

Supplementary Planning Guidance (SPG) on Planning Obligations

draft for public consultation

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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 draft of the SPG takes on board changes in the context since the October 2003 draft and comments received as a result of consultation on the first draft where still relevant.

It was anticipated that the Replacement Unitary Development Plan (RUDP) would by now have been adopted. At the very last minute, however, ODPM directed that the Council should amend its housing policy. At the time of publishing this draft SPG, this situation is still unresolved. The RUDP is a material consideration of significant weight since it has reached the very final stage of preparation prior to its adoption. The Direction relates only to policies for affordable housing, and therefore the weight to be afforded to all parts of the draft plan other than affordable housing is unaffected by this Direction. Thus the challenge does not directly affect overarching policy on planning obligations at STRA 7 although the potential alterations to affordable housing policy may in turn affect additional S106 contributions.

The ODPM is further reviewing the S106 system in the context of Kate Barker's "Review of Housing Supply" (March 2004). A consultation on the introduction of the proposed Planning Gain Supplement will run until 27th February 2006. However, the proposals will require changes to primary legislation and thus will not be implemented until 2008 at the earliest. It is clear that as legislation changes, this SPG will need to be revised and possibly amended. Westminster will review this Guidance within three years of its adoption or earlier in the event of significant changes to legislation or to Westminster's policy objectives.

A handwritten signature in black ink, appearing to read 'Robert Davis', with a stylized flourish at the end.

Councillor Robert Davis

Cabinet Member for Planning and Customer Services

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1 Introduction

- 1.1 This document is the practical and procedural part of Westminster's draft Supplementary Planning Guidance (SPG) on planning obligations. The draft SPG as a whole sets out the approach that Westminster will be taking through the implementation of Policy STRA 7 in Part 1 of the Replacement Unitary Development Plan (RUDP). It sets out its priorities for benefits and identifies the ways in which those priorities can be applied in the case of individual development proposals.
- 1.2 Appendices 4 –7 set out Westminster's particular circumstances and the national, regional and local policy context in much greater detail for those who wish to fully understand the evolution of this draft 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 The purpose of the draft SPG is also 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*.
- 1.4 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. Planning benefits secured through an agreement or undertaking under s106 of the 1990 Act, are known as planning obligations. 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.
- 1.5 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, where an Environmental Impact Assessment has been carried out, planning obligations may be used to secure the necessary mitigation measures that are proposed in the Environmental Statement.
- 1.6 Planning obligations can regulate or control the use of land, require the carrying out of on-site or off-site works, or the provision of facilities, or require the payment of a financial contribution to enable Westminster (or other service provider) to implement particular studies, projects or schemes.

- 1.7 Westminster will use planning obligations that regulate land uses, for example securing the community use of private facilities, and provide for the provision of on-site and off-site works and facilities to achieve its priorities for planning benefits. It will also establish Funds¹ for the various types of planning benefits 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 simple formulae using the floorspace, capacity, or number of units in the development. The formulae vary depending on the type of planning benefit being sought and contributions within a Fund may be pooled with other contributions in order to meet the need. The formulae for different benefits are outlined on the supplementary sheets.
- 1.8 Westminster already completes about 50 planning obligations a year. In the future, it is expected that this number will increase. This is partly due to the Government's changing policy on planning obligations that sees obligations as an important means of delivering sustainable development, and partly due to Westminster's growing awareness of the impacts of development on its area.
- 1.9 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. (Such conditions are often known as "Grampian conditions" – see Appendix 6). 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.
- 1.10 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.

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.

2 The Appropriate Types Of Development

- 2.1 Some planning obligations are required because without them it is not possible to achieve an acceptable development. In these circumstances Westminster will be seeking planning obligations to address the impacts or additional cumulative impacts of developments that have been identified.
- 2.2 Other planning obligations arise directly out of the application of policy, such as affordable housing, and are relevant City-wide. In these cases the principles of the planning obligation are largely non-negotiable being a policy requirement.
- 2.3 It should be noted, as stated in Circular 05/05, 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

- 2.4 Policy STRA 7 of Part 1 of the RUDP is Westminster's key policy on planning obligations. It says that Westminster will aim to secure planning obligations and the provision of related benefits in *all appropriate types of development*.
- 2.5 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.

Planning obligations as a requirement of policy

- 2.6 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.
- 2.7 Policies COM 2 and CENT 3 are triggered by developments where there is an increase of 200 sq. metres or more of floorspace. In addition to the requirement for a mix of uses, Part (D) 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.
- 2.8 For example, 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.

- 2.9 Similarly, entertainment uses such as bars, restaurants, nightclubs and cinemas attract tourists, shoppers and after work patronage which needs to be sustainable 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.
- 2.10 Westminster's RUDP policies operate so as to focus commercial uses within the Central Activities Zone and some of its Special Policy Areas. Where commercial and office developments are proposed outside CAZ (that is, where CENT 3 and COM 2 do not apply), Westminster will also use the 200 sqm additional floorspace threshold as the guide for the application of Policy STRA 7 on planning obligations.
- 2.11 In certain cases, such as contributions for CCTV and Open Space, the floorspace threshold for contributions will be set higher, at 1000 sq. metres or more, to ensure that disproportionate contributions are not required from smaller developments.
- 2.12 For **residential schemes**, Policy H4 on affordable housing provision, although currently subject to a Direction, applies the threshold of 15 or more units or a site area of 0.5 ha or more, generally requiring 30% of the proposed units to be affordable or a financial contribution to be made where on-site provision is not appropriate. Chapter 3 of the RUDP details the requirements for affordable housing provision including the calculation of the financial contribution.
- 2.13 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. Westminster requests the provision of community facilities, including health facilities, from residential developments under policy H10 of the RUDP. Para 3.121 of the supporting paragraphs in the RUDP states that such requests will be made if a development consists of a net increase of more than 50 residential units. However, given the more recent advice in Circular 05/05 and the ODPM threshold for 'major applications', the City Council is likely to seek such provision (or contributions) in schemes providing 10 or more additional residential units. The individual formulae on the supplementary sheets contain more details on this issue.

2.14 The application of Policy STRA 7 will not normally apply to uses other than commercial or residential, for example community, voluntary sector or education facilities. Such development is usually sustainable in its own right, for example local health care, 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 Benefits

- 3.1 Westminster has decided on an approach that identifies the impacts of the development and sets these against its priorities for planning benefits, 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 RUDP (e.g. affordable housing). 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. CCTV) but may not be sought in all cases.
- 3.3 In view of the policies and aims contained in the RUDP, the Westminster City Plan and the priorities outlined in Towards One City, Westminster has identified the following list of planning benefits, 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. Affordable housing should be provided on-site wherever possible in accordance with RUDP and government policy requirements. Where circumstances exist which mean that affordable housing cannot or should not be provided on-site the Council will require a financial payment in the form of a commuted sum or in particular circumstances, provision of housing off-site. In commercial schemes, housing will be sought on site in order to achieve a mixed-use scheme. The formula for calculating contributions for affordable housing is set out in the RUDP.
- 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 and other public transport providers.
- 3.6 **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 B**.
- 3.7 **City Management** arising out of large entertainment and A3 uses. This includes the key requirements of achieving a safe, clean and high quality central areas including the provision of

additional CCTV and warden's services, safety and security initiatives, specialist or enhanced cleansing services. The formula for calculating contributions for CCTV is set out on **Sheet C**.

- 3.8 **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. For example Paddington Area Transport and Environmental Management Study (PATEMS). The formula for calculating contributions for Parking Mitigation from residential schemes is set out on **Sheet D**.
- 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 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. The method of calculating contributions for one aspect of this group, health facilities, is set out on **Sheet E**.
- 3.10 **Public Realm** arising out of residential and commercial schemes. These include highway works, restoration and repair works and access to historic buildings, the preservation and enhancement of conservation areas and 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 the encouragement of nature conservation. The formula for calculating contributions for Open Space is under development and set out on **Sheet F**.
- 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 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 and therefore be monitored from 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. 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.

How Planning Benefits will be applied Across Westminster

- 3.12 The RUDP identifies a number of geographically based policy areas, for example the Special Policy Areas, the Stress Areas, Priority Areas and Action Areas. These will be used to provide the priorities for the type of benefit sought when development arises in those areas.
- 3.13 There are also other corporate plans, such as the Westminster City Plan, 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 benefits involving financial contributions will be achieved. Further formulae will be consulted upon and added to this document as they emerge. Work is currently being undertaken regarding contributions for open space and wider public realm benefits.
- 3.15 Planning briefs for large redevelopment sites may include the types of planning benefits that will be sought when a development proposal comes forward, and will provide clear advice to applicants on what Westminster may require in terms of s106 benefits. Also, developments that require an Environmental Impact Assessment may have mitigation measures identified in the Environmental Statement which can be secured through planning obligations.
- 3.16 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

- 3.17 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. An Annual Report on planning obligations secured, works carried out and the status and use of financial contributions will be produced. This will be part of the Business Plan process within Westminster and the City Development Overview and Scrutiny Committee will also consider the Report.

4 Procedure For Completing An Obligation

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

Pre Application Stage

Applicants are directed to the RUDP 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, and is chargeable on major applications. Having regard to the guidance contained in this SPG, applicants should come forward with proposals for planning benefits (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 item, known as 'Head of Terms' in the legal agreement, to reflect the increased complexity of monitoring agreements with multiple clauses. 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 A**.

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) Where highway works obligations are required, the draft legal agreement will contain Westminster's standard highway works clauses that are available from Westminster's legal team and described further in section 4.8 below.
- (iv) 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.

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.

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 Report to the City Development Overview and Scrutiny Committee.

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 5 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.
- (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 instead of carrying out the works themselves. 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 Benefits

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)	Benefits Could Include	Formulae
<ul style="list-style-type: none"> Housing and Affordable Housing 	<p>H4 – provision of Affordable Housing - to be amended following GoL Direction. CENT3 & COM 2 - provision of Housing to achieve mixed- use schemes</p>	<p>Circular 6/98 PPG3 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</p>
<ul style="list-style-type: none"> Public Transport Infrastructure 	<p>TRANS 4 - bus services and priority TRANS 5 - surface and underground railways, TRANS 9 - financial assistance to transport</p>	<p>Borough Spending Plan Mayors Transport Strategy</p>	<ul style="list-style-type: none"> <i>Financial contributions to public transport projects and facilities including buses, trams and trains</i> <i>Contributions to station improvements,</i> <i>Designing improvements to underground stations into development proposals</i> <i>Capital cost of 'countdown' system at bus stops</i> <i>London bus priority network contributions.</i> <i>Green 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 impact statements, TRANS 1 – protecting the environment from the effects of transport activities, TRANS 2 – road safety, TRANS 3– pedestrians, ENV 2 - environmental appraisals TRANS 21-26 – off street parking provision</p>	<p>Borough Spending Plan Mayors Transport Strategy Local Implementation Plan</p>	<ul style="list-style-type: none"> <i>Pedestrian safety, public transport accessibility, 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>Parking Mitigation Payments-Sheet D</p>
<ul style="list-style-type: none"> City Management 	<p>STRA 5 - public/private sector partnerships DES 1 - principles of development TACE 8/9/10 - entertainment uses SOC 8 - public toilet facilities ENV 6 - control of noise pollution ENV 10 - waste and recycling</p>	<p>Westminster City Plan Sustainable Buildings SPG Towards One City Neighbourhood Renewal Strategy Westminster Crime and Disorder Reduction Strategy Municipal waste management plan Entertainments SPG (in prep)</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 C</p> <p>Code of Construction Practice – see 3.11</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)	Benefits Could Include	Formulae
<ul style="list-style-type: none"> Education Training and Employment . 	STRA 4 - regeneration and economic development, SOC 1 - provision of community facilities, SOC 3 – provision of education facilities H10 (re. school contributions)	Education Development Plan Economic Development Strategy	<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> 	<i>Education – Sheet B</i>
<ul style="list-style-type: none"> Public Realm Environmental Improvements Management of Open Space 	TRANS 1 – protecting the environment from the effects of transport activities TRANS 3 - pedestrian activities TRANS 10 - cycling facilities DES 7 – Townscape Management DES 9 - conservation areas DES 10 - works to listed building DES 14 - trees and shrub cover ENV 4 - planting around and on buildings, STRA 29 - the river Thames and canals RIV 9 - Thames path, RIV 10 - Thames access, DES 13 - canals ENV 13 - public and private open space, DES 12 - parks, gardens and squares SOC 6 – Children’s Play Provision	Sustainable Buildings SPG SPG on Public Art PPG17 Open Spaces Nature Conservation Strategy Open Space Study and Strategy	<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>Green 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> 	<i>Open Space – Sheet F</i>
<ul style="list-style-type: none"> Social, Cultural and Community 	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 STRA11A – arts, culture and entertainment	Westminster’s Cultural Strategy Annual Library Plan Primary Care Trust Strategic Service Development Plan	<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 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> 	<i>Health – Sheet E</i>

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

Stage	Actions	Responsibility
Pre Application	Applicant to consider relevant London Plan and RUDP 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	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	Applicant/Case Officer/Legal
Preparing the Planning obligations	Draft obligations sent to applicant's solicitors for consideration	Legal
	Further negotiation meetings held if necessary	Applicant/Case Officer/Legal
	Before agreement is signed, Westminster to ensure all financial and title matters are in order.	
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)
Post Legal Agreement Completion	Legal Agreement Completion	
	Copy of legal agreement planning permission and any other consents sent to applicants 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	Applicants
Monitoring	Details of agreement including clauses and triggers recorded on database	Legal Agreement Monitoring Officer
	Implementation of planning permissions monitored	Legal Agreement Monitoring Officer
	Fulfilment of applicant's and council's obligations monitored and recorded on database. Compliance enforced as necessary.	Legal Agreement Monitoring Officer

Appendix 1: Model Wordings and Legal Correspondence

Templates of model wordings for S106 obligations

Accessed online at:

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

A - 'Skeleton' agreements (to insert clauses into)

A1 - City Council and Applicant only

A2 - City Council, Applicant and others

A3 - City Council, Applicant and Mortgagee

A4 - For Crown Land (where Crown is applicant)

A5 - For Crown Land (Crown is not the applicant)

B - Clauses that can be inserted into the 'skeletons'

B1 - Residential Land Use Swap (City Council and Applicant only)

B2 - Residential Land Use Swap (City Council, Applicant & Others)

B3 - Affordable Housing

B4 - Definition of 'Index Linking'

B5 - Conservation Area Consent - timing of demolition/construction

B6 - CCTV - Council Providing CCTV

B7 - Highways Works - Council to carry out

B8 - Highways Works - Developer to carry out - (To follow)

B9 - Highway Dedication

B10 - Other Miscellaneous standard provisions:

C - Example full agreements by subject (combining texts from A and B above)

C1 - Residential Use Swap (Council and Applicant only)

(This is a combination of A1 and B1 above)

C2 - Residential Use Swap (Council, Applicant and Others)

(This is a combination of A2 and B2 above)

C3 - Highways Works - Council to carry out (Council and Applicant only)

(This is a combination of A1 and B7 above)

C4 - Highways Works - Council to carry out (Council, Applicant and Others)

(This is a combination of A2 and B7 above)

D - Other

D1 - Sample Unilateral Undertaking - Financial Contribution

D2 - Deed of Dedication of Land as Public Highway (in some cases this may be appended to a Section 106 Agreement)

D3 - Deed of Postponement

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 Dx 2310 Victoria

Email: @westminster.gov.uk

Date:

Our Ref:
Your Ref:

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 2: Useful Contacts and Information

S106 Monitoring Officer

Hannah Berriman

(T) 020 7641 2418 (F) 020 7641 8535 Email: hberriman@westminster.gov.uk

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 - UDP, SPG and corporate policy issues

Graham King

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

Roger Bloom

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

Alice Leach

(T) 020 7641 8073 (F) 020 7641 8535 Email: aleach1@westminster.gov.uk

Legal Services

Christine Hereward

(T) 020 7641 2887 (F) 020 7641 2761 Email: chereward@westminster.gov.uk

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

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

Useful websites

Westminster City Council website - www.westminster.gov.uk

(Click on environment and planning and then planning for further information on the Local Development Framework / Unitary Development Plan and publications)

Greater London Authority - www.london.gov.uk

Transport for London - www.tfl.gov.uk

Office of the Deputy Prime Minister - www.odpm.gov.uk

Department For Transport - www.dft.gov.uk

HM Land Registry - www.landreg.gov.uk

Appendix 3: Policy Areas and sites covered by Planning Briefs

UDP Area Designations that may influence S106 negotiations

- Central Activities Zone (CAZ) and CAZ Frontages
- Paddington Special Policy Area (PSPA)
- 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
- 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 e.g. Temple Gardens (forthcoming Open Space Study / Strategy will provide further details)

Project Areas

- Leicester Square Action Plan
- Chinatown Action Plan
- Soho Action Plan
- Covent Garden Action Plan
- Church Street Action Plan
- Edgware Road Action Plan
- Local Area Renewal Partnership Areas
 - Harrow Road
 - Queens Park
 - Westbourne
 - South Westminster
- Business Improvement Districts
 - Paddington BID
 - Heart of London BID
 - New West End Company (NVEC) BID
- Theatreland Project
- Strand and Aldwych Environmental Improvements (Courts & Alleys / Cross River Tram)
- Westbourne Green

Planning Briefs

Available online at:

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

Central Area

- Berwick Street, Soho, W1
- Middlesex Hospital and Related Sites, W1 (2005)
- St. Marks Church, North Audley Street, W1 (2002)
- Marshall Street Baths, W1 (2004)

North Area

- Dudley House, North Wharf Road & 139-147 Harrow Road, W2 (2002)
- 149-157 Harrow Road and adjacent highway / open space (2004)
- St Mary's Hospital and Post Office sites, W2 (2004)
- Westbourne Green, W2 (2004)
- North Westminster Community School and North Wharf Road sites, W2 (2004)
- City of Westminster College (Paddington Green / Cosway Street (2004)

South Area

- Chelsea Barracks, Chelsea Bridge Road, SW1 (under revision 2005)
- Victoria Area (2005)
- Brabazon House, SW1 (2004)
- Pimlico School (2005)

Crossrail

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

Appendix 4: 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 eventually be replaced by the LDF under the new policy framework (see Appendix 7).
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 Pieda 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,
 - 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.

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

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 three years of its adoption or earlier in the event of significant changes to legislation or to Westminster's policy objectives.

Appendix 5: Westminster's Planning Obligations Policy

1. This draft Supplementary Planning Guidance provides a policy framework on what Westminster may seek in terms of planning benefits when an appropriate development proposal is made. The first part of the draft 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.
 - This is sometimes described as planning benefit or planning gain.
 - The modifications and improvements the Act permits are wide and provide for a wide range of community benefits to be legitimately achieved.
 - 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 (UDP)(July 1997) and the Replacement Unitary Development Plan (RUDP), that is the Pre-inquiry UDP (August 2002), plus subsequent modifications agreed by the Council in May, September and December 2004, and the London Plan, provide 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 05/05 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 the progress of the UDP review and 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 6: Current Legal Context and Government Guidance

- 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 05/05 on Planning Obligations, which replaces Circular 01/97.
- 2 This SPG has been revised in light of Circular 05/05 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 will also reflect the themes set out in the forthcoming Planning Obligations Good Practice Guide by Halcrow for ODPM.
- 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 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.

The Barker Review

- 8 S106 policy may be subject to further reform in light of the Barker Review. Kate Barker's Report, published in March 2004, entitled "Review of Housing supply", is primarily about the constraints on the free market for housing, which are preventing demand and supply coming more closely into balance. Consultation on whether or not to adopt the Barker approach of the Planning Gain Supplement (PGS) will run until 27th February 2006. However, primary legislation will be required if the recommendations are to be adopted and the changes are not likely to be implemented until 2008 at the earliest. As legislation changes, this SPG will need to be revised and possibly amended. Therefore Westminster will review this Guidance within three years of its adoption or earlier in the event of significant changes to legislation.
- 9 Barker's advice is that a system should be set up to allow Central Government to capture development 'gains' while scaling back the s106 contributions collected directly by Local Planning Authorities to mitigate direct 'development-site environment' impacts and the existing affordable housing requirements. As compensation for the loss of the s106 'gains', Local Planning Authorities would receive a share of the PGS. The Barker recommendation is that this should be broadly in proportion the amount local authorities are currently able to achieve from section 106 agreements. It is proposed that the PGS be levied on the commencement of development and that it be based on self-assessment with checks made by the Valuation Office.

Use of Obligations in place of 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").

- 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 7: the RUDP/LDF, the Westminster City Plan, One City and the London Plan

The Replacement Unitary Development Plan (RUDP)

- 1 Westminister's Unitary Development Plan, adopted in July 1997, has undergone its statutory review process. The Pre-Inquiry version (2002) of the UDP has subsequently been modified by the Council in May, September and December 2004. However, the Council's draft replacement Unitary Development Plan (RUDP) has been the subject of a Direction under section 17(1) of the Town and Country Planning Act 1990, issued by the First Secretary of State on 9 December 2004. The Direction relates only to policies for affordable housing, but it prevents the adoption of the whole plan. The weight to be afforded to all parts of the draft plan other than affordable housing is unaffected by this Direction.

- 2 The City Council's Director of Legal Services wrote to the Secretary of State advising of the City Council's intention to challenge the Direction in the Courts unless it was withdrawn. Although the Treasury Solicitor declined to withdraw the Direction, he invited the Council to discuss potential policy wording with the Government Office for London. These discussions continue. Until interim new affordable housing policies are drafted and approved by the City Council to the satisfaction of the First Secretary of State, the affordable housing policies in the draft RUDP continue to be afforded the same weight as they had prior to the Direction being issued. The RUDP is a material consideration of very significant weight, as it has reached the very final stage of preparation prior to its adoption.

- 3 The RUDP 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

- 4 The Council's principal policy relating to planning benefits is contained in Policy STRA 7 of Part 1 of the RUDP:

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.

5 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)

6 Although Westminster will retain the RUDP (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

7 In 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 such as the Housing and Homelessness Strategy.

The Westminster City Plan³

8 Westminster City Plan (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.

³ The Westminster City Plan (April 2002) under review

- 9 Public consultation on the WCP revealed that people wanted a clean City with clean streets, especially in the popular entertainment areas of the West End. Planning obligations could be one means of addressing these issues where, for example, new entertainment uses such as restaurants, bars or night-clubs have additional impacts on the existing situation in the locality.
- 10 Some benefits sought through s106 agreements can be directly related to the objectives and targets of the Westminster City Plan, and will help to achieve those targets.
- 11 Examples of these could be:
- travel plans
 - works to highways
 - measures to improve travel safety at night
 - street cleaning and management obligations
 - waste and recycling obligations.
- 12 Achieving planning benefits from developers and institutions through s106 agreements 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,⁴ Westminster's Local Area Agreement (LAA) and the Neighbourhood Renewal Strategy⁵

- 13 'One City' is the Council's proposed vision for the next five years. The programme will be 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.
- 14 The new One City programme will focus 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.
- 15 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.

⁴ Towards One City (November 2005)

⁵ The Westminster Neighbourhood Renewal Strategy (October 2002)

- 16 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.

Co-ordination with the London Plan

- 17 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 RUDP. STRA 7 is also in line with the Mayor's proposal that all Boroughs should include a general planning obligation policy in their UDPs.
- 18 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.

Appendix 8: 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. A registered social landlord (RSL) usually manages it. The government's guidance on affordable housing is contained in Circular 6/98 - Planning for Affordable Housing. Westminster's affordable housing policy is currently subject to a Direction

Business Improvement District (BID)

BIDs are limited, locally controlled partnership for improving the environment and economic performance of a defined area of a town or city. They are created by groups of businesses within small areas to oversee and fund environmental improvements and the provision of additional or enhanced local services such as street cleaning, waste removal, lighting and public security.

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 Local Government Act 2000 places a duty on local authorities to prepare community strategies for promoting the economic social and environmental well-being of their areas and contributing to the achievement of sustainable development in the UK. Westminster's community strategy is contained in the City Plan.

Code of Construction Practice

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

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.

Committed sum

A financial payment made by a developer towards the provision of, for example, affordable housing.

Conditions

Planning permissions may be granted subject to conditions which must be precise, necessary, reasonable and relevant to planning. If they are not, they can be appealed within six months.

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.

Development

Almost all building and engineering operations and any material change of use. Planning permission is needed unless the proposals constitute permitted development, or do not affect the external appearance of the building.

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

A plan that sets out the Council's policies to control development in a local planning authority's area. Planning decisions have to be made in accordance with the plan unless material considerations indicate otherwise. In Westminster the London Plan and the Unitary Development Plan, adopted 1997 are currently the development plan, although the latter will be replaced by the RUDP when adopted and then progressively by the Local Development Framework as the latter evolves.

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.

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

There is no agreed definition of key workers but they are generally considered to be people who are essential to the running of the Central London economy and fall within three main groups - economy, community and support.

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 replacement for UDPs, as set out in the Planning and Compulsory Purchase Act 2004. The LDF will consist of Local Development Documents (including a Core Strategy, Supplementary Planning Documents and a Statement of Community Involvement), a Local Development Scheme and the Annual Monitoring Report.

London Plan

The name that the Mayor has given to his Spatial Development Strategy (SDS), published February 2004.

Material considerations

Factors which have to be taken into account when planning decisions are made.

Mayor of London

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

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

Agreements and undertakings usually associated with the grant of planning permission and made by deed under s106 Town and Country Planning Act 1990.

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.

Planning permission

Permission to carry out development issued by a local planning authority. Planning permission for buildings may be outline, where the principle is subject to the submission of further applications for the approval of reserved matters. Planning permission is normally issued subject to conditions and will lapse if the development is not started within a stated period of time.

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)

A concept introduced by the Housing Act 1996 applying to housing organisations registered with the Housing Corporation.

RUDP

Revised Unitary Development Plan (see UDP)

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.

Spatial Development Strategy (SDS)

The strategic planning document that the Mayor is required to produce. The SDS has to reflect the land use and development implications of the Mayor's various other strategies and policies. The SDS is called 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)

Formally adopted policy statements that either elaborate key policies set out in the 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.

Supplementary Planning Guidance (SPG)

Formally adopted policy statements that either elaborate key policies set out in the UDP or set out how policies apply to a particular site. SPG is a material consideration in the determination of planning applications. SPGs will be replaced by SPDs

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, the Community Strategy for Westminster

UDP (Unitary Development Plan)

Development plan produced by a unitary authority, such as Westminster, for its area. Westminster currently refers to the adopted 1997 Unitary Development Plan and the Replacement Unitary Development Plan (RUDP) that is the 2002 pre-inquiry UDP plus subsequent modifications agreed by the Council in May, September and December 2004. Adoption has been delayed by the receipt of a Direction from the Secretary of State, requiring changes to be made to the affordable housing policies. Westminster hopes to be able to adopt a finalised plan in 2006. The UDP will subsequently be replaced by the Local Development Framework. For further details refer to Appendix 7.