

## APPENDIX B – Schedule of Consultation Responses



**Schedule of Consultation Response to Barnet's Planning Obligations SPD**

<b>Ref</b>	<b>Respondent</b>	<b>SPD Section / paragraph</b>	<b>Comments</b>	<b>Councils Response</b>
1	Natural England	General	In general terms our principal concern with regard to the development of the Planning Obligations Supplementary Planning Document (SPD) is that essential green infrastructure needs should be identified and played into the process. Since it is now widely accepted that the provision of a sustainable network of green infrastructure is an essential component of the infrastructure necessary to support growth.	The Council will be producing a Green Infrastructure Supplementary Planning Document.
2		2.25	Paragraph 2.2.5 in respect of Strand 1: "Absolute protection of Green Belt, Metropolitan Open Land and other valued Open Space from inappropriate development" is welcomed and to be encouraged. Also welcomed and to be encouraged is the reference under paragraph 2.2.8 – Consideration of Planning Obligation for "Provision of Public Open Space and improving access to Public Open Space", together with "Environmental Improvements".	We welcome this support
3		3.4	The retention, enhancement and creation of biodiversity opportunities and infrastructure (Section 3.4 – Environmental Requirements: Energy Efficiency, Air Quality, Noise pollution and Biodiversity) is also welcomed and to be encouraged.	We welcome this support
4	Middlesex University, Andy Karski	1.3.1	The University welcomes and is supportive of the Council's initiative in bringing its S106 SPD into line with the CIL SPD, on which the University has previously commented. We also welcome the introductory acknowledgement in para 1.3.1 of the need for the Council to provide flexibility in the operation of its S106 planning obligations process in the light of the viability of development projects in continuing difficult economic conditions.	We welcome this support
5		General	The SPD document very usefully provides an update of the new legislative context, whereby the use of planning obligations is for the first time restricted by law to complying to the tests of being necessary to make the development acceptable in planning terms, directly related to the development, and fairly and	We welcome this support

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			reasonably related in scale and kind to the development. The University has stressed the importance of these in all its previous negotiations with the Council on S106 obligations, and this legislative change and the Council's recognition of it as underpinning the SPD will be very helpful in the future.	
6		2.4.5	The University also welcomes and supports the explicit recognition that CIL charges and Planning Obligations do not overlap, and that individual developments are not charged for the same item twice under CIL and S106. However, the University would like it acknowledged that, where community and social infrastructure providers are exempt from CIL by virtue of charitable status, or are 0 rated because their contribution has or will be already have been made in kind, they should not be charged under S106 for items that would have been covered by CIL. Could the Council confirm that this concern is adequately covered in section 2.4, and particularly para 2.4.5?	Developments must mitigate for the local impacts so whilst charitable institutions and social housing are exempt or eligible for relief from CIL they cannot be exempt from Planning Obligations.
7		3.4.1	The University has no comments to make on sections 3.1 to 3.3 of the proposed Planning Obligations Framework. We have one reservation, however, on the environmental requirements relating to energy efficiency. The wording of the third sentence in para 3.4.1 poses us some problems in stating: "Where relevant a planning obligation will be required in relation to a decentralised heat network where for example a contribution to a feasibility study is necessary or a commitment to connect to a future heat network is necessary." First, it would be helpful to state that a S106 obligation may only be used where a planning condition is inadequate. (For example future proofing a development in design to allow for future connection to an area network could be achieved by an appropriate condition). Secondly, the University objects to the example cited of a S106 commitment to connect to a future heat network. The University has previously objected to such an obligation in its response to the Sustainable Design & Construction SPD on the grounds that it (along with most developers) would not be able to enter into a legal agreement to a future action whose costs and implications are wholly unknown and could prove unviable and unreasonable. We	The supporting text has been amended.

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			suggest that the third sentence omits the examples and is re-drafted as: "Where relevant, and not achievable through a planning condition, a planning obligation may be required in relation to a decentralised heat network."	
8		4.1.6	The University notes that section 4, dealing with process and procedures has been shortened from that in the previous SPD. While there is no objection to the remaining content, some of the material omitted might have been helpful to include. At the end of para 4.1.6 it would be helpful to include the previously helpful, explanatory sentence, and to make reference in this to the appropriate payment triggers negotiated with the applicant. An additional sentence could read: "The required planning obligation will normally be negotiated with the applicant, the "heads of terms" and payment triggers agreed, and reported to a relevant planning committee as part of the evaluation of the planning application."	The supporting text has been amended.
9		4.1.7	It would be also helpful to include the former para 6.6 under the Resolution to Grant Permission heading as currently there is only reference to processes following the resolution to grant. This described the decision making process and made useful reference to the delegation of powers to the Head of Planning.	The supporting text has been amended.
10		4.3	Our final comments relate to section 4.3 Cost Recovery. The University supports the distinction made between charges at the Execution Stage and the Implementation Stage that has been carried forward from the previous SPD. It welcomes the flexibility in the wording for the collection of sums payable at the Implementation Stage, recognising that payment triggers can be agreed at other than the legal commencement of development/implementation. The University strongly supports the principle, agreed by the Council in its negotiations on University schemes, that payment triggers are related to the design and implementation of S106 schemes that are required as mitigation or compensation obligations (eg off-site traffic and highways measures, public realm improvements, public open space enhancement).	We welcome this support

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11		4.3.4	<p>The table in para 4.3.4 setting out cost recovery charges, suffers from a lack of flexibility, that the previous charging schedule had. Para 4.3.3 acknowledges that the appropriate fee for administering and monitoring S106 agreements "will vary dependent on the value of the contribution and the number of obligations - each 'topic area' will require a distinct obligation to be drafted." It should be noted that as well as value and number of obligations, the nature of the obligation will also be a variable that will influence how much officer time may be required in the future.</p> <p>The charging table should have in it the scope for variation and negotiation that the previous SPD provided. This can be achieved by stating that the percentage figures cited for each value band are "up to" the percentage stated (as was previously the case).</p>	The supporting text has been amended
12			<p>We note that there is an arithmetic anomaly in the table as cited that is probably unintended. Having a higher percentage charge for a value band that is less than the one that follows it could mean that an applicant with a higher aggregate contribution value pays less in cost recovery than one with a greater S106 contribution total. For example, applying the table inflexibly would mean that someone with a total of £27,500 in contributions pays less in cost recovery than someone with a total of £24,999 as the latter is in a lower value band but with a higher cost recovery percentage. We suggest that this is dealt with by the first three value thresholds each having a cost charge band of "up to" 4%.</p>	The supporting text has been amended
13	Robert Newton	1.3.1	<p>In the the third line of the second sentence of paragraph 1.3.1, insert the words "with regard to affordable housing provision," between the words "process" and ", whilst", so that the sentence now reads:</p> <p>The Council will continue to enable development to be brought forward during the economic downturn by providing flexibility in the operation of its s106 planning obligations process with regard to affordable housing provision, whilst continuing to ensure the sustainability of schemes through delivery of supporting infrastructure.</p>	The suggested change would be confusing as affordable housing is not the only planning obligation able to be required.

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14		New paragraph	<p>At the end of paragraph 1.3.1, add a new paragraph 1.3.2 that reads:</p> <p>However, it should be clear that, the only economic viability test will be in respect of any affordable housing element in the proposed development. Otherwise, so as to safeguard the position of future residents of the development and existing residents of the Borough, the provision of justifiable and appropriate social infrastructure will not be compromised because of viability issues. Equally, the Council will not compromise its Local Plan Policies by allowing overdevelopment of a site in order to help a developer achieve viability. In short, the community will not be called upon to subsidise the development by foregoing justified planning obligations or allowing overdevelopment.</p>	<p>The combined impact of CIL, Planning Obligations, Planning Conditions, Affordable Housing, 'in kind contributions' of land and any other costs upon development need to be considered when reviewing a developments viability. Part of this review process includes considering whether the scale and form of the development is acceptable in policy terms. It is not reasonable to identify affordable housing as the only 'flexible' cost in the process and remove the need to consider community uses or other requirements.</p>
15		2.1.3	<p>In third line of the second sentence in paragraph 2.1.3 insert the words "and employment" between the words "housing" and "growth" so that the sentence now reads:</p> <p>The IDP is a living document as it provides an ongoing assessment of local infrastructure needs. Appendix 1 of the IDP details all critical and necessary infrastructure projects that are key to supporting housing and employment growth in Barnet.</p>	<p>The supporting text has been amended.</p>
16		2.1.5	<p>The second sentence of paragraph 2.1.5 is unclear and should be re-written. What does "not constitute funding" mean? "Should it read ""as a reason for refusing planning permission" rather than "for granting planning permission" as presently written?</p>	<p>This is the form of words used in the regulations which means that the council cannot use the provision of funding from a section 106 agreement as a reason to grant planning permission.</p>
17		2.2.2	<p>At the end of paragraph 2.2.2, add a new sentence that reads:</p> <p>Our approach is set out in paragraphs 1.3.1 and 1.3.2.</p>	<p>Paragraph 1.3.1 sets the context and it is not necessary to cross refer.</p>

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18		2.2.17	<p>In the second line of paragraph 2.2.17, replace the words “training and enterprise” with the words “the provision of affordable workspace, training and enterprise” so that it now reads:</p> <p>The purpose of the SPD is to provide advice and information to developers about the level of Planning Obligations required for the provision of affordable workspace, training and enterprise.</p>	The supporting text has been amended.
19		New paragraph	<p>The Enterprise, Employment and Training SPD is expected to introduce a number of measures to utilise Planning Obligation contributions to facilitate the provision of affordable workspace, including the provision of land and construction costs for new workspace premises. As described more fully in the Adopted Local Plan Core Strategy paragraph 13.6.5, providing affordable and flexible workspace helps small to medium businesses, particularly home-workers in the knowledge economy and those engaged in creative industries, to continue their valuable contribution to Barnet's prosperity. There is presently a scarcity of small business premises in the Borough which start-up home working and other businesses can expand into. The construction of new units using Planning Obligation contributions can play an important part in filling the gap in provision that is not being met by the private sector. An added advantage is that investment of planning obligation contributions into land and buildings, over time, provides an income that could be used to fund future employment initiatives, whilst training contributions are one-off and may not always be spent productively.</p>	It would be premature for the sort of detail suggested to be included until a draft of the Enterprise, Employment and Training SPD is published.
20		2.3.6	<p>After paragraph 2.3.6, add a new paragraph 2.3.7 that reads:</p> <p>For the avoidance of doubt, when the size of an approved development is increased, the planning obligations due will be re-assessed to take account of the additional impact of the development. Examples are where the number of residential units is increased or where there is an increase in the number of habitable rooms contained in the existing approved residential units.</p>	Part of the review process when considering viability includes considering whether the scale and form of the development is acceptable.



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21		2.4.1	<p>Replace paragraph 2.4.1 with the following new paragraph:</p> <p>This Supplementary Planning Document provides the framework to address issues of financial viability. As described in Paragraph 1.3.1, the Council will continue to enable development to be brought forward and facilitate the deliverability of individual schemes on a case by case basis by means of an economic viability test in respect of any appropriate affordable housing element. However, so as to safeguard the position of existing and future residents, the required provision of justifiable and appropriate social infrastructure will not be compromised because of viability issues.</p> <p>Historically, there has been some flexibility in the operation of negotiated planning obligations where there have been viability concerns. Operationally, the system has not been open and transparent or, in practice, appeared to be the subject of democratic oversight. The result has been that the impact of such developments on social infrastructure has not been fully addressed (and in some cases not addressed at all) to the detriment of residents of the proposed development and existing residents of the Borough.</p>	The combined impact of CIL, Planning Obligations, Planning Conditions, Affordable Housing, 'in kind contributions' of land and any other costs upon development need to be considered when reviewing development viability. Part of this review process includes considering whether the scale and form of the development is acceptable in policy terms. It is not reasonable to identify affordable housing as the only 'flexible' cost in the process and remove the need to consider community uses or other requirements.
22		Figure 1	Amend boxes to reflect amendments to paragraphs 1.3.1 and 2.2.2 and 2.4.1 that limit viability testing to the affordable housing element only. The amendments should make it clear that, in particular, the Council is not in the business of subsidising developments by foregoing appropriate and justifiable planning obligations or allowing over-development so as to assist the financial viability of a proposed development.	These amendments are not necessary.
23		3.1.10	<p>In the last sentence of paragraph 3.1.10, delete the words "of £2,000" and add a new sentence at the end of the paragraph that reads:</p> <p>As at December 2012, the payment was £2.000 but is is subject to variation and/or</p>	The supporting text has been amended.

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			index linking.	
24		3.1.16	It is believed that the reference to "Table 2.1" in paragraph 3.1.16 should be to "Table 3.1 of the TfL's guidance".	The supporting text has been amended.
		3.2.1	It appears from paragraphs 3.2.1 to 3.2.3 (and paragraph 3.2.5) that areas of open space deficiency are being addressed via CIL contributions from all developments in the Borough whether located in areas of open space deficiency or not. However, it is not clear from paragraph 2.2.11 that this is the case as this list has yet to be published and may vary from year to year depending on budget priorities. Is this correct? If so, what is the mechanism for ensuring that the requirement for contributions to tackle areas of open space deficiency is not omitted during the budget setting process in any one year and funds re-allocated to other services?	Addressing areas of open space deficiency are only likely to come forward via section 106 from development of a sufficient scale to create the impact and/or on appropriate land. Funding for a new park is unlikely to forward via CIL contributions.
25		3.2.3	Paragraph 3.2.3 is confusing and not clearly expressed. What authority is there for the sentence that reads "An appropriate site may be one where development is permitted on existing private open space providing it meets other aspects of DM15: Green Belt and Open Spaces"? In particular, this does not accord with paragraphs 16.3.3 and 16.3.4 and Policies DM15 b) i and ii of the Adopted Local Plan Development Management Policies DPD.  In any event, at the start of the sentence that begins "An appropriate site...." the words "In exceptional circumstances," should have been added to make it consistent with the Development Management Policies DPD wording and intention.	The supporting text has been amended.
26		4.3.4	In the first line of paragraph 4.3.4, between the words "this" and "will be updated..." insert the words "applies as at December 2012 and" so that the start of the paragraph now reads:  The basis for implementation costs is set out below, which are based on the total	The supporting text has been amended.

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			value of the contributions – this applies as at December 2012 and will be updated as and when necessary:	
27	Brent Cross Development Partners, Philip Murphy	3.3.10	<p>Paragraph 3.3.10 relates to education facilities and specifically the delivery of new school facilities or the transfer of land. The paragraph is very prescriptive for an SPD and fails to acknowledge that such issues will need to be considered on a site by site basis, having regard to individual circumstances. As such, the BXC Development Partners request that the following amendments are made to the paragraph:</p> <p><i>“If a developer is required to construct a new school or transfer land for a school to the Council to mitigate the impacts of its development and where this meets the test set out in Regulation 122 of the CIL Regulations, it will <u>usually</u> be obliged to make such transfers at no charge to the Council and free from financial ties. The land should have planning permission for educational or unrestricted D1 use, must be fully serviced, and have access provided to the boundary (to a standard specified by the Council). <u>This will be considered on a site by site basis having regard to individual site circumstances, and any impact in the reduction in developable area and any other costs will be included as part of the viability assessment.</u>”</i></p>	The supporting text has been amended to reflect individual site circumstances.
28		2.2.8	Paragraph 2.2.8 - please amend the start of the paragraph to read "Subject to restrictions in Regs 122 and 123 of the CIL Regulations and to government guidance...";	The supporting text has been amended.
29		2.3.5	Paragraph 2.3.5 - this paragraph should be updated to reflect the fact that	The supporting text has been

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			permitted development will be liable for CIL from 7 April 2013;	amended.
30		2.4.4	Paragraph 2.4.4 – the paragraph needs to be updated as the permanent and transitional arrangements have now been introduced	The supporting text has been amended.
31		2.4.5	Paragraph 2.4.5 - this paragraph needs to be updated as applications for a change of use are liable for CIL where it creates an additional housing unit and where the occupation test is not met;	The supporting text has been amended.
32		2.4.7	Paragraph 2.4.7 – please add to the end of the paragraph "The Council will also take into account government guidance to ensure there is no "double charging" or "double dipping" in respect of a development through the use of Planning Obligations, other statutory agreements, planning conditions and CIL payments".	The supporting text has been amended.
33		3.3.11	Paragraph 3.3.11 - as commented above, the paragraph needs to be updated to accurately reflect the application of CIL in the context of residential change of use. Furthermore, a residential to residential conversion, as referred to in the last sentence of the paragraph, is not a change of use and therefore should not be liable.	The supporting text has been amended.
34	<b>London Fire And Emergency Planning Authority, Dron and</b>	2.2.8	We note under section 2.2.8 of the draft document, that fire fighting facilities are not listed, although reference is made to 'other community facilities including policing'. We request that the words 'and fire fighting facilities' be added to the above entry.	This text is taken from the Core Strategy and that would be the appropriate document to make such a change. We consider that fire fighting facilities are included under 'community facilities'.

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	<b>Wright consultants</b>			
35		3.3.3	Similarly, under section 3.3 of the draft document, and with particular reference to section 3.3.3, again the wording 'and fire fighting facilities' should be added.	The document is cross referencing the DM policies and we do not consider this necessary
36		General	<p>Please note that in relation to CIL, although the Council proposes a single flat rate levy of £135.00 per square metre across the borough, section 3.8 within the draft charging schedule states that 'the Council commits to provide a CIL grant equivalent to the total CIL charge levied where such a development is delivered for a public body'. Whilst we are generally supportive of this sentiment, we are concerned that it is dependant on such a development being identified within the Council's Infrastructure Delivery Plan as either 'necessary' or 'critical'. Fire stations are essential community safety facilities and any CIL costs for them are therefore inappropriate.</p> <p>As fire stations (as community safety facilities) are included within the definition of 'infrastructure' under the Planning Act 2008, we believe that they should automatically be excluded from any CIL payments. We note that the Examiner is currently preparing his recommendation report following the examination hearing held in December 2012.</p>	The Amendments to the Council's CIL charging schedule have meant that all forms of community facilities (including fire stations) are zero rated in relation to their CIL charge.
37		General	<p>In the same way that we have requested that consideration should be given to the use of CIL funding for any future LFEPA safety and community facilities within the borough (which the Council has recognised as a valid request), consideration should also be given to the following:-</p> <p><b>1.0</b> LFEPA should be exempt from contributing towards Section 106 payments;</p> <p><b>2.0</b> A proportion of the Section 106 payments collected in the borough should be provided to LFEPA for the provision of new fire fighting facilities, as and when required.</p>	The Council cannot preclude LFEPA facilities from having to enter into a planning obligation.

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38	Canal & River Trust, Claire McClean	3.2	With regard to the document, our only comment is with reference to the section at 3.2 Social Infrastructure: Public Open Space, Outdoor Amenity Space and Children's Play Space. This relates to the need for additional open space, and compensation for the lack of open space, but not the mitigation or improvements for the impact of development on existing open space. As an example, the West Hendon Estate redevelopment will bring significantly more visitors to the reservoir, which is likely to require more management in terms of wind-blown litter and vegetation, putting an additional burden on the Trust. The development should include measures to help mitigate this impact.	As set out in the Planning Obligations SPD contributions towards improvements will be required where a development does not meet the outdoor amenity space requirements otherwise contributions would be expected to be delivered from CIL funding.
39	Environment Agency, Clark Gordon		<p>We request that section 3.4 (Environmental Requirements: Energy Efficiency, Air Quality, Noise Pollution and Biodiversity) is updated to include a separate section on 'Flood Risk'.</p> <p>In terms of surface water flood risk, we expect that any mitigation would be provided by suitable Sustainable Drainage Systems (SuDS) on-site secured by planning conditions. However, there may be opportunities to secure planning obligations to carry out works on adjacent areas of land. This would be particularly relevant if it meant a better overall SuDS system could be provided such as utilising an area of land between a site and watercourse that may remove the need to discharge to local sewers. Additional land could also provide space for water attenuation in ponds etc. that would not fit on the site. We would encourage developers to speak to us early in the planning process to discuss issues around SuDS and drainage.</p> <p>There may be opportunities to use planning obligations on larger developments to provide programmes to reduce flood risk in the surrounding community. This is particularly relevant in Barnet given the scale of recent developments (e.g. Millbrook Park), upcoming developments (e.g. West Hendon), and large-scale sites that may be identified in the upcoming Strategic Housing Land Availability Assessment.</p>	The supporting text has been amended.

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			<p>In terms of fluvial flood risk we expect that any mitigation for loss of flood storage would be provided by flood compensation on- or off-site secured by planning conditions, although we would only permit this in exceptional circumstances. We would not support planning obligations to provide flood defences to <i>enable</i> development on a site. However, there may be circumstances where the improvement or creation of a flood defence structure as part of a site development could help to reduce flood risk to others off-site. We are currently in the process of identifying communities at risk and establishing how flood risk for these existing communities may be reduced most effectively through local policy, maintenance, flood defence schemes and individual flood proofing or resilience measures. As part of this, we may identify schemes or projects that could benefit from CIL funds, or potentially from planning obligations.</p> <p>We are at quite an early stage in the process of identifying communities at risk and associated projects to reduce these risks. We will liaise with you in the future, once we have more information about communities at risk in Barnet. However, in the meantime, we would like to establish the principle of using planning obligations for flood infrastructure in this SPD.</p>	
40		Biodiversity	<p>We are pleased that the protection, enhancement and creation of habitat, and in particular the Mayor's Green Grid Framework, has been identified in this SPD. We are keen to work closely with you on your emerging Green Infrastructure SPD to ensure that developers can be confident of when planning obligations may apply to their development.</p> <p>However, we would request that a further explanatory paragraph is added after 3.4.10 to provide some detail on the requirements for river restoration/Water Framework Directive (WFD) in Barnet. In particular, this should focus on improving water quality and the ecological potential of rivers in Barnet, as targeted in the WFD. The Thames River Basin Management Plan (RBMP) is the document underpinning the WFD targets in Barnet.</p> <p>The target of the WFD is for all notified rivers to achieve a good ecological potential (or status) by 2027. Rivers can be classified as <i>heavily modified</i>, and are</p>	<p>The supporting text has been amended. Further detail on the Water Framework directive has been added in the Sustainable Design and Construction SPD.</p>

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			<p>assessed for ecological <i>potential</i> (all of the WFD rivers in Barnet are heavily modified); or they can be classified as <i>non-heavily modified</i>, and are assessed for ecological <i>status</i>.</p> <p>There are three WFD rivers in Barnet:</p> <p style="padding-left: 40px;"><b>Silk Stream and Edgware Brook</b> – heavily modified – <i>moderate</i> ecological potential.</p> <p style="padding-left: 40px;"><b>Dollis Brook</b> – heavily modified – <i>poor</i> ecological potential.</p> <p style="padding-left: 40px;"><b>Pymmes Brook (upper channel with Muswell Stream &amp; Bounds Green Brook)</b> – heavily modified – <i>moderate</i> ecological potential.</p> <p>Two of the rivers need to gain one descriptive class from moderate to good, whilst Dollis Brook needs to gain two descriptive classes from poor to good.</p> <p>We have been carrying out investigations and assessments of the WFD watercourses in Barnet and will this year publish specific actions for each river to help them achieve good ecological status. We hope to liaise with you later this year, once we have more detailed information about the specific actions relating to Barnet's rivers. However, in the meantime, we would like to establish the principle of using planning obligations for river restoration/WFD actions in this SPD.</p>	
41	A2 Dominion, Barton Wilmore	General	<p>We are concerned that the draft SPD does not reflect intentions of national planning policy. Moreover given the complexities of the CiL Regulations, we suggest that there may be merit in the borough solicitor reviewing the document for legal robustness.</p> <p>Specifically we would raise the following:</p> <ul style="list-style-type: none"> <li>• The collective introduction of the SPD and CiL does not appear to have been properly tested in relation to scheme viability and could introduce an unacceptable economic burden on development;</li> <li>• The SPD as drafted does not adequately ensure that double charging with the emerging CiL will not occur;</li> </ul>	<p>The SPD has been brought forward to clarify when CiL will apply and when planning obligations will apply. It replaces the three existing SPD and makes clear the situations when planning obligations will be required. The respondent does not clearly demonstrate which areas are causing concern.</p> <p>Furthermore the public examination into Barnet's CiL has</p>



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			<ul style="list-style-type: none"> <li>• There is a lack of clarity between the application of CiL and the Planning Obligations SPD resulting in uncertainty to developers;</li> <li>• The SPD seeks funding for matters either already considered in the preparation of the emerging CiL Charging Schedule or are more appropriately addressed through CiL due to need to 'pool' contributions; and</li> </ul> <p>The SPD appears to introduce charges/obligations for matters that do not meet the tests of the CiL regulations, i.e. only matters that are essential for the grant of planning permission.</p>	<p>recommended adoption and the examiner explicitly states:  <i>"In setting the CIL charging rate the Council has had regard to detailed evidence on infrastructure planning and the economic viability evidence of the development market in Barnet Borough."</i></p>
42		Viability	<p>The purpose of CiL is to provide a fairer, faster and more certain and transparent means to address infrastructure needs and funding. The NPPF states that supplementary planning documents 'should be used where they can help applicants make successful applications or aid infrastructure delivery, and should not be used to add unnecessarily to the financial burdens on development' (paragraph 153).</p> <p>The Council's emerging CiL Charging Schedule has been subject to Examination; however the Inspector's Report is awaited. The Draft SPD is predicated on the Inspector finding that the Charging Schedule meets the tests of the Regulations. The Council rely on the BNP Paribas Affordable Housing and Community Infrastructure Levy: Viability Study September 2011 as demonstrating that their proposed CiL charge is viable and will not impose an unnecessary burden on development.</p> <p>It is unclear what assessment the Council has undertaken to ensure that the combination of local CiL, Mayoral CiL and the Planning Obligations SPD will have on viability. As drafted the SPD relies on a flexible application on a site by site</p>	<p>The Council considers that viability was adequately considered as part of the examination of the Barnet CIL. As part of the methodology of the Affordable Housing and Community Infrastructure Levy: Viability Study a residual level of Planning Obligations for localised requirements was considered alongside varying levels of affordable housing and levels of CIL including the Mayoral CIL.</p> <p>The Charging Schedule examiner stated that:  <i>"Accepted information sources fed into the recognised valuation methodology which was informed</i></p>

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			basis. Whilst Government guidance encourages a flexible approach to the application of policy, this is predicated on the policy being informed by a review of its implications on viability in the first instance. This does not appear to have been undertaken in this instance.	<i>by reasonable assumptions... the evidence which has been used to inform the Charging Schedule is proportionate, appropriate and, in most instances, robust".</i>
43		Double charging	<p>To avoid double-charging, CIL Regulation 123(2) prevents local authorities from seeking planning obligations in relation to infrastructure included on the published list of infrastructure projects. If no such list is published the Regulations assume that CIL will apply to all infrastructure and planning obligations to infrastructure will not be sought. The Council intend to use both CiL and Planning Obligations to secure funding for 'infrastructure' therefore there is a need to ensure no double charging. In this respect the SPD's relationship with CIL is unclear and, in our view, the SPD does not provide the necessary comfort and safeguards to prevent overlap with CIL and the potential for double-charging.</p> <p>It appears that infrastructure that informed the emerging CiL charge (i.e. that identified and costed in the Infrastructure Development Plan) and has now been 'extrapolated' out of CiL through the draft SPD and is to be funded separately and therefore in addition to CiL. For example, the IDP identifies various sport, open space and recreational facilities/projects yet the draft SPD seeks monies towards off-site open space and playspace (i.e. the same projects). The cost of such provision has therefore already been considered when setting the CiL rate. To apply the CiL charge and seek a planning obligation in respect of the same matter is double charging in terms of cost to a scheme and viability considerations. As per our comments above this does not appear to have been tested.</p> <p>The draft SPD states that in addition to the Regulation 123 list, the procedure set out at Figure 1 'Process for pre application negotiation and review of Planning Obligations and other matters that might impact on development viability' will be</p>	<p>The Regulation 123 list will be published at Cabinet on 25<sup>th</sup> February 2013 in advance of the adoption of CIL on 1 May 2013.</p> <p>The supporting text is clear that open space requirements will apply where there is a loss of open space, where development fails to deliver sufficient private amenity open space / play space and in relation to large sites where public open space will be provided on-site and cannot be fully and appropriately secured through a condition alone.</p> <p>The process of repeated reviewing and appraising of the development proposals to secure the balance between development viability and appropriate mitigation of impacts is an iterative process. The mechanism is the iterative</p>

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			<p>used to ensure no double charging (para 2.4.8). However, it is unclear from Figure 1 what step or mechanism is relied upon in this respect.</p> <p>With regard to the on-site provision of facilities such as schools, the SPD advises that this will be secured through planning obligations. However, the SPD does not identify the mechanisms whereby the on-site provision would be off-set against the CIL charge to prevent double-charging. Again providing uncertainty to applicants.</p>	<p>nature of negotiation in relation to a planning application for a proposed development scheme</p> <p>With regards to on site provision of education facilities the supporting text makes clear that the tests in Regulation 122 need to be complied with.</p>
44		Pooling of Contributions	<p>The Government identify CIL as its preferred vehicle for the collection of pooled contributions (CIL: An Overview 2011; paragraph 67). The CIL Regulations 2010 provide a cut-off point of 6 April 2014 beyond which only five pooled contributions can be directed to an item of infrastructure. This provides a clear indication of the Government's intention that CIL should be the primary means of delivering infrastructure within an authority area.</p> <p>A number of the items identified within the SPD relate to potentially large projects that may not be able to be delivered without the pooling of in excess of five contributions. For example, children's play space, public realm improvements and public open space could all require in excess of five pooled contributions and could all reasonably be delivered through CIL. Indeed, many had been identified previously as to be delivered by CIL. Funding these matters through CIL and not an SPD would also assist in preventing double-charging and providing a more transparent system for applicants.</p>	<p>The SPD relates to items which will be delivered on-site but maybe transferred to Council management eg playspace.</p> <p>The appropriate balance between S.106 and CIL as the mechanism for securing prescription, mitigation and compensation in relation to large scale developments is site and context specific and therefore can only be viewed as a process for discussion at the policy level.</p>
45		2.2.17	<p>Paragraphs 2.2.17 to 2.2.19 relate to the proposed Enterprise, Employment and Training SPD. A draft of this SPD has not yet been published for consultation. In advance of its publication paragraph 2.2.19 of the draft SPD states that, in the interim, developments that result in a loss of employment floorspace or provide more than 10 dwellings, 'will be reviewed to assess whether there are appropriate</p>	<p>The paragraph sets out the detail in the existing Affordable Housing SPD.</p>

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			<p>measures to support local enterprise and/ or training'. No details of the type of measures are given. Therefore, it is not possible to ascertain the implications this may have on a development. Again this creates uncertainty for applicants. Moreover, the cross referencing to a proposed SPD that has not yet been published is confusing and creates a convoluted policy framework that places an unnecessary burden on applicants.</p> <p>There are instances within the draft SPD where a planning condition would be a more appropriate and flexible means of addressing an impact than a planning obligation. For example, Travel Plans (paragraphs 3.1.11 to 3.1.17) could reasonably be secured by condition. A planning condition would provide greater flexibility for the Travel Plan requirements to be modified and adapted to suit the circumstances at the time of implementation.</p>	<p>Given the long term monitoring nature of Travel Plans which go beyond the implementation of a development they should be secured through a planning obligation and not a planning condition.</p>
46		Statutory tests: purpose of a planning obligation	<p>As detailed above, the statutory tests in relation to planning obligations are set out in CIL Regulation 122(2). The aim of these tests is to limit the use of planning obligations to site-specific matters, with wider infrastructure requirements to be covered by CIL.</p> <p>The draft SPD correctly identifies the statutory tests in paragraph 2.1.4. However, in paragraph 2.3.3, the SPD sets out three forms of planning obligations: 'prescribe, mitigate and compensate'. These forms of obligation are taken from Circular 05/2005 which was predicated on Section 106 of the Town and Country Planning Act 1990 (as substituted by the Planning and Compensation Act 1991) which are no longer relevant. The CIL Regulations 2010 significantly scaled back the use of planning obligations thus the wide reaching definitions of 'prescribe, mitigate and compensate' are no longer appropriate. To provide clear and relevant guidance to assist applicants, the SPD should be based on current legislation and</p>	<p>We consider that the description of the three forms of planning obligations are still relevant and appropriate to describing the types of role planning obligations are still expected to perform.</p>

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			<p>guidance.</p> <p>To summarise, we do not consider that the draft Planning Obligations SPD accurately reflects the legislative and national planning policy background. Moreover, whilst the purpose of the SPD is stated as clarifying the relationship with CIL, we do not consider that this is satisfactorily achieved and sufficient comfort and safeguards provided to ensure double-charging does not occur. The result is a document that creates uncertainty for applicants; proposes obligations where planning conditions would be a more appropriate and flexible response; presents a significant risk of overlap with CIL and double-charging; and has the potential to place an unnecessary financial burden on applicants to the detriment of the delivery of development within Barnet.</p>	
47	Scottish Widows Investment Partnership Property Trust, Deloitte		<p>Overall, we support the updating of the SPD Planning Obligations 2006 to bring the Document up to date in light of changing market conditions and the emerging CIL Charging Schedule.</p> <p>The draft Planning Obligations SPD was submitted for consultation in advance of the CIL Examination and thus formed part of the Examination papers for review by the Examiner in considering the appropriateness of the levy. Therefore, the Examiner's comments on the proposed CIL Draft Charging Schedule (DCS) and draft Planning Obligations SPD and their relationship should form part of the representations to this consultation. At present, the draft SPD is drafted in light of the flat rate charge of £135psm being the final agreed levy, dependant upon the Examiner's report, modifications may be required to the CIL DCS which will in turn impact upon the draft Planning Obligations SPD.</p> <p>On review of the detail of the draft Planning Obligations SPD our main concern is related to the lack of clarity of financial liabilities for investors. One of the reasons behind the introduction of a CIL Charging Schedule is to provide greater clarity to</p>	<p>Changes to supporting text have been introduced to address the examiner's recommendations from the CIL examination and their impact on Planning Obligations.</p> <p>We consider that the SPD provides suitable clarity in section 2.3 and section 3 on the situations where development will be required to pay a planning obligation.</p>

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			investors on what financial obligations are likely to occur. In its current form the draft Planning Obligations SPD, provides no clarity as to what financial obligations an investor will be required to pay on top of the mandatory CIL payments.	
48		Need for the consolidation of guidance documents	<p>Since the original adoption of the 2006 SPD, there have been a number of updates, interim guidance and policy changes. The outcome is that the current policy does not provide investors in the Borough with clear, concise and simple policy basis to understand the potential s106 obligations on their developments.</p> <p>Whilst the draft SPD does seek to supersede a number of, currently, extant planning obligations guidance documents – not all are to be updated, such as affordable housing. In seeking to update the Planning Obligations SPD expediently and in advance of the CIL Examination, to provide for clarity on the inter-relationship, the resultant outcome will be to retain a tiered suite of documents which have a varied base date of evidence.</p> <p>Accordingly, we propose that the Planning Obligations SPD is not adopted until all elements of the s106 obligations have been reviewed with up to date evidence and can sit confidently in tune with the CIL Charging Schedule (when adopted).</p>	We consider it imperative that we adopt an up to date Planning Obligations SPD alongside the Charging Schedule to provide clarity on the relationship between CIL and planning obligations. We do not consider further evidence necessary to deliver the suite of SPDs related to Planning Obligations, Affordable Housing, Enterprise and Training, and Green Infrastructure.
49		The relationship between CIL and Planning Obligations	<p>It is positive that paragraph 1.3.1, reflects NPPF paragraph 173, and recognises that developments should not be over burdened by Planning Obligations and to continue to provide flexibility in the operation of s106 planning obligations. We also endorse the recognition that Edgware, as a priority town centre in Barnet, should be supported as a priority area for growth to ensure that Barnet remains a successful London suburb.</p> <p>As recognised in both the CIL Draft Charging Schedule and the draft Planning Obligations SPD, there may be instances where the financial liabilities will render a development unviable. In these instances the Council has proposed a 'recycling' mechanism whereby CIL monies can be paid back via the Regulation 123 list. As</p>	<p>The negotiation process identified in figure 1 provides the detail of what will be reviewed as part of the process of assessing viability.</p> <p>The Examiner's Report into the Charging Schedule and associated recommendations has addressed the key underlying concerns within this representation</p>

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			<p>discussed during the CIL Examination, this proposal and section 2.4 of the Document does not offer sufficient guarantees to investors that monies would be recycled back into the scheme. In addition, we question the need to pay monies under CIL to then have them re-paid to develop the same infrastructure projects.</p> <p>The exceptional circumstances relief is also proposed as a tool to ensure that developments are not over burdened by financial obligations of CIL and s106. Whilst the provision of this relief, in the Borough, is welcomed, the criteria of its use is not straight forward and would only be used in the most exceptional circumstances. The use of this relief only comes into play when the cost of complying with the S106 obligations is greater than the charge from CIL. Therefore, if the level of charge is already rendering a scheme unviable the relief by itself will not assist bringing forward the scheme.</p>	
50		Regulations 123 List of CIL liable infrastructure	<p>This 123 Regulation List will form a critical document to ensure that developments coming forward will not be liable to double counting of CIL and s106 obligations. It would have been helpful if the draft Regulation 123 list had been published alongside the draft SPD.</p> <p>Further, additional detail as to the proposed regularity of the Regulation 123 list updates and what process will endorse the updates within the LB Barnet would be helpful.</p>	The Regulation 123 list was published at Cabinet on 25 <sup>th</sup> February 2013 and will be adopted alongside Barnet's CIL when it is adopted on 1 May 2013.
51	St George, Matt Bostock	General	<p>SGCL is concerned that the draft SPD does not reflect intentions of the CIL Regulation. SGCL is specifically concerned that the draft SPD has been prepared without reference to the current legislation and guidance, may result in double-charging and could render development in the Borough unviable. These matters are discussed below.</p>	See Councils responses below
52		2.3.3	The SPD appears to introduce charges/obligations for matters that do not meet the	We consider that the description

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			tests of the CIL Regulations (i.e. only matters that are essential for the grant of planning permission). The draft SPD correctly identifies the statutory tests in paragraph 2.1.4. However, in paragraph 2.3.3, the SPD sets out three forms of planning obligations: 'prescribe, mitigate and compensate'. These forms of obligation are taken from Circular 05/2005 which was predicated on Section 106 of the Town and Country Planning Act 1990 (as substituted by the Planning and Compensation Act 1991) which are no longer relevant as this Circular has been replaced by the NPPF. To provide clear and relevant guidance to assist applicants, the SPD should be based on current legislation and guidance.	of the three forms of planning obligations are still relevant and appropriate to describing the types of role of planning obligations are still expected to perform.
53		General	<p>The draft SPD may result in double charging with the Barnet's emerging CIL. For example:</p> <ul style="list-style-type: none"> <li>Paragraph 3.2.5 &amp; 3.2.13 - Barnet's Infrastructure Development Plan (IDP) identifies in the Regulation 123 List various sport, open space and recreational facilities / projects to be funded through CIL. However, the draft SPD will seek financial contributions towards off-site open space and playspace provision. To apply the CIL charge and seek a separate planning obligation in respect of the facilities is double charging unless new open space provision is provided by Barnet Council or the existing provisions are not already listed in the Regulation 123 List; and</li> <li>Paragraphs 3.3.8 to 3.3.11 - With regard to improvements to school facilities, the draft SPD advises that this will be secured through financial obligations. However, the SPD does not identify how an on-site provision or off-site contributions would be off-set against the CIL charge to prevent double-charging.</li> </ul>	<p>The supporting text is clear that open space requirements will apply where there is a loss of open space, where development fails to deliver sufficient private amenity open space / play space and in relation to large sites where public open space will be provided on-site and cannot be fully and appropriately secured through a condition alone.</p> <p>The CIL regulations allow for the value of land being transferred to the Council to be accepted in place of CIL payments, therefore all such contributions will be quantified through the process for securing payment of CIL income</p>
54		General	The financial implications of the draft SPD on development has not been robustly	The Council considers that



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			tested alongside the financial burden of the Mayor's CIL and Barnet's CIL. We are therefore concerned that development schemes within the Borough will no longer be viability. SGCL requests that the Council undertakes an assessment of the cumulative implications of the abovementioned financial burdens on the delivery of development in the Borough.	<p>viability was adequately considered as part of the examination of the Barnet CIL. As part of the methodology of the Affordable Housing and Community Infrastructure Levy: Viability Study a residual level of Planning Obligations for localised requirements was considered alongside varying levels of affordable housing and levels of CIL including the Mayoral CIL.</p> <p>The Charging Schedule examiner stated that:  <i>"Accepted information sources fed into the recognised valuation methodology which was informed by reasonable assumptions... the evidence which has been used to inform the Charging Schedule is proportionate, appropriate and, in most instances, robust"</i>.</p>
55	Greater London Authority	General	The SPD appears comprehensive and should prove to be a useful tool for both planners and prospective developers. The inclusion of the "London Plan" section on page 7 is supported. The reference to the Mayor's CIL and London Plan policy 8.2 is particularly welcome. The document raises a few issues outlined below:	We welcome this support
56		3.4.3	Paragraph 3.4.3 sets out what obligations may be sought to improve air quality. The installation of electric charging points could usefully be added to this section.	The supporting text has been amended.

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57		2.4.6	Section 2.4.6: As a key stakeholder and delivery partner, TfL should be involved in the Council's preparation of its Regulation 123 list (list of projects to be CIL funded) prior to the Council publishing it in its website. This will ensure that decisions on transport accessibility and capacity improvements that may be required to support development at the local level and how these are funded are jointly undertaken by the borough and TfL.	Noted
58		4.1.2	Section 4.1.2 Pre application advice. It would be helpful for users of the document if it also made reference to the GLA and TfL pre application advice service for those applications of strategic importance that are referred to the Mayor.	The supporting text has been amended.
59		General	As you are aware all local development documents including Supplementary Planning Documents have to be in general conformity with the London Plan under section 24 (1) (b) of the Planning and Compulsory Purchase Act 2004. The SPD is in general conformity with the London Plan, however it could be enhanced if it was amended in line with the comments in this letter. I look forward to receiving a copy of the adoption statement and the final SPD in due course.	Noted
60	Theresa Villiers MP	General	<p>I note that the aim of the consultation is so that the Council can change its existing policy document to address legislative changes and to consolidate three related documents. I also note that this single guidance will be used by planning officers and developers to agree how to make new development acceptable to local communities.</p> <p>Over the years my constituents have made it very clear that there are four main issues of concern when new developments in my constituency are proposed. These are:</p> <ul style="list-style-type: none"> <li>• Over-development;</li> <li>• Development that is not in keeping with the low rise suburban character of Barnet;</li> <li>• Protecting the Green Belt;</li> <li>• The need to ensure that developers contribute fairly to the infrastructure and services needed to support their projects.</li> </ul>	<p>We welcome this support. We note the issues most commonly raised by your constituents. The Council considers that Barnet's recently adopted Local Plan – Core Strategy and Development Management Policies will help to address these concerns.</p> <p>The forthcoming adoption of the Barnet Community Infrastructure Levy will help ensure that all developers contribute fairly to the infrastructure and services needed to support their projects.</p>

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			<p>There have been many times during my time as MP when I have supported local residents in opposing plans to demolish family homes in my constituency where they are to be replaced by much denser development such as blocks of flats.</p> <p>Additionally, I have supported my constituents in opposing backlands development as I believe that the increasing threat of gardens being covered in concrete have a negative impact on the local environment and quality of life.</p>	