

Supplementary Planning Guidance (SPG) on Planning Obligations



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Preface

The publication by the ODPM in July 2005 of Circular 05/2005 'Planning Obligations' has enabled work on this draft Supplementary Planning Guidance (SPG), first issued in October 2003, to be carried a stage further. That Circular endorses the Council's approach of using 'pooled' contributions to fund larger projects and a more formalised programme of projects. It also endorses the use of set charges and formulae as a way of ensuring consistency and speeding up the process. Associated with the SPG the Council has already issued draft standard agreements and clauses, available on the City Council's website. This SPG takes on board changes in the context since the October 2003 draft, comments received as a result of consultation that ran February – April 2006 and to subsequent comments received in relation to the formulae proposed for public realm and child yield issues during 2006-07.

Westminster City Council's UDP was adopted by Full Council on the 24 January 2007. This SPG explains and interprets the approach to planning obligations set out in the UDP.

In 2007 the Government announced in the Comprehensive Spending Review the introduction of a 'planning charge' mechanism to partially replace S106 obligations. S106 would largely be confined to site specific issues while infrastructure, including sub regional and regional infrastructure would be contributed to through the 'planning charge'. This will require primary legislation and therefore cannot be introduced until 2009 and the working detail still has to be announced.

In addition the Government has passed the Greater London Authority Act (24 October 2007) which gives the Mayor extended planning powers, including the ability to determine the details of S106 agreements for strategically important planning applications.

It is not clear how these two legislative will inter-relate nor is it clear how the resultant system will respond to the emerging localism agenda which aims to empower local authorities and neighbourhoods through local decision making and accountability.

It is clear however that as legislation changes, this SPG will need to be revised and possibly amended. Westminster will review this Guidance annually and in any event comprehensively within three years of its adoption or earlier in the event of significant changes to legislation or to Westminster's policy objectives.



Councillor Robert Davis DL – Chief Whip and Cabinet Member for Planning

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1 Introduction

- 1.1 This document is the strategic part of Westminster's Supplementary Planning Guidance (SPG) on planning obligations and should be read in conjunction with the linked document on Formula Details and Maps. The SPG as a whole sets out the approach that Westminster will be taking through the implementation of Policy STRA 7 on 'Planning Obligations and Benefits' in Part 1 of the Unitary Development Plan (UDP). It sets out the priorities for planning obligations and identifies the ways in which those priorities can be applied in the case of individual development proposals.
- 1.2 The appendices of this document provide links to model wordings for sample planning obligations, contact and policy area details. In addition, Westminster's particular circumstances and the national, regional and local policy context on planning obligations are included in the appendices for those who wish to fully understand the evolution of this SPG. The London Plan, the Mayor's Spatial Development Strategy for London, details priorities for planning contributions in Policy 6A.4 and 6A.5.
- 1.3 ODPM Circular 05/2005 contains the most recent national guidance on planning obligations. Westminster supports the central government objectives of transparency, certainty and speed in the S106 process, has published standard agreements and clauses and proposes to introduce the use of formulae and pooling, as endorsed by the Circular. The Circular re-states (B3) the guiding principles of planning obligations i.e. to make applications acceptable when conditions cannot achieve the benefits required. Obligations can 'prescribe' (e.g. require the provision of affordable housing), 'compensate' (e.g. loss of open space) or 'mitigate' (e.g. through increased public transport provision) and should comply with the 5 tests:
- (i) Relevant to planning
 - (ii) Necessary to make the proposed development acceptable in planning terms
 - (iii) Directly related to the proposed development
 - (iv) Fairly and reasonable related in scale and kind to the proposed development
 - (v) Reasonable in all other respects
- 1.4 The purpose of the SPG is to provide advice and information to applicants and their advisers when their development has given rise to the need for Westminster to secure planning benefits through a legal agreement or unilateral undertaking, and to amenity groups and other parties within the community involved in the planning process. In certain circumstances, there are other means of securing planning benefits such as through the imposition of conditions. However, this SPG is particularly concerned with planning benefits

secured with a legal agreement or unilateral undertaking and referred to in this document as *planning obligations*.

- 1.5 Planning obligations secured through a voluntary legal agreement or undertaking under s106 of the Town and Country Planning Act 1990 are binding contractual obligations controlling or restricting the manner in which land is developed or requiring works or facilities to be provided or financial payments made to enable Westminster (or other service provider) to implement particular studies, projects or schemes. For example, such obligations can include contributions towards educational facilities, the provision of highways works, or can secure the residential component of land use swaps or community use of private facilities. The planning obligations contained in the agreement or undertaking affect all those with an interest in the land being developed and will continue to affect subsequent owners of the property if the obligations are still capable of being complied with or carried out.
- 1.6 Planning obligations can serve to mitigate the land use impacts arising from a development either on the development site, in the wider locality, or where the development will increase local demands for facilities and services or where it is important to integrate the new development into the local community and environment so that they are more sustainable. For example, obligations can include works/contributions for the public realm, public transport and community facilities.
- 1.7 Westminster will establish Funds¹ for the various types of planning obligations e.g. environmental improvements, community facilities, into which the financial contributions from planning obligations will be paid on an identifiable, transparent basis. The financial contribution to be paid into a Fund will be based on formulae using the floorspace or the number of units in the development. The formulae for different obligations are outlined on the supplementary 'Formula Details' sheets and work is ongoing to develop formulae for additional areas of benefit. The formulae vary depending on the type of planning obligation being sought and contributions within a Fund may be pooled with other contributions in order to address major investment needs e.g. for infrastructure or impacts wider than a single development. Circular 05/2005 and the related best practice guidance encourage pooled contributions but emphasize the need for a clear audit trail for these contributions, which will be facilitated by the S106 monitoring database that the Council has developed.

¹ 'Funds' in this context means the use of an earmarked or ring-fenced reserve in the Council's General Fund or, for traffic and public transport purposes, the Council's Parking Places Reserve Account.

The Circular and guidance encourage the use of IT database systems for comprehensive monitoring.

- 1.8 When considering applications, Westminster will consider whether planning conditions can adequately control all the direct and indirect impacts of the development and secure the desired planning benefits, before it decides that a planning obligation is necessary.

2 The Appropriate Types of Development

- 2.1 In terms of priorities for planning obligations, the Council must first seek to mitigate the direct impacts of the development (e.g. highways restoration adjacent to development), and secondly comply with the policy requirements set out in the UDP (e.g. affordable housing / public art). These contributions are largely non-negotiable and will be looked for in all cases. Thirdly, the Council will seek contributions that are relevant on a site-specific basis (e.g. wider public realm and CCTV).
- 2.2 It should be noted, as stated in Circular 05/2005 (B6), that it is not legitimate for unacceptable development to be permitted because of the benefits offered by a developer, which are not necessary to make the development acceptable in planning terms.

Deciding what are the Appropriate Types of Development

- 2.3 Policy STRA 7 of Part 1 of the UDP is Westminster's key policy on planning obligations says that Westminster will aim to secure planning obligations and the provision of related benefits in *all appropriate types of development*.
- 2.4 In the context of the policy *appropriate types of development* are considered to be all types of development where the impacts of the development necessitate some form of mitigation or positive contribution. Floorspace and residential unit thresholds will normally be the starting point for consideration of whether planning obligations should be sought and specific details regarding thresholds for different obligations can be found on the linked Formula Details sheets.

Planning obligations as a requirement of policy

- 2.5 UDP Policies CENT 3 and COM 2 apply in respect of all types of **commercial and office development in Central Westminster**, known as the Central Activities Zone (CAZ) and CAZ Frontages. Policy CENT 3 covers all commercial uses such as shops, pubs and restaurants, hotels and Policy COM 2 specifically covers offices. The aim of these policies is to ensure that there is a mix of different uses in Central Westminster, including self contained residential accommodation, and where applicable, affordable housing. Policies COM 2 and CENT 3 are triggered by developments where there is an increase of 200m² or more of floorspace. In addition to the requirement for a mix of uses, Part (E) of each of the Policies states that "in all cases the City Council will expect appropriate planning obligations or benefits to be provided as set out in STRA 7." In applying STRA 7 in these

cases, Westminster will consider whether the development gives rise to any impacts or consequences that need to be dealt with through planning obligations.

- 2.6 However, in certain cases, such as contributions for CCTV, Public Realm and Open Space from commercial developments, the floorspace threshold for contributions will be set at 1000m² or more, to ensure that disproportionate contributions are not required from smaller developments. However, the threshold for contributions for CCTV from entertainment uses will be set lower, at 150m², reflecting UDP Policies TACE 8-10 and the additional impact of these types of land use.
- 2.7 To demonstrate why contributions are sought, office developments bring employment and economic benefit but there is a need to integrate such developments into the local community and environment. Both employees and other users require effective transport provision and a safe and functional environment. This may be achieved by improvements to the highway and the wider public realm. The increased workforce may also place increased demands on services such as libraries, health centres, leisure and recreational facilities.
- 2.8 Similarly, entertainment uses such as bars, restaurants, nightclubs and cinemas attract tourists, shoppers and after work patronage which needs to be balanced with Westminster's residential communities. Many of these activities also operate late into the evening and so issues of safety, provision of transport, night time noise, litter and street fouling arise. These activities need to be managed in order to maintain the local character that people find attractive as well protecting the amenity of residents.
- 2.9 For **residential schemes**, the Council seeks the provision of affordable housing from the threshold of 10 or more units or a site area of 0.3 ha or more as set out in revised UDP Policy H4. The policy generally requires 30% within CAZ (including CAZ frontages and the PSPA) and 50% outside CAZ of the proposed units to be affordable (with varying degrees of stepping – see UDP Policy H4) or a financial contribution to be made where on-site provision is not appropriate.
- 2.10 Westminster seeks the provision of community facilities, including health facilities, from residential developments under policy H10 of the UDP. Para 3.113 of the supporting paragraphs in the UDP states that such requests will be made if a development consists of a net increase of more than 50 residential units. This 50 unit threshold will be applied when seeking provision and contributions from residential schemes for all benefits except parking (where a 5 unit threshold is already applied) and affordable housing (where the threshold is set at 10 units as set out above) and for playspace where there are 25 or more family sized

units. The individual formulae on the supplementary sheets contain more details on this issue. Where units are unusually large (but the development is considered acceptable) and as a result the development falls below the relevant threshold, contributions may be adjusted to reflect the potential number of units that could have been provided.

- 2.11 To demonstrate why contributions are sought, housing developments bring new residents who will use existing facilities and create a demand for new ones. Education and training, health facilities, arts and culture, open space and leisure demands will arise.
- 2.12 The application of Policy STRA 7 will not normally apply to applications for community, voluntary sector or education facilities. It will also not normally apply to householder applications or small-scale commercial development (under the 1000m² threshold). Such development is usually small-scale or sustainable in its own right, for example local health care facilities, or fulfils Westminster's key policy priorities for the location, for example an educational or leisure facility such as a community theatre or arts centre, and thus will not usually be required to provide planning obligations.

3 Westminster's Priorities for Planning Obligations

- 3.1 Westminster has decided on an approach that identifies the impacts of the development and sets these against its priorities for planning obligations, based on its knowledge of the locality and community. Whilst the Council does not seek to apply a blanket approach, it is necessary to have a consistent and transparent approach so that applicants can be aware early on in the development process what the Council's expectations might be. At all times Westminster will seek to ensure that the benefit sought is reasonable in scale and kind to the specific development proposal.
- 3.2 In terms of priorities, the Council must first seek to mitigate the direct impacts of the development (e.g. highways restoration adjacent to development), and secondly comply with the policy requirements set out in the UDP (e.g. affordable housing / public art). These contributions are largely non-negotiable and will be looked for in all cases. Thirdly, the Council will seek contributions, as set out below, that are relevant on a site-specific basis (e.g. wider public realm and CCTV).
- 3.3 In view of the policies and aims contained in the UDP, the Westminster City Plan and the priorities outlined in One City, Westminster has identified the following list of planning obligations, not in order of importance, that it will be seeking to secure. The priorities will depend on the specific development proposals and location of the development. **Table 1** outlines this list.
- 3.4 **Housing and Affordable Housing** are policy requirements arising out of many residential and commercial schemes. The formula for calculating contributions for affordable housing is set out in the UDP Policy H4. In commercial schemes, housing will be sought on site in order to achieve a mixed-use scheme as set out in UDP Policy COM2 and CENT3.
- 3.5 **Public Transport Infrastructure** including capital and infrastructure projects and schemes where payments need to be pooled in order to provide the required facility within a defined local area, working in conjunction with Transport for London (TfL) and other public transport providers. Priority will be given to funding for the provision of capital infrastructure to deliver public transport improvements. The Paddington Area Transport Study (PATS) and Victoria Area Transport Study (VATS) are examples of effective joint-working between the Council and TfL to assess likely development impact and deliver the necessary public transport mitigation measures required to support development. This approach may be extended to other parts of the city.
- 3.6 **Area Transport and Environmental Management Studies and Works**, arising out of major redevelopment schemes. The purpose of such studies is to identify necessary mitigation or improvement requirements and concentrating on parking, road and

pedestrian safety, accessibility and highway works to protect existing residential communities, and implement these works. For example Paddington Area Transport and Environmental Management Study (PATEMS). In addition, the formula for calculating payment for the Review of On-Street Parking (PROP) from residential schemes is set out on **Sheet 7**.

- 3.7 **City Management** arising particularly out of large entertainment and A3 uses. This includes the key requirements of achieving a safe, clean and high quality environment including the provision of additional CCTV and warden's services, safety and security initiatives, specialist or enhanced cleansing services and in exceptional circumstances, policing facilities. The approach for determining contributions for CCTV generally is set out on **Sheet 2**. However, cameras may be required on individual sites in certain circumstances to make the application acceptable.
- 3.8 **Public Realm** arising out of residential and commercial schemes. These include both site specific highways restoration works to make the development acceptable and wider public realm benefits, as sought under RUDP Policy STRA7. These works could include restoration and repair works and access to historic buildings, the preservation and enhancement of conservation areas and historic spaces such as City squares, public access and environmental improvements to the River Thames and canals, public art associated with the development site, tree planting, public realm improvements, increased opportunities for public access to open space and associated facilities and the encouragement of nature conservation. The procedure and maps for determining contributions for wider Public Realm issues and indicative highways costs are set out on **Sheet 3**. Maps and Contributions for Open Space and Playspace are covered on **Sheet 4**.
- 3.9 **Social Community and Culture** including the provision of health, welfare and other community and cultural facilities, such as libraries, and projects that recognise particular difficulties or gaps in provision, such as a voluntary sector resource centre, and seek to integrate development with new and existing communities, working in partnerships with other service and voluntary agencies such as the health authority. The Social and Community Fund (SCFA) at Paddington is an example of what can be achieved in this sector. Contributions for social, community and cultural projects are detailed on **Sheet 5**. The method of calculating contributions for one aspect of this group, health facilities, is set out on **Sheet 8**.
- 3.10 **Education Training and Employment** arising out of residential and commercial schemes. This embraces the provision of capital facilities, training and support schemes to secure locally based skills and knowledge, working in partnership with other service providers and local businesses. The formula for calculating contributions for Education from residential schemes is set out on **Sheet 6**.

3.11 **Environmental Inspectorate and Code of Construction Practice.** The Code of Construction Practice and the associated Environmental Inspectorate have been developed to mitigate construction and development impacts on large complex sites or a combination of sites. The Code was initially developed for the Paddington Special Policy Area PSPA but has also been used on sites across Westminster and it is proposed to use it on future major infrastructure projects. Sites are selected relating to the scale and complexity of the development proposed and site-specific issues, and the use of the Code is usually included in relevant site planning briefs. The developer will be informed whether the Code is required during the negotiation of the legal agreement. The majority of the costs of the Environmental Inspectorate will be recovered and met by developers where the Code has been deemed to apply. The period the Code will cover will be commencement of demolition and site clearance, to the completion of works including fit-out(s). To ensure the accuracy of the recovery of costs, staff will keep accurate time sheets and the administration and management costs of the Inspectorate will also be recovered. Funding will become liable at the commencement of any development or project. Any adjustments will be made at the end of the financial year in the event of over/under payment. Further details of where the Code is applied are set out on **Sheet 9**.

How Planning Obligations will be applied Across Westminster

3.12 The UDP identifies a number of geographically based policy areas, for example the CAZ, Special Policy Areas, the Stress Areas, Priority Areas and Action Plan Areas. These will be used to provide the priorities for the type of obligation sought when development arises in those areas (See Public Realm Sheet 3).

3.13 There are also other corporate plans, such as the Westminster City Plan and One City Strategy and studies where the existing and future needs of an area have been assessed and priorities for action set out. Where these plans and studies have sustainability and land use implications they are being used to develop a list of local projects to which contributions may be sought.

3.14 Westminster has and is developing a number of formulae, as set out on the attached sheets, which will be used to assist in the calculation of financial contributions towards local projects. In this way, a consistent and transparent approach to the application of planning obligations involving financial contributions will be achieved. Further formulae will be consulted upon and added to this document as they emerge.

3.15 Planning briefs for large redevelopment sites may include the types of planning obligations that will be sought when a development proposal comes forward. Also, developments that require an Environmental Impact Assessment may have mitigation measures identified in

the Environmental Statement which can be secured through planning obligations. A list of policy areas and current planning briefs is contained in Appendix 3 and can be viewed online at <http://www3.westminster.gov.uk/planningpublications/cf-results.cfm>

Review

- 3.16 It will be necessary to review this SPG as a whole as further guidance is evolved by the Council and in light of further government advice. Details on planning obligations secured, and the status and use of financial contributions will be reported as part of the Annual Monitoring Report (AMR). After first year of operation (2008), there will be a review and report back to members.

4 Procedure For Completing An Obligation

The procedure is set out below and in diagrammatic form in **Table 2**.

Pre Application Stage

<http://www.westminster.gov.uk/environment/planning/planningprocess/advice.cfm>

Applicants are directed to the UDP policies relevant to the proposal and to any relevant supplementary planning guidance, including this SPG on planning obligations. Details on the format of pre-application advice for applicants is available online (see link above), and is chargeable for medium-sized and major applications. Having regard to the guidance contained in this SPG, applicants should come forward with proposals for planning benefits (to be secured through obligations or conditions) that are relevant and related to their development proposals. The Council will seek to agree a range of potential benefits and Heads of Terms that can be submitted with the application, to provide greater clarity and speed-up the planning application process.

Application Appraisal Stage

- (i) Once the application is submitted, the negotiation on any potentially appropriate obligations will proceed at the same time as consideration of the planning application, and will include an assessment of whether or not planning conditions will suffice instead of an obligation. This process is without prejudice to the determination of the application by the appropriate planning committee. Where there have been no pre-application discussions, the case officer will also direct the applicant to Westminster's policies and supplementary planning guidance, including this SPG on planning obligations.
- (ii) Where the need for an agreement or undertaking has been identified, the applicant will be requested to progress matters as far as possible prior to a committee resolution, and the case officer will put the applicant in touch with one of Westminster's legal team. In order to progress the agreement or undertaking, such items as an undertaking for costs incurred in negotiating and completing the obligation, contact details and legal title will need to be supplied to the Council as soon as possible. These negotiations are without prejudice to the final determination of the application by the relevant committee, but are an appropriate way to ensure timely decision-making in accordance with government targets.
- (iii) The key element of the negotiation will be to confirm that the applicant agrees with the matters to be included in the obligation. The case officer will ensure that the nature and

scale of matters for inclusion as obligations, and when those obligations are triggered, are identified, and will manage the negotiation process in conjunction with Westminster's legal team.

- (iv) By the time the proposal is considered by the Planning and City Development Committee or the Planning (Applications) Sub-Committee, the matters which have the potential to be included in the obligations should be known and agreed with the applicant, in some detail. The obligations (including when those obligations are triggered) will be set out as part of the Committee report, which is a public document.

Committee and Post Committee

- (i) Any recommendation to grant planning permission will be made subject to the completion of a satisfactory legal agreement or undertaking within a specified time period, which may relate directly to the government's target period for determination of the application, and will authorise the Director of Legal Services to complete the legal agreement or accept the undertaking. Standard models of legal agreements and clauses can be found on the Council's website as set out at Appendix 1. The Committee will decide whether to approve the application as set out in the report and whether the proposed obligations are appropriate.
- (ii) It will not usually be necessary to refer an application back to Committee once there has been a resolution to grant permission subject to a legal agreement or undertaking. However, this may occur where, for example, circumstances have changed which would require the obligations themselves to be changed in some way, or the legal agreement has not been completed within the time period set by Committee. In these circumstances, the application will be reviewed and may be considered again by the appropriate committee, or if the Committee have previously agreed so, under officers' delegated powers.

Completing the Legal Agreement or Undertaking

- (i) A legal agreement or undertaking will normally be drafted prior to the Committee resolution in the circumstances set out above, or, if this has not proved possible, following the Committee resolution. The draft obligation will be sent to the applicant's solicitor for comment and any negotiations will be progressed through each party's legal team. The agreement or undertaking will have a unique reference number that will be used on all correspondence and monitoring arrangements for the planning obligations.

- (ii) Where it appears to Westminster that progress on the agreement is unnecessarily slow, Westminster will actively seek progress. It may also be necessary to refer the application back to committee, or officer with delegated powers, who will then reconsider the original resolution. Equally if developers are concerned with progress on the agreement, they should approach the relevant Area Team Leader to state their case and further timely progress.
- (iii) If the target timescale is approaching, with no prospect of completion of the agreement on time, officers will consider whether there is scope to secure the benefits by condition. In some such cases the applicant may consider the best way to meet the requirements of the condition(s) may still be the completion of an agreement or undertaking at a later stage.
- (iv) Prior to completion of the obligation, Westminster's Legal Services will ensure that all financial and title matters are in order. At the time the legal agreement is completed, the planning permission and any other consents will also be issued.

Post Completion

Westminster will register the agreement or undertaking and consents as local land charges and the applicant will be required to register the agreement as a charge against the title to the property at HM Land Registry in accordance with the terms of the agreement or undertaking. Westminster will also update the statutory registers.

Monitoring Planning Obligations

The S106 monitoring officer will hold a copy of the completed obligation, the details of which will be entered into the electronic monitoring database. The database will track compliance with each obligation in the agreement as the development proceeds. This system will be operated by the S106 monitoring officer whose responsibility it is to monitor the allocation and expenditure of S106 funding, provide regular updates on obligations and improve the service delivery of the planning obligations process. They will be the first point of contact for an applicant when making payments or serving notices as required by an agreement and will issue receipts and acknowledgements of compliance where necessary.

The administrative and staff costs of this monitoring will be financed through a charge per obligation, known as 'Head of Terms' in the legal agreement, to reflect the increased complexity of monitoring agreements with multiple obligations. This charge will be reviewed annually and adjusted as necessary in relation to monitoring costs. For exceptionally

detailed agreements, for example including phasing, the Council may request a contribution above the standard rate. For further details on monitoring payments, see the details set out on supplementary **Sheet 1**.

Additional Considerations for Completing an Obligation involving Highway Works

- i. Highway matters will be discussed well before the application is considered by the Committee to agree the extent and scope of any necessary works, the timing of those works even where a planning obligation is not involved and who should carry them out - the applicant's contractor or Westminster contractors. This allows officers to recommend the works that may need to be carried out and it also ensures that any works are proportional to the scale and type of the development.
- ii. During the initial discussions, some information on the background to the development will be required and the applicant should provide the Transportation officers with plans showing existing and proposed layouts and proposed elevation. Plans can be submitted on disk in PDF if preferred.
- iii. In certain cases, Transport for London are the relevant highway authority in respect of the Transport for London Road Network (TLRN) and the strategic road network (SRN) and should be consulted (see map below).
- iv. Where highway works obligations are required, the draft legal agreement will contain Westminster's standard highway works clauses that are described further in Appendix 1 below.
- v. An obligation involving highway works may also need to refer to the provisions of s278 Highways Act 1980 that enables land owners to make financial contributions towards the carrying out of highway works.



Figure 1: Map showing the inter-relationship of Transport for London Road Network (TLRN) [Red], Strategic Road Network (SRN) [Blue] and Roads in Royal Parks (Green)

5 Frequently Asked Questions

When will financial contributions be paid?

In order that the needs and impacts arising from new developments are addressed as soon as possible Westminster will generally aim to achieve the payment of financial contributions before the commencement of development. In the case of major phased developments, contributions may be paid in instalments on the commencement of each phase. The phasing of payments will be set out in the s106 agreement signed by the applicant and Westminster.

Why are financial contributions Index Linked?

- (i) In order to maintain the value of contributions from the date of the Committee resolution until the time development is commenced, they will be index linked to reflect changes in, for example in most instances, the Retail Price Index (RPI) or in certain cases, the Index of Civil Engineering Contracts (CECI) or the Building Cost Information Services (BCIS)
- (ii) The late payment of financial contributions will incur interest at a rate 4% above the Base Rate of Lloyds TSB plc (the City Council's banker). This is to ensure that the projects and works for which the contributions are earmarked are not unduly delayed or if delay occurs there is a contingency which may help negate the costs associated with delay.

Why should I pay the Council's Legal Costs?

The applicant will be requested to pay Westminster's legal and technical and costs (in addition to monitoring costs) in connection with the preparation and completion of a legal agreement. It will also be necessary to include the costs of the case officer where it has been necessary for the officer to become involved in negotiating the legal agreement as opposed to dealing with the application which is covered by the application fee. The payment is a reimbursement of costs incurred. VAT is not payable on these costs.

Do I need to involve a solicitor to complete the agreement?

You do not necessarily need a solicitor but it may be advisable because legal agreements and undertakings can restrict the use of the property in the future. Alternatively, some applicants may choose to use their agent or planning consultant.

Can a legal agreement cover more than one obligation?

A legal agreement may contain any number of planning obligations depending on the complexity and scale of the development and what would be necessary in order to grant planning permission. Where an obligation is very straightforward it may be contained in an undertaking which tends to be a short and simple document.

How do I make payments to the Council?

It is the applicant's responsibility to be aware of when payments are due and to ensure that they are made on time. Payments can be made by cheque, made payable to the "City of Westminster" and sent c/o the monitoring officer or through the BACS transfer system. Payments must specify the S106 agreement number and site address in order to identify the relevant legal agreement and site. The Council's bank details are set out in Appendix 2. Details can be confirmed with S106 monitoring officer.

What will happen to the payments?

When payments are received they will be recorded by the monitoring officer and noted against the relevant Fund or part of the Council or outside organisation for spending. Progress with particular obligations and the Funds in general will be reported regularly to the Cabinet Member and as part of the Annual Monitoring Report (AMR).

How long will it take to complete a legal agreement or undertaking?

This will depend on a number of issues including the complexity and size of the proposed development, the smoothness of negotiations between the parties, how much progress has been made before the proposal goes to Committee, and the complexity of title issues. It is Westminster's aim to carry out as much as possible of this work prior to consideration by Committee. Straightforward agreements on non-complex sites should normally be completed shortly after the Committee resolution. Undertakings tend only to deal with simple obligations such as the payment of a financial contribution into a particular Fund and so once the obligation has been agreed there is no reason why the standard form of undertaking cannot be concluded promptly. Westminster's aim is to conclude such matters quickly and efficiently so that the planning permission can be issued. Applicants are encouraged to commence negotiations as soon as they become aware that an obligation

will be sought or bring forward their own suggestions for planning obligations in accordance with this guidance.

How long will S106 obligations last?

- (i) Some requirements of a s106 obligation are of an ongoing nature, for example the maintenance of a facility or the community use of a building and so the obligation will continue for so long as development implemented under the associated planning permission continues.
- (ii) Where financial contributions are being made it will depend a great deal on when payments are due to be made. For example, if a contribution is due on commencement of the development that could be up to 3 years after the date the legal agreement is completed and consents are issued.
- (iii) After Westminster is satisfied that all the obligations in an agreement are complied with Westminster will, if requested, provide written confirmation that the obligations in an agreement have been met. S106A Town and Country Planning Act 1990 also provides a procedure by which an applicant can apply for the formal modification or discharge of planning obligations.

Can I use my own contractors for works on the Public Highway?

- (i) This will depend upon the circumstances of the application and the site. Applicants often want to carry out repaving or environmental improvement works to the public highway adjacent to their own development using their own contractors. Westminster has a duty of care to the public as a local highway authority, including maintaining the highway to the appropriate standards. Westminster must be sure that the appropriate safeguards are in place before applicants' contractors begin works.
- (i) In certain cases, Transport for London will be the relevant highway authority in respect of the Transport for London Road Network (TLRN) and the strategic road network (SRN) and should be consulted (see Map on P.14)
- (ii) Please refer to the Westminster Transportation department manual - Design and Implementation of Highways Projects Associated with Development (April 2004) for further details.

- (iii) Applicants may alternatively want to make financial contributions to highway or environmental improvement works. In such cases, Westminster will apply the contribution to a scheme in the vicinity of the development and related to it. In some cases, this may be a scheme which uses pooled funding.

Table 1: Proposals for Planning Obligations

Proposals	UDP Policies Supporting Requirement (in addition to STRA 7)	Other Relevant Strategies and Guidance (in addition to 6A.4/5 of the London Plan)	Obligations Could Include	Formulae (see Sheets)
<ul style="list-style-type: none"> Housing and Affordable Housing 	<p>H4 – provision of Affordable Housing CENT3 & COM 2 - provision of Housing to achieve mixed- use schemes</p>	<p>Circular 6/98 PPS3 Housing Westminster Housing Strategy</p>	<ul style="list-style-type: none"> <i>Affordable housing on site</i> <i>Commuted sum financial payment</i> <i>Housing on or off site</i> <i>Housing made ready before commercial development in mixed-use schemes</i> 	<p>see UDP H4</p>
<ul style="list-style-type: none"> Public Transport Infrastructure 	<p>TRANS 4 - bus services and priority TRANS 5 - surface and underground railways, TRANS 8 - financial assistance for transport</p>	<p>Borough Spending Plan Mayors Transport Strategy PPG13 Transport</p>	<ul style="list-style-type: none"> <i>Financial contributions to public transport projects and facilities including (river) buses, trams, trains</i> <i>Contributions to station improvements, and supporting infrastructure</i> <i>Designing improvements to underground stations into development proposals</i> <i>Capital cost of 'countdown' system at bus stops and other capital expenditure on buses</i> <i>Travel plans</i> 	<p>PATS / VATS</p>
<ul style="list-style-type: none"> Area Transport and Environmental Management Studies Parking Improvement Payments 	<p>TRANS 14 – transport assessments TRANS 1 – protecting the environment from the effects of transport activities TRANS 2 – road safety TRANS 3– pedestrians TRANS 9/10 - cycling facilities ENV 2 - environmental appraisals TRANS 21-26 – off street parking provision</p>	<p>Borough Spending Plan Mayors Transport Strategy Local Implementation Plan PPG13 Transport</p>	<ul style="list-style-type: none"> <i>Pedestrian safety, public transport accessibility, connectivity - walking and cycle paths, parking and highway works that will protect existing residential communities from effects of redevelopments.</i> <i>Studies to identify mitigation or improvement requirements e.g. parking issues</i> 	<p>PATEMS/ VATEMS</p> <p>'PROP' Parking Payments - Sheet 7</p>
<ul style="list-style-type: none"> City Management 	<p>STRA 6 - public/private sector partnerships DES 1 – design principles of development TACE 8/9/10 - entertainment uses SOC 8 - public toilet facilities ENV 6 - control of noise pollution ENV 12 - waste and recycling</p>	<p>Westminster City Plan Sustainable Buildings SPG One City Neighbourhood Renewal Strategy Westminster Crime and Disorder Reduction Strategy Municipal waste management plan Entertainments SPG (draft) PPS10: Waste</p>	<ul style="list-style-type: none"> <i>Additional CCTV and monitoring</i> <i>Wardens services</i> <i>Recycling management agreements e.g. Glass bottles from A3 uses</i> <i>Specialist cleansing services</i> <i>Contributions to Business Improvement District –style areas</i> <i>Community Safety Initiatives</i> <i>Provision of public toilets</i> <i>Management plans for operation of property and adjacent public realm</i> 	<p>CCTV – Sheet 2</p> <p>Code of Construction Practice – see 3.11 (Sheet 9)</p>

Proposals	UDP Policies Supporting Requirement (in addition to STRA 7)	Other Relevant Strategies and Guidance (in addition to 6A.4/5 of the London Plan)	Obligations Could Include	Formulae (see Sheets)
<ul style="list-style-type: none"> ▪ Public Realm Environmental Improvements Management of Open Space 	<p>TRANS 1 – protecting the environment from the effects of transport activities TRANS 3 - pedestrian activities TRANS 9/10 - cycling facilities DES 7 – Townscape Management DES 9 - conservation areas DES 10 - works to listed building ENV 4 - planting around and on buildings</p> <p>STRA 31 - the river Thames and canals RIV 9 - Thames path, RIV 10 - Thames access DES 13 - canals ENV 15 - public and private open space DES 12 - parks, gardens and squares SOC 6 – Children’s Play Provision</p>	<p>Sustainable Buildings SPG</p> <p>PPG15: Historic Environment</p> <p>SPG on Public Art</p> <p>Westminster Way (to follow)</p> <p>PPG17 Open Spaces Nature Conservation Strategy Open Space Study and Strategy Waterways and Development Plans (BW) Trees Strategy (to follow)</p>	<ul style="list-style-type: none"> • <i>Restoration, repair and access to historic buildings</i> • <i>Preservation and enhancement of conservation areas and city squares</i> • <i>Public access and environmental improvements to the river Thames and canals</i> • <i>Public art associated with the development site,</i> • <i>Tree planting and other street works.</i> • <i>Highway works,</i> • <i>Travel plans</i> ▪ <i>Railing reinstatement to parks and gardens</i> • <i>Financial contributions to open space improvements, including addressing existing deficiencies.</i> • <i>Enabling public accessibility of private open space in the City.</i> • <i>Improvements to playgrounds</i> • <i>Development and management of the public realm</i> 	<p><i>Public Realm – Sheet 3</i></p> <p><i>Open Space – Sheet 4</i></p>
<ul style="list-style-type: none"> • Social, Cultural and Community 	<p>H10 - provision of community facilities in housing developments, SOC 1 - provision of community facilities SOC 2 - provision of childcare facilities SOC 4 - provision of healthcare facilities SOC 7 - indoor leisure and libraries STRA13 – arts, culture and entertainment</p>	<p>Westminster’s Cultural Strategy Mayor’s Cultural Strategy Annual Library Plan</p> <p>Primary Care Trust Strategic Service Development Plan</p>	<ul style="list-style-type: none"> • <i>The provision of health, welfare and other community facilities.</i> • <i>Contributions to projects which address gaps in e.g. Health provision</i> • <i>Contributions to social / cultural / arts facilities</i> • <i>Enable local community to take advantage of facilities offered by private sports facilities e.g. By linking to GP referral schemes of patients in adjacent areas.</i> • <i>Financial contributions from residential and commercial schemes to enhance local facilities</i> 	<p><i>Social / Community / Cultural – Sheet 5</i></p> <p><i>Health – (Sheet 8)</i></p>
<ul style="list-style-type: none"> • Education Training and Employment 	<p>STRA 5 - regeneration and economic development, SOC 1 - provision of community facilities, SOC 3 – provision of education facilities H10 (re. school contributions)</p>	<p>Education Development Plan Economic Development Strategy</p>	<ul style="list-style-type: none"> • <i>Provision of capital facilities/ floorspace for training providers,</i> • <i>Participation in existing employment and training schemes in the City e.g. Connexions, New Deal</i> • <i>Advertising jobs locally</i> • <i>Provide financial contributions to training and employment projects and involvement in partnerships such as Paddington First.</i> • <i>Financial contributions to school, college and adult learning facilities.</i> 	<p><i>Education – Sheet 6</i></p>

Table 2: Procedure for Negotiating, Preparing and Completing a Planning Obligation

Stage	Actions	Responsibility
Pre Application	Applicant to consider relevant London Plan and UDP policy and this SPG prior to submitting application and submit proposals for planning obligations where appropriate	Applicant
	Need for planning obligations established and applicant informed. Pre application discussions	Case Officer
Formal Consideration of Planning Application	Standard letters sent to applicants e.g. title information	Legal
	Agreed Heads of terms and triggers to be included in committee report. Consultation with stakeholders e.g. TfL	Applicant/Case Officer/Legal
Preparing the Planning obligations	Draft obligations sent to applicant's solicitors for consideration	Legal
	Further negotiation meetings held if necessary, including stakeholder representatives where relevant	Applicant/Case Officer/Legal
	Before agreement is signed, Westminster to ensure all financial and title matters are in order.	Legal
Committee Consideration	Consider application. If proposal acceptable grant permission subject to completion of planning obligations	Committee
	Resolution to Grant	Time frame for completion imposed (which may be directly related to government targets for determination of applications)
For applications above defined thresholds, formally refer proposed decision to Mayor (14 days) who can direct refusal		Legal
Post Legal Agreement Completion	Legal Agreement Completion	
	Copy of legal agreement planning permission and any other consents sent to applicant's solicitor	Legal
	Copy sent to Legal Agreements Monitoring Officer and other officers as necessary	Legal
	Statutory Register updated to show that permission has been granted. Copy of s106 placed on register.	DPS Admin
	Agreements and consents registered as local land charges	Legal
	Agreement registered as a charge against the title at HM Land Registry	Applicant
Monitoring	Details of agreement including clauses and triggers recorded on database	Legal Agreement Monitoring Officer
	Implementation of planning permissions monitored	
	Fulfilment of applicant's and council's obligations monitored and recorded on database. Compliance enforced as necessary.	

Appendix 1: Planning Obligations – Model Wordings Index for revised webpage

<http://www.westminster.gov.uk/environment/planning/sitesandprojectspolicies/obligations.cfm>

A Key documents

A1 – Skeleton Agreement

A2 – Front Cover

B Affordable housing

B1 – Affordable Housing – Additional provisions

B2 – Affordable Housing – Appendix 1

B3 – Affordable Housing – Appendix 2

C Highways issues

C1 – Highways works, Developer carrying out – Additional provisions

C2 – Highways works, WCC carrying out – Additional provisions

C3 – Highway Dedication – additional provisions

C4 – Car Club – additional provisions

D – Other issues, documents and clauses

D1 – Residential Land Use Swap – Additional provisions

D2 – CCTV – Additional provisions

D3 – Timing and Demolition/Construction – Additional provisions

D4 – Independent Expert – Additional provisions

D5 – S106 Unilateral Undertaking – Financial Contribution

** Please note that the list was last updated in August 2007 and more model wordings might be introduced during the course of 2008. Please refer to the website for the most up to date list.

Appendix 2: Initial Letter – Post Committee Resolution

**Director of Legal and
Administrative Services
C T Wilson, LLB., CMA**

Please contact:

Telephone direct on: (020) 7641

Fax No: (020) 7641 2761

Minicom: (020) 7641 5912

London Dlx 2310 Victoria

Our Ref:
Your Ref:

Date:

Dear Sirs

S106 PLANNING AGREEMENT -

I understand that you act on behalf of []. On [] the City Council's Planning (Applications) Sub-Committee {Planning and City Development Committee} resolved to grant planning permission for [.....] subject to the completion of a legal agreement to secure [].

To assist me to draft the legal agreement, I will need proof of title to the land. Assuming that the land is registered, I will need an up to date official copy of register entries at the Land Registry, in respect of both freehold and leasehold titles. I will need to know the date of the official copy of register entries in order that I may do a pre-completion search at the Land Registry.

Since the benefit of the planning permission will run with the land, I will need to ensure that all persons or bodies with interests in the land are parties to the agreement. I will, therefore, require details of all persons or bodies, including the freehold, mortgagees and lessees, with interests in the land.

I should be grateful therefore if you would let me have this information at your earliest convenience.

I should also be grateful to receive your client's written undertaking to pay all of the City Council's costs in the preparation of the agreement, whether or not the matter proceeds to completion.

The City Council attaches great importance to the speedy completion of section 106 Agreements. In the event that this agreement is not completed within the timescale agreed by the Committee, your client's application may be referred back to the Committee / officer with delegated powers for further consideration.

(Accordingly, following circulation of the first draft of the Agreement, I would be prepared at the earliest convenient opportunity to host a meeting with your client and Council officers from the various Council Departments included in order to identify any issues of concern. I hope this will result in the smooth progression of this matter to completion.)

If you are not instructed to deal with this matter I should be very grateful if you would pass it to the solicitor acting on behalf of your client as soon as possible.

Yours faithfully

Director of Legal and Administrative Services

Appendix 3: Useful Contacts and Information

Development Planning Services (DPS) – applications for planning permission

North team (NW1, NW6, NW8, W2, W9, W10, W11)

(T) 020 7641 2924/2017 (F) 020 7641 2338

Email: NorthPlanningTeam@westminster.gov.uk

Central team (W1)

(T) 020 7641 2927/2514 (F) 020 7641 3158

Email: CentralPlanningTeam@westminster.gov.uk

South team (SW1, SW3, SW7, WC2, EC4)

(T) 020 7641 2977/2681 (F) 020 7641 2339

Email: SouthPlanningTeam@westminster.gov.uk

City Planning Group

Graham King (re: Strategic Schemes)

(T) 020 7641 2749 (F) 020 7641 8535 Email: gking@westminster.gov.uk

Roger Bloom (SPG)

(T) 020 7641 2504 (F) 020 7641 8535 Email: rbloom@westminster.gov.uk

Rachael Ferry-Jones (SPG)

(T) 020 7641 2418 (F) 020 7641 8535 Email: rferry-jones@westminster.gov.uk

Karen Lee (SPG)

(T) 020 7641 8073 (F) 020 7641 8535 Email: klee@westminster.gov.uk

Norma Angus (Monitoring)

(T) 020 7641 2888 (F) 020 7641 8535 Email: nangus@westminster.gov.uk

Legal Services

(T) 020 7641 2887 (F) 020 7641 2761

Transportation

Richard Case

(T) 020 7641 3398 (F) 020 7641 3050 Email: rcase@westminster.gov.uk

Local Land Charges

Kim Bellengi

(T) 020 7641 2766

(F) 020 7641 6069

Email: kbellengi@westminster.gov.uk

Useful websites

Westminster City Council website - www.westminster.gov.uk/environment/planning/

Greater London Authority - www.london.gov.uk

Transport for London - www.tfl.gov.uk

London Development Agency – www.lda.gov.uk

Department for Communities and Local Government - www.communities.gov.uk

Department for Transport - www.dft.gov.uk

HM Land Registry - www.landreg.gov.uk

Valuations Office – www.voa.gov.uk

Cross River Partnership – www.crossriverpartnership.org

British Waterways - <http://www.britishwaterways.co.uk/>

Appendix 4: Westminster City Council bank details

Westminster City Council bank details:

Bank	Lloyds TSB
Branch	City Office

When making an electronic payment, it is very important that you quote the agreement number and notify the monitoring officer of the intended date of payment. The monitoring officer will agree any necessary index-linking and will provide relevant account details.

The City Council's own publications can be obtained from One Stop Services at 62 Victoria Street London SW1 or through the Council's Website.

Appendix 5: Policy Areas and sites covered by Planning Briefs

Also see Public Realm Maps (Sheet 3) in Supplementary Formula Details document

UDP / London Plan Area Designations that may influence S106

- Central Activities Zone (CAZ) and CAZ Frontages
- Paddington Special Policy Area (PSPA)
- Opportunity Areas / Areas for Intensification (Victoria / Tottenham Court Road)
- North West Westminster Special Policy Area
- Arts Culture and Education Special Policy Area - Exhibition Road and Kensington Gore
- Affordable Housing - Higher Value Areas
- River Thames Policy Area / Blue Ribbon Network (including Grand Union and Regents Canal)
- Creative Industries Policy Area - Soho/East Marylebone/Regent Street/Covent Garden
- Stress Areas - West End (Soho/Covent Garden), Edgware Rd, Queensway/Bayswater
- Priority Areas - public open space, play space, green space (Open Space Strategy, Feb 07)

(for further information contact UDP/LDF Policy team – 0207 641 2513)

Project Areas

- Action Plans
(West End Team 0207 641 3209) Leicester Square
Chinatown
Soho
Covent Garden
Edgware Road
Oxford / Regent / Bond Streets
- Local Area Renewal Partnership Areas
(LARPS 0207 641 3172) Harrow Road
Queens Park
Westbourne
South Westminster
Church Street
West End
- Business Improvement Districts
(Economic Dev 0207 641 3172) Paddington BID
Heart of London BID
New West End Company (NWECC) BID

- Environmental Improvements
 Contact 0207 641 3209 Cathedral Piazza
 Theatreland Streetscape Initiative
 Civic Streets (7 district centres)

- Contact 0207 641 5972 World Squares for All (Parliament
 Square / Embankment)
 Strand and Aldwych (incl. Courts &
 Alleys / Cross River Tram)

- Contact 0207 641 3172 Westbourne Green

- Contact 0207 621 1818 Open Space Strategy

Planning Briefs

For further information, contact City Planning Group at 0207 641 8073
 Planning briefs available online at:

<http://www3.westminster.gov.uk/planningpublications/cf-results.cfm>

Central Area

- 18-46 (even) Oxford Street, 4-5 Tottenham Court Road (2007)
- 4-48 Oxford Street (2007)
- Berwick Street, Soho, W1 (2006)
- Marshall Street Baths, W1 (2004)
- Middlesex Hospital and Related Sites, W1 (2005)
- St. Marks Church, North Audley Street, W1 (2003)

North Area

- 149-157 Harrow Road and adjacent highway / open space (2004)
- City of Westminster College (Paddington Green / Cosway Street (2004)
- 149-157 Harrow Road & adjacent highway / open space, Paddington, W2 (2004)
- North Westminster Community School and North Wharf Road sites, W2 (2004)
- Paddington Circle and District LUL station block, Praed Street (2007)
- St Mary's Hospital and Post Office sites, W2 (2004)
- Westbourne Green, W2 (2004)

South Area

- Brabazon House, SW1 (2004)
- Chelsea Barracks, Chelsea Bridge Road, SW1 (2006)
- Pimlico School (2006)
- Victoria Area (2006)
- Victoria City Hall and adjoining Selbourne and Kingsgate Houses, Victoria Street (2007)

Crossrail

- Bond Street – Eastern Ticket Hall (2005)
- Bond Street – Western Ticket Hall (2005)
- Paddington New Yard, W2 (2005)
- Paddington Stations and Environs, W2 (2007)
- Tottenham Court Road – Eastern Ticket Hall (2005)
- Tottenham Court Road – Western Ticket Hall (2005)

Appendix 6: The Westminster Context

1. Planning in Westminster recognises the City's unique role and character and the twin role it plays in being both the heart of a World and Capital City catering for workers and visitors as well as being the home to nearly a quarter of a million residents. The City has a remarkable historic heritage and is the focus of the monarchy, Government, corporate headquarters and entertainment and tourist attractions. Such a variety of demands and uses require positive land use policies to ensure that the needs of the City are met in an integrated and balanced way, providing for sustainable development.
2. The UDP's function is to enable competing uses and demands to be assessed by setting out Westminster's planning policies for developing land, improving transport and protecting the environment, and, by describing some of the more significant development proposals likely to take place over the next 10-15 years. The UDP is therefore the primary policy document for understanding the relationships between land uses and how their impacts can be mitigated through, for example, the use of conditions and planning obligations. The UDP will be replaced after three years by the LDF under the new policy framework (see Appendix 9).
3. There is a balance to be struck between the need for schemes to mitigate the consequences which they give rise to, contribute to the City and the promotion of economic prosperity. Westminster recognises that in order for development to be sustainable, social, economic and environmental benefits must also be delivered to the City as a whole. Planning obligations are seen by Westminster as one of the key ways to deliver sustainable development, to meet the needs of all of Westminster's neighbourhoods, residents, workers and visitors, and achieve an efficient and high quality environment.
4. Planning obligations have sometimes been seen by some applicants as an additional burden, unfairly applied, and delaying the development process. In order to address these concerns and obtain an independent assessment of existing procedures within the City Council, Westminster commissioned a study by DTZ Pleda Consulting in conjunction with Forsters Solicitors². Following a review of best practice, the study recommended changes to the way Westminster deals with s106 agreements through its UDP and development control process. These can be summarised as:
 - The development of different approaches to planning obligations – e.g. the preparation of Supplementary Planning Guidance or more detailed UDP policy,

² The study is entitled "S106 Agreements: Policy and Good Practice Review Report" (February 2002)

- Improved procedures for negotiating planning obligations, including improved internal communication and co-ordination and the designation of a specific s106 officer, and
 - Improved monitoring of agreements through the use of such tools as databases.
5. These recommendations are being implemented with the establishment of a corporate S106 Co-ordination Group, the introduction of an electronic monitoring database and the production of this Guidance as Supplementary Planning Guidance containing information on procedures and setting out how planning obligations will be delivered in Westminster.
6. As legislation, policy and priorities change it is important to recognise that this Guidance will need to be reviewed and possibly amended. Westminster will review this Guidance within its first year of operation, annually through the LDF/ AMR, and in any event, within three years of its adoption or earlier in the event of significant changes to legislation or to Westminster's policy objectives.

Appendix 7: Westminster's Planning Obligations Policy

1. This Supplementary Planning Guidance explains and interprets the UDP policy framework on what Westminster may seek in terms of planning obligations when an appropriate development proposal is made. The first part of the SPG sets out the procedure for securing obligations in parallel to the grant of planning permission, and the information required by Westminster to enable a planning obligation to be completed.
 - Section 106 of the Town and Country Planning Act 1990 allows Local Planning Authorities to enter into planning obligations with landowners to secure modifications or improvements to the development or deal with the impacts that a development has on the locality.
 - Planning benefits can also be achieved through the imposition of conditions and through unilateral undertakings.
2. Planning obligations are therefore legal documents, in the form of a deed, made voluntarily between the Council as local planning authority and an applicant under the provisions of s106 of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991). The adopted City of Westminster Unitary Development Plan (2007) provides the land use planning policy context for planning obligations in Westminster.
3. This SPG incorporates many of the themes set out in the Government's recently published Circular 05/2005 on Planning obligations. Westminster supports the three central government objectives of transparency, certainty and speed and this Guidance is an initial response to those issues. It will be reviewed through practice and in the light of whatever eventual procedural or legal system the Government puts into effect in future years. It is intended that this Guidance will carry over and improve on existing practice until any new system is formally established. The Guidance will therefore be reviewed against those legislative and policy developments and through the preparation of our Local Development Framework (LDF).
4. By adopting this approach, Westminster believes that the quality of development in the City will be enhanced and made more sustainable through the achievement of significant local benefits that can address the impacts of the intense development pressures in this World-City location.

Appendix 8: Current Legal Context and Government Guidance

Power of local planning authority entering into a planning obligation

- 1 The power of Westminster as local planning authority to enter into a planning obligation with an owner of land in its area is set out in s106 of the Town and Country Planning Act 1990 (as amended). The Government's guidance on planning obligations is contained in the recently published Circular 05/2005 on Planning Obligations, which replaces Circular 01/1997.
- 2 This SPG has been revised in light of Circular 05/2005 which provides a clear context for and supports the approach proposed in this document. Westminster supports the central government objectives of transparency, certainty and speed in the S106 process, has published standard agreements and clauses and proposes to introduce the use of formulae and pooling, as endorsed by the Circular. The SPG also reflects the themes set out in the DCLG Planning Obligations Practice Guidance (July 2006).
- 3 The Circular re-states the guiding principles of planning obligations i.e. to make otherwise unacceptable applications acceptable when conditions cannot achieve this. Obligations can 'prescribe' (e.g. require the provision of affordable housing), 'compensate' (e.g. loss of open space) or 'mitigate' (e.g. through increased public transport provision) and should comply with the 5 tests
 - (i) Relevant to planning
 - (ii) Necessary to make the proposed development acceptable in planning terms
 - (iii) Directly related to the proposed development
 - (iv) Fairly and reasonable related in scale and kind to the proposed development
 - (v) Reasonable in all other respects
- 4 The Circular encourages pooled contributions to address major investment needs or impacts wider than a single development, which is a key tenet of this SPG. The Circular emphasises the need for a clear audit trail for these contributions, which will be facilitated by the S106 monitoring database that the Council has developed. The Circular encourages the use of IT database systems for comprehensive monitoring.
- 5 It also supports the use of published formulae and standard charges, defined as "the quantitative indications of the level of contribution likely to be sought by a local planning authority towards the provision of infrastructure that is necessitated by a new development". This SPG sets out a number of formulae and standard charges in line with the guidance, and the City Council will be developing further formulae in due course.

- 6 Support is also offered for standard agreements and model clauses. Westminster has already published a suite of model agreements and clauses that are available online.
- 7 The Circular also clarifies that maintenance payments can be sought in certain cases in perpetuity, when facilities are predominantly for the benefit of the users of the development. It also supports the use of conditions rather than legal agreements where possible, which is covered below.

‘Planning Charges’

- 8 In the 2007 Comprehensive Spending Review the Chancellor announced the conclusion of the consultation into Planning Gain Supplement and its alternatives. The Government intend through the Planning Reform Bill to empower Local Planning Authorities to apply planning charges to new development alongside negotiated contributions for site specific matters. The “charge income will be used entirely to fund infrastructure identified through the development plan process” and include contributions towards the costs of infrastructure of regional and sub regional importance. The details still need to be resolved but the centralising threat of PGS has been removed. The local authority will be made responsible for producing a ‘local infrastructure plan’ to determine where the money will be spent and is able to continue with a more limited S106 system.

Extension of Mayor’s Powers

- 9 The Greater London Authority Act (24 October 2007) gives the Mayor extended planning powers, to take over strategically important planning applications, and in doing so determine the details of the S.106 agreement and hence secure funding for Mayoral projects. At this stage it is unclear how the potential extension of the Mayor’s powers will co-ordinate with the introduction of the planning charge mechanism. The extension of the Mayor’s powers is also at odds with the current localism agenda, which aims to empower local authorities and neighbourhoods through local decision-making and accountability.

Use of Obligations or Conditions

- 10 Planning obligations (s106 agreements and undertakings) are used instead of conditions because they can relate to matters other than those directly covered in the planning application. They can cover areas of land outside the application site, they can deal with the payment of money to the local authority, and are often drafted in greater detail than conditions in order to deal with complex matters such as management regimes, mechanisms for the provision of affordable housing and provision of access to and

management of the public realm. However, obligations should not be used where a planning condition would suffice, nor should an obligation replicate a condition.

- 11 There are many developments where planning conditions can adequately deal with on-site works and even the provision of works or facilities outside the application site. This may be achieved by the imposition of a condition preventing the occupation or commencement of a development until the works or facilities in question have been provided or until appropriate arrangements are in place that guarantee that the works or facilities will be provided in an appropriate form and timescale. (Such conditions are often known as "Grampian conditions"). This issue is further explored in the Planning Officers Society (POS) guidance note 'Best Practice Note on Highway / Environmental Improvement Works and Affordable Housing Secured by Planning Conditions' published March 2005.

http://www.planningofficers.org.uk/documents/POS_best_practice_note_on_conditions_s106_march_2005.doc)

- 12 When considering applications, Westminster will consider whether planning conditions can adequately deal with all the direct and indirect impacts of the development before it decides that a planning obligation is necessary.

Appendix 9: The UDP/LDF, the Westminster City Plan, One City and the London Plan

Unitary Development Plan (UDP)

- 1 Westminster's Unitary Development Plan (UDP) was adopted by Full Council on the 24th January 2007. It can be viewed online at:
<http://www.westminster.gov.uk/environment/planning/unitarydevelopmentplan/index.cfm>

- 2 The UDP contains six planning aims that are key in identifying the priorities for obligations. The aims are linked and recognise the essential land use characteristics and circumstances of the City. They are:
 - enhancing the attraction of central London
 - fostering economic vitality and diversity
 - building sustainable residential communities
 - integrating land use and transport policies and reducing the environmental impact of transport
 - ensuring a high quality environment
 - working towards a more sustainable City

- 3 The Council's principal policy relating to planning obligations is contained in Policy STRA 7 of Part 1 of the UDP:

It is the City Council's aim: To secure planning obligations and the provision of related benefits in all appropriate types of development. These should:

 - have an identifiable connection with the development
 - be in line with the policies in Part 2
 - be appropriate to the location scale and nature of the development; and
 - seek to mitigate the economic environmental transportation social and community consequences of the development.

- 4 Given that planning obligations are entered into voluntarily, applications will be considered on their own merits, on a case-by-case approach.

The Local Development Framework (LDF)

- 5 Although Westminster will retain the UDP (once adopted) for at least three years, the Local Development Scheme has been approved by GoL in April 2005. This sets out the work programme for the Local Development Framework (the portfolio of Local Development Documents) which will provide the framework for delivering the spatial planning strategy for Westminster. These documents are the requirements of the new statutory planning framework, set out by the Planning and Compulsory Purchase Act (2004).

The Corporate Context and achievement of wider objectives

- 6 Interpreting UDP / emerging LDF policies and negotiating planning obligations, the wider corporate objectives of Westminster will be taken into account. These wider objectives are set out in the Council's formal policy framework, which includes the Westminster City Plan, The Neighbourhood Renewal Strategy, as well as other plans.

The Westminster City Plan

- 7 Westminster City Plan 2006-2016 (WCP) is Westminster's community strategy required under Part I of the Local Government Act 2000 designed to improve the economic, social and environmental well being of the local area with their partners and to contribute to the achievement of sustainable development. The WCP can be viewed online at:
<http://www.westminster.gov.uk/councilgovernmentanddemocracy/councils/partnerships/>
- 8 Public consultation on the WCP revealed that people wanted an improved city environment, with safer, cleaner and greener streets, better life chances for all, through improving health, care, housing, learning and employment opportunities, strong, united and engaged communities and customer tailored services.
- 9 Some benefits sought through planning obligations can be directly related to the objectives and targets of the Westminster City Plan, and will help to achieve those targets.
- 10 Achieving planning benefits from developers and institutions through planning obligations also fits in with the partnership approach that is inherent in how Westminster's and other public sector services are provided now and in the future.

One City,³ Westminster's Local Area Agreement (LAA) and the Neighbourhood Renewal Strategy⁴

- 11 One City' is the Council's proposed vision for the next five years. The programme is the successor to 'Civic Renewal', which saw the delivery of over 100 specific improvements to the city and included developing the biggest charitable housing trust in British history, the first wireless city, and a radical approach to safer street management.
- 12 The 2007 One City programme focuses on 'Excellent Services – Strong Communities' with four proposed themes: Order, covering the street environment; Opportunity, covering social service, leisure, housing and children's services; Enterprise, including plans for business; and Renewal, covering the future of our streets and parks. The focus is on communities, giving people the chance to play a fuller role in city life and to make Westminster the best place in the UK for quality of life. Westminster City Partnership has been allocated by central government £6.6 million Neighbourhood Renewal Funding (NRF) over the 2006-08 period to tackle deprivation and disadvantage. It is envisaged that this funding will be pooled within the Local Area Agreement to further develop the strategic management of neighbourhoods.
- 13 Planning obligations have been and may be used in the future to support specific initiatives which are developed as part of these over-arching programmes.
- 14 The Mayor of London published his Spatial Development Strategy for Greater London, the London Plan, in February 2004. The Mayor considers planning obligations as key delivery mechanisms for the policies in the London Plan, to secure sustainable development and regeneration. The Mayor's policies on planning obligations are found in policies 6A.4 & 6A.5 of the London Plan. Westminster's UDP needs to be in general conformity with the London Plan. Westminster generally supports the approach taken and it is reflected in policy STRA 7 of the UDP. STRA 7 is also in line with the Mayor's proposal that all Boroughs should include a general planning obligation policy in their UDPs.

Co-ordination with the London Plan

- 15 The Mayor's priorities for planning obligations are to achieve affordable housing and public transport improvements as well as learning and skills and health facilities and services. Westminster supports these priorities which are also reflected in Westminster's own priorities for planning obligations as set out in Section 3.

³ Towards One City (March 2007)

⁴ The Westminster Neighbourhood Renewal Strategy (October 2002)

Appendix 10: Glossary

This glossary contains words, phrases and names of organisations that are mentioned in this Guidance and are relevant to the planning process.

Affordable housing

Subsidised housing at below market prices or rents intended for those households who cannot afford housing at market rates. The accommodation is usually managed by an registered social landlord (RSL)

Business Improvement District (BID)

Area defined under Part 4 of the Local Government Act 2003 where businesses, through a partnership arrangement, contribute by means of an annual levy over a period of up to five years, to provide funds to secure environmental improvements, to enhance local services such as street cleaning, and to carry out economic development activities within that area.

Central Activities Zone (CAZ)

Area described in Chapter 1 of the UDP and shown on the Proposal Map where the City Council envisages the maintenance or growth of Central London Activities. There are also CAZ Frontages described in Chapter 1 and on the Proposal Map.

Central London Activities

Those uses listed in Chapter 1 of the UDP and suitable in the CAZ and CAZ Frontages including: shopping, tourism facilities, arts culture and entertainment uses, centres of excellence in higher education, medical facilities, diplomatic uses, the state and government, national and international headquarters, professional institutions and associations, media and publishing, fashion trades and other particular specialist industrial activities.

Change of use

Planning Permission is required for a change of use unless it falls within the same use class or it is allowed by the General Permitted Development Order.

Character

The distinctive or typical quality of an area as described by its historic fabric; appearance; townscape; and other land uses.

Circulars

Government publications explaining procedural matters and legislation.

City Plan

The 'community strategy' for the City of Westminster, prepared under s4 of the Local Government Act 2000, and agreed by the Westminster City Partnership in 2002, which is intended to promote the economic, social and environmental well-being of the city. The strategic policies in the Unitary Development Plan reflect the six aims set out in the City Plan. A new community strategy was published in November 2006.

Code of Construction Practice

A code of practice setting out environmental standards and constructions procedures for major developments.

Commercial Floorspace

Floorspace utilised by the following uses: offices, industry, warehousing, showrooms, hotels, retail, entertainment and private educational, health and leisure facilities, other than social and community uses that are principally provided by the public sector.

This does not include residential use.

Committee (Planning and City Development Committee and Planning Applications Sub-Committee)

The above Committees have powers to make most decisions in respect of planning applications and other development control matters. Made up of elected councillors in proportion to the political complexion of the City Council. Members of the Committees are not bound to follow the recommendations of planning officers when taking their decisions.

Commuted sum

A financial payment made, in accordance with a planning agreement, by a developer towards the provision of, for example, affordable housing.

Conditions

A restriction or qualification imposed when planning permission or other consent is granted under the Planning Acts. Conditions are required in law to be necessary, relevant to planning, directly related to the development to be permitted,

Conservation Area

An area of special architectural or historic interest designated by the local planning authority under the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990, the character or appearance of which it is desirable to preserve or enhance.

Department for Community & Local Government (DCLG)

Government department, established in 2006, responsible for community cohesion and equality, for housing, urban regeneration, planning and local government.

Development

The carrying out of building, engineering, mining or other operations in, on, over or under the land; or the making of any material change in the use of any buildings or other land, as defined in the Town and Country Planning Act 1990 as amended. Unless it is defined under the Act as 'permitted development', planning permission is required for the carrying out of any development of land.

Development Briefs

A form of supplementary planning guidance that sets out the City Council's preferred development options for a site. Also known as planning briefs.

Development Plan

Under the Planning and Compulsory Purchase Act 2004, in Greater London the development plan comprises the spatial development strategy prepared by the Mayor of London (known as the London Plan) and until they are replaced by development plan documents prepared under that Act, the unitary development plans prepared by the London Boroughs. If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan, unless material considerations indicate otherwise.

Entertainment Use

Uses within Class A3 (Restaurants and Cafes) A4 (Drinking Establishments) and A5 (Hot Food Take-aways) and other entertainment uses where the primary activity is use as a nightclub, live music and dance venue, discotheque, entertainment centre, dance hall, casino or bingo hall. These are mostly uses where the greatest attendances occur during the evening or at night. Most of these uses fall within Class D2 of the Revised (2005) Use Classes Order 1987. It does not include theatres.

Environmental Inspectorate

City Council Inspectors operating in relation to the construction of major developments, to agree routine working arrangements for individual sites and ensure compliance with the Code of Construction Practice.

Greater London Authority (GLA)

The GLA is part of the strategic government of London established on 3 July 2000. It is made up of a directly elected mayor and a separately elected Assembly. The Mayor prepares plans on issues from transport to the environment and from culture to land use, directs the GLA and sets budgets for the GLA, Transport for London, the London Development Agency, the Metropolitan Police and London's fire services. The Assembly is also able to investigate other issues of importance to Londoners, publish its findings and recommendations and make proposals to the Mayor.

Gross Floorspace

Method of assessing the extent of building (or land) occupied by a use. This should be measured to include the overall dimensions of the building on each floor both above and below ground, including the thickness of all internal walls, half the thickness of party walls and the full thickness of external walls. If a site covers more than one property, party walls should be measured as internal walls except those party walls to properties not falling within the site. Gross floorspace should include all the following:

- stairs and lift shafts (to be measured for each floor);
- lobbies, corridors, reception areas;
- cloakrooms and toilets;
- storage and roofed plant areas (but see 'k' below);
- kitchens, cafeterias etc;
- operational voids e.g. for air conditioning ducting (to be measured for each floor);
- vaults.

Gross floorspace should exclude all the following:

- voids in atria;
- internal lightwells;
- double or triple height areas should be measured only once e.g. conference halls, theatres
- screened but unroofed plant area or plant areas and other operational voids which are not reasonably capable of commercial or residential use;
- car parking space, loading/ servicing bays and areas exclusively reserved for refuse storage.

In assessing entertainment uses against Policies TACE 8, TACE 9 and TACE 10, gross floorspace will be taken, in addition, to include open areas within the curtilage of the premises, such as forecourts, which are to be used for as the positioning of tables and chairs for customers' use. Such open areas will be excluded from the calculation of gross floorspace under Policy CENT3.

Healthy Urban Development Unit (HUDU)

A part of the NHS that has developed a model for calculating developer contributions for health facilities from new residential development

Key workers

Person having skills in an employment sector important to the functioning of Central London in which employers have severe difficulties in recruiting and retaining staff. Some categories of key worker are eligible for special forms of housing assistance.

Local Area Renewal Partnerships (LARP)

LARPs receive funding through the Local Area Agreement to co-ordinate partnerships working at a neighbourhood level and to deliver programmes to reduce deprivation. They bring together service providers and residents, to identify and address key local issues across a range of areas (crime, health, housing, education, employment and environment).

Listed building

A building contained in a list of buildings of special architectural or historic interest prepared by the Secretary of State for the Environment. Before any work can be carried out which affects the character or appearance of a listed building, inside or out, listed building consent is required.

Local Area Agreement

Three-year agreement setting out key priorities for the local area agreed between government (GoL), Westminster City Council and the Westminster City Partnership.

Local Development Framework (LDF)

The new plan-making system, introduced by the Planning and Compulsory Purchase Act 2004 requires local planning authorities to prepare a local development framework, which will comprise development plan documents, which will form part of the statutory Development Plan and supplementary planning documents which will

provide additional detail. The framework will also include the statement of community involvement, the local development scheme and the annual monitoring report.

London Plan

Title given to the spatial development strategy for Greater London prepared by the Mayor of London under Part VIII of the Greater London Authority Act 1999 and published by the Greater London Authority in February 2004. Further alterations published 2006 and reviewed or at inquiry Summer 2007. Unitary Development Plans prepared by London Boroughs are required to be in general conformity with the London Plan.

Material considerations

A factor which a local planning authority may take into account in making a decision on a planning application before it. In certain circumstances, such a factor, or a combination of them, may be sufficient to lead the authority to determine the application other than in accordance with the provisions of the development plan. Where that occurs, the factor or factors involved must, by law, be genuine planning matters, relating to the development and use of land, and must fairly and reasonably relate to the application concerned.

Mayor of London

The mayor has an extensive strategic planning role, in particular producing the Spatial Development Strategy for London. Westminster's UDP has to be in general conformity with the London Plan.

Office of the Deputy Prime Minister (ODPM)

Government department responsible between 2002 and 2006 for regional and local government (including the regional Government Offices), housing, planning, regeneration and neighbourhood renewal. The ODPM is now the Department for Communities and Local Government.

Paddington Special Policy Area (PSPA)

Area identified in the UDP and on the Proposals Map where major development is likely to take place during the Plan period.

Permitted development

Some development does not require planning permission from the City Council. Blanket permission is given by the General Permitted Development Order.

Planning agreement

See planning obligation

Planning Brief

A form of SPG that sets out the City Council's preferred development options for a site. Also known as development briefs.

Planning obligation

A form of planning benefit secured through a legal agreement or undertaking within the provisions of s106 of the Town and Country Planning Act 1990. This may be either an agreement between a local planning authority and an organisation or individual having an interest in land; or a unilateral undertaking given by an applicant for planning permission. An obligation usually involves a restriction on the use or development of land; or a specific requirement about an operation or activity to be carried out on land; or a requirement that land should only be used in a specified way; or the payment of a sum or sums of money.

Planning permission

A written consent to the carrying out of development issued by a local planning authority or, on appeal, by a Planning Inspector or the Secretary of State. The permission is normally subject to conditions and will lapse if the development is not started within a stated period of time. Planning permission for buildings may be in outline where the principle is approved, subject to the later submission of further applications for the approval of reserved matters.

Planning Policy Guidance Notes (PPG)

Government policy notes which contain advice on a wide variety of planning issues. PPGs are being replaced by PPSs.

Planning Policy Statements (PPS)

Government policy statements (replacing PPGs) which contain guidance on planning issues.

Public Art

Permanent or temporary physical works of art visible to the general public, whether as part of a building or freestanding: can include sculpture, lighting effects, and the designed treatment of street furniture, paving, railings and signs.

Registered Social Landlord (RSL)

Organisation registered with the Housing Corporation under the provisions in Chapter 1 of the Housing Act 1996. The organizations concerned may be housing associations which are registered charities, or non-profit-making provident societies or companies. They must provide housing kept available for letting, and meet other requirements set out in the Act.

Residential Use

As set out in the Use Classes Order (C3) Dwelling Houses unless otherwise stated.

Section 38(6) (formerly 54A)

The provision within the Planning and Compulsory Purchase Act (2004) which contains the principle of the development plan-led system. Planning decisions must be made in accordance with the development plan unless material considerations indicate otherwise.

Section 106 agreement

An agreement or undertaking made under s106 of the Town and Country Planning Act 1990 to secure planning obligations. Sections 46 and 47 of the Planning and Compulsory Purchase Act (2004) give the Secretary of State the power to make regulations to replace S106, but these powers have not yet been taken up.

Social, Community and Cultural Facilities

Most social, community and cultural facilities are in classes C2, D1 and D2 of the Use Classes Order. Such facilities can include social service uses, health facilities, some leisure and recreation facilities such as libraries, theatres and general social uses such as community meeting facilities and community halls etc.

Spatial Development Strategy (SDS)

Document setting out a broad strategy for land use and development in Greater London prepared by the Mayor of London under Part VIII of the Greater London Authority Act 1999 and published as the London Plan by the Greater London Authority in February 2004. Unitary Development Plans prepared by London Boroughs are required to be in general conformity with the London Plan.

Stress Areas

Those areas set out in the UDP which have become dominated with A3 and entertainment uses to the extent that their character is being eroded. Three stress areas have been identified at West End, Edgware Road, and Queensway/Bayswater.

Supplementary Planning Documents (SPD) (formerly SPG)

Formally adopted policy statements that either elaborate key policies set out in the UDP/LDF or set out how policies apply to a particular site. They are prepared to cover particular development topics, or area-based issues, such as planning briefs. SPDs will consist of the main document, a sustainability appraisal, an equalities impact assessment and a consultation plan. Recent SPDs are a material consideration in the determination of planning applications.

Transport for London (TfL)

TfL is a functional body of the Greater London Authority, accountable to the Mayor with responsibility for delivering an integrated and sustainable transport strategy for London.

Westminster City Partnership

The Westminster Local Strategic Partnership that produces the City Plan, which is the Community Strategy for Westminster.

UDP (Unitary Development Plan)

Plan prepared under Part II, Chapter 1 of the Town and Country Planning Act 1990 by a local planning authority for its area. Every London borough was required to prepare a unitary development plan for its area under the provisions of that Act. Unitary development plans will be replaced by a local development framework prepared under the provisions in the Planning and Compulsory Purchase Act 2004. Westminster's Unitary Development Plan (UDP) was adopted by Full Council on the 24 January 2007.