



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	<p>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:</p> <ul style="list-style-type: none"> • Transportation measures; • Site specific public realm improvements; • Carbon reduction measures; • Biodiversity measures/initiatives; • Site related flood mitigation measures. <p>Transportation measures</p> <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> <p>Site specific public realm improvements</p>	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: At paragraph 4.17 POSPD states that; "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>	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	Old paragraphs 4.17 – 4.20 deleted and replaced by following wording: <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>

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. "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". 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>	<p>Councils consolidated position.</p>	<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> <p><u>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.</u></p> <p><u>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.</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>

Respondent	Representations	Council's Response	Amendments made to S106 SPD / Reg 123 List
	<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

Respondent	Representations	Council's Response	Amendments made to S106 SPD / Reg 123 List
	<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>
<p>QUOD on behalf of the Berkeley Group</p>	<p>1. Introduction 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>
<p>QUOD on behalf of the Berkeley Group</p>	<p>2. Approach to Development Mitigation and Infrastructure Delivery 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>

Respondent	Representations	Council's Response	Amendments made to S106 SPD / Reg 123 List
	<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>
<p>QUOD on behalf of the Berkeley Group</p>	<p>3. Legislative and Policy Context 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: "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." 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><u>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."</u> 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>
<p>QUOD on behalf of the Berkeley Group</p>	<p>4. Negotiating Planning Obligations 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><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</u></p>

Respondent	Representations	Council's Response	Amendments made to S106 SPD / Reg 123 List
	<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><u>agents should discuss this with the Council at an early stage.</u></p>
<p>QUOD on behalf of the Berkeley Group</p>	<p>5. Standard Charges and Obligations 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>
<p>QUOD on behalf of the Berkeley</p>	<p>Employment and Skills Training & Enterprise 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>

Respondent	Representations	Council's Response	Amendments made to S106 SPD / Reg 123 List
<p>Group</p>	<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>	

Respondent	Representations	Council's Response	Amendments made to S106 SPD / Reg 123 List
		<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>	

Respondent	Representations	Council's Response	Amendments made to S106 SPD / Reg 123 List
		<p>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.</p>	
<p>GLA</p>	<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>	<p>Paragraph 5.20 has been amended to provide clarity.</p>
<p>The City of London Corporation</p>	<p>The City of London Corporation has no substantive comments on Tower Hamlets' draft revised Planning Obligations SPD.</p>	<p>N/A</p>	<p>N/A</p>
<p>DP9 on behalf of Londonewcastle</p>	<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>	<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</p>	<p>N/A</p>

Respondent	Representations	Council's Response	Amendments made to S106 SPD / Reg 123 List
		of S106 as a tool to make planning applications acceptable by removing a flexible approach.	
DP9 on behalf of Londonewcastle	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 Londonewcastle	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/lgs/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/lgs/501550/register_of_planning_decisions/section_106_planning_obligatio/community_infrastructure_levy.aspx
DP9 on behalf of Londonewcastle	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 Londonewcastle	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

Respondent	Representations	Council's Response	Amendments made to S106 SPD / Reg 123 List
	<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>
<p>DP9 on behalf of Londonewcastle</p>	<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>
<p>DP9 on behalf of Londonewcastle</p>	<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</p> <p>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>
<p>DP9 on behalf of Londonewcastle</p>	<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</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>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>

Respondent	Representations	Council's Response	Amendments made to S106 SPD / Reg 123 List
	<p>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. 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>
<p>DP9 on behalf of Londonewcastle</p>	<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 incorporate 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>

Respondent	Representations	Council's Response	Amendments made to S106 SPD / Reg 123 List
	<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 Councils 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 states 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>	

Respondent	Representations	Council's Response	Amendments made to S106 SPD / Reg 123 List
	<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>		
<p>DP9 on behalf of Londonewcastle</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 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 • <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>
<p>DP9 on behalf of</p>	<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>

Respondent	Representations	Council's Response	Amendments made to S106 SPD / Reg 123 List
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/lgs/501550/register_of_planning_decisions/section_106_

Respondent	Representations	Council's Response	Amendments made to S106 SPD / Reg 123 List
			<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/lgs/501550/register_of_planning_decisions/section_106_planning_obligatio/community_infrastructure_levy.aspx</p>
<p>DP9 on behalf of Bishopsgate Goods Yard Regeneration Limited</p>	<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>	<p>N/A</p>
<p>DP9 on behalf of Bishopsgate Goods Yard Regeneration Limited</p>	<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>
<p>DP9 on behalf of Bishopsgate Goods Yard</p>	<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>	<p>N/A</p>

Respondent	Representations	Council's Response	Amendments made to S106 SPD / Reg 123 List
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. <u>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.</u></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 <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>

Respondent	Representations	Council's Response	Amendments made to S106 SPD / Reg 123 List
	<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>		
<p>DP9 on behalf of Bishopsgate Goods Yard Regeneration Limited</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 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><u>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.</u></p> <p><u>2. For all schemes requiring a review, where a scheme has not been implemented</u></p>

Respondent	Representations	Council's Response	Amendments made to S106 SPD / Reg 123 List
	<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
	<p>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>		
<p>DP9 on behalf of Bishopsgate Goods Yard Regeneration Limited</p>	<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 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 • <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>
<p>DP9 on behalf of Bishopsgate Goods Yard Regeneration Limited</p>	<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>	<p>N/A</p>
<p>DP9 on behalf of Canary wharf Group</p>	<p>‘In-Kind’ Contributions Paragraph 2.2 of the Draft SPD notes the following: “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>

Respondent	Representations	Council's Response	Amendments made to S106 SPD / Reg 123 List
	<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>
<p>DP9 on behalf of Canary wharf Group</p>	<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: "Z4 'h' 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 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> <ol style="list-style-type: none"> <u>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.</u> <u>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.</u> <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</u>

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>		
<p>DP9 on behalf of Canary wharf Group</p>	<p>General Approach to Viability Paragraph 4.15 of the document states the following: "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. 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. 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 <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>
<p>DP9 on behalf of Canary wharf Group</p>	<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 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
			or more • <u>All major commercial development</u> 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 • <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.	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 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 Councils 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 '123 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.	<p>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".</p> <p>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</p>	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	<p>We previously suggested that our waterways and environs could fall within the following categories within the table on page 8 of the existing SPD.</p> <ul style="list-style-type: none"> • Transportation measures; • Site specific public realm improvements; • Carbon reduction measures; • Biodiversity measures/initiatives; • Site related flood mitigation measures. <p>We encourage the Council to retain this table which helps to provide clarity on this issue.</p>	<p>The table has been removed as it was considered to be causing confusion in more cases than it was providing clarity.</p> <p>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.</p>	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