

STATES OF JERSEY



THE USE OF PLANNING AGREEMENTS/OBLIGATIONS

**Presented to the States on 24th May 2005
by the Environment and Public Services Committee**

STATES GREFFE

INTRODUCTION/FOREWORD

- (1) The Committee intend to formally adopt this policy document on 1st June 2005. It represents a major new initiative in the use of planning powers which has recently become possible as a result of amendments to the Planning Law.
- (2) Planning Agreements are legal agreements between a developer and the Committee made in order to ensure that the implications of new development is balanced by the provision of necessary services. The cost of the provision of these related services will be met by the developer. It may require a developer to carry out certain works or make a capital contribution which reflects the implications of new development. It reflects the objectives within the Island Plan 2002 by seeking to ensure that development proposals are obliged to provide for the necessary infrastructure, facilities and may include transport, education, amenity, community or service framework provision.

They will be used when Planning conditions are not appropriate or are not capable of being applied. They will be used “on site”; that is within the boundary of the land which may be the subject of a development application and “off site” that is to say on land which lies outside the boundary of the site which is the subject of an application.

- (3) This policy will provide a rationale for the Committees approach to negotiating planning agreements and obligations. The Committee has, up until now, negotiated on a site-by-site basis. The Committee wishes to increase certainty and provide clarity for developers and others in areas where planning agreements may be appropriate.
- (4) The Committee is committed to ensuring where possible that these powers are used fairly, reasonably and appropriately and that the requirement for a developer to negotiate a planning agreement is identified at an early stage. The Committee consider it important that negotiations in relation to Planning Agreements take place from the outset and that any negotiations are directly related to the proposed development. They will reflect and respond to the nature, size and scale of the proposed development.

The States Strategic Plan 2005-2010 has, as one of its strategic aims, the improvement of the delivery of public services. This policy document reinforced by a raft of policy statements within the Island Plan is designed to target the provision of necessary public services in response to development proposals. The onus, however, is put on the developer to provide the facilities and services directly generated and attributable to new development thereby shifting some of the burden of provision from the States directly to the developer. Development proposals will still be obliged to comply with Planning Policy as a first test.

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THE USE OF PLANNING AGREEMENTS/OBLIGATIONS

POLICY APPROVED BY THE ENVIRONMENT AND PUBLIC SERVICES COMMITTEE

Draft for Public Consultation

PART I

1. INTRODUCTION

- 1.1 Well-planned and sensitive development can offer great benefits to the Island. It provides the homes, the work places and facilities that we need and stimulates the economy. However, development whatever the scale also brings an impact on the environment, facilities and services of the area in which it is located and sometimes places burdens and costs on the community. The Environment and Public Services Committee wishes to ensure that the negative aspects of new development are minimised and that such development provides social, economic and environmental benefit, to the community and the Island as a whole.

2. PURPOSE

- 2.1 The purpose of the first part of this document is to set out a framework so that developers and landowners have a clear understanding of how the Environment and Public Services Committee will implement its objectives of bringing benefits to the wider community from development. The second part of this document will identify where the Committee may expect a contribution.

3. THE LEGISLATIVE AND POLICY FRAMEWORK

- 3.1 The legal and procedural framework for Planning Obligations is set out within Article 8A which is an amendment to the Island Planning (Jersey) Law 1964. It was adopted by the States of Jersey on 18th June 2002. The Environment and Public Services Committee's approach to the use of planning obligations is set out within Policy G10 of the Island Plan. That policy is intended to be a broad but not precise interpretation of the powers given by law. This document provides a more detailed explanation of how the powers given to the Committee may be used. The policy reads –

- 3.2 **“Where as a direct consequence of a proposed development additional infrastructure or amenities are required within a development site, the Planning and Environment Committee (now the Environment and Public Services Committee) will negotiate the provision of appropriate facilities with the developer. Where necessary, the provision of financial contributions to off-site infrastructure and facilities including measures to assist public transport, cyclists or pedestrians, or to alleviate traffic impacts will be sought from the developer.”**

Planning permission will be refused for proposals that do not make satisfactory provision for infrastructure or amenities that are necessary for the development.

- 3.3 This policy is one of a number of General Policies contained within the plan. The General Policies are required to be read in conjunction with the specific topic related policies that are also included as part of the plan. The Environment and Public Services Committee's approach to the negotiation of planning obligations will be based upon furthering the Aims, Vision and Objectives as identified within the Island Plan. It follows that a diverse range of benefits will be sought through negotiated planning obligations in order to make a contribution to the achievement of one or more elements of the Committee's vision.

4. WHAT IS A PLANNING OBLIGATION?

- 4.1 A Planning Obligation is a legal agreement between a developer or anyone who has an interest in the land in question and the Environment and Public Services Committee. It may require an individual or

individuals to carry out certain works to provide appropriate benefits in response to a development proposal. The Committee will seek to enter into negotiations with developers to secure obligations where it is deemed necessary. They can be made to ensure that any new development does not place a strain on existing services and facilities such as open space, roads, recreation, and leisure facilities, community services or schools. They will be used when planning conditions or other arrangements outside the planning system do not cover, or cannot cope with a particular situation, enabling a property owner or developer to overcome obstacles which might in some circumstances prevent planning permission from being granted. They will be used “on site” that is within the boundary of any site which is the subject of a development application and “off site” that is to say on land which lies outside the boundary of an application should such arrangements be deemed justifiable and appropriate.

5. WHEN IS A PLANNING OBLIGATION APPROPRIATE?

5.1 The Environment and Public Services Committee will look to put in place a planning obligation or agreement where it meets a number of key tests. These tests are –

- (i) **that it is necessary
(to make a development acceptable in planning terms);**
- (ii) **that it is relevant to planning;**
- (iii) **that it is directly related to the proposed development;**
- (iv) **that it is fairly and reasonably related in scale and kind to the proposed development;**
- (v) **that it is reasonable in all other respects.**

5.2 The Committee will not refuse an application simply because the applicant is unwilling or unable to offer benefits. The application will be assessed on its own merits. Similarly development which is unacceptable on planning grounds will not be permitted simply because of an offer of benefits which are unnecessary or unrelated to the proposed development.

6. WHICH KIND OF DEVELOPMENT WILL GENERATE PLANNING OBLIGATIONS?

6.1 The Committee wishes to clarify its approach to the provision of developer contributions, and other forms of planning obligations in support of the policies within the Island Plan. Contributions are appropriate within the following areas –

- Housing
- Transport
- Education
- Community and Social Service Provision
- Health Care Provision
- Open Space
- Environmental Enhancements
- Archaeology, Conservation and the Historic Environment
- Prevention of Crime and Disorder

This list is not exhaustive.

Contributions and appropriate obligations will be deemed appropriate where that development either by itself and/or cumulatively with other development, creates a material impact which requires mitigation or the provision of benefits to the wider community. The contributions and obligations expected will be based upon the Committee’s assessment of needs. These needs will be addressed in conjunction with other States Committees and stakeholders. The Committee will keep those needs under review. Where a

proposed development suggests that there may be implications for educational or community services the Committee will carefully consider the context of the site and the availability of existing services prior to requiring additional services. Table 1 gives an indication of those types of development that may generate a contribution. This table is intended to operate as a guide only.

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PART II

Supplementary Planning Guidelines

1. INTRODUCTION

- 1.1 The legislative framework for Planning Obligations in England is set out within Section 106 of the Town and Country Planning Act 1990. Current government policy in England is set out in DOE Circular 1/97. Over the last 13 years Planning Obligations have been used successfully by local planning authorities and developers to unlock development. However, over the years problems have emerged within the system. The specific criticisms are –
- (i) some agreements take an unacceptably long time to negotiate and can entail very high legal costs;
 - (ii) negotiations can delay or frustrate development;
 - (ii) there is a lack of clarity about the level of contributions that can be sought (Policy -v- Case Law);
 - (iv) contributions may not accurately reflect the true impact of the development on services and infrastructure.
- 1.2 There is value in understanding how the debate and process for handling and delivering Planning Obligations in England has progressed. In many instances local authorities have embodied in their local plan or policy documents specific mention of contributions. This declaration of intent is usually backed up by Supplementary Planning Guidance (SPG).
- 1.3 England also has Government Circular 01/97 which gives guidance on the proper use of planning obligations. It sets out broad guidelines and restraints which local planning authorities should take into account when considering planning applications and drafting policies. Our law is derived from the English legislation and to that extent the advice within Circular 01/97 is deemed relevant and appropriate within the Jersey context. The necessity test (see paragraph 5.1) is derived from advice in the circular and there is other key advice given which is relevant to use in Jersey and should assist the Committee in pursuing and negotiating agreements. It is considered that the circular offers a regime and framework which should be used to guide and define negotiations. Some of the more important of these principles are –
- **Local authorities should place more emphasis on the overall quality of a development proposal than on the number and nature (or value) of planning benefits they can obtain or offer.**
 - **Developers should not be expected to pay for facilities which are needed solely in order to resolve existing deficiencies nor should attempts be made to extract excessive contributions to infrastructure costs from developers.**
 - **Planning Obligations should never be used as a means of securing for the local community a share in the profits of development i.e. as a means of securing a “betterment levy”.**
 - **Authorities should be careful to guard against attempting to secure a list or range of desirable benefits from developers without justification.**
 - **Policies which are based on blanket formulation are not thought to be appropriate.**
 - **Policies which allocate precise costs in advance are not deemed to be appropriate since it is impossible to know what is involved until an individual proposal has been made.**

- **It is not acceptable for a planning authority to seek to secure a percentage of enhanced land value through the use of obligations.**
- **If there is a choice between imposing conditions and entering into a planning obligation the imposition of a condition is preferable.**

1.4 **Principles**

The Committee will seek to negotiate Planning Obligations based on those criteria. The Committee will also apply the key tests in each case (see Part I, paragraph 5.1) In addition the Committee will ensure that –

- Obligations will only be sought that are material to the planning decision and where a specific obligation is needed to make a proposal acceptable in planning terms.
- The nature of the Planning Obligation likely to be required will be made clear to the developer as early as possible in the planning process.
- The extent of the Planning Obligation will have regard to the social and environmental costs of the development. This will be negotiated and will take into account the viability of the scheme.
- Where, as a result of development proposals, there are a number of planning obligations which might be appropriate the Committee will determine which of those should be given priority.
- The Committee will determine the acceptability of a proposal on its planning merits taking the development and the obligations as an entirety.

1.5 **Range of Benefits to be sought**

Table 1 sets out examples of different benefits that will be sought. These benefits are tied back to policies and objectives within the Island Plan and will reflect identified needs in the particular locality. The exact type and range likely to be considered for any site will depend upon the type of development proposed and its impact on local services.

TABLE 1 RANGE OF BENEFITS TO BE SOUGHT

Development type that may generate contributions	Topic Paper	Policy in Island Plan	Contributions that may be sought
Residential	Education	G10 SC5	<ul style="list-style-type: none"> • Commuted Payments for Primary/ Secondary place provision
Residential Tourist Retail and Office Mineral Workings	Community Facilities and Infrastructure	G1 SC1 SC5 SC9 G10 G2 NR1 NR2 NR3	<ul style="list-style-type: none"> • Educational Facilities • Health and Social Care • Community Meeting Rooms • Crèches • Flood Protection • Water Attenuation • Surface Water Drainage • Foul Sewer System Extension and Upgrades
Residential Tourist Retail and Office Mineral Workings	Travel and Transport	TT1 TT3 TT30 TT22 TT15 TT16 TT10 TT11	G10 SC1 <ul style="list-style-type: none"> • Highway Improvements • Pedestrian Facilities • Travel Plans • Cycling Facilities • Commuted Payments for new car parks
Residential Tourist Mineral Workings Retail and Office	Conservation, Recreation and Environment	G1 TR2 G10 G13 TR4 TR5 BC12	<ul style="list-style-type: none"> • Open Space • Sports Facilities • Environmental Protection • Registered Buildings • Archaeology
Residential Tourist Retail and Office	Environmental Enhancement	G1 G10 BE2 BE3 BE9	BE12 <ul style="list-style-type: none"> • CCTV Systems • Environmental Improvements • Urban Renewal
Residential Tourist Retail and Office Mineral Workings	Housing	G10 H1 G1	<ul style="list-style-type: none"> • Special Needs Housing • Sheltered Housing • First Time Buyers and Social Rented Housing

The list of contributions that may be sought is not exhaustive.

It should not be assumed that every development type identified in Table 1 will generate a contribution. The table is intended to be a guide only. The requirement for a contribution will be subject to an analysis of context, scale and circumstances.

PART III

Topic Paper 1

Education

1. Introduction

1.1 New housing development can generate a demand for school places. Where a residential development creates an additional demand for school or nursery places which cannot be met by existing provision developers will be obliged to meet the cost of providing for additional accommodation or specific site requirements. The Committee will also take into account spare capacity elsewhere in other schools and their ability to reasonably and practically to accommodate new development.

2. Policy Context

2.1 The Island Plan sets out within its vision and objectives that Jersey should be a place where “everyone is able to share in Island life and be valued for their contribution” and where “individual parishes and local communities can thrive” with regard to social and community facilities. One of the strategic objectives of the Island Plan is to –

- Assist the development of facilities to meet health, education, social and community needs.

2.2 Policy G10 within the Island Plan reaffirms the Committee will –

Where, as a direct consequence of a proposed development, additional infrastructure or amenities are required within a development site, the Planning and Environment Committee will negotiate the provision of appropriate facilities with the developer. Where necessary, the provision of financial contributions to off-site infrastructure and facilities, including measures to assist public transport, cyclists or pedestrians or to alleviate traffic impacts will be sought from the developer.

Planning permission will be refused for proposals that do not make satisfactory provision for infrastructure or amenities that are necessary for the development.

3. Calculation of Costs

3.1 New development may give rise to increases in population within the age groups of 2-18 over and above the capacity of existing services. In such cases the Environment and Public Services Committee will seek developer contributions. Negotiations will be on a case-by-case basis but should follow certain procedures and address salient points of principle.

3.2 It is unlikely that any development will justify the construction of a new school. Some developments may, depending on their location, justify however contributions for extending or making other improvements to existing schools. In either case it may be appropriate for the developer to provide the works or make a cash contribution.

3.3 At present the construction of 50 three-bedroom houses in Jersey are estimated to generate –

	Category A	Category B	
5 - 11 yr	(32)	(8)	(Primary)
11 - 16 yr	(20)	(7)	(Secondary)
16 - 18 yr	<u>(4)</u>	<u>(1)</u>	(Sixth Form)

- 3.4 If the mix of new development varies, i.e. provision of smaller flats and sheltered housing, then so will the number of pupils generated. To that extent each case will require to be assessed individually. Contributions will generally be assessed using the Education, Sport and Culture Committee's skills cost per pupil place.
- 3.5 In addition to the skills cost, the capital costs of providing extra accommodation will also be taken into account. Those costs may include purchase of land, build costs and professional fees.
- 3.6 Contributions will be sought unless suitable and adequate places are available. Reduced contributions may be sought if there is capacity available but where there is potential medium or long term capacity issues that may arise as a result of the development. Contributions in that respect will increase the flexibility and quality of accommodation to allow schools to address emerging and longer term capacity issues. Any assessment of cost will take into account the possibility of amending catchment areas should that prove practicable and feasible given the location of the proposed development.

Note: The negotiation of contributions by way of the provision of specific facilities or by a financial contribution scale will be done in conjunction with the Education Department.

Topic Paper 2

Community Facilities and Infrastructure

1. Introduction

- 1.1 To ensure that the community has sufficient facilities to keep pace with new development the Committee will seek contributions to community facilities from some types of development where appropriate to do so.

2. Policy Context

- 2.1 The Island Plan within Policy G1 (Sustainable Development) will –

“support an overall pattern of land uses that reduce the need to travel and promote increased use of public transport, cycling and walking.”

- 2.1 The Plan also sets out within its visions and objectives that with regard to social and community facilities one of the strategic objectives of the Island Plan will be to –

- assist the development of facilities to meet health, education, social and community needs.

- 2.2 The Plan goes further in Policy G10 (Planning Objectives) and reaffirms the Committee’s wishes –

Where, as a direct consequence of a proposed development, additional infrastructure or amenities are required within a development site, the Planning and Environment Committee will negotiate the provision of appropriate facilities with the developer. Where necessary, the provision of financial contributions to off-site infrastructure and facilities, including measures to assist public transport, cyclists or pedestrians, or to alleviate traffic impacts will be sought from the developer.

Planning permission will be refused for proposals that do not make satisfactory provision for infrastructure or amenities that are necessary for the development.

3. Assessing the Contributions

- 3.1 The level of provision and/or contributions sought will be dependant on the size and location of development. Negotiations will be on a case by case basis. There may be instances where there is –

- **Development that generates a new or significantly large community. Facilities may be required to provide new buildings to allow the new community to function and develop.**
- **Development where the need for community facilities does not require full provision. A contribution may be required to improve/extend existing facilities in the locality.**
- **Development in an area where community facilities and services are at, or near capacity.**

- 3.2 Depending upon the scale and nature of development and the availability of existing service provision the kind of facilities envisaged may cover –

Crèches and Day Nurseries
Community Halls and Meeting Rooms
Youth Centres

- 3.3 In determining the level of contributions required the Committee will work with the Health and Social

Services Committee, the Parishes and other associated interest groups in order to quantify the level of contribution required. In this as in other topic areas any negotiations should form part of the pre-application submissions and become an integral part of the planning process. If need is identified at an early stage it should become part of the development proposals and part of the planning application. (This matter is addressed later in the document.)

3.4 The Committee recognise that some contributions may be required to address matters relating to –

- Flood Protection
- Surface Water Attenuation
- Surface Water Drainage
- Foul Sewer System Upgrading or Extension

The Committee will consult with Public Services Engineers in order to quantify the level of contribution or the nature of the work that may be required. If the need is identified at an early stage it should become an integral part of the formal application or the subject of a unilateral agreement.

Topic Paper 3

Transport and Travel

1. Introduction

- 1.1 In assessing planning applications for new development the impact on the existing highway network will be assessed. The adequacy of the existing network and facilities will be evaluated in the light of emerging demands likely to be put on that system through new development. Remedial measures could include the provision of, or improvements to, public transport services. It could also, where appropriate, be used to secure contributions to off site road network improvements, cycleways, footpaths, traffic calming or traffic signals.

2. Policy Context

- 2.1 The Island Plan has as one of its principle objectives relating to travel and transport –
- The promotion and encouragement of the use of public transport and other more environmentally sustainable forms of transport through integrated land use and transport planning and to reduce the social, economic and environmental impact of current transport modes.
- 2.2 Within the raft of policies in the Plan there are a number which give specific support to that objective.

Policy TT10 – Cycle Network

The Planning and Environment Committee will support the continuing development of a cycle network to encourage cycling as a recreational pursuit and as a main mode of travel.

Policy TT12 – Safe Routes to Schools

The Planning and Environment Committee will support the development of the Safe Routes to Schools Initiative. Any proposals which are likely to disrupt the integrity of a designated Safe Route or cause a level of traffic generation that would have an unreasonable impact on its safe use will not normally be permitted unless a suitable alternative route is provided at the developer's expense.

Policy TT15 – Facilities for Bus Passengers

Proposals for the development of new residential and commercial development outside the St. Helier Ring Road of at least 20 homes or 500 m²(gross floor area), will normally be expected to provide a safe pedestrian route to a convenient bus stop (existing or proposed) and a bus shelter, to a design approved by the Planning and Environment Committee.

Policy TT22 – Travel Plans

The Planning and Environment Committee will require a Travel Plan to be submitted with major planning applications for new development. The range of measures and targets contained within the Travel Plan shall be approved by the Planning and Environment Committee and may be secured through planning obligations. Where any submitted Travel Plans are not acceptable, permission will not normally be granted.

Policy TT30 – Commuted Payment in lieu of Parking

In respect of development proposals in St. Helier (within the Ring Road or Waterfront Area) the Planning and Environment Committee in consultation with the Public Services Committee may accept the commutation of developer’s car parking liabilities. Payments received will be put towards the provision of public parking, improvements to public transport, cycling and walking projects.

3. Calculation of Costs

Residential Development

3.1 Levels of contribution to transport infrastructure and service improvements will be assessed having regard to the development, the estimated increase in population, and the estimated additional transport need and traffic generated. This may require the provision of bus shelters and stops and might extend to the improvement of a bus service which passes near the site. If such infrastructure is to be taken over by the States then developers may be required to pay for the upkeep for an agreed period of time or provide a capital payment which reflects the costs. The extent to which new residential development would require the provision of an additional service will be determined in conjunction with the Public Services Department. Contributions will be sought within the following areas.

- | | | |
|----------|----|--|
| On Site | 1. | Provision of a road system that would allow easy access by public transport. |
| | 2. | Provision of traffic signals, bus stops, shelters, lay-bys and pedestrian crossings. |
| Off Site | 1. | Improvement to the fabric and condition of the existing road network providing access to the site. |
| | 2. | Improvement to road layouts, junctions and pedestrian facilities in the locality directly affected by new development. |

This list is not exhaustive.

3.2 It would be invidious to place a limit or threshold on a scale of development that would immediately invoke a contribution of some kind. The context of the site and the nature of the development will determine to what extent a contribution is deemed to be reasonable and appropriate. It is possible that in some parts of the Island schemes as low as a single house might generate some kind of contribution if perhaps there were exceptional issues at stake. In other instances schemes extending to perhaps 10/20 homes may, depending on their context, require no specific contribution if they were located in an area where they brought with them no negative implications for the local community. To that extent it is recommended that each scheme be regarded on its merits.

Commercial Development

3.3 The Island Plan requires that all major planning applications for new development be accompanied by a Travel Plan. This includes major developments for –

	<u>Thresholds</u>
• Offices	2,500m ²
• Industry	5,000m ²
• Warehouse/Distribution	10,000m ²
• Education	2,500m ²

- Retail 1,000m²

3.4 These travel plans will also address mixed use development, and applications for change of use when they exceed the thresholds laid down in the Plan. It is not deemed appropriate that the figures which trigger the threshold for a travel plan should determine a threshold in relation to contributions. The travel plan figures are set at a very high level. Instead it is recommended that each scheme should be assessed on its own merits having regard to the scale of the proposed development, its context and the character and volume of traffic likely to be generated.

3.5 In all cases the nature and level of contributions shall be calculated in consultation with the Public Services Department.

Topic Paper 4

Conservation, the Historic Environment and Archaeology

1. Introduction

1.1 The Environment and Public Services Committee has stated its intention to protect and enhance those parts of the Island's Heritage deemed to be of historic, archaeological or architectural importance. When planning conditions are not appropriate, obligations will be used to enable restoration, enhancement or other works to be carried out to a building on the Register. This will also include works within Conservation Areas or protection where the investigation or protection of archaeological remains is deemed appropriate.

2. Policy Context

2.1 The General Policies in the Island Plan set out the aims and objectives of the plan in relation to –

- **Sites of Special Interest (G11)**

Sites of Special Interest will be designated for protection in recognition of the importance of their –

Special zoological, ecological, botanical or geological interest; or

Special architectural, archaeological, artistic, historical, scientific, or traditional interest that attaches to a building or place

Written guidance will be provided and advice offered on appropriate management and maintenance practices for Sites of Special Interest.

There will be a presumption against development that would have an adverse impact on the special character of a Site of Special Interest.

Where a proposed or designated Site of Special Interest is at risk of damage, and an agreement with the landowner or tenant to avoid such damage cannot be made, the Planning and Environment Committee may use powers of acquisition to safeguard and manage the site as an alternative to its statutory powers.

Where land is voluntarily put up for sale the Planning and Environment Committee may use powers of acquisition to safeguard and manage the site as an alternative to its statutory powers.

Where land is voluntarily put up for sale the Planning and Environment Committee may

purchase proposed or designated Sites of Special Interest and manage them or enable other appropriate bodies to manage them. This will be subject to States approval.

- **Archaeological Resources (G12)**

The Planning and Environment Committee will normally require an archaeological evaluation to be carried out for development proposals which may affect archaeological remains.

Development which would adversely affect archaeological remains will normally only be permitted where the Planning and Environment Committee is satisfied that the importance of the proposed development or other material considerations outweigh the value of the remains in question. In such cases, the Planning and Environment Committee will require adequate provision to be made for the archaeological evaluation, investigation and recording of sites by the use of planning conditions and/or by the use of agreements prior to permission being granted.

For Sites of Special Interest, there will be a presumption in favour of the physical preservation in situ of archaeological remains and their settings.

- **Building and Places of Architectural and Historic Interest (G13)**

There will be a presumption in favour of the preservation of the architectural and historic character and integrity of registered buildings and places. Applications for the alteration or change of use of a registered building must contain sufficient information against which the impact on the fabric and appearance of the building can be assessed.

Permission will not normally be granted for the –

- (i) total or partial demolition of a registered building;**
- (ii) extension or other external alteration works which would adversely affect the architectural or historic interest, character or setting of a registered building or place;**
- (iii) addition of external items, including satellite dishes, antennae, signs, solar panels, roof-lights and uPVC or aluminium doors or windows, which would adversely affect the special interest or character of the building; and**
- (iv) removal of natural roofing materials and render or stucco and their replacement with modern alternative materials.**

In addition, where the registered building is designated as a Site of Special Interest, permission will not be granted for alterations which would have an adverse impact on the internal structure, historic interiors and fittings.

Permission may be granted for partial demolition, but only for the removal of inappropriate additions to the building, where their removal would not harm, or would improve the historic character and appearance of the building or its setting.

3. Assessing the Contribution

- 3.1 Any development of whatever type which is associated with a site of cultural, archaeological, historic or architectural significance will need to be addressed individually. If the Committee considers that archaeological or other works are required and these cannot be enabled by conditions, then the Committee

will seek to secure them through planning obligations. It may mean a cash contribution or it may mean that sensitive sites are controlled through an appropriate agreement if their long-term maintenance and well-being is in the public interest. In some instances it will be appropriate to agree a joint programme of funding and rehabilitation to ensure the retention and maintenance of a site or building. It may also be appropriate to require on-site or off-site research or interpretation schemes.

3.2 In relation to archaeology it will be the responsibility of the developer to pay for all works required including fieldwork, analysis of findings, conservation of artefacts and interpretation.

3.3 Within Conservation Areas, or proposed Conservation Areas, where it is not appropriate to use Planning Conditions, Obligations will be used to enable restoration enhancement and/or other works to be carried out to buildings or land in the Conservation Area in order to conserve or enhance its character.

Topic Paper 5

Environmental Enhancement

1. Introduction

1.1 The Committee expects that new development should seek to improve the quality of the environment. In environmental terms development can result in a negative impact upon landscape quality, local character, distinctiveness, tranquillity or biodiversity. The Committee expects that appropriate contributions are negotiated from all development that would –

- Create a need for specific facilities
- Have a damaging impact upon the environment or local amenity
- Impact directly upon policies within the Island Plan

2. Policy Context

2.1 Policy G1 in relation to Sustainable Development states –

In accordance with the principles of sustainable development of the Island Plan objectives, all development proposals should in particular seek to –

- (i) **integrate new development with the existing built-up area;**
- (ii) **promote the vitality and viability of the town of St. Helier and the defined rural and urban settlements;**
- (iii) **re-use already developed land;**
- (iv) **support an overall pattern of land-uses that reduce the need to travel and promote increased use of public transport, cycling and walking;**
- (v) **conserve or enhance the natural environment and cultural heritage of the Island; and**
- (vi) **minimise impacts on the Island and global environment.**

Applications which do not support these principles will not normally be permitted.

3. Assessing the Contribution

3.1 Any development of whatever type will be assessed individually. In order to be able to quantify the effect of development, detailed site surveys will when necessary be sought from developers to establish the nature and character of existing features. This will inform the decision-making process whereby some areas are safeguarded whilst others might be appropriately addressed by offsetting benefits.

3.2 If the Committee considers that environmental enhancements are required and these cannot properly be achieved through planning conditions then they shall be achieved through planning obligations. These may be used so that –

- Development is restricted so as to prevent damage to existing features, i.e. the protection and enhancement of appropriate habitats and species;
- Works are enabled to improve visual amenity and biodiversity, i.e. planting and habitat management agreements;

- Contributions are secured towards facilities in the vicinity of the site, i.e. visitor interpretation new park, footpath, bridleway or cycleway.
- A system of management or monitoring is put in place to ensure that environmental gain is delivered. This may entail the provision of funding towards the monitoring of either mitigation or enhancement schemes.

The costs associated with such agreements will need to be individually assessed for each project. It may include either a cash commission if work were required off-site or the control of a sensitive site to safeguard its character in the Public's interest. It could also require a commuted sum for the capital costs of implementation or revenue costs for maintenance or monitoring. It may be appropriate that in some cases contributions to strategic enhancements in the vicinity of the site may be appropriate.

In determining the contributions required the Committee will consult with the Environmental Department, and the Parks and Gardens section of the Public Services Department.

Topic Paper 6

First Time Buyer and Social Rented Housing

1. Introduction

- 1.1 The Committee expects the Planning system throughout the Island Plan to deliver both First Time Buyer and Social Rented Homes (Category A Homes). The sites rezoned in 2002 within the Island Plan will provide exclusively for both those types of tenure, and the extension of the Built Up Area boundaries makes provision for additional open market housing (Category B Homes). The private sector is expected to deliver the First Time Buyer Homes and it is intended that they will also supply the Social Rented Homes in conjunction with Housing Trusts and the Housing Committee.

2. Policy Context

- 2.1 One of the objectives of the Island Plan is to “*Support the provision of adequate housing for all residents*”. The Plan aims to ensure that there is an appropriate balance between housing provided by the States for rent and first time buyers, housing for private rent and purchase and lodging accommodation to cater for those who have difficulty in affording homes of an appropriate standard for their needs.

- 2.2 Policy H1 – “Provision of Homes” states –

The Environment and Public Services Committee will make provision for sufficient land and opportunities to meet the requirements for homes over the Plan period.

The Plan allows for 2,860 homes to be built over the first five years of the Plan period of which 1,850 will be for Category A homes and 1,010 will be for Category B homes. Land will be rezoned to ensure that sufficient land is available to meet the requirements for Category A homes in the first five years to 2006.

Developers of sites designated in the Plan specifically for the construction of Category A housing in Policy H2, will be required by the Environment and Public Services Committee to provide first-time buyer homes and social rented homes in the respective proportions of 55% and 45% of the total number of dwellings provided on each site, in order to ensure that the identified needs for housing are met.

2.3 Assessing the Contributions

The split between the First Time Buyer and Social Rented Housing was developed through negotiations between the Housing Committee and Environment and Public Services Committee. It is a measure of the current housing need and derived from “Planning for Homes”, a household survey completed in 2000 and the 2001 census. All this work is amalgamated within the data in the Island Plan. This data will be subject to regular review.

3. Scope of Agreements

- 3.1 It is intended that agreements will be used where Planning conditions are not appropriate and they will be applied when necessary to –

- Enforce Planning Policy on rezoned sites in relation to providing the required ratio of First Time Buyer and Social Rented Homes or homes required within the various categories that constitute sheltered housing.
- Ensure the occupancy of these homes in their separate categories in perpetuity.

- Ensure co-ordinated delivery of both First Time Buyer and Rented accommodation within an agreed timescale.
- Ensure the transfer of the rented accommodation to a Housing Trust or to the Housing Committee within an agreed timescale.
- Enforce the co-ordinated provision of First Time Buyer homes and rented accommodation if the provision of those tenures are to be provided on different sites.
- To ensure that the occupation of all new homes are limited to those approved by the Housing Committee.

PART IV

Negotiating and Securing Planning Agreements

1.1 From the perception of the developer the requirement to engage in a Planning Agreement will be an additional responsibility to address as part of new development. Experience in the U.K. illustrates that many of the criticisms of Planning Agreements focus on a number of key areas. These are –

- There is general concern regarding the time taken to conclude agreements. This can give rise to substantial delay in realising development. This has cost implications.
- From the developer's view the requirement to enter into a Planning Agreement and the terms of that agreement are frequently identified late in the planning application process.
- There is uncertainty regarding the legitimate scope of Planning Agreements and their use.

1.2 In order to address those concerns and so that a clear and understandable framework for negotiating agreements is created the committee wish to put in place –

- An explicit link from the policy framework to the mechanisms for delivering planning objectives related to new development.
- Clear Supplementary Planning Guidance.
- A process which will establish the requirements or scope of an agreement at an early stage before funding decisions are made on development proposals.
- A framework which is transparent, easy to use and understood, inexpensive and simple.

2. The Process

2.1 In order to enhance efficiency and speed, the Committee considers that where possible negotiations with developers in relation to planning agreements should take place either at a pre-application stage or simultaneously with the consideration of the planning application.

- Negotiate agreements during/or prior to consideration of planning application.
- Specify heads of terms of agreement within the Committee Report on the planning application, and if possible seek approval for those heads of terms prior to consideration of the Planning Approval.
- Resolve to grant planning consent subject to achieving legal agreement.
- Issue a Planning decision following engrossment of legal agreement.

2.2 These negotiated agreements would address –

- The range of benefits to be sought.
- If the provision of these benefits will take place on site or off site.
- The level of provision/financial contribution required.
- Trigger points defining at which time benefits will be required and completed.

- Details of how and when any financial contributions will be used.

3. The Skills Required

- 3.1 The negotiation of Planning Agreements will involve a number of different States Departments depending on the nature and scale of the scheme proposed. The Committee will establish a panel of Officers having specialist skills within their own departments who will contribute to and be part of the preparation of planning agreements and be led by the Planning Officer whose case it is. This panel will include Officers from Public Services (Engineering and Transportation Sections), Education, Sport and Culture, Housing, Property Services, Health and Social Services and the Law Officers' Department. This panel will be briefed on forthcoming applications, negotiations, agreements and implementation. The ability of the States to offer a "one stop shop" approach will contribute significantly to meeting the States' own objectives of speed, efficiency and transparency. The panel will need, amongst other things, to develop an understanding of the development process and its financing so that judgements can be made upon the reasonableness and practicality of agreements based upon the viability of the scheme in question. In this respect valuation advice from Property Services will also be essential on occasion.
- 3.2 It is not expected that this group would need to meet on a regular basis but rather when there is either –
- Planning or Development applications which raise the likelihood of contributions;
 - an approach made prior to the submission of a formal application that raises issues of contributions.

In every case the group take into account –

- that what is being sought can not be delivered by the use of Planning Conditions;
 - that it complies with the necessary test (see Part I, paragraph 5.1);
 - all parties who are likely to be signatories to any agreement.
- 3.3 Given that it is often the case that the Planning Officer is the first to receive notice of development intentions either by a preliminary enquiry or by the submissions of a formal application, the Planning Officer will take the lead in co-ordinating and selecting those who would represent the interests of the States in any discussions in relation to contributions. The discussion of contributions should run in parallel with the processing of the planning application. The group would in effect represent another consultee as part of the process of evaluating the planning application.

4. Resources

- 4.1 It is not the intention to create an additional layer of bureaucracy but to enable and assist discussions on potential contributions as early as possible in the proceedings; ideally at pre-application stage. Continuing to offer pre-application advice on development proposals is an important means of triggering discussions in relation to contributions whilst at the same time addressing the normal range of issues contained within the development control process.

5. Financial Contributions

- 5.1 If it is agreed by the developer that a financial contribution is desirable and appropriate then a cash sum should be set aside specifically for that specific purpose. There will be a commitment given by the Committee to use that sum within a specified period. It is important that the direct link between a financial contribution and the project be maintained. As part of any agreement and in the interest of openness and transparency it is important that the States carry through their commitment to use the cash

contribution for the purpose or purposes intended, and that capital sum is ring-fenced.

6. Appeals and Disputes

- 6.1 A new planning law allowing the adoption of a new system for appeals is currently being constrained by a lack of resources. On that basis for the short term at least the existing means of appeal will still be available to applicants. That is to say that if the Committee refuse an application the applicant will have recourse to the Royal Court or a Judicial Review Board. The applicant will also continue to have the right to appeal directly to the Committee. It may be possible that the Committee will consider mediation for disputes where there is disagreement regarding the terms of a proposed agreement or obligation.
- 6.2 The Committee's endorsement of the 5 "key tests" (see Part 1, paragraph 5.1) will impose strong tests of reasonableness in relation to the use of obligations and agreements, and the Committee is committed to such an approach.

7. Register of Agreements

- 7.1 The Environment and Public Services Committee will maintain a register of all agreements and obligations for public information. The register shall hold full details of all agreements and obligations including capital payments. It will also hold details of the date of the discharge of any such agreements or obligations.

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