

Norwich City Council

Planning Obligations Guidance Notes

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1. Introduction

New development will often result in increased pressure on infrastructure and services. This creates demand for additional or improved community facilities. In the absence of such improvement there could be a detrimental effect on local amenity and the quality of the environment.

Developers have a responsibility, through the planning process, to manage the impact of growth. They should make sure that all development makes a positive contribution to sustainable development, providing social, economic and environmental benefits to the community.

This guidance sets out the council's approach to planning obligations and is intended to provide users of the planning service with guidelines to what obligations will be sought and the council's procedure for processing them.

The council has adopted supplementary planning guidance (SPG) and a number of supplementary planning documents (SPDs) covering various types of obligations. Brief details of types of obligations, policy justification and thresholds are given in section five. Further details including relevant formulae for the calculation of contributions are given within the relevant SPG and SPD links to which can also be found within section five.

2. Status of the guidance

This guidance has not been formally adopted as SPD. It is intended to draw together various obligations, the policy basis for which is established within development plan policy, SPGs and SPDs, and provide further guidance on the approach to planning obligations and procedure.

3. What is a planning obligation?

Planning obligations secure infrastructure and service provision to make development acceptable which would otherwise be unacceptable in planning terms.

A planning obligation is a legally binding agreement entered into by the developer. It requires the developer to carry out certain works or contribute towards the provision of measures to mitigate the negative impact of the development and ensure that it makes a positive contribution to the local community.

Planning obligations can take the form of unilateral undertakings made by a developer or agreements made jointly between local authorities and developers through negotiation in the context of granting planning permission.

4. Legislative and national policy context

The legislative framework for planning obligations is set out in Section 106 of the Town and Country Planning Act 1990, as amended by section 12 of the Planning and Compensation Act 1991 and brought into force on 25 October 1991 by Statutory Instrument no. 1991/2272.

The national planning policy framework (NPPF) replaces circular 05/2005 and provides local authorities with guidance on the use of planning obligations under section 106 of the Town and Country Planning Act.

The NPPF sets out three tests which must be satisfied in order for obligations to be required. These tests have also been integrated into legislation at regulation 122 of The Community Infrastructure Levy (CIL) Regulations

2010 as amended. These state that a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.

Planning Policy Statement (PPS)1 sets out the government's objective for the delivery of sustainable development, at the heart of which is the simple idea of ensuring a better quality of life for everyone. PPS1 recognises that development can adversely affect people who do not benefit directly and that obligations can reduce such impacts.

Further specific guidance in relation to providing affordable housing is given within PPS3.

Planning policy statements are soon to be replaced by the National Planning Policy Framework. The draft version includes similar guidance to the above with regard to planning obligations and affordable housing.

5. Types of obligation

A planning obligation may restrict development or use of the land, or require operations or activities to be carried out in, on, under or over it. It may require the land to be used in any specified way or require payments to be made to the relevant authority, either in a single sum or periodically.

The council will, where possible, seek to make development proposals acceptable which might otherwise be unacceptable, through the use of planning conditions as opposed to obligations.

5.1 Transportation

The council's Transport Contributions SPD sets out when and how transportation infrastructure and enhancements are required as part of development proposals. The SPD provides interpretation to saved policies TRA10 and TRA11 of the adopted City of Norwich Replacement Local Plan.

The council considers that developers may reasonably be expected to pay for, or contribute to, the cost of transport infrastructure which would not have been necessary but for their development.

A transportation contribution will be required to provide support for the city-wide transport infrastructure improvement programme to reduce the wider impact of significant development proposals. The contribution will be triggered by the following thresholds:

- for residential developments - 10 or more dwellings;
- for A1, A2, A3, A4 and A5 uses – 500sqm gross floor area;
- B1, B2 and B8 uses over 200sqm gross floor area;
- contributions may also be triggered by C1, C2, D1, D2 and sui generis uses subject to consideration of a transport assessment.

Transport assessments submitted with applications for significant development proposals will be taken into account when determining the infrastructure and enhancements required as part of any development proposal.

On a case by case basis where it is demonstrated that the recent former use of a site had a greater transport impact than the proposed use, the transport contribution may not be considered necessary.

For significant new developments it may be necessary to include obligations for a scheme managing construction traffic. This will only be necessary where the construction traffic resulting from the development could have a significant impact on the highway network.

5.2 Open space and play provision

The [Open Space and Play Provision SPD](#) provides details of how saved policies SR4 and SR7 of the adopted City of Norwich Replacement Local Plan will be implemented. The policies seek open space and play equipment to serve new housing developments. Either on-site provision or a financial contribution will be triggered by the following thresholds:

- Playspace - 10 or more child bed spaces;
- Open Space – In the City Centre (as defined by the adopted Local Plan Inset Maps), 25 dwellings or more. Elsewhere, 40 dwellings or more.

A child bed space (cbs) is defined as any bedrooms additional to the first bedroom in a dwelling. For example, a two bedroom house provides 1cbs, a three bedroom house provides 2cbs and a house with four or more bedrooms provides 3cbs.

The method of provision should be agreed with the case officer at pre-application stage.

5.3 Affordable housing

The target proportion of affordable housing is:

- 20% on sites of between 5 and 9 dwellings (with tenure mix to be agreed on a site by site basis);
- 30% on sites of between 10-15 dwellings (with tenure mix to be agreed on a site by site basis)

- 33% on sites of 16 dwellings or more with approximately 85% social rented and 15% intermediate tenures.

The requirements for affordable housing are set out in more detail within policy 4 of the adopted [Joint Core Strategy](#) for Broadland, Norwich and South Norfolk 2011.

The proportion of affordable housing sought may be reduced and the balance of tenures amended where it can be demonstrated that site characteristics, including infrastructure provision, together with the requirement for affordable housing would render the site unviable in prevailing market conditions, taking account of the availability of public subsidy to support affordable housing. Procedural guidance on development viability is given at section 7.0 below.

5.4 County council obligations

The [Norfolk County Council Planning Obligations Standards](#) sets out the requirements for obligations relating to county council services as required through saved policy HOU6 of the adopted City of Norwich Replacement Local Plan.

The majority of the obligations relate to residential developments and will be triggered on developments of 25 dwellings and over.

The obligations primarily relate to education, library, fire hydrant and social service provision.

Education and library contributions are calculated on a needs based assessment taking into account capacity and facilities at local schools and libraries. This means the county council will need to be consulted on developments of 25

dwellings and over in order to ascertain the exact requirements.

5.5 Heritage interpretation

The Heritage Interpretation SPD provides details of how saved policy TVA8 of the City of Norwich Replacement Local Plan will be interpreted. It explains the requirements for heritage interpretation on significant developments affecting sites or buildings of significant heritage interest. Such interpretation can often be secured via condition.

5.6 Green links and riverside walks

Development proposals on sites next to or within existing or proposed riverside walks and green links (as detailed within the City of Norwich Replacement Local Plan Proposals Maps) will be required to provide for or enhance that link, including the provision of public access.

The Green Links and Riverside Walks SPD provides further details on the provision of green links and riverside walks. It interprets saved policies SR11 and SR12 of the adopted City of Norwich Replacement Local Plan.

5.7 Shopmobility

Major new retail developments in excess of 1000sqm and any new short stay car parking facilities in excess of 300 spaces in the city centre will be expected to contribute to the enhancement of the shopmobility scheme through saved policy SHO8 of the adopted City of Norwich Replacement Local Plan.

5.8 Others

In certain circumstances it may be necessary to use planning obligations to cover issues which are not identified above. In particular this would be the

case where, due to the particular circumstances of any case, planning conditions cannot be used to make development proposals acceptable which might otherwise be unacceptable. Matters covered may include, among others, trees, flood risk, archaeology, contamination and enhancement of public areas outside the development site.

6. Community Infrastructure Levy

Norwich City Council is proposing to introduce a Community Infrastructure Levy (CIL) and this will apply to all relevant developments that gain planning permission following its formal introduction. It will affect applications submitted prior to, but not determined by, this date and which is currently expected to be Autumn 2012. CIL will replace many elements of section 106 agreements such as financial contributions for childrens' play, open space, transport, libraries, education and from this date Section 106 agreements will only be used for affordable housing and for some specific matters which are essential for the particular site to be developed. CIL will apply to dwellings of one residential unit upwards and other development of over 100sq.m gross internal area. For the latest information on the introduction of CIL including draft charging schedules please see the Greater Norwich Development Partnership Website.

7. Viability

The council considers costs should be expected to be incurred when delivering a sustainable, high quality development. These should not reduce the ability of the site to contribute towards relevant planning objectives.

Where several developments are proposed in close proximity to each

other and the cumulative effect will result in a requirement for new infrastructure, the council may pool contributions from each of the developments in order to fund the necessary infrastructure in an equitable way.

The onus will be on the applicant to demonstrate if the requirements of the council would significantly harm the viability of their proposal.

Where there is a need for the council to seek professional advice from the council's property services team or an independent third party to assess submitted viability evidence, any costs incurred are to be met by the applicant. Such costs will also be incorporated into the viability appraisal. The applicant will be given an estimate of expected cost of professional fees, and the applicant will need to pay the estimated costs to the Council inclusive of any VAT prior to this advice being sought. Charges for professional advice are likely to be by the hour and clearly cost will vary on a case by case basis. Any unspent monies will be returned to the applicant. Equally if the costs of the advice are likely to exceed the estimated costs further monies will be sought from the applicant.

In order to fully assess viability the onus is on the applicant to produce a sufficiently detailed viability assessment and this should include the following as a minimum:

- floor plans to scale with a design and access statement;
- supporting reports for any site abnormalities;
- full quantity surveyor cost assessment;
- market evidence and detailed valuation reports;
- Two full viability appraisals including a cash flow (ideally using a

recognised viability model such as the HCA or Three Dragons Model. If using the Three Dragons Model a separate cash flow should be submitted). One appraisal with the policy compliant package of planning obligations and another with a package of planning obligations which the applicant considers is viable in the current market;

- the development programme.

Please note that the price paid for the site is not relevant to the viability appraisal which should be based on a residual land value model. It will however be relevant to provide an existing or alternative use value and any such value should be supported by market evidence and valuation reports.

The price paid for the site may be relevant to the deliverability of the site and you may wish to tell us separately what price was paid for the site in order for deliverability to be taken into account.

It is likely to take approximately 3 weeks to provide a response to viability assessments from receipt of all the necessary information. Where viability is an issue it is strongly recommended that pre-application advice is sought. Such negotiations can take a significant amount of time. There will not be sufficient time during the course of a planning application to have meaningful negotiations on the viability of a scheme. Therefore any application submitted with a viability assessment and which has not benefitted from pre-application advice is likely to be determined on the basis of the information submitted and will not be negotiated during the course of the application.

Norwich City Council operate a paid for pre-application advice service. Further

details of this are available on our [website](#). The [validation requirements](#) detail the information required to be submitted with formal planning applications, including information required on planning obligations.

Negotiation over the level of contributions will take account of the economics of the development as well as any abnormal costs and other planning objectives that may affect the viability of the proposal.

Proven impact on viability will be a material consideration in the assessment of a planning application. The relevant weight given to this and any failure to comply with development plan policy will be considered on a case-by-case basis.

If it is apparent that poor viability, or deliverability is due to particular aspects of the design, density or layout it may be appropriate for the design to be amended to address these issues where this would be compatible with other planning policy objectives.

8. Prioritisation

Where it has been agreed that the development in question is unviable with the full package of planning obligations, the planning obligations will be prioritised on the basis of the Councils [Prioritisation Framework](#). This prioritises site specific critical requirements over other essential policy requirements. Decisions on the prioritisation will be for the Council to determine and these decisions will be guided by relevant Council officers.

9. Location of provision

Wherever possible, provision should be made on-site for facilities required through a planning obligation. However, there will be cases where this is neither

practicable, appropriate or within the existing Local Plan policy context. In these instances the council will require financial contributions towards providing these facilities at an appropriate alternative location.

The council will consider the issue of whether facilities are to be provided on or off-site on a case-by-case basis. However, where affordable housing obligations are required it is expected that in all but very exceptional cases provision will be on-site.

The City Council Cabinet have adopted an [interim statement on affordable housing](#) which will have weight in the determination of planning applications. The document sets out the exceptional circumstances where an off-site contribution to affordable housing may be acceptable and establishes a methodology for the calculation of payments.

10. Procedure for drafting agreements

It will be necessary to complete a legal agreement or suitable undertaking before planning permission can be granted.

Where there are delays in completing the S106 agreement which may lead to the application running over its 8 or 13 week determination period the application is likely to be refused on the basis of a lack of any suitable planning obligation even if there are no other reasons for refusal. The onus is on the applicant to supply the necessary undertaking or agreement to adequately secure the relevant obligations.

In order to avoid delays during the application process, either a draft planning obligation will need to be submitted with the planning application

or instruction forms to allow our solicitors to draft an agreement.

Developers will be required to pay for the city council's costs and where appropriate the county council's costs in drafting, negotiating and completing the agreement. We will therefore also require a solicitors undertaking to cover our legal costs in processing and completing the legal agreement or undertaking. This will be required prior to any legal work being carried out on the agreement. Further guidance is given in the Councils validation requirements.

Applicants are strongly advised to get professional legal advice, but if they choose not to do so, we would require full payment of our initial legal fees up front.

The S106 instruction forms attached at appendix A will need to be completed. These will detail the obligations which are required (the Heads of Terms) and provide a solicitors undertaking for the City Council to draft/consider, negotiate and complete the agreement. The amount of the initial undertaking will need to be discussed with the case officer in consultation with the Councils solicitors. The solicitors undertaking cannot be completed by the applicant, it must be completed by the applicants solicitor. It is recommended that pre-application discussions are held prior to the submission of any planning application where the heads of terms can be discussed and agreed with the case officer. Norwich City Council operate a paid for pre-application advice service. Further details of this are available on our website.

The City Council wishes the agreement to be completed quickly and to ensure that the costs of completing the agreement are kept to a minimum. To

achieve this, the council will seek wherever possible to use standard templates for the issues to be included, and to minimise the involvement of the council's legal representatives in any negotiation. Attached at appendix B is a S106 template which includes standard clauses for obligations which are often included in S106 agreements. This can be used as a template where the applicant's solicitors are providing a first draft.

11. Submission of undertakings

As an alternative to an agreement an undertaking can be submitted with any planning application in order to meet the policy requirements for any obligations. It is important, if an undertaking is submitted, that it satisfactorily secures the relevant provisions.

A solicitors undertaking to cover our legal costs in reviewing the undertaking will also be required.

The draft agreement given at appendix B provides typical clauses which the Council would expect to be included in an undertaking. Please however bear in mind that an undertaking cannot place any obligations on the Council or County Council such as requirements to pay commuted sums back to the applicant if unspent. For this reason undertakings are rarely used.

12. Financial contributions

All financial contributions contained in planning agreements or undertakings will be index linked using either the RICS Building Cost Information Service All in Tender Index or the Retail Prices Index to the date of the committee resolution or delegated recommendation to approve the application.

Unless otherwise agreed, all commuted payments should be triggered on first occupation of the development. For significant major applications where development is phased, payments can be triggered on first occupation of each phase.

Planning agreements or undertakings shall also provide for interest to be paid on any late payments at the annual rate of 2 per cent above base rate.

Repayment of unspent contributions plus any interest incurred on it will be possible where an agreement is entered into. The time period depends on the particular piece of infrastructure or service the monies are assigned to.

13. Outline applications

It will be necessary to secure obligations at the outline planning application stage. There will be cases where final numbers of dwellings or sizes of floor space are not fixed in which case it may be necessary to include formulae within the agreement itself to ensure the necessary flexibility is in place.

14. Variations of obligations

It may be necessary to vary or amend an obligation. This would usually occur where there is a proposal to amend an existing consent or where an application to vary a condition has been submitted.

A planning obligation may not be modified or discharged except by agreement between the authority and the person or persons against whom it is enforceable (or their successors). This would be via a deed of variance under S106A of the Town and Country Planning Act 1990 as amended.

Developers will be required to pay for the council's costs in drafting,

negotiating and completing any deed of variance.

There will be occasions where developers wish to enter into negotiations on the content of a S106 agreement following its completion and the grant of planning consent due to concerns over viability. The council is happy to enter into such negotiations, however will require payment for officer's time spent undertaking these negotiations. The guidance on viability at section seven above will be relevant to such negotiations.

In order to start these negotiations we will need a request in writing, along with the viability information detailed at section seven above. On receipt we will provide advice on the initial fee required to undertake these negotiations. This will include the costs of any third party professional fees. The fee will need to be received prior to any work taking place. Officer time will be recorded and charged by the hour and any unspent monies will be refunded at the end of the process. Equally if the time spent is likely to exceed the initial payment further monies are likely to be sought.

This process does not provide for any amendments to the details or conditions of the original consent, only the content of the S106 agreement can be amended. Ultimately the decision on whether to agree to an amendment to the S106 will be with elected members of the City Councils Planning Applications Committee.

The applicant/developer should be aware that if the Council decide not to agree to an amendment there is no right of appeal. The alternative is to submit a new application for planning permission where there would be a right of appeal.

15. Further guidance and useful links

- [DCLG Planning Obligations Practice Guidance](#)
- [Law Society's Model Planning Obligation](#)
- [Circular 11/95, The Use of Conditions](#)
- [Community Infrastructure Regulations 2010](#)

16. Contacts

Planning Services, Norwich City Council,
City Hall, St. Peter's Street, Norwich,
NR2 1NH.

e-mail: planning@norwich.gov.uk

For queries relating to county council obligations only:

- Planning Obligations Team Leader
Norfolk County Council, County Hall,
Martineau Lane, Norwich, NR1 2DH

e-mail: stephen.faulkner@norfolk.gov.uk

Appendix A S106 Instruction Forms

1. Application Details

Application Number (if known)	
Informal Reference Number (if known)	
Planning Case Officer (if pre-application with whom discussions have taken place) If no pre-application discussions have taken place we would strongly advise contacting us to discuss your proposals prior to submission.	

Site Address Details:	
Address Line 2	
Postcode	

Proposed Development:

2. Applicant Details

Applicant Name:	
Applicant Company:	
Applicant Address:	
Address Line 2	
Town & County	
Postcode	
Tel:	
E-mail:	

3. Agent Details

Agent Name:	
Agent Company:	
Agent Address:	
Address Line 2	
Town & County	
Postcode	
Tel:	
E-mail:	

4. Details of Land Ownership (Including all freehold and leasehold interests. If more than two, please supply details of all further owners on a separate sheet)

Owners Name:	
Owners Company:	
Interest in Land:	
Owners Address:	
Address Line 2	
Town & County	
Postcode	
Tel:	
E-mail:	

Second Owner (if applicable)

Owners Name:	
Owners Company:	
Interest in Land:	
Owners Address:	
Address Line 2	
Town & County	
Postcode	
Tel:	
E-mail:	

Please supply full copies of the register of title. Attached (please tick)

5. Solicitor Details

Solicitor Name:	
Solicitor Company:	
Address:	
Address Line 2	
Town & County	
Postcode	
Tel:	
E-mail:	

6. Details of all Mortgagee Interests (If more than one, please supply details of all further mortgagees on a separate sheet)

Mortgagee Name	
Mortgagee Address:	
Address Line 2	
Town & County	
Postcode	

7. Procedure to be used: (please tick)

- S106 – initial draft to be undertaken by applicants solicitor
- S106 – initial draft to be undertaken by the councils solicitor

8. Matters to be Included in Draft S106 Agreement: (To be agreed with the Case Officer)

List obligations to be included below, including trigger points:

9. Solicitors Undertaking (to be completed by the applicants solicitor)

A solicitors' undertaking to pay the City/County Council's legal fees for considering and negotiating the draft Section 106 Agreement is required before the draft is considered /can be supplied. Please therefore arrange for your solicitors to provide an undertaking in the following form as soon as possible:-

Please accept this as our irrevocable undertaking to pay Norwich City Council's legal fees reasonably incurred in respect of the consideration, drafting and negotiation of the Section 106 Agreement up to and including the sum of £_____ irrespective of whether the Agreement is completed, payment to be made within 7 days of demand in respect of any interim or final bill submitted by Norwich City Council. We acknowledge that this is an initial undertaking and not an estimate of fees which will depend on the actual time spent, and understand that if the costs in this matter exceed £_____ then a further undertaking may be required.

Figures to be discussed and agreed with case officer in conjunction with council solicitor.

Where the County Council are to be a party to the S106 agreement an undertaking is also required for their legal costs. Where this is the case the following should also be completed by the applicants solicitor:

Please accept this as our irrevocable undertaking to pay Norfolk County Council's legal fees reasonably incurred in respect of the consideration, drafting and negotiation of the Section 106 Agreement up to and including the sum of £_____ irrespective of whether the Agreement is completed, payment to be made within 7 days of demand in respect of any interim or final bill submitted by Norwich City Council. We acknowledge that this is an initial undertaking and not an estimate of fees which will depend on the actual time spent, and understand that if the costs in this matter exceed £_____ then a further undertaking may be required.

Figures to be discussed and agreed with case officer in conjunction with council solicitor.

You should also note that this is an initial undertaking and not an estimate of fees which will depend on the actual time spent. If the costs in this matter exceed the above figures then a further undertaking will be required. In addition you may be required to pay fees on a 3 monthly basis if completion has not taken place within that timescale.

Signed	_____
Name	_____
Position	_____
Date	_____

10. When completed this form should be returned to:

Via post:

Norwich City Council, Planning and Regeneration Services, City Hall, St. Peter's Street, Norwich, NR2 1NH

Via E-mail:

planning@norwich.gov.uk

Appendix B S106 Instruction Forms

DATED _____ 201X

CITY COUNCIL OF NORWICH

-AND-

NORFOLK COUNTY COUNCIL

-AND-

XXXXXX

AGREEMENT UNDER SECTION 106
OF THE TOWN AND COUNTRY PLANNING
ACT 1990

Relating to the development of land at

XXXX

and/or maintenance of play areas and play equipment off Site both sums being Index Linked

Or:

the sum of £**XX,XXX.XX** Index Linked

“Children’s On-Site
Playspace Management
Scheme”

means a scheme for the provision in perpetuity and maintenance and management of the Children’s On Site Play Space which scheme shall include details of the proposed maintenance and management specification and arrangements for their provision together with such documentation as shall reasonably satisfy the Council that maintenance and management of the Children’s On Site Play Space will be safeguarded and undertaken by appropriate and financially solvent operators in perpetuity

“Children’s On-Site
Play Space”

Means any area to be provided within the Site as a childrens play area based on a minimum area of 7.5 square metres per child bed space provided

"Commencement Date"

the initiation of the Development by the carrying out on the Site pursuant to the Planning Permission of a material operation within the meaning of Section 56 (4) of the Act (but not including any operations relating to the demolition of any existing buildings or clearance of the Site or decontamination or archaeological investigation) and "Commence" and "Commenced" and "Commencement" shall be interpreted in accordance with this definition

"Development"

the development permitted by the Planning Permission being the redevelopment of part of the site with residential development

“Dwelling Unit”

any residential unit approved pursuant to the Planning Permission built on the Site as part of the Development and “Dwelling Units” shall be construed accordingly

"Education Contribution"

the sum of £**XX,XXX.XX** Index Linked

"Index Linked"	means that any sum payable under the terms of this Agreement which is expressed to be index linked shall be index linked from the (date of Committee) until such time that payment of any sum specified in this Agreement is made, such index linking to be equivalent to any increase or decrease in such sums in proportion to the increase or decrease in the Royal Institution of Chartered Surveyors Building Cost Information Service All in Tender Index in relation to the Education Contribution and the Library Contribution and the Retail Price Index (All Items) in relation to the Child Off Site Play Space Contribution and the Off Site Open Space Contribution or if such index ceases to be published then such other index as the Council shall reasonably determine
"Interest"	means interest at the rate of 2% above HSBC Bank base rate for the time being in force
"Intermediate Tenure Dwellings"	15% of the Affordable Housing Units to be constructed or provided on the Site as part of the Development. These will be shared equity products (e.g. HomeBuy), other low cost homes for sale (e.g. Shared Ownership Dwellings) and Affordable Rent.
"Library Contribution"	the sum of £ XX,XXX.XX Index Linked
"Occupation", "Occupied" and "Occupy"	occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations
"Open Market Dwellings"	those Dwelling Units to be constructed on the Site pursuant to the Development which are to be provided and occupied as general market housing
"Open Space"	Means any area to be provided within the Site as an open space area based on an area of 24 square metres (up to a maximum of 20% of the Site area) per dwelling unit provided on Site

"Open Space Management Scheme"

means a scheme for the provision in perpetuity and maintenance and management of the Open Space which scheme shall include details of the proposed maintenance and management specification and arrangements for their provision together with such documentation as shall reasonably satisfy the Council that maintenance and management of the Open Space will be safeguarded and undertaken by appropriate and financially solvent operators in perpetuity

"Open Space Provision Scheme"

means a statement of how much Open Space will be provided within the Site together with a scheme for the provision and laying out of this Open Space to include but not be limited to the location of the Open Space, proposals for its landscaping, drainage, location of the shared lay space, details of play equipment, specification of play equipment and its provision as well as the timetable for provision of the Open Space

"Off-Site Open Space Contribution"

Either:

the sum of £720.00 per dwelling unit provided to cover purchase of land together with £515.00 per dwelling unit for the design and layout of Open Space off Site both sums to be Index Linked

Or:

the sum of £**XX,XXX.XX** Index Linked

"Qualifying Occupiers"

in relation to any person housed in the Affordable Housing Units, any person who meets the qualifying criteria as having a total household income at a level which prevents them from obtaining on the open market housing accommodation locally which is reasonably adequate for their needs contained in the Council's policies relating to housing allocation (as amended from time to time and as formulated pursuant to the provisions of the Housing Acts 1985, 1996 and 2004 and the Homelessness Act 2002) and ranked in accordance with the sub-regional choice based lettings policy or any successor scheme chosen by the City Council

	or where such persons have been exhausted any person on the Council's housing register that the Registered Provider owning or managing the Affordable Housing Unit on the Site is entitled to house within its rules
"Plan"	the plan annexed to this Agreement
"Planning Permission"	the planning permission to be granted by the Council pursuant to the Application
"Registered Provider"	a provider of Affordable Housing registered in accordance with the provisions of Chapter 3 of Part 2 of the Housing and Regeneration Act 2008
"Shared Ownership Dwelling"	means an Affordable Housing Unit that shall be let on a Shared Ownership Lease
"Shared Ownership Lease"	a Lease of a Shared Ownership Dwelling which shall include arrangements enabling the purchaser to acquire up to 100% of the legal and equitable interest in the Shared Ownership Dwelling at some future date or dates and shall allow a rent to be charged on the remainder of the equitable interest
"Site"	the land at XXXXX , Norwich, Norfolk, NRX XXX shown for the purposes of identification only edged red on the Plan
" XXXXX Land"	means the land edged red on the plan attached and marked " XXXXX "
"Social Rented Units"	85% of the Affordable Housing Units to be constructed or provided on the Site as part of the Development and to be let for a rent upon either a weekly basis or monthly assured tenancy basis not exceeding Tenant Services Authority or any successor Authority target rents and to be let by or on behalf of a Registered Provider
"Sub-regional Choice Based Letting Policy"	the system by which Social Rented Housing is let as used by the Council and as amended from time to time by the Council or any successor scheme chosen by the City Council
"Transportation"	Either:

Contribution”

means the sum of £282.15 per dwelling unit
which sum is Index Linked

Or:

the sum of £**XX,XXX.XX** Index Linked

In this Agreement unless the context otherwise requires:

- (i) references to any party shall include the successors in title and assigns of that party
- (ii) references to clauses and schedules are references to clauses in and schedules to this Agreement
- (iii) any mention herein of any Act or of any Section Regulation or Statutory Instrument shall be deemed to refer to the same source as at any time amended and where such Act Section Regulation or Statutory Instrument has been replaced consolidated or re-enacted with or without amendment such mention shall be deemed to refer to the relevant provision of the updating consolidating or re-enacting Act or Section or Regulation or Statutory Instrument
- (iv) headings in this Agreement shall not form part of or affect its construction
- (v) references to the singular include the plural and vice versa
- (vi) any covenant by the Owner not to do any act or thing includes a covenant not to cause permit or allow the doing of that act or thing

W H E R E A S:

- A. The Council is the Local Planning Authority for the purposes of the Act for the area within which the Site is situated
- B. The Owner is the freehold owner of the Site with title absolute registered at H M Land Registry under title number **NKXXXXXX** and is the freehold owner of the **XXXXXX** Land under title number [**NKXXXXXX**]
- C. The Owner has submitted the Application
- D. The Council has resolved to approve the Application subject to the completion of this Agreement and the need for new development to:
 - 1) provide Children’s Playspace or an Off Site Child Play Space Contribution
 - 2) provide a Transportation Contribution

- 3) provide an education contribution
- 4) provide a library contribution
- 5) provide an Open Space or an Off Site Open Space Contribution
- 6) provide for Affordable Housing Units

2. GENERAL PROVISIONS APPLICABLE TO THIS AGREEMENT

- 2.1 To the extent that they fall within the terms of Section 106 of the Act the obligations contained in this deed are planning obligations for the purposes of Section 106 of the Act which relate to the Development and which are planning obligations enforceable by the Council against the Owner and their successors in title
- 2.2 To the extent that any of the obligations contained in this deed are not planning obligations within the meaning of the Act, they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000
- 2.3 The provisions of this Agreement shall have immediate effect upon the grant of the Planning Permission
- 2.4 This Agreement shall cease to have effect if:
 - 2.4.1 the Planning Permission shall be quashed revoked or otherwise withdrawn
 - 2.4.2 the Planning Permission shall expire prior to the Commencement Date
- 2.5 This Agreement shall be registered as a charge in the Council's Register of Local Land Charges

3. Agreements and Declarations

IT IS HEREBY AGREED AND DECLARED as follows:

- 3.1 No Fetter of Discretion
 - 3.1.1 Save insofar as legally or equitably permitted nothing contained or implied in this Agreement shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions as Local Planning Authority and the rights powers duties and obligations under all public and private bylaws and regulations may be as fully and effectively exercised as if the Council were not a party to this Agreement
- 3.2 Invalidity or Unenforceability of any of the Terms of this Agreement

3.2.1 If any provision in this Agreement shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired

3.3 No Waiver

3.3.1 No waiver (whether express or implied) by the Council of any breach or default by the Owner in performing or observing any of the covenants in this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the covenants or from acting upon any subsequent breach or default in respect thereof by the Owner or its successors in title

3.3.2.1 No person shall be liable under this Agreement for any breach of the covenants contained in this Agreement after that party has parted with its interest in the Site or the part of the Site in respect of which such breach occurs provided that liability will still remain for any breach occurring prior to the parting of any person's interest in the Site or any part thereof in respect of which any such breach has taken place

3.3.2.2 A party parts with its interest in the Site or part of the Site notwithstanding the retention of easements or the benefit of covenants or restrictions in respect thereof

3.3.3 Except for liability arising under clauses 15.2 and 15.4 the Council shall not be liable to any person under this Agreement after that person has parted with all interest in the Site but without prejudice to any liability arising prior thereto

4. Notices

4.1 Any notice document or other correspondence required to be served or given under the provisions of this Agreement shall be in writing and delivered personally or sent by pre-paid letter or facsimile

4.2 The address for any notice or other written communication in the case of each party to this Agreement shall be as follows:-

The Council	Head of Planning Norwich City Council City Hall Norwich NR2 1NH
The Owner	XXXXXX

or such other address for service as may be notified by one party to the other in accordance with the provisions of this clause 4

5. Dispute Resolution

- 5.1 The parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Agreement promptly through negotiations between the respective senior executives of the parties who have authority to settle the same
- 5.2 If the matter is not resolved through negotiation the parties will attempt in good faith to resolve the dispute or claim through an Alternative Dispute Resolution (“ADR”) procedure as recommended to the parties by the Centre for Dispute Resolution.
- 5.3 If the matter has not been resolved by an ADR procedure within 28 days of the initiation of such procedure or if either party will not participate in an ADR Procedure the dispute may be referred by either party to arbitration for decision by a person appointed by agreement between the parties or in default of agreement by the President for the time being of the Institute of Civil Engineers who shall act as an expert and not as an arbitrator and whose decision shall be final and binding upon the parties
- 5.4 Nothing in this clause shall apply to the recovery of liquidated sums or prevent the parties from commencing or continuing court proceedings

6. Third Parties

- 6.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no person who is not a party to this Agreement (other than a successor in title to one of the original parties) shall be entitled in that person's own right to enforce any provisions of this Agreement pursuant to the provisions of the said Act
- 6.2 The expressions “the Council” and “the Owner” shall include their respective successors and assigns as appropriate within the terms of Section 106 of the Act

7. Costs

- 7.1 The Owner shall on completion of this Agreement pay the Council's reasonable legal costs incurred in the preparation negotiation and completion of this Agreement

8. Payment of Interest

- 8.1 The parties shall pay Interest on any monies due under the provisions of this Agreement in the event of late payment for the period from the date the monies should have been paid to the date the money is received

9. VAT

9.1 All consideration given in accordance with the terms of this Agreement shall be exclusive of any VAT properly payable

9.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Agreement, then to the extent that VAT has not previously been charged in respect of that supply the person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly

10. Jurisdiction

10.1 This Agreement is to be governed by and interpreted in accordance with the law of England and Wales

11. Compensation

11.1 The Owner agrees that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of the Agreement are hereby waived

12. Title Warranty

12.1 The Owner hereby covenants that it is the freehold owner of the Site and has full power to enter into this Agreement and that the Site is free from all charges or other encumbrances

13. Notification

13.1 The Owner agrees to notify the Council of the reaching of any of the occupation or completion thresholds relating to the Dwelling Units contained in this Agreement, such notification to be given within 30 days of reaching such threshold

14. Planning Obligations

The Owner hereby covenants with the Council as follows:

14.1 prior to Occupation of any Dwelling Unit to pay to the Council the Childrens Off-Site Playspace Contribution unless the Children's On Site Playspace is being provided under clause 14.3

14.2 prior to Occupation of any Dwelling Unit to pay to the Council the Transport Contribution

14.3 prior to 75% Occupation of Dwelling Units on the Development to provide the Children's On Site Playspace in lieu of the Children's Off Site Playspace Contribution

- 14.4 prior to the Occupation of any Dwelling Unit comprised in the Development to pay the County Council the Library Contribution
- 14.5 prior to Occupation of any Dwelling Unit comprised in the Development to pay to the County Council the Education Contribution
- 14.6 Affordable Housing
 - 14.6.1 not to commence Development on the Site pursuant to the Permission until a scheme for the provision and long term management of the Affordable Housing Units has been submitted to and approved by the Council ("the Affordable Housing Scheme") which Scheme for the avoidance of doubt shall deal with and include the location and tenure type of the Affordable Housing Units within the Site, the location of the Affordable Rental Units and Intermediate Tenure Dwellings to be provided, the percentage of the equitable interest in any Shared Ownership Dwelling upon grant of the Lease the level of any Affordable Rent to be charged, the draft transfer or Lease to an approved Registered Provider, the construction and provision of the Affordable Housing Units in phases during the Development implementation of the Scheme and terms including timing for acquisition and management and upon approval such Scheme shall be deemed to be incorporated into the provisions of this Agreement
 - 14.6.2 upon approval of the Affordable Housing Scheme by the Council to implement the Affordable Housing Scheme as approved and in accordance with the provisions contained in the Affordable Housing Scheme
 - 14.6.3 not to occupy more Open Market Dwellings on the Site than permitted under the terms of the Affordable Housing Scheme until such time as the Affordable Housing Scheme has been fully implemented and all of the Affordable Housing Units comprised within the Development have been constructed and are ready for occupation and have been transferred or leased to a Registered Provider
 - 14.6.4 not to use the Affordable Housing Units for any purpose other than for Affordable Housing
 - 14.6.5 not to allow the Affordable Housing Units to be occupied other than by Qualifying Occupiers
 - 14.6.6 the Registered Provider shall not dispose of its interest in the freehold of the Affordable Housing Units or any part thereof (except by way of mortgage) other than to any other Registered Provider or to a purchaser of an Affordable Housing Unit pursuant to any right to buy or right to acquire as referred to in the paragraph 14.6.7 below

- 14.6.7 paragraphs 14.6.4, 14.6.5 and 14.6.6 above shall not be binding upon any mortgagee in possession of the Affordable Housing Units or part thereof who exercise its power of sale nor any receiver or manager (including an administrative receiver) appointed by a mortgagee of the Affordable Housing Units and shall cease to apply to any of the Affordable Housing Units where the Registered Provider shall be required to dispose of such units pursuant to a right to buy or right to acquire under Part 5 of the Housing Act 1985 or Section 16 of the Housing Act 1996 or Section 172 of the Housing and Regeneration Act 2008 or any similar or substitute right applicable or shall be required to sell a final tranche of equity to a tenant pursuant to the terms of any Shared Ownership Lease granted in respect of such unit
- 14.6.8 under the transfer of an Affordable Housing Unit to the Registered Provider such transfer shall be free from encumbrances (other than encumbrances similar to the Planning Obligations) and shall contain the following provisions:- a grant in favour of the Registered Provider of all rights of access and passage of services and other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Units and reservations of all rights of access and passage of services and rights of entry reasonably necessary for the purposes of the remainder of the Development

14.7 Open Space

- 14.7.1 not to Implement the Development until the Council has agreed in writing the Open Space Provision Scheme
- 14.7.2 not to occupy or permit occupation of any Dwelling on the Development until the Council has agreed in writing the Open Space Management Scheme
- 14.7.3 to provide and layout the Open Space and all landscaped areas in accordance with the agreed Open Space Provision Scheme
- 14.7.4 to provide the Open Space in accordance with the Open Space Provision Scheme and to maintain the Open Space in accordance with the Open Space Management Scheme and to ensure that no structures or buildings shall be placed or erected upon the Open Space nor shall any alterations be made to it without the written consent of the Council
- 14.7.5 not to use or permit to be used the Open Space for any purpose other than that of Open Space as defined in this Deed

14.8 Off Site Open Space Contribution

- 14.8.1 The Owner in lieu of providing Open Space may pay to the Council the Off Site Open Space Contribution prior to Implementation and

in the event of payment of the Off Site Open Space Contribution clauses 14.7.1 to 14.7.5 inclusive of this agreement are of no effect

15. The Council covenants with the Owner as follows:

- 15.1 the Council covenants with the Owner to use any Childrens Off-Site Playspace Contribution for the creation and/or maintenance of additional children's playspace and/or the improvement and maintenance of currently existing play space in any of the Sectors numbered 1, 3, 5 and 11 as identified in the Open Space and Play Provision Supplementary Planning Document to include capital spending on play equipment
- 15.2 the Council covenants with the Owner that if any part of the Children's Off-Site Playspace Contribution is not expended by the Council within ten years of receipt of the date of receipt of the balance of the Children's Off-Site Playspace Contribution then the Council shall repay to the payer so much of the same as shall remain uncommitted together with a reasonable rate of interest thereon
- 15.3 the Council covenants with the Owner to use the Transport Contribution towards enhanced cycling facilities within the area
- 15.4 the Council covenants with the Owner that if any part of the Transport Contribution is not expended by the Council within ten years of the date of receipt of the balance of the Transport Contribution then the Council shall repay to the payer so much of the same as shall remain uncommitted together with a reasonable rate of interest thereon.
- 15.5 the Council covenants with the Owner that upon satisfaction of any of the Owner's obligations under this deed subject to adequate information having been received by the Council it will issue written confirmation of that fact upon request and will amend the Register of Local land Charges accordingly
- 15.7 the Council covenants with the Owner to use any received Off Site Open Space Contribution for the purposes of providing or maintaining public open space
- 15.8 the Council covenants with the Owner that if any part of the Off Site Open Space Contribution is not expended by the Council within ten years of the date of receipt of the balance of the Off Site Open Space Contribution then the Council shall repay to the payer so much of the same as shall remain uncommitted together with a reasonable rate of interest thereon

16. The County Council covenants with the Owner as follows:

- 16.1 the County Council covenants with the Owner to hold the Education Contribution in an interest bearing account and to apply it and any interest

accrued upon it only towards the improvement of education facilities serving the Development

- 16.2 the County Council covenants with the Owner to hold the Library Contribution in an interest bearing account and to apply it and any interest accrued upon it only towards the provision of library facilities serving the Development

EXECUTED by the parties hereto as a deed on the date written above

THE CORPORATE SEAL of)
THE CITY COUNCIL OF NORWICH)
was hereto affixed in the presence of)

.....
being an officer of the Council authorised
to attest the use of the Corporate Seal

THE COMMON SEAL of)
NORFOLK COUNTY COUNCIL)
Was hereto affixed in the presence of)

Head of Law

Executed as a deed by **XXXXXX**)
in the presence of:)

.....
Director

.....
Director/Secretary

Signed and delivered as a deed for and)
on behalf of **XXXXXX** by a duly authorised)
Attorney in the presence of:

.....
Attorney

.....
Witness