability. Of particular importance is paragraph 176 which includes that requirement that:</p> <p>"The need for such safeguards (ie conditions & obligations) should be clearly justified through discussions with the applicant, and the options for keeping such costs to a minimum fully explored, so that development is not inhibited unnecessarily."</p> <p>We believe that this provides important context for the following section of the Council's SPD (Negotiating Planning Obligations), and emphasises the need for pre-application engagement and flexibility in order to ensure that policy requirements are met whilst ensuring that development remains viable.</p>	<p>A new paragraph 3.6 has been added to the SPD to reflect this comment. Please find the wording in the next column</p>	<p>Paragraph 176 of the NPPF recognises that "where safeguards are necessary to make a particular development acceptable in planning terms... the development should not be approved if the measures required cannot be secured through appropriate conditions or [obligations through] agreements." The NPPF also sets out in paragraph 173 that it is important that the scale of obligations does not threaten the ability of a site to be developed viably.</p>
QUOD on behalf of the Berkeley Group	<p>4. Negotiating Planning Obligations</p> <p>We strongly support the principle of addressing issues of infrastructure delivery and viability as part of the pre-application process. This then allows both the Council and applicant to understand the full impact of the range of potential obligations (affordable housing, other Section 106 items and CIL) and to take these into account in determining the appropriate scope of any Section 106 agreement.</p> <p>In this context it may also be useful to suggest that applicants include a calculation of their notional CIL liability (MCIL and Borough CIL) as well as likely Section 106 heads of terms to aid pre-application discussions.</p> <p>We are concerned that paragraph 4.15 of the draft SPD, on viability, does not properly reflect Government policy and relevant guidance on land values. The National Planning Policy Framework states that: "To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation,</p>	<p>Minor amendments have been made to the wording in paragraphs 4.16 and 4.17 (replacing former paragraph 4.15) of the SPD. Please find the wording in the next column.</p>	<p>At Planning Application Stage, proposals where the full range of planning obligations cannot be met must be submitted with a full Viability Assessment, with information provided on an open book basis to enable the viability of the scheme to be comprehensively assessed.</p> <p>There are currently a number of sources of guidance relating to development viability. These guidance notes take a range of approaches to certain aspects of development viability. It is for the Council to determine the most appropriate approach to be taken in each case. Applicants and their</p>

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	<p>provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable." (Paragraph 173).</p> <p>In this context Existing Use Value (EUV) will be a commonly used benchmark. As it is the current value of the uses on the site it will already reflect historic planning policy/requirements and cannot (by definition) take into account planning policy requirements that might apply to an alternative use as implied in Paragraph 4.15. An Alternative Use Value (AUV) that is alternative to the use proposed would need to take into account obligations but only insofar as they related to that use.</p> <p>The reference to planning policy requirements as an input appears to conflate EUV and AUV with the appropriate use of 'market value' as suggested by the Royal Institute of Chartered Surveyors in their Financial Viability in Planning guidance (GN94 2012) which states that: 'Site Value should equate to the market value subject to the following assumption: that the value has regard to development plan policies and all other material planning considerations and disregards that which is contrary to the development plan.'</p> <p>It would be useful if the document could refer to the correct definitions of EUV and AUV (the former of which was used by the Council in determining appropriate viable CIL rates in the Borough) as well as the approach to market value. There are numerous precedents from planning appeals and case law which confirm the appropriate approach.</p> <p>In relation to paragraph 4.17 (and subsequently on page 16) on re-appraisals we would suggest that the need for these should be judged on the merits of the individual case rather than a blanket approach being taken. In particular, where a high level of obligations have been provided and growth assumptions built into appraisals it would not be appropriate to require re-appraisals.</p>		<p>agents should discuss this with the Council at an early stage.</p>
QUOD on behalf of the Berkeley Group	<p>5. Standard Charges and Obligations</p> <p>We have no comments to make on the following sections: Affordable Housing, Student Accommodation, Transport and Highways, Public Access, Children's Playspace, and Flood Risk.</p> <p>In two areas we are concerned that proposed obligations stray into areas of cumulative impacts that would be more properly be funded by CIL. These are "off site public realm" and "bio-diversity". In our view the draft SPD should make clearer that these will only be required where they result from the direct impacts of development and meet the tests set out in Regulation 122. The mere proximity of an open space or historic building to a development site is not sufficient in itself to warrant a planning obligation towards its improvement.</p>	<p>The public realm paragraphs of the SPD have been removed as the Council consider that these matters are entirely covered by the CIL Regulation 123 List.</p> <p>Additional wording has been added to the biodiversity section to clarify the relationship between CIL and S106.</p>	<p>The public realm paragraphs of the SPD have been removed as the Council consider that these matters are entirely covered by the CIL Regulation 123 List.</p> <p><u>The Council's Regulation 123 List includes a range of strategic infrastructure types, such as open space, sustainability infrastructure and community facilities. Where strategic infrastructure projects fall under the infrastructure types in the Regulation 123 List, financial planning obligations will not be sought for the same project. Biodiversity measures that are not covered by the Council's Regulation 123 List and are deemed necessary to the particular development to mitigate specific impacts of that development will be dealt with by planning condition or if this is not possible, by financial and/or non-financial planning obligation.</u></p>
QUOD on behalf of the Berkeley	<p>Employment and Skills Training & Enterprise</p> <p>The Berkeley Group has a strong commitment to ensuring that local people are able to benefit from its developments through access to jobs and business opportunities and is already working with the</p>	<p>The proposed amendments to the Tower Hamlets S106 SPD in relation to the securing of</p>	<p>N/A</p>

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Group	<p>Council and local organisations to ensure such benefits from its developments in the Borough.</p> <p>Employment and training is clearly a significant issue for Tower Hamlets and we understand the desire of the Council to have targets and 'ready reckoners' in its planning guidance as a basis for negotiation. We also acknowledge that in our experience the Council has implemented these policies flexibly and will work with willing developers to agree bespoke arrangements reflecting the specific circumstances of particular developments. It might be helpful if the Council were to emphasise this more in relation to obligations on 'Targets' and 'End User Jobs and Training' as it does explicitly for the construction phase.</p> <p>Although not primarily a commercial developer, Berkeley will usually have mixed use components in its developments and is concerned that the proposed formula for end user training could be onerous for any intensively used commercial floorspace – up to £40 per square metre (eg. 1,000 sqm of development, occupied at 10 sqm per job, would equate to 100 jobs, 20% of which (20) LBTH would be seeking £2,040 (£40,000) for).</p> <p>This is clearly disproportionate compared to the Council's proposed CIL rates for infrastructure and could impact on the viability of other obligations such as affordable housing. We would also question whether it meets part 2c of Regulation 122 of the CIL regulations where planning obligations are required to be "fairly and reasonably related in scale and kind to the development."</p> <p>The Council's previous SPD on Planning Obligations acknowledged, in its formula for contributions to 'end user' jobs, that only those Tower Hamlets residents outside of the labour market would need employment training support. On the most recent available data that equates to around 30% of the labour force (Annual Population Survey). This should be included in the formula which would discount the requirement by 70%. Adding wording which says that this requirement will be implemented flexibly is also required to allow bespoke programmes to be agreed.</p> <p>We would make similar comments in relation to obligations towards Local Enterprise. Where there is a specific policy requirement (for example replacement employment space) obligations may be appropriate but we would be concerned about the use of Section 106 agreement to provide unnecessary restrictions on the use of employment space or interfere in commercial arrangements with tenants.</p>	<p>economic development obligations reflect the introduction of CIL and the continuing commitment of the council to ensure that development benefits local business and local residents. The amendments seek to simplify and clarify the methodology by which financial contributions and obligations are calculated and to ensure that these are reasonable and meaningful.</p> <p>The employment, skills & training, and enterprise elements of the SPD 2012 have been reviewed with reference to the methodologies of other London boroughs as well as the demographics of Tower Hamlets and the current cost of training and employment support provision.</p> <p>The "end user" multiplier that reflects the number of residents of working age outside the labour market (approx. 30% of the labour force), which previously created a 70% discount in the "end user" financial contributions has been removed. Officers consider this multiplier to be spurious and to effectively render "end user" financial contributions irrelevant. The revised formula continues to use multipliers that take into account the employee density of each development and the borough's desired 20% local labour target; the revised formula now calculates a financial contribution that can provide some meaningful training and support in the end user phase.</p>	

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		<p>The end user requirements are in place through Planning legislation to allow residents to benefit from the creation of employment opportunities in the borough. The council will expect and negotiate, where possible, opportunities arising from the commercial floorspace of new developments. These opportunities are advantageous for all parties concerned as they bring multiple skillsets as well as assisting with the integration of the development within the borough and improving relationships with residents. Overall, employing people in their borough of residence reduces commuting issues, decreases carbon footprint and helps generate a more committed workforce with increased attendance levels.</p> <p>The council will remain flexible where bespoke programmes are designed for specific developments and will continue to consider negotiation with developers and their needs. At this stage officers have not considered the inclusion of financial penalty clauses in the SPD as other boroughs have explored and implemented; however, going forward, this may be something that LBTH will consider should obligations not be met to the satisfaction of the council and the benefit of local residents.</p> <p>In relation to the enterprise targets, local companies benefit through the tender process for securing packages commissioned throughout the construction phase of the development. Local companies</p>	

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		are defined as being in Tower Hamlets and, where possible, should be invited to tender. The Council seeks evidence of "best endeavours" on the fulfilment of this obligation.	
GLA	<p>The approach that LB Tower Hamlets appears to be taking in the draft S.106 Planning Obligations SPD has major implications for the delivery of transport infrastructure which could impact on the level of growth delivered in Tower Hamlets and the delivery of infrastructure by Transport for London.</p> <p>The Mayor endorses the detailed comments made by Transport for London and shares their concern that the proposed SPD's reliance on CIL to fund site specific mitigation appears to be based on a misunderstanding of the CIL Regulations. As CIL is not intended to address site specific mitigation measures generated by a particular scheme, in the view of the Mayor the Council's approach is unsound.</p> <p>The Mayor strongly encourages the Council to seek independent legal advice before final publication of the SPD.</p>	<p>The section of the SPD regarding Transport and Highways details that there may be circumstances where S278 or S106 contributions may be appropriate to mitigate against the disbenefits of the development on the transport network or local highways. Any funding or works secured through S278 or S106 will be required to not fall under the the Council's Regulation 123 List (as stated in paragraph 5.21), in particular the definition of "strategic roads and other transport facilities" in the list.</p> <p>The Council consider that Borough CIL is the vehicle to address the cumulative impacts of development on the strategic road and transport network (from a developer contribution perspective). S106 and S278 may be required to be used where appropriate for matters not covered by the Regulation 123 List. This position is supported by legal advice.</p>	Paragraph 5.20 has been amended to provide clarity.
The City of London Corporation	The City of London Corporation has no substantive comments on Tower Hamlets' draft revised Planning Obligations SPD.	N/A	N/A
DP9 on behalf of Londonecastle	<p>Chapter 0 - Overview</p> <p>On page 3 of the document it states that "in some instances...additional planning obligations outside the scope of this SPD may be sought". Further clarity and justification is sought as to why additional obligations are required. The purpose of this supplementary planning document is to clearly identify all of the S106 planning obligations associated with development.</p>	The Council disagree that the point of the SPD is to identify all potential S106 obligations. The point is to provide guidance on those S106 matters likely to require consideration in the borough. Site specific circumstances may exist which requires bespoke S106 obligations and it would be inappropriate to restrict the use	N/A

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		of S106 as a tool to make planning applications acceptable by removing a flexible approach.	
DP9 on behalf of Londonecastle	Chapter 1 - Introduction On page 4 of the document, paragraph 1.5 states that "some developments are exempt from paying the levy [CIL]". Further clarification is required on the types of development that are exempt from paying CIL.	The Council agrees with the comments regarding paragraph 1.5 Please see amended wording to paragraph 1.5 in the next column.	Some developments are exempt from paying the levy. These are developments of affordable housing and developments by charities of buildings used for charitable purposes. Some developments are exempt from paying the levy such as, developments of qualifying social housing, developments by charities of buildings used for charitable purposes and developments that are self-build: new home, extension or residential annex.
DP9 on behalf of Londonecastle	On page 5 of the document, paragraph 1.7 should be updated to reference the London Borough of Tower Hamlets (LBTH) adopted CIL Charging Schedule (April 2015), instead of its current reference to the Draft Charging The Schedule.	The Council agrees with the comments regarding paragraph 1.7 Please see amended wording to paragraph 1.7 in the next column.	The Council, as Local Planning Authority, is entitled to charge a „Community Infrastructure Levy“ (CIL) on new developments, which is set out in Tower Hamlets Adopted Charging Schedule, available at: http://www.towerhamlets.gov.uk/lgsi/501550/register_of_planning_decisions/section_106_planning_obligatio/community_infrastructure_levy.aspx From 1st April 2015, the London Borough of Tower Hamlets' CIL came into operation, the Council, as Local Planning Authority, is entitled to charge a 'Community Infrastructure Levy' (CIL) on new developments, which is set out in Tower Hamlets Adopted Charging Schedule, available at: http://www.towerhamlets.gov.uk/lgsi/501550/register_of_planning_decisions/section_106_planning_obligatio/community_infrastructure_levy.aspx
DP9 on behalf of Londonecastle	On page 6 of the document, Table 1 sets out the Crossrail charging schedule for London. An explanatory note of its role alongside the Mayoral CIL is provided within paragraph 1.14. For clarity it is recommended that the CIL charging schedule map is also included so that applicants can easily identify whether or not sites are subject to Crossrail contributions.	The Council do not consider it appropriate to add the CIL Charging Schedule map to the SPD. It is available attached to the Councils CIL Charging Schedule.	N/A
DP9 on behalf of Londonecastle	Chapter 2 - Approach to Development Mitigation and Infrastructure Delivery On page 7, Paragraph 2.2 of the document states that "Contributions may be financial or non-financial. There may be provision 'in kind' negotiated as part of planning applications". Our client strongly supports the acknowledgment that planning obligations can be dealt with on an 'in-kind' basis, particularly in the case of large scale development sites where the developer may be best placed to provide physical infrastructure as part of a development, rather than making financial contributions towards Council funded initiatives. Clarification is also required that the document is only	For clarity minor amendments have been made to the wording in paragraph 2.2 of the SPD. Please find the wording in the next column.	Contributions may be financial or provision 'in kind' (where the developer builds or provides directly the matters necessary to fulfil the obligation) negotiated as part of planning applications. There may be cases where provision in kind is preferable and suitable, such as where finding land for a facility is an issue. Where provision in-kind is made, contributions will be secured for

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	<p>referring to the ability of S106 planning contributions being capable of being financial or non-financial.</p> <p>Paragraph 2.2 goes on to state that “contributions will be secured for reasonable fitting out costs and to ensure that providers of community services necessitated by the development have facilities suitable for their needs and provided at nominal rents.” These requirements are site specific and should be referred to as such. The wording of this sentence should be reviewed so that applicants enter into discussion and negotiations on a site by site basis.</p>		<p>reasonable fitting out costs and to ensure that providers of community services necessitated by the development have facilities suitable for their needs and provided at nominal rents. In many cases provision in kind is preferable and suitable, especially where this reduces management costs and/or where finding land for a facility is a problem. Where provision is made within developments, this will be credited to the scheme and would off-set financial contributions that may otherwise be sought, but other contributions may be secured for reasonable fitting out and infrastructure costs. These would ensure that providers of community services necessitated by the development have facilities suitable for their needs and provided at nominal rents and service charges.</p>
DP9 on behalf of Londoneast	<p>Chapter 3 - Legislative and Policy Context</p> <p>This chapter should appear before ‘Approach to Development Mitigation and Infrastructure Delivery’ as it sets out the policy context of the document which needs to be understood and addressed before the approach.</p>	<p>The Council do not consider a change necessary.</p>	<p>N/A</p>
DP9 on behalf of Londoneast	<p>Chapter 4 - Negotiating Planning Obligations</p> <p>Paragraph 4.11 states that “if obligations required by the Council are not agreed to, officers will prepare a recommendation for refusal of the planning application.” This paragraph does not consider flexibility in the negotiation process as full compliance to planning obligations may not be possible due to site specific constraints or viability. Therefore the paragraph should be reworded to:</p> <p>“If the Council and the applicant are unable to come to an agreement on planning obligations after reasonable negotiation, then officers may prepare a recommendation for refusal of the planning application, if the scheme was deemed to be unacceptable in the absence of those obligations.”</p>	<p>The Council agrees with the comments regarding paragraph 4.11.</p> <p>Please see amended wording to paragraph 4.11 in the next column.</p>	<p>Para 4.11 If the obligations required by the Council are not agreed to, officers will prepare a recommendation for refusal of the planning application. If the Council and the applicant are unable to come to an agreement on planning obligations after reasonable negotiation, then officers may prepare a recommendation for refusal of the planning application.</p>
DP9 on behalf of Londoneast	<p>There are two 4.15 paragraphs on page 11 of the document.</p> <p>At Paragraph 4.15 the document states that;</p> <p>“The Authority will resist the application of a fixed land value as an input in the development appraisal where it is based on a price paid for land or an aspirational sum sought by a landowner when establishing the Residual Land Value”.</p> <p>The document seeks to resist Market Value (MV) as a measure of Land Value. This is contrary to the NPPF and NPPG which states that whilst the most appropriate way to assess land or site value will vary, there are common principles which should be reflected.</p> <p>The NPPG reference is consistent with section 173 of the NPPF. This approach is also contrary to regional policy which in the Mayor’s Housing SPG (2012) at paragraph 4.3.23 states that:</p> <p>“There are a range of valuation methodologies that can be used to assess viability in particular cases, and the usefulness and robustness of a particular approach in providing a basis for informed decision</p>	<p>Minor amendments have been made to the wording in paragraphs 4.16 and 4.17 (replacing former paragraph 4.15) of the SPD. Please find the wording in the next column.</p>	<p>Paras 4.16 and 4.17 At Planning Application Stage, proposals where the full range of planning obligations cannot be met must be submitted with a full Viability Assessment, with information provided on an open book basis to enable the viability of the scheme to be comprehensively assessed.</p> <p>There are currently a number of sources of guidance relating to development viability. These guidance notes take a range of approaches to certain aspects of development viability. It is for the Council to determine the most appropriate approach to be taken in each case. Applicants and their</p>

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	<p>making is the key criterion for deciding which to use in each case". The Mayor's draft Housing SPD, published for consultation in May 2015 also reflects this statement and notes that both MV and CUV approaches to viability may be acceptable with their appropriate application depending on the specific circumstances.</p> <p>The Mayor's latest viability toolkit guidance notes (2015) (the Borough refers to an earlier version, 2010 in paragraph 4.16) also identifies that Existing Use Value is not the only approach to assessing viability and that Market Value is an alternative approach and this approach is being promoted by an RICS Guidance Note (Financial Viability in Planning 94/2012) ('RICS GN').</p> <p>The Mayor considers that it is for Boroughs and other Toolkit users to determine which is the most appropriate in the light of their local circumstances. In instances where there is some uncertainty over which approach to adopt, users are advised to take into account the legal precedents and established practice.</p> <p>MV is intended to provide the practitioner with a general sense check, rather than a definitive number, as to a reasonable return to a landowner as required by central Government policy and practice and indeed other best practice guidance such as the RICS GN and the Lord Harman Local Housing Delivery Group publication 'Viability Testing Local Plans' (June 2012) that, in regard the use of MV states: "Consideration of an appropriate Threshold Land Value needs to take account of the fact that future plan policy requirements will have an impact on land values and landowner expectations. Therefore, using a market value approach as the starting point carries the risk of building-in assumptions of current policy costs rather than helping to inform the potential for future policy. Reference to market values can still provide a useful 'sense check' on the threshold values that are being used in the model".</p> <p>Whilst the Lord Harman report is collated in relation to policy making rather than site specific development management, and for plan making the risk of including market data that reflects previous policy environments is clear, the report still acknowledges the importance of a 'sense check' on the appropriate land value for viability purposes.</p> <p>The clear risk of not sense checking against market data, and being reliant on a singular CUV based approach with an arbitrary approach to premiums, is to disregard the importance of the workings of the land market and to risk the delivery of sites.</p> <p>It is for the practitioner to present the correct balance between land value, development profit, the delivery of planning obligations (and the Community Infrastructure Levy) and ultimately the release of land for new development. The complete exclusion of a MV approach does not take into consideration the inherently low CUVs on many sites and risk to delivery of this singular approach is adopted.</p> <p>It is also worth noting that the significant majority of local authority viability advisors across London incorporate MV into their methodologies and both approaches i.e. CUV based and MV, have been adopted historically in LBTH. It is therefore difficult to understand how LBTH are seeking to reconcile the complete exclusion of MV within their policy framework which is contrary to policy, guidance and the practices of the majority of local authority advisors.</p>		<p>agents should discuss this with the Council at an early stage.</p>
DP9 on behalf of Londonewcastle	<p>Chapter 5 - Standard Obligations and Charges</p> <p>On page 16 of the document, it states that "where a viability appraisal is used to justify an affordable housing offer below policy requirements, the Council may require commitment to re-appraise the scheme viability (on one or more occasions) to be incorporated into the Section 106 agreement".</p>	<p>The section regarding Viability Re-appraisal on page 16 has been removed from the SPD. The Council's approach to Viability Re-appraisal is now</p>	<p>Section objected to has been deleted.</p>

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	<p>Our client strongly objects to the above wording and the inclusion of this section within the SPD. It should first be recognised that it is incorrect to suggest that a scheme is not policy compliant if it provides less than the 35 – 50% target. If the scheme provides the “maximum reasonable” based on a financial assessment which has been reviewed and agreed by an independent assessor at the time the application was approved, then the provision is seen to be policy compliant irrespective of its percentage.</p> <p>The wording of this section of the document suggests that a viability reassessment will be required for any scheme that does not meet the Council's affordable housing policy target (35-50%) and tenure mix of affordable housing. This assumption is contrary to the NPPF and London Plan policies and should be removed.</p> <p>The document goes on to identify a number of circumstances where the Council requires a new viability appraisal to be undertaken. This wording should be revised as the original financial appraisal should be updated and scoped on a case by case basis. Further clarification is also required over the reasoning and wording of the circumstances, such as “a long period of time” and “renewal of permission” which could be subject to misinterpretation.</p> <p>The list of circumstances is drafted inclusively meaning the triggers for a viability reappraisal could be endless. The document should clearly state the circumstances where the Council will require a viability appraisal to be undertaken.</p> <p>The London Plan (2015) broadly recognises appropriate use of pre-implementation review mechanisms, however it specifically states that the provision of review mechanisms is intended for large, phased developments and that they should only be carried out prior to implementation. The full context of the Mayor's application of ‘contingent obligations’ is set out at Policy 3.12 B) and states; “Negotiations on sites should take account of their individual circumstances including development viability, the availability of public subsidy, the implications of phased development including provisions for re-appraising the viability of schemes prior to implementation ('contingent obligations'), and other scheme requirements.”</p> <p>The Mayor's Housing SPG provides further clarification at paragraph 4.4.42. “Where a large scheme is built out in phases, consideration should be given to a reappraisal mechanism which specifies the scope of a review of viability for each phase.”</p> <p>Consequently, the circumstances in which it is proposed that review mechanisms are appropriate within the document are contrary to London Plan policy and the Mayor's SPG. Furthermore, the guidance set out within the NPPG elects to exclude any provision for review mechanisms which indicates that review mechanisms should not be imposed as a blanket approach, as they add unnecessary uncertainty and risk, ultimately adversely impacting on the delivery of development.</p> <p>The document provides no justification as to why a review mechanism should take place after implementation.</p> <p>The NPPG states at paragraph 017 that: “Viability assessment in decision-taking should be based on current costs and values. Planning applications should be considered in today's circumstances”.</p> <p>The approach proposed by the document is contrary to this, and the idea that viability should be re-</p>	<p>only set out in Chapter 4.</p>	

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	<p>assessed after implementation is directly contrary to explicit instruction in the NPPG that the appropriate time to assess viability is at the time of the planning application, and on a current day basis. The document is also contrary to National Planning Policy. The introduction of a requirement to carry out review mechanisms after implementation creates uncertainty for developers and funders alike, and therefore places doubt over funding availability for schemes that include this type of review. Forcing developers to agree to terms in S106 agreements that render planning permissions undeliverable is directly contrary to the key theme of the NPPF; to deliver sustainable development. It is also misaligned with the Government's national driver to unfetter the planning system and encourage the delivery of more residential development.</p> <p>The document should also be considered in the context of professional best practice guidance. The RICS Financial Viability in Planning (2012) provides further clarification as to the appropriate application of review mechanisms. It supports London Plan policy stressing that re-appraisals should always be undertaken prior to the implementation of the scheme or phase. It goes on to state that post-implementation reviews, otherwise known as 'overage' arrangements are not considered appropriate as development risk at the time of implementation cannot be accounted for. The impact of post-implementation review mechanisms on development viability in the context of National Planning Policy is considered at paragraph 3.6.43 which states; 'It also undermines the basis of a competitive return as envisaged by the NPPF by introducing uncertainty post the implementation of the development.'</p> <p>Additionally, a Supplementary Planning Document should not be used to add new strategic policies. This is the responsibility of the Core Strategy and Managing Development Document. Affordable housing is dealt with in Policy SP02 and DM3 which outline the Boroughs affordable requirements. Any proposed changes or addition to policy, such as the inclusion of viability reassessments, should be dealt with through a review of the Local Plan.</p> <p>In light of the above, the proposals regarding viability re-appraisal should be deleted. This represents a significant departure from the intent of National and Regional Policy, would result in a material change to the way in which development viability is assessed and work in direct contravention to the promotion of the delivery of local sustainable development.</p>		
DP9 on behalf of Londonecastle	<p>Commercial floorspace has now been removed from the contribution threshold set out in respect of Employment Skills and Training and Biodiversity. The reasoning for this change should be clarified as it now only relates to residential developments above 10 units or 1,000 m² (GIA).</p>	<p>References to commercial floorspace in the Employment and Biodiversity sections were removed in error. They have now been replaced.</p>	<p>Threshold and Contribution Requirements Planning obligations relating to Employment and Skills Training will be sought for:</p> <ul style="list-style-type: none"> • Residential developments of more than 10 units or with a combined gross floorspace of 1,000 sqm (gross internal area) or more • All major commercial development <p>Threshold and Contribution Requirements Where it is deemed necessary by the Council to secure Planning Obligations relating to Biodiversity, the threshold will be:</p> <ul style="list-style-type: none"> • Residential developments of more than 10 units or with a combined gross floorspace of 1,000 sqm (gross internal area) or more • All major commercial development
DP9 on behalf of	<p>Our client is also concerned with how the bio-diversity fund is to be calculated. There is no explanation of the methodology for calculating a contribution. Without such information and an opportunity to review</p>	<p>Given the bespoke nature of biodiversity requirements it is</p>	<p>N/A</p>

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Londonewcastle	the formula our client would object strongly to its inclusion.	not considered possible to provide a methodology or formula for it. Contributions will be required to be calculated based on site by site evidence.	
DP9 on behalf of Londonewcastle	Chapter 7 - Procedure & Management Paragraph 7.3 identifies that during the negotiation process trigger points will be agreed upon between the Council and the applicant for each S106 obligation. The paragraph goes on to identify four established trigger points which LBTH find suitable. Although our client supports the use of established trigger points, S106 agreement should not be restricted to the use of the ones identified in paragraph 7.3 alone. As such, it should be noted that other triggers may be used.	The Council consider that paragraph 7.4 provides the necessary flexibility by stating that the Council will "encourage" the use of the identified triggers. This wording does not exclude the use of other trigger dates if they can be justified.	N/A
DP9 on behalf of Londonewcastle	Paragraph 7.6 states that where the Council is not notified of an obligation and these become overdue, the Council will seek to enforce the obligation and will activate the penalty clause. Although this is an understandable addition, further clarity is required in relation to the likely fee and/or calculation for the penalty fee.	Paragraph 7.7 provides this clarity. Penalty Clauses may vary, therefore it is not possible to be more precise in the SPD.	N/A
DP9 on behalf of Bishopsgate Goods Yard Regeneration Limited	Chapter 0 - Overview On page 3 of the POSPD it states that "in some instances...additional planning obligations outside the scope of this SPD may be sought". Further clarity and justification is sought as to why additional obligations are required. The purpose of this supplementary planning document is to clearly identify all of the S106 planning obligations associated with development.	The Council disagree that the point of the SPD is to identify all potential S106 obligations. The point is to provide guidance on those S106 matters likely to require consideration in the borough. Site specific circumstances may exist which requires bespoke S106 obligations and it would be inappropriate to restrict the use of S106 as a tool to make planning applications acceptable by removing a flexible approach.	N/A
DP9 on behalf of Bishopsgate Goods Yard Regeneration Limited	Chapter 1 - Introduction On page 4 of the document, paragraph 1.5 states that "some developments are exempt from paying the levy [CIL]". Further clarification is required on the types of development that are exempt from paying CIL.	The Council agrees with the comments regarding paragraph 1.5 Please see amended wording to paragraph 1.5 in the next column.	Some developments are exempt from paying the levy. These are developments of affordable housing and developments by charities of buildings used for charitable purposes. Some developments are exempt from paying the levy such as, developments of qualifying social housing, developments by charities of buildings used for charitable purposes and developments that are self-build: new home, extension or residential annex.
DP9 on behalf of Bishopsgate Goods Yard Regeneration Limited	On page 5 of the document, paragraph 1.7 should be updated to reference the London Borough of Tower Hamlets (LBTH) adopted CIL Charging Schedule (April 2015), instead of its current reference to the Draft Charging The Schedule.	The Council agrees with the comments regarding paragraph 1.7 Please see amended wording to paragraph 1.7 in the next column.	The Council, as Local Planning Authority, is entitled to charge a „Community Infrastructure Levy“ (CIL) on new developments, which is set out in Tower Hamlets Adopted Charging Schedule, available at: http://www.towerhamlets.gov.uk/lgsi/501550/register_of_planning_decisions/section_106

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			<p>planning_obligatio/community_infrastructure levy.aspx-From 1st April 2015, the London Borough of Tower Hamlets' CIL came into operation, the Council, as Local Planning Authority, is entitled to charge a 'Community Infrastructure Levy' (CIL) on new developments, which is set out in Tower Hamlets Adopted Charging Schedule, available at: http://www.towerhamlets.gov.uk/lgs1/501550/register_of_planning_decisions/section_106/planning_obligatio/community_infrastructure_levy.aspx</p>
DP9 on behalf of Bishopsgate Goods Yard Regeneration Limited	<p>On page 6 of the document, Table 1 sets out the Crossrail charging schedule for London. An explanatory note of its role alongside the Mayoral CIL is provided within paragraph 1.14. For clarity it is recommended that the CIL charging schedule map is also included so that applicants can easily identify whether or not sites are subject to Crossrail contributions.</p>	<p>The Council do not consider it appropriate to add the CIL Charging Schedule map to the SPD. It is available attached to the Councils CIL Charging Schedule.</p>	N/A
DP9 on behalf of Bishopsgate Goods Yard Regeneration Limited	<p>Chapter 2 - Approach to Development Mitigation and Infrastructure Delivery</p> <p>On page 7, paragraph 2.2 of the POSPD states that "Contributions may be financial or non-financial. There may be provision 'in kind' negotiated as part of planning applications".</p> <p>Our client strongly supports the acknowledgment that planning obligations can be dealt with on an 'in-kind' basis, particularly in the case of large scale development sites where the developer may be best placed to provide physical infrastructure as part of a development, rather than making financial contributions towards Council funded initiatives. Clarification is also required that the POSPD is only referring to the ability of S106 planning contributions being capable of being financial or non-financial.</p> <p>Paragraph 2.2 goes on to state that "contributions will be secured for reasonable fitting out costs and to ensure that providers of community services necessitated by the development have facilities suitable for their needs and provided at nominal rents." These requirements are site specific and should be referred to as such. The wording of this sentence should be reviewed so that applicants enter into discussion and negotiations on a site by site basis.</p>	<p>For clarity minor amendments have been made to the wording in paragraph 2.2 of the SPD. Please find the wording in the next column.</p>	<p>Contributions may be financial or provision 'in kind' (where the developer builds or provides directly the matters necessary to fulfil the obligation) negotiated as part of planning applications. There may be cases where provision in kind is preferable and suitable, such as where finding land for a facility is an issue. Where provision in kind is made, contributions will be secured for reasonable fitting out costs and to ensure that providers of community services necessitated by the development have facilities suitable for their needs and provided at nominal rents. In many cases provision in kind is preferable and suitable, especially where this reduces management costs and/or where finding land for a facility is a problem. Where provision is made within developments, this will be credited to the scheme and would off-set financial contributions that may otherwise be sought, but other contributions may be secured for reasonable fitting out and infrastructure costs. These would ensure that providers of community services necessitated by the development have facilities suitable for their needs and provided at nominal rents and service charges.</p>
DP9 on behalf of Bishopsgate Goods Yard	<p>Chapter 3 - Legislative and Policy Context</p> <p>This chapter should appear before 'Approach to Development Mitigation and Infrastructure Delivery' as</p>	<p>The Council do not consider a change necessary.</p>	N/A

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Regeneration Limited	it sets out the policy context of the POSPD which needs to be understood and addressed before the approach.		
DP9 on behalf of Bishopsgate Goods Yard Regeneration Limited	<p>Chapter 4 - Negotiating Planning Obligations</p> <p>Paragraph 4.11 states that "if obligations required by the Council are not agreed to, officers will prepare a recommendation for refusal of the planning application." This paragraph does not consider flexibility in the negotiation process as full compliance to planning obligations may not be possible due to site specific constraints or viability. Therefore the paragraph should be reworded to:</p> <p>"If the Council and the applicant are unable to come to an agreement on planning obligations after reasonable negotiation, then officers may prepare a recommendation for refusal of the planning application, if the scheme was deemed to be unacceptable in the absence of those obligations."</p>	<p>The Council agrees with the comments regarding paragraph 4.11.</p> <p>Please see amended wording to paragraph 4.11 in the next column.</p>	<p>Para 4.11 If the obligations required by the Council are not agreed to, officers will prepare a recommendation for refusal of the planning application. If the Council and the applicant are unable to come to an agreement on planning obligations after reasonable negotiation, then officers may prepare a recommendation for refusal of the planning application.</p>
DP9 on behalf of Bishopsgate Goods Yard Regeneration Limited	<p>There are two 4.15 paragraphs on page 11 of the document.</p> <p>At Paragraph 4.15 the document states that; "The Authority will resist the application of a fixed land value as an input in the development appraisal where it is based on a price paid for land or an aspirational sum sought by a landowner when establishing the Residual Land Value".</p> <p>The document seeks to resist Market Value (MV) as a measure of Land Value. This is contrary to the NPPF and NPPG which states that whilst the most appropriate way to assess land or site value will vary, there are common principles which should be reflected.</p> <p>The NPPG reference is consistent with section 173 of the NPPF. This approach is also contrary to regional policy which in the Mayor's Housing SPG (2012) at paragraph 4.3.23 states that:</p> <p>"There are a range of valuation methodologies that can be used to assess viability in particular cases, and the usefulness and robustness of a particular approach in providing a basis for informed decision making is the key criterion for deciding which to use in each case".</p> <p>The Mayor's draft Housing SPD, published for consultation in May 2015 also reflects this statement and notes that both MV and CUV approaches to viability may be acceptable with their appropriate application depending on the specific circumstances.</p> <p>The Mayor's latest viability toolkit guidance notes (2015) (the Borough refers to an earlier version, 2010 in paragraph 4.16) also identifies that Existing Use Value is not the only approach to assessing viability and that Market Value is an alternative approach and this approach is being promoted by an RICS Guidance Note (Financial Viability in Planning 94/2012) ('RICS GN').</p> <p>The Mayor considers that it is for Boroughs and other Toolkit users to determine which is the most appropriate in the light of their local circumstances. In instances where there is some uncertainty over which approach to adopt, users are advised to take into account the legal precedents and established practice.</p> <p>MV is intended to provide the practitioner with a general sense check, rather than a definitive number, as to a reasonable return to a landowner as required by central Government policy and practice and indeed other best practice guidance such as the RICS GN and the Lord Harman Local Housing Delivery Group publication 'Viability Testing Local Plans' (June 2012) that, in regard the use of MV states: "Consideration of an appropriate Threshold Land Value needs to take account of the fact that future plan policy requirements will have an impact on land values and landowner expectations.</p>	<p>Minor amendments have been made to the wording in paragraphs 4.16 and 4.17 (replacing former paragraph 4.15) of the SPD. Please find the wording in the next column.</p>	<p>Paras 4.16 and 4.17 At Planning Application Stage, proposals where the full range of planning obligations cannot be met must be submitted with a full Viability Assessment, with information provided on an open book basis to enable the viability of the scheme to be comprehensively assessed.</p> <p>There are currently a number of sources of guidance relating to development viability. These guidance notes take a range of approaches to certain aspects of development viability. It is for the Council to determine the most appropriate approach to be taken in each case. Applicants and their agents should discuss this with the Council at an early stage.</p>

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	<p>Therefore, using a market value approach as the starting point carries the risk of building-in assumptions of current policy costs rather than helping to inform the potential for future policy. Reference to market values can still provide a useful ‘sense check’ on the threshold values that are being used in the model”.</p> <p>Whilst the Lord Harman report is collated in relation to policy making rather than site specific development management, and for plan making the risk of including market data that reflects previous policy environments is clear, the report still acknowledges the importance of a ‘sense check’ on the appropriate land value for viability purposes.</p> <p>The clear risk of not sense checking against market data, and being reliant on a singular CUV based approach with an arbitrary approach to premiums, is to disregard the importance of the workings of the land market and to risk the delivery of sites.</p> <p>It is for the practitioner to present the correct balance between land value, development profit, the delivery of planning obligations (and the Community Infrastructure Levy) and ultimately the release of land for new development. The complete exclusion of a MV approach does not take into consideration the inherently low CUVs on many sites and risk to delivery of this singular approach is adopted.</p> <p>It is also worth noting that the significant majority of local authority viability advisors across London incorporate MV into their methodologies and both approaches i.e. CUV based and MV, have been adopted historically in LBTH. It is therefore difficult to understand how LBTH are seeking to reconcile the complete exclusion of MV within their policy framework which is contrary to policy, guidance and the practices of the majority of local authority advisors.</p>		
DP9 on behalf of Bishopsgate Goods Yard Regeneration Limited	<p>At paragraph 4.17 POSPD states that;</p> <p>“Where the original viability assessment of a scheme was used to justify an offer which falls short of the Councils policy requirements in full, the Council may require a commitment to re-appraise the scheme viability (on one or more occasions) to be incorporated into the Section 106 agreement”.</p> <p>There are a number of circumstances where the Council will require a new viability appraisal to be undertaken when the original application did not provide the Council’s headline requirement in terms of the quantum and tenure mix of affordable housing including;</p> <ul style="list-style-type: none"> • Where there is a delay in starting on-site normally two years • Where an application for renewal of permission is submitted • Where a large scheme is built out in phases, or over a long period • At the end of the development to assess whether the development can deliver the maximum reasonable level of affordable housing and to inform future negotiations. The viability appraisal will be carried out after the completion of sales of at least 80% of the private units. <p>Where it is concluded that the scheme can sustain a greater quantum of affordable housing and/or a more policy compliant affordable housing tenure mix can be provided, the Council will elect to seek the following or a combination of the following;</p> <ul style="list-style-type: none"> • A higher proportion of affordable housing • Amend the tenure mix for the affordable housing element (where the scheme design permits) • A cash in lieu contribution. <p>The London Plan (2015) broadly recognises appropriate use of pre-implementation review mechanisms, however it specifically states that the provision of review mechanisms is intended for large, phased developments and that they should only be carried out prior to implementation. The full context of the Mayor’s application of ‘contingent obligations’ is set out at Policy 3.12 B) and states;</p>	<p>The Council has reviewed the Viability Review Mechanisms section of the SPD considering the comments received as part of the consultation, the Mayor of London’s Housing SPG and the developing planning appeal and case law context. The resulting revised paragraphs 4.19 and 4.20 of the SPD reflect the Councils consolidated position.</p> <p>The section regarding Viability Re-appraisal on page 16 has been removed from the SPD. The Council’s approach to Viability Re-appraisal is now only set out in Chapter 4.</p>	<p>Old paragraphs 4.17 – 4.20 deleted and replaced by following wording:</p> <p><u>4.19 For all applications where policy requirements are not met in full at the time permission is granted and where the departure is justified as a result of the submission of a Financial Viability Assessment, provisions for viability review mechanisms will be required to be incorporated within Section 106 agreements.</u></p> <p><u>4.20 Viability review mechanisms will be triggered and undertaken according to the circumstances in each case but based on the following principles.</u></p> <p>1. <u>For all schemes requiring a review (see paragraph 4.16 above), an advanced stage review will be carried out. These reviews should be undertaken on sale of 75% of market residential accommodation, or within a three month period prior to practical completion, whichever is earlier.</u></p> <p>2. <u>For all schemes requiring a review, where a scheme has not been implemented</u></p>

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	<p>'Negotiations on sites should take account of their individual circumstances including development viability, the availability of public subsidy, the implications of phased development including provisions for re-appraising the viability of schemes prior to implementation ('contingent obligations'), and other scheme requirements.'</p> <p>The Mayor's Housing SPG provides further clarification at paragraph 4.4.42. 'Where a large scheme is built out in phases, consideration should be given to a reappraisal mechanism which specifies the scope of a review of viability for each phase.'</p> <p>Consequently, the circumstances in which it is proposed that review mechanisms are appropriate within POSPD are contrary to London Plan policy and the Mayor's SPG. Furthermore, the guidance set out within the NPPG elects to exclude any provision for review mechanisms which indicates that review mechanisms should not be imposed as a blanket approach, as they add unnecessary uncertainty and risk, ultimately adversely impacting on the delivery of development.</p> <p>The POSPD provides no justification as to why a review mechanism should take place after implementation.</p> <p>The NPPG states at paragraph 017 that; 'Viability assessment in decision-taking should be based on current costs and values. Planning applications should be considered in today's circumstances' The approach proposed by POSPD is contrary to this, and the idea that viability should be re-assessed after implementation is directly contrary to explicit instruction in the NPPG that the appropriate time to assess viability is at the time of the planning application, and on a current day basis.</p> <p>Notwithstanding the comments above and the contradiction with London Plan policy, it should be noted that the housing market, is by its nature, cyclical. Recent house price growth is a small part of a larger economic cycle and it is wholly unreasonable to seek to impose new development plan policies 1) through an SPD and 2) based on a short-term assessment of a fundamentally indeterminate and ever-changing medium. National Planning Policy within paragraph 174 of the NPPF states that the cumulative impact of all policies "should not put the implementation of the Plan at serious risk, and should facilitate development throughout the economic cycle".</p> <p>Consequently, the proposal within the POSPD is contrary to National Planning Policy. The introduction of a requirement to carry out review mechanisms after implementation creates uncertainty for developers and funders alike, and therefore places doubt over funding availability for schemes that include this type of review. Forcing developers to agree to terms in S106 agreements that render planning permissions undeliverable is directly contrary to the key theme of the NPPF; to deliver sustainable development. It is also misaligned with the Government's national driver to unfetter the planning system and encourage the delivery of more residential development.</p> <p>POSPD should also be considered in the context of professional best practice guidance. The RICS Financial Viability in Planning (2012) provides further clarification as to the appropriate application of review mechanisms. It supports London Plan policy stressing that re-appraisals should always be undertaken prior to the implementation of the scheme or phase. It goes on to state that post-implementation reviews, otherwise known as 'overage' arrangements are not considered appropriate as development risk at the time of implementation cannot be accounted for. The impact of post-implementation review mechanisms on development viability in the context of National Planning Policy is considered at paragraph 3.6.43 which states; 'It also undermines the basis of a competitive return as envisaged by the NPPF by introducing uncertainty post the implementation of the development.'</p> <p>In light of the above, the proposals regarding viability re-appraisal at the end of the development within</p>		<p><u>within 12 months of the relevant application decision date, a pre-implementation review will be required.</u></p> <p><u>3. For phased schemes requiring a review, mid-term reviews will be necessary where the second (or subsequent phases) are not implemented within 12 months of the decision of the application to which the originally submitted Financial Viability Assessment relates.</u></p> <p>The objected to section on page 16 has been removed from the SPD.</p>

Respondent	Representations	Council's Response	Amendments made to S106 SPD / Reg 123 List
	Section 5 on page 16 of POSPD should be deleted. This represents a significant departure from the intent of National and Regional Policy, would result in a material change to the way in which development viability is assessed and work in direct contravention to the promotion of the delivery of local sustainable development.		
DP9 on behalf of Bishopsgate Goods Yard Regeneration Limited	<p>Chapter 5 - Standard Obligations and Charges</p> <p>Commercial floorspace has now been removed from the contribution threshold set out in respect of Employment Skills and Training and Biodiversity. The reasoning for this change should be clarified as it now only relates to residential developments above 10 units or 1,000 m² (GIA).</p>	<p>References to commercial floorspace in the Employment and Biodiversity sections were removed in error. They have now been replaced.</p>	<p>Threshold and Contribution Requirements</p> <p>Planning obligations relating to Employment and Skills Training will be sought for:</p> <ul style="list-style-type: none"> Residential developments of more than 10 units or with a combined gross floorspace of 1,000 sqm (gross internal area) or more All major commercial development <p>Threshold and Contribution Requirements</p> <p>Where it is deemed necessary by the Council to secure Planning Obligations relating to Biodiversity, the threshold will be:</p> <ul style="list-style-type: none"> Residential developments of more than 10 units or with a combined gross floorspace of 1,000 sqm (gross internal area) or more All major commercial development
DP9 on behalf of Bishopsgate Goods Yard Regeneration Limited	<p>Chapter 7 - Procedure & Management</p> <p>Paragraph 7.3 identifies that during the negotiation process trigger points will be agreed upon between the Council and the applicant for each S106 obligation. The paragraph goes on to identify four established trigger points which LBTH find suitable. Although our client supports the use of established trigger points, S106 agreement should not be restricted to the use of the ones identified in paragraph 7.3 alone. As such, it should be noted that other triggers may be used.</p> <p>Paragraph 7.6 states that where the Council is not notified of an obligation and these become overdue, the Council will seek to enforce the obligation and will activate the penalty clause. Although this is an understandable addition, further clarity is required in relation to the likely fee and/or calculation for the penalty fee.</p>	<p>The Council consider that paragraph 7.4 provides the necessary flexibility by stating that the Council will "encourage" the use of the identified triggers. This wording does not exclude the use of other trigger dates if they can be justified.</p>	N/A
DP9 on behalf of Canary wharf Group	<p>'In-Kind' Contributions</p> <p>Paragraph 2.2 of the Draft SPD notes the following:</p> <p>"Contributions may be financial or non-financial. There may be cases for provision 'in kind' (where the developer builds or provides directly the matters necessary to fulfil the obligation) negotiated as part of planning applications. There may be cases where provision in kind is preferable and suitable, such as where finding land for a facility is an issue. Where provision in-kind is made, contributions will be secured for reasonable fitting out costs and to ensure that providers of community services necessitated by the development have facilities suitable for their needs and provided at nominal rents. "</p> <p>The recognition that planning obligations can be dealt with on an 'in-kind' basis is welcomed and is considered particularly relevant in the case of large scale development sites where the developer may be best placed to provide physical infrastructure as part of a development rather than making financial contributions towards Council funded initiatives.</p>	<p>For clarity minor amendments have been made to the wording in paragraph 2.2 of the SPD. Please find the wording in the next column.</p>	<p>Contributions may be financial or provision 'in kind' (where the developer builds or provides directly the matters necessary to fulfil the obligation) negotiated as part of planning applications. There may be cases where provision in kind is preferable and suitable, such as where finding land for a facility is an issue. Where provision in-kind is made, contributions will be secured for reasonable fitting out costs and to ensure that providers of community services necessitated by the development have facilities suitable for their needs and provided at nominal rents. In many cases provision in</p>

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	<p>However, some clarification needs to be added to Paragraph 2.2 to make it clear that it is referring to the ability of s106 planning contributions being capable of being financial or non-financial. This is because the ability for 'payment in kind' as it applies to CIL is subject to the requirements of national guidance and the CIL Regulations. Therefore, it needs to be clear that Paragraph 2.2 is referring to s106 planning obligations only.</p> <p>In addition, we are concerned about the inclusion of a requirement that 'contributions will be secured for reasonable fitting out costs and to ensure that providers of community services necessitated by the development have facilities suitable for their needs and provided at nominal rents.' These requirements are specific and potentially onerous for developers. We think it is more appropriate for matters such as fitting out and rental costs to be discussed and negotiated on a scheme by scheme basis. This is because many providers of community services will often have a number of sources of funding and revenue available to them. Therefore, the requirements of the developer to meet fit out and rental costs in addition to the physical provision of space within a development should be determined once the circumstances of the potential future occupier of the space are known.</p>		<p>kind is preferable and suitable, especially where this reduces management costs and/or where finding land for a facility is a problem. Where provision is made within developments, this will be credited to the scheme and would off-set financial contributions that may otherwise be sought, but other contributions may be secured for reasonable fitting out and infrastructure costs. These would ensure that providers of community services necessitated by the development have facilities suitable for their needs and provided at nominal rents and service charges.</p>
DP9 on behalf of Canary wharf Group	<p>Introduction of Viability Re-Appraisal</p> <p>A Supplementary Planning Document should not be used to set new strategic or development management policies for the Borough which the Draft SPD does in relation to affordable housing as set out on p. 15 and p. 16 of the document. As part of the LBTH Local Plan, the main policies relating to affordable housing are Core Strategy (2010) Policy SP02 and Managing Development Document (2013) Policy DM3. These policies outline the Borough's overall target for the delivery of affordable homes and also the requirements that apply to the delivery of affordable housing on individual sites. However, neither policy makes reference to the requirement to re-appraise scheme viability where a viability appraisal is used to justify an affordable housing offer below policy requirements.</p> <p>We note the Council's rationale for seeking to introduce new policy and guidance in relation to the application of viability re-appraisal. However, we do not consider that an SPD, which will not be subject to the full rigours of public consultation and Examination in Public, is the appropriate means by which to do so. The appropriate means by which to introduce policy and guidance in relation to viability re-appraisal is to do so through a future review of the LBTH Local Plan.</p> <p>It is also relevant to consider the 2014 Examination in Public (EiP) of the LBTH Draft Community Infrastructure Levy Charging Schedule. In his report dated November 2014, the Inspector noted the following: "Z4h' the 50% affordable housing requirement were assumed, it is likely that little or no CIL could be viably charged on residential development but it is also likely that on many, or even most, developments 50% affordable housing would not in any case be achieved. In contrast, the appraisals demonstrate that (other than on large allocated sites, considered below) if 35% affordable housing requirement is assumed (which is higher than the average figure achieved in recent years) it is feasible that both this level of affordable housing and a worthwhile CIL contribution towards other infrastructure can be achieved on most residential development.01 June 2015</p> <p>Consequently, although it is set in the context of a strategic target of 50% of new homes being affordable, given that policy SP02 sets 35% as the minimum requirement for sites with more than 10 residential units (subject to viability), this is an appropriate assumption on which to base CIL charges and is one which would not threaten developing viably the scale of development identified in the Core Strategy."</p> <p>Based on all of the evidence put to the Inspector as part of the EiP, including evidence that suggests that the majority of market led residential schemes in LBTH on average deliver c. 30% of units as</p>	<p>The Council do not consider that the wording included in the SPD creates new policy, rather it is providing guidance that is appropriate for inclusion in an SPD.</p> <p>The Council has reviewed the Viability section of the SPD in section 4 considering the comments received as part of the consultation, the Mayor of London's Housing SPG and the developing planning appeal and case law context. The resulting revised paragraphs 4.19 and 4.20 of the SPD reflect the Council's consolidated position.</p> <p>The section regarding Viability Re-appraisal on page 16 has been removed from the SPD. The Council's approach to Viability Re-appraisal is now only set out in Chapter 4.</p>	<p>Old paragraphs 4.17 – 4.20 deleted and replaced by following wording:</p> <p>4.19 For all applications where policy requirements are not met in full at the time permission is granted and where the departure is justified as a result of the submission of a Financial Viability Assessment, provisions for viability review mechanisms will be required to be incorporated within Section 106 agreements.</p> <p>4.20 Viability review mechanisms will be triggered and undertaken according to the circumstances in each case but based on the following principles.</p> <ol style="list-style-type: none"> For all schemes requiring a review (see paragraph 4.16 above), an advanced stage review will be carried out. These reviews should be undertaken on sale of 75% of market residential accommodation, or within a three month period prior to practical completion, whichever is earlier. For all schemes requiring a review, where a scheme has not been implemented within 12 months of the relevant application decision date, a pre-implementation review will be required. For phased schemes requiring a review, mid-term reviews will be necessary where the second (or subsequent phases) are not implemented within 12 months of the decision of the application to which the originally submitted Financial Viability

Respondent	Representations	Council's Response	Amendments made to S106 SPD / Reg 123 List
	<p>affordable housing, he concluded that the proposed CIL charging rates would not threaten the viability of schemes where affordable housing provision of up to 35% is assumed.</p> <p>However, as part of the LBTH CIL EiP, no regard was had to the potential introduction of viability re-appraisal measures for schemes. As acknowledged by the Inspector, there would be some uncertainty as to the viability of schemes and their ability to make CIL contributions if more than 35% affordable housing provision is required.</p> <p>Accordingly, we object to inducing viability reappraisal requirements in the Draft SPD and as such this should be removed if policy and guidance on viability re-appraisal is to be introduced, then this should be as part of a Local Plan review and specifically a review of adopted policies SP02 and DM3. This is to ensure that the viability implications for development in the borough of introducing re-appraisal measures are fully assessed and examined. Ultimately, if schemes cannot be delivered viably because of requirements to make CIL contributions alongside contributions to affordable housing delivery and other planning obligations, then this will act as a barrier on development.</p> <p>Despite our objections as set out above, should the Council opt to include guidance in the Draft SPD relating to viability re-appraisal, then it should be noted that the currently proposed approach as set out in Paragraph 4.17 and on p. 15 & p.16 of the document is fundamentally flawed for reasons which we set out below:</p> <ol style="list-style-type: none"> 1. Paragraph 4.17 — reference to 'offer' in the first sentence needs to be clarified as it is not clear what this refers to. It is assumed it refers to the quantum of affordable housing that the developer has sought demonstrate that it is viable to provide with a scheme? 2. Paragraph 4.17 also states that a viability re-appraisal may be required where the proposed quantum of affordable housing falls short of the Council 's policy requirements in full'. Similarly, the text box on p.16 refers to development that 'did not provide a policy compliant scheme in terms of the quantum and tenure mix of affordable housing'. The Draft SPD is currently drafted on the basis that a viability re-appraisal will always be required when the target percentage is not met. However, it is fundamentally incorrect to suggest that a scheme is not policy compliant if it provides less than the 35% - 50% affordable target for residential developments as set out in the LBTH Local Plan. If the scheme provides the 'maximum reasonable' quantum of affordable housing based on a financial assessment which has been reviewed by an independent assessor at the time the application has been determined then it is policy compliant irrespective of the percentage offered. This is in accordance with strategic policy as set out in the London Plan (Policy 3.12). 3. The text box on p.16 says that a 'new viability appraisal' would be required. This is also incorrect. The requirement should be for an update to the original appraisal with the scope of any re-appraisal to be determined based on the specific of the particular site. 4. The text box on p.16 correctly identifies in accordance with the London Plan that a viability re-appraisal could be required for phased and long term schemes. However, the Draft SPD goes beyond adopted policy by suggesting that a range of other development scenarios should be subject to re-appraisal, including when development has been delayed in commencing and also post completion of development. Of great concern is the suggestion that a post completion (after at least 80% of private units have been sold units) re-appraisal will be required. This is an overly onerous requirement and implies an overage/profit sharing type arrangement which is contrary to adopted policy. The London Plan broadly recognises appropriate use of review mechanisms, however it specifically states that the provision of review mechanisms is intended for large, phased developments and that they should only be carried out prior to implementation. The full context of the Mayor's application of 'contingent obligations' is set out at Policy 3.12 B) and states; <p>'Negotiations on sites should take account of their individual circumstances including development</p>		<p><u>Assessment relates.</u></p> <p>The objected to section on page 16 has been removed from the SPD.</p>

Respondent	Representations	Council's Response	Amendments made to S106 SPD / Reg 123 List
	<p>viability, the availability of public subsidy, the implications of phased development including provisions for re-appraising the viability of schemes prior to implementation ('contingent obligations'), and other scheme requirements.'</p> <p>Consequently, the circumstances in which it is proposed that review mechanisms are appropriate as suggested within the Draft SPD are contrary to London Plan policy and the Mayor's SPG. Furthermore, guidance set out within the National Planning Practice Guidance (NPPG) elects to exclude any provision for review mechanisms which indicates that review mechanisms should not be imposed as a blanket approach, as they add unnecessary uncertainty and risk, ultimately adversely impacting the delivery of development.</p> <p>The primary justification within the Draft SPD for the proposed viability re-appraisal as set out in Paragraph 4.17 is to determine if a development is capable of 'providing additional affordable housing or other requirements that would otherwise have been necessary'. However, the NPPG states at paragraph 017 that;</p> <p>'Viability assessment in decision-taking should be based on current costs and values. Planning applications should be considered in today's circumstances' Therefore, the approach proposed by Draft SPD is contrary to this. The wording of the text on p.16 is also drafted inclusively which suggests that the range of circumstances where a viability re-appraisal may be required is endless.</p>		
DP9 on behalf of Canary wharf Group	<p>General Approach to Viability</p> <p>Paragraph 4.15 of the document states the following:</p> <p>"At Planning Application Stage, proposals where the full range of planning obligations cannot be met must be submitted with a full Viability Assessment which contains sufficient evidence to enable officers to properly assess a scheme. The Authority will resist the application of a fixed land value as an input within a development appraisal where it is based on a price paid for land or an aspirational sum sought by a landowner when establishing the Residual Land Value. The authority considers that Existing Use Value or Alternative Use Value should take account of full planning policy requirements as an appropriate input. "We do not consider it appropriate for the Draft SPD to seek to restrict the means by which scheme viability is assessed. In this regard, the NPPG (paragraph 023) states that whilst the most appropriate way to assess land or site value will vary, there are common principles which should be reflected and it notes that in all cases, estimated land or site value should provide a competitive return to willing developers and land owners and be informed by comparable, market-based evidence wherever possible.</p> <p>The Mayor's Housing SPG (2012) at paragraph 4.3.23 states that there is a range of valuation methodologies that can be used to assess viability in particular cases, and the usefulness and robustness of a particular approach in providing a basis for informed decision making is the key criterion for deciding which to use in each case.</p> <p>In our view, the Draft SPD should not seek to provide measures to control the use of a range of alternative approaches to determining the appropriate land value in viability appraisals. The most suitable method should be determined based on site specific circumstances, as set out in national and regional planning policy guidance.</p>	<p>Minor amendments have been made to the wording in paragraphs 4.16 and 4.17 (replacing former paragraph 4.15) of the SPD. Please find the wording in the next column.</p>	<p>Paras 4.16 and 4.17</p> <p><u>At Planning Application Stage, proposals where the full range of planning obligations cannot be met must be submitted with a full Viability Assessment, with information provided on an open book basis to enable the viability of the scheme to be comprehensively assessed.</u></p> <p><u>There are currently a number of sources of guidance relating to development viability. These guidance notes take a range of approaches to certain aspects of development viability. It is for the Council to determine the most appropriate approach to be taken in each case. Applicants and their agents should discuss this with the Council at an early stage.</u></p>
DP9 on behalf of Canary wharf Group	<p>Wording of 'Employment Skills and Training' on p.18 of the document and in a number of other places should be clarified because, as currently drafted, it appears to relate to residential developments only and not commercial? — 'Residential development of more than 10 units or with a combined gross floorspace of, 1000 (gross internal area) or more'</p>	<p>References to commercial floorspace in the Employment and Biodiversity sections were removed in error. They have now been replaced.</p>	<p>Threshold and Contribution Requirements</p> <p>Planning obligations relating to Employment and Skills Training will be sought for:</p> <ul style="list-style-type: none"> • Residential developments of more than 10 units or with a combined gross floorspace of 1,000 sqm (gross internal area)

Respondent	Representations	Council's Response	Amendments made to S106 SPD / Reg 123 List
			<p>or more</p> <ul style="list-style-type: none"> • <u>All major commercial development</u> <p>Threshold and Contribution Requirements Where it is deemed necessary by the Council to secure Planning Obligations relating to Biodiversity, the threshold will be:</p> <ul style="list-style-type: none"> • Residential developments of more than 10 units or with a combined gross floorspace of 1,000 sqm (gross internal area) or more • <u>All major commercial development</u>
DP9 on behalf of Canary wharf Group	Section 6 'Monitoring and Implementation' — The Council should have regard to recent case law (Oxfordshire County Council V Secretary Of State For Communities & Local Government & 5 Ors [2015] EWHC 186) where the High Court has given a planning judgement severely restricting the right of local planning authorities to charge administration and monitoring costs in Section 106 agreements. The Council should consider this judgement before finalising the Draft SPD and specifying a requirement for monitoring costs to be paid by the developer.	The Council has had regard to the case law referred to in the representation. The Council consider that the case in question does not prevent the SPD from requesting monitoring contributions.	N/A
DP9 on behalf of Canary wharf Group	Paragraph 7.3 and 7.4 - needs to be clear that other triggers and not just the four that are listed can be used. Paragraph 7.4 should be amended to read 'Unless the specific circumstances of a development require otherwise and it is agreed that an alternative approach should be taken, the Council will encourage the use of these four identified triggers in negotiations with the commencement of development being the preferred point for an obligation to be delivered upon.'	The Council consider that paragraph 7.4 provides the necessary flexibility by stating that the Council will "encourage" the use of the identified triggers. This wording does not exclude the use of other trigger dates if they can be justified.	N/A
DP9 on behalf of Canary wharf Group	Paragraph 7.6 — further clarification is required in relation to the proposed penalty clause including how much it might be.	Paragraph 7.7 provides this clarity. Penalty Clauses may vary, therefore it is not possible to be more precise in the SPD.	N/A
DP9 on behalf of Canary wharf Group	The LBTH CIL Charging Schedule is referred to as 'draft' throughout the document — it has now been published so the document should be updated to reflect this	This has been amended throughout the document	Changed as necessary
DP9 on behalf of Canary wharf Group	Paragraph 1.5 — references to the types of development that are exempt from paying CIL are vague, particular as not all types of affordable housing are always exempt from CIL.	<p>The Council agrees with the comments regarding paragraph 1.5</p> <p>Please see amended wording to paragraph 1.5 in the next column.</p>	<p><u>Some developments are exempt from paying the levy. These are developments of affordable housing and developments by charities of buildings used for charitable purposes. Some developments are exempt from paying the levy such as, developments of qualifying social housing, developments by charities of buildings used for charitable purposes and developments that are self-build: new home, extension or residential annex.</u></p>
DP9 on behalf of Canary wharf Group	Table 1, p.6 — The inclusion of this table in the Draft SPD is confusing unless the associated maps are also included to indicate the geographical extent of the contribution areas	The Council do not consider it appropriate to add the CIL Charging Schedule map to the SPD. It is available attached to	N/A

Respondent	Representations	Council's Response	Amendments made to S106 SPD / Reg 123 List
		the Council's CIL Charging Schedule.	
DP9 on behalf of Canary wharf Group	The Draft SPD would read better if Section 3 'Legislative and Policy Context' came before Section 2 'Approach to Development Mitigation and Infrastructure Delivery'	The Council do not consider a change necessary.	N/A
DP9 on behalf of Canary wharf Group	Paragraph 2.1, 1st bullet point — the language used in this paragraph is vague. What stages of the planning application process are being referred to by 'initial proposal' and 'final proposal'?	The Council do not consider this wording to be inappropriate.	N/A
DP9 on behalf of Canary wharf Group	The 'Infrastructure' Table on p.8 needs a reference and it also needs to be made clear that 'Roads and other transport facilities' refers to borough wide rather than site specific requirements.	The Council have removed the table at paragraph 2.3 as it was felt that it was causing more confusion than it was providing clarity.	The table at paragraph 2.3 has been removed.
DP9 on behalf of Canary wharf Group	Paragraph 4.11 should be redrafted as follows: 'If the obligations sought by the Council are not capable of being agreed through negotiation with the developer, officers may prepare a recommendation for refusal of the planning application.'	The Council agrees that paragraph 4.11 needed amending. Please see amended wording to paragraph 4.11 in the next column.	Para 4.11 If the obligations required by the Council are not agreed to, officers will prepare a recommendation for refusal of the planning application. If the Council and the applicant are unable to come to an agreement on planning obligations after reasonable negotiation, then officers may prepare a recommendation for refusal of the planning application.
DP9 on behalf of Canary wharf Group	There are two paragraphs numbered 4.15	Comment noted.	Numbering fixed.
DP9 on behalf of Canary wharf Group	Paragraph 4.16 sets out that 'Detailed guidance on the information required to enable the Council to scrutinise viability assessments will be provided in due course.' This is quite vague and further clarification should be provided	The wording used reflects the Council's desire to provide further viability guidance in the future, while acknowledging that it is not yet known in what form this will be provided.	N/A

Table 2: April – June 2016 Consultation

Respondent	Representations	Council's Response	Proposed Amendments to S106 SPD / Reg 123 List
Highways England	No comment is offered	No comment	N/A
Canary Wharf Group PLC	An SPD should not be used to set new strategic or development management policies for the Borough. LBTH's current planning policies as contained in the Core Strategy (2010) and Managing Development Document (2013), make no reference to the requirement to re-appraise scheme viability where a viability appraisal is used to justify an affordable housing offer below policy requirements. We therefore do not consider this SPD as an appropriate means for introducing this requirement. Notwithstanding this, the proposed requirement is also contrary to the London Plan and Mayors SPG as well as guidance set out in the National	The Council do not consider that the wording included in the SPD creates new policy, rather it is providing guidance that is appropriate for inclusion in an SPD. The Council consider that the SPD as drafted is in	N/A

Respondent	Representations	Council's Response	Proposed Amendments to S106 SPD / Reg 123 List
	Planning Policy Guidance (NPPG).	accordance with the NPPG, the London Plan and the Mayor of London's Housing SPG.	
Canary Wharf Group PLC	It is apparent that the financial contributions have significantly increased since the June 2015 publication. No clarification or justification is provided for this.	Financial contributions have not significantly increased since the June 2015 publication.	N/A
Canary Wharf Group PLC	The SPD proposes to continue to charge a monitoring fee; this is unlawful. In Oxfordshire County Council v Secretary of State for Communities and Local Government [2015] EWHC 186 (Admin) the County Council, the High Court upheld the decision of an Inspector that a requirement for the payment of administration and monitoring fees did not accord with regulation 122 of the Community Infrastructure Regulations 2010. Accordingly this section of the SPG should be removed.	The Council has had regard to the case law referred to in the representation. The Council consider that the case in question does not prevent the SPD from requesting monitoring contributions.	N/A
GLA	Throughout the document there is reference to the authority's Regulation 123 List. It would be helpful if the list was included in the document as an appendix or in Chapter 2 to help the reader have all the relevant information in one document.	The Council do not consider it necessary or appropriate to include the Regulation 123 List in the SPD document. It is available on the Council's website alongside the SPD. It should be kept separate in case it requires changes without the need to change the SPD.	N/A
GLA	On Page 6, Table 'I', the rows are incorrectly labelled. The office rates are '140/1 90/31 and the retail rates are 90/121/16, not the other way round as stated in the document.	Comment noted and table amended.	Error amended
GLA	On Page '19, footnote '3' referred to in the top line of the formula for Construction Phase Skills and Training (£43) is at the bottom of the previous page.	Comment noted and location of footnote amended.	Error amended
GLA	The Mayor's main concerns relate to the provision of transport in section 5 of the document. The changes being proposed to the text in paragraph 5.'1 are to clarify that there will be no 'double dipping' for the same piece of infrastructure from S106 and CIL. The Regulation 'I23 List has also been amended to reinforce this point. However, the wording of paragraphs 5.20 and 5.21 has also been amended but both paragraphs lack clarity as to when CIL will be required or a S278/S106 agreement will be required. Both of these paragraphs appear to rule out 'double dipping' then set out circumstances where 'double dipping' could occur.	Paragraphs 5.20 and 5.21 are clear that s106 will only be used when it is not appropriate to use CIL (i.e. where it does not clash with the Regulation 123 List). The Regulation 123 List is clear in its definition of "strategic road and other transport facilities". Many S278 requirements are not caught by the Regulation 123 List definition and are therefore appropriate. S106 obligations that are 'not strategic' (as defined by the Regulation 123 List) or not	N/A

Respondent	Representations	Council's Response	Proposed Amendments to S106 SPD / Reg 123 List
		covered by the Regulation 123 List in other ways may be appropriate, subject to the 'three tests' and pooling restrictions.	
GLA	Paragraph 5.23 could usefully point out that the Mayor will not 'double dip'.	No need for this to be added as Mayoral documents already make this clear. It's not the council's responsibility to state that the Mayor will not double-dip.	N/A
Quod on behalf of St William LLP	Some of the wording of the section might usefully be edited to clarify how the requirement for sites for strategic infrastructure will be secured. We note that the Council has elsewhere used Section 106 agreements to secure sites for strategic infrastructure identified on the Regulation 123 list, and has also received Counsel's advice that such land may, in whole or in part, be used as a payment in-kind for CIL. This section could also helpfully cross-refer to the Council's very helpful Payments in Kind and Infrastructure Payments Policy (2015).	The council welcomes the use of on-site infrastructure provision when appropriate to do so. The SPD is however, not the place to set out detail regarding any CIL in-kind process.	N/A
Canal and River Trust	We note that the regulation 123 list does not specifically relate to the borough's waterways and we are unclear as to whether the improvements that the Trust might commonly seek as developer contributions are considered by the Council to fall within the headings listed in the reg. 123 list. We consider that the Council's definition of strategic infrastructure is open to misinterpretation. In the example of a towpath upgrade scheme, the Trust may request funding towards a scheme to mitigate the impact of a particular development but that upgraded towpath section would not have been designed to serve the residents or workers of that one particular development. As a result, we would suggest that this could, erroneously in the Trust's opinion, be said to be a strategic infrastructure scheme.	The Council would expect most waterway improvements to come under 'open space' or 'transport facilities' on the Regulation 123 List. There may be exceptional works or circumstances that mean that a S106 contribution could be necessary. The SPD does not preclude this as it is not an exhaustive list of contributions permitted, rather it is guidance regarding common obligations.	N/A
Canal and River Trust	We previously suggested that our waterways and environs could fall within the following categories within the table on page 8 of the existing SPD. <ul style="list-style-type: none"> • Transportation measures; • Site specific public realm improvements; • Carbon reduction measures; • Biodiversity measures/initiatives; • Site related flood mitigation measures. We encourage the Council to retain this table which helps to provide clarity on this issue.	The table has been removed as it was considered to be causing confusion in more cases than it was providing clarity. The categorisation provided by CRT is helpful and each item is clearly reflected as either a CIL or S106 matter in the SPD and Regulation 123 List.	N/A
Canal and	Paragraphs 5.18 to 5.23 consider how CIL and planning obligations will be used to secure	Paragraphs 5.20 and 5.21	N/A

Respondent	Representations	Council's Response	Proposed Amendments to S106 SPD / Reg 123 List
River Trust	transport and highways infrastructure improvements. Paragraph 5.21 explains that any necessary alterations should be incorporated within the proposals. We note that “where a transport disbenefit is directly related to the development and it is necessary to outweigh that disbenefit to make the development acceptable, the Council will use s278 agreements or s106 agreements to secure such obligations”. The Trust considers that infrastructure schemes that it seeks planning obligations towards frequently fall into this category and supports this approach. As explained above, we are concerned, however, that there may be circumstances where this proposed approach is inconsistent with the CIL reg. 123 list.	are clear that S106 obligations will not be considered where they are in conflict with the Regulation 123 List.	
Canal and River Trust	The Trust considers that the resulting public realm forms an important consideration for developments that are proposed in close proximity to the waterway network. We are, therefore, disappointed that the Council proposes to delete the paragraph in the existing SPD on public realm (5.24), even if the current expectation is that these are secured through the developments themselves rather than associated planning obligations. The current paragraph provides a helpful distinction between what a developer is expected to provide directly and wider open space provision, which will generally be secured through CIL. We are disappointed that in deleting the public realm section, the Council will delete one of the few references in the document to the borough’s waterways.	The Council consider that public realm works are on the most part covered by the Regulation 123 List through Open Space and Roads, or as part of a build cost for development. The SPD is not exhaustive therefore if the situation arises where an exceptional s106 obligation is considered necessary, the SPD does not preclude this from happening.	N/A
Canal and River Trust	The Trust welcomes the proposal that biodiversity improvements and site specific flood defence measures will be secured through s106 and the recognition of the role of canals and other water bodies in these sections.	Noted	N/A
Port of London Authority	The PLA would like to see consideration given by developers to the use of the River Bus and this should be cited within the Transport and Highways section of the draft SPD and Table 3 Statement of Reasons within the draft SEA Screening and Sustainability Review.	Strategic Transport is included on the Regulation 123 List and it is not therefore not necessary to make reference to such matters in the SPD or supporting documents.	N/A

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