

# New Policy Document for Planning Obligations

## Consultation questions

We are seeking your views on the following questions on the Government's proposal for a new policy document on the use of planning obligations. **If possible, we would be grateful if you could please respond by email.** Alternatively, we would be happy to receive responses by post.

Email responses to: [planning.obligations@communities.gsi.gov.uk](mailto:planning.obligations@communities.gsi.gov.uk)

Written responses to:

Natasha Trinidad  
Communities and Local Government  
Zone 1/E2  
Eland House  
Bressenden Place  
London  
SW1E 5DU

### (a) About you

#### (i) Your details

Name:	Pat Aird
Position:	Head of National Planning Advice
Name of organisation (if applicable):	English Heritage
Address:	1 Waterhouse Square, 138-142 Holborn, London EC1N 2ST
Email Address:	<a href="mailto:pat.aird@english-heritage.org.uk">pat.aird@english-heritage.org.uk</a>
Telephone number:	020 7973 3826

**(ii) Are the views expressed on this consultation an official response from the organisation you represent or your own personal views?**

Organisational response                      yes

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<sup>1</sup> CLG (2010) New Policy Document for Planning Obligations: Consultation  
(see: [www.communities.gov.uk/planningandbuilding/planning/planningpolicyimplementation/planningobligations](http://www.communities.gov.uk/planningandbuilding/planning/planningpolicyimplementation/planningobligations))

Personal views

**(iii) Please tick the *one* box which best describes you or your organisation:**

- Private developer or house builder
- Housing association or RSL
- Land owner
- Voluntary sector or charitable organisation
- Business
- Parish council
- Local government (i.e. district, borough, county, unitary, etc.)
- Regional government
- National Park
- Other public body (please state) Y English Heritage
- Other (please state)

**(iv) What is your main area of expertise (please tick as many boxes that apply)?**

- Planning y
- Legal
- Housing
- Economic or commercial development
- Environment y
- Transport
- Other (please state)

**(v) Do your views or experiences mainly relate to a particular geographical location?**

- South West
- South East
- East of England
- East Midlands
- West Midlands
- North West
- Yorkshire and The Humber
- North East
- London
- All of England y
- Wales
- Other (please comment)

**(vi) Would you be happy for us to contact you again in relation to this consultation?**

Yes

## (b) Consultation questions

### Question 1: Key principles

The policy content of *Circular 5/05: Planning Obligations* has largely been retained in the *Key Principles* section of the Annex.

**1(a) – Do you agree with the principles set out in paragraphs PO1.1 to PO1.5?**  
Yes

**1(b) – If yes, do you have any comments on the drafting of these policies or think that any additional principles should be provided (please state why in either case)?**

The principle of Enabling Development needs to be included in accordance with PPS5 policy HE11.1. Suggested wording at the end of PO1.2: *However, where the benefits of securing the future conservation of a heritage asset outweighs the disbenefits of departing from the development plan a planning obligation should be used to ensure the benefits are secured.*  
EH would be happy to assist with re-drafting.

**1(c) – If no, please state which principles you disagree with and why?**

n/a

### Question 2: Three tests

The Community Infrastructure Levy (CIL) regulation 122 will place into law the three tests described in this section, which will make it unlawful for a planning obligation, concerning a development that is capable of being charged CIL, to be taken into account in determining a planning application. The three tests are proposed to remain a material consideration for all other uses of planning obligations.

**2(a) – Do you agree with the principles set out in paragraph PO2.1?**  
Yes

**2(b) – If yes, do you have any comments on the drafting of these policies or think that any additional principles should be provided (please state why in either case)?**

no

**2(c) – If no, please state which principles you disagree with and why?**

n/a

**Question 3: Maintenance payments**

The policy content of *Circular 5/05: Planning Obligations* has largely been retained in the *Maintenance Payments* section of the Annex.

**3(a) – Do you agree with the principles set out in paragraphs PO3.1 to PO3.3?  
No**

**3(b) – If yes, do you have any comments on the drafting of these policies or think that any additional principles should be provided (please state why in either case)?**

n/a

**3(c) – If no, please state which principles you disagree with and why?**

**PO3.3 Where an asset is intended for wider public use, the principle that the cost of subsequent maintenance and other recurrent expenditure should be borne by the body or authority in which the asset is to be vested, and not through developer contributions,**

Heritage assets that are an integral part of our infrastructure such as railway lines, viaducts, canals and other waterways, bridges, weirs, parks and public spaces, can be an important contributor to sustainable economic development. These heritage assets are often also valued local landmarks which add to local distinctiveness and are an essential element of place shaping. They have heritage value in the associations they hold and instrumental value for their potential use for leisure activities and social interaction. They can be used and adapted to increase connectivity and permeability, within and between new developments and regeneration schemes and existing development, particularly in urban areas.

Repairing, maintaining, adapting and enhancing these heritage assets ensures continuing use of existing infrastructure and networks, contributes to retaining green infrastructure, and canals and waterways can assist in flood management and development of renewable energy technologies to mitigate and adapt to the impact of climate change.

In these circumstances developer contributions for subsequent maintenance and other recurrent expenditure may be justified. However, as drafted the policy would exclude this possibility and it has the potential to discourage investment in heritage assets and would therefore have a disproportionate impact on the historic environment as a whole.

#### Question 4: Relationship with conditions

The policy content of *Circular 5/05: Planning Obligations* has largely been retained in the *Relationship with Conditions* section of the Annex. The use of planning conditions has been subject to a separate consultation, launched on 21 December 2009, to replace the existing policy in Circular 11/95 with a new policy Annex as part of the Development Management Planning Policy Statement (which has also been subject to consultation from the same date).<sup>2,3</sup>

**4(a) – Do you agree with the principles set out in paragraphs PO4.1 to PO4.2?**

Yes

**4(b) – If yes, do you have any comments on the drafting of these policies or think that any additional principles should be provided (please state why in either case)?**

no

**4(c) – If no, please state which principles you disagree with and why?**

n/a

#### Question 5: Pooled contributions

The legal framework with which planning obligations may be used to seek pooled contributions for infrastructure items that are capable of being funded by the Community Infrastructure Levy (CIL) has been changed by CIL regulation 123. Policies in this section of the Annex reflect these new legal developments.

**5(a) – Do you agree with the principles set out in paragraphs PO5.1 to PO5.6?**

Yes

**5(b) – If yes, do you have any comments on the drafting of these policies or think that any additional principles should be provided (please state why in either case)?**

It is not clear whether heritage assets which are part of infrastructure e.g historic bridges and weirs could be funded through CIL as they would not constitute new provision and may be excluded by proposed policy PO3.3.

<sup>2</sup> CLG (2009) Improving the use and discharge of planning conditions: Consultation (see: [www.communities.gov.uk/publications/planningandbuilding/improvingplanningconditions](http://www.communities.gov.uk/publications/planningandbuilding/improvingplanningconditions))

<sup>3</sup> CLG (2009) Development Management: Proactive Planning from Pre-Application to Delivery- Consultation (see: [www.communities.gov.uk/publications/planningandbuilding/developmentmanagementconsult](http://www.communities.gov.uk/publications/planningandbuilding/developmentmanagementconsult))

**5(c) – If no, please state which principles you disagree with and why?**

n/a
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**Question 6: Planning framework**

The policy content of *Circular 5/05: Planning Obligations* has largely been retained in the *Planning Framework* section of the Annex. Some policies have been revised to reflect wider changes to the planning system as set out in Planning Policy Statement 12: Local Spatial Planning.

**6(a) – Do you agree with the principles set out in paragraphs PO6.1 to PO6.4?**

**Yes**

**6(b) – If yes, do you have any comments on the drafting of these policies or think that any additional principles should be provided (please state why in either case)?**

**6(c) –**

no
n/a

**6(d) – Do you think that local communities have sufficient opportunity to comment on proposed developer contribution policies to ensure that local needs arising from new development are properly understood and addressed?**

**Yes**

**6(e) – If not, how do you think this might be improved?**

n/a
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**Question 7: Transparency and accountability**

The policy content of *Circular 5/05: Planning Obligations* has largely been retained in the *Transparency, reporting and implementation* section of the Annex.

**7(a) – Do you agree with the principles set out in paragraphs PO7.1 to PO7.4?**

**Yes**

**7(b) – If yes, do you have any comments on the drafting of these policies or think that any additional principles should be provided (please state why in either case)?**

no

**7(c) – If no, please state which principles you disagree with and why?**

n/a

The Government has set out in the Empowerment White Paper *Communities in Control: Real People, Real Power* (launched in July 2008) its desire to explore whether it can strengthen the information provided to local communities about how planning obligations have been delivered by developers (for example, information about when payments have been made) and how the local authority has put those contributions to use. Greater transparency will enable local communities to hold local authorities to account if infrastructure agreed in a planning obligation and paid for by a developer does not come forward. It will also help ensure that local authorities do not amass significant levels of unspent developer contributions without good reason.

**7(d) – Do you agree with the proposal at Paragraph PO7.3 that local planning authorities should publish on their websites on a quarterly basis details of all planning obligations agreed and delivered during that period, including any monies that remain unspent and their intended use?**

Yes

**7(e) – If no, what else do you think could be done to improve the transparency of planning obligations to provide information to the public?**

n/a

#### **Question 8: Appeals modifications and discharge**

The policy content of *Circular 5/05: Planning Obligations* has largely been retained in the *Appeals modifications and discharge* section of the Annex.

**8(a) – Do you agree with the principles set out in paragraph PO8.1?**  
Yes

**8(b) – If yes, do you have any comments on the drafting of these policies**

no

or think that any additional principles should be provided (please state why in either case)?

**8(c) – If no, please state which principles you disagree with and why?**

n/a

### **Question 9: Guidance**

The Government is intending to review and replace the current *Planning Obligations: Practice Guidance*, which was published in 2006, in light of the policy changes set out in this document, as well as building upon the latest best practice and taking account of the introduction of CIL.

**9(a) – Do you agree that new guidance on the use of planning obligations should be provided?**

**Yes**

**9(b) – If yes, who do you think would be best to provide such guidance? And, 9(c), what issues or topics should be covered specifically in any new guidance?**

CLG.

English Heritage would be pleased to help draft specific guidance in the light of these proposed policies on the use of S106 obligations for

- Enabling development
- Publication and dissemination of archaeological investigations (WSI) where the evidential value of a heritage asset is affected
- CIL/S106 contributions for heritage assets that are part of infrastructure.

It would also be helpful to have further guidance on what constitutes infrastructure and whether this would include some types of heritage assets

### **Question 10: Any other questions**

**10(a) – Do you have any other comments that you would like to make about matters raised in the draft policy Annex which are not covered by the questions above?**

**Yes**



**10(b) – If yes, please comment.**

n/a
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