

## **POS response to the consultation on standard planning agreements for medium-sized sites**

**Response submitted 20 Oct 2026**

### **Overarching Remarks**

POS fully supports the aims behind these proposals to reduce the inefficiencies and delays associated with s106 agreements, but we consider that the way government have approached this matter is misplaced and unlikely to work.

POS therefore asks MHCLG to reconsider reliance on a standard s106 template and instead explore legislative reform that would: place the standard body of planning obligations in secondary legislation; enable obligations to be agreed through standard clauses; create a targeted mechanism for resolving negotiation deadlocks; and revisit POS's proposals on affordable housing and infrastructure delivery.

The central difficulty is that a standard s106 template cannot be imposed on either the LPA or the applicant. A s106 agreement is a legal agreement between the parties, and neither party can be compelled to enter into it. Their conduct is governed, among other principles, by Wednesbury reasonableness. Against that background, the attempt in the NPPF to set a higher bar—NDMP DM6(4) states that “...[national templates] should be used unless there are strong reasons for using a different planning obligation”—may be found ultra vires if legally challenged. Each party must remain free to decide whether to enter into the agreement and, provided its reasons are not unreasonable, may legitimately refuse to do so.

POS considers that meaningful efficiency gains require reform of the contractual basis of planning obligations, rather than a new template for repeatedly drafted agreements. There is no reason why a fresh contract needs to be drafted each time. The body of a s106 obligation can be transferred into secondary legislation so that it is only the obligations themselves that are required. These can then operate much more like conditions and can be produced and agreed in a far more efficient way, supported by standard clauses, produced by both MHCLG and LPAs. POS set out these proposals [in a paper published nearly two years ago](#).

The reformed system also needs a mechanism for breaking negotiation deadlocks. Currently the only available solution is for the applicant to appeal and submit a unilateral undertaking to the Inspector. The LPA has no ability to proactively break a deadlock, and this does not make sense. POS proposes an approach which involves separating the

completion of obligations from the issuing of the planning permission, alongside the ability of an LPA to issue a unilateral undertaking. It would operate like this:

- A recommendation to grant planning permission with the need for planning obligations would be reported as now with the details of the necessary obligations set out in the report. If the report is agreed (delegated or committee) the result would be a planning permission being issued containing a standard clause (or condition) identifying the need for the specified obligations and preventing implementation of the permission until they are completed.
- LPAs would be encouraged to publish standard Planning Obligation clauses, following an SPD type process, and applicants would be encouraged to use and submit them with their applications. Where they are submitted in this way and the LPA agree with them then they should be taken as agreed.
- If one or more clauses become deadlocked in negotiations, the LPA would have the ability to declare that if the matter is not resolved (in say 21 days) then they will issue the planning obligations unilaterally.
- The applicant can either accept that position or would have a right to appeal against the unagreed obligations. Only those unagreed matters would be considered at such an appeal.

This approach limits the matters to be dealt with to those that need negotiation and removes all other matters from the process. Furthermore, it sets a clear procedure to deal with disputes efficiently and protects the applicant's interests with a targeted right of appeal.

The only other legal matter that would need to be considered under this new system is checking that the applicant has an appropriate interest in the land and the ability to perform the obligations. There are procedures for dealing with this when the applicant does not own the land (known as an Arsenal clause) and it may prove beneficial for this to be incorporated into the legislative provisions rather than leaving it for the application/obligation process.

An area that causes the most disputes in s106 negotiations is affordable housing and POS set out proposals to address this [in a paper published over a decade ago](#). POS urges government to review the proposals in that paper as they seek to ensure that the provision of affordable housing is optimised in a way that gives both market certainty, through a fixed percentage approach, and development deliverability, through a phased introduction. At the time of preparing the proposals we received many positive comments from developers who saw the benefits in following this route.

The wider issues associated with infrastructure funding were tackled by POS [in a paper published in 2015](#) following the introduction of CIL and our members' experiences of trying to make it work. We have recently updated our advice to POS members on infrastructure delivery in a [Good Practice Guidance Note](#) setting out the opportunities and requirements that strategic and local planning authorities should put in place to ensure infrastructure delivery is optimised as the new strategic planning system is established.

## **POS response to Consultation Questions**

### **Part 1: Standard templates for medium sites - draft bilateral s106 agreement and Unilateral Undertaking (UU) template**

#### **Parties, titles and recitals**

##### **Question 1**

**Do you consider that the publication of guidance on title issues would assist with the negotiation of section 106 obligations?**

Yes, because if the objective is to help Small and Medium Enterprise (SME) builders then providing plain guidance seems reasonable and sensible.

#### **Definitions – Clause 1**

##### **Question 2**

**Do you agree that the definition of “Commencement” used in the templates is appropriate?**

Agree. The explanatory text could make it clear the term is defined solely in the context of the s.106 and any other matters such as liability for charges under CIL are not dealt with in the agreement.

##### **Question 3**

**Do you have any views on whether renaming the defined term “Commencement” would be appropriate to avoid confusion with other statutory uses of the term in the future?**

See answer to Question 2.

##### **Question 4**

**Do you have any other comments on the definitions included in this clause?**

**Please explain your answer.**

The more definitions there are the greater the potential for confusion.

#### **Interpretation – Clause 2**

##### **Question 5**

**Do you agree with the drafting of this clause?**

Agree.

### **Statutory provisions – Clause 3**

#### **Question 6**

**Do you agree with the drafting of this clause?**

Agree to the clause.

### **Conditionality – Clause 4**

#### **Question 7**

**Do you agree with the drafting of this clause?**

Agree. However, should there also be a provision in clause 4.2, or clarity about where other forms of permission by the Planning Inspectorate i.e. under S.62A and S.62B of the Town and Country Planning Act 1990 (as amended).

### **Appeal provisions – Clause 5**

#### **Question 8**

**Do you agree with the drafting of this clause?**

Agree. See also comments in respect of Q7 where the planning inspectorate grant other types of permission.

### **Covenants to the council – Clause 6**

#### **Question 9**

**Do you agree with the drafting of this clause?**

Agree.

### **Developer's consent – Clause 7**

#### **Question 10**

**Do you agree that this clause is necessary in circumstances where a developer has no interest in the land, or where their only interest is an option over the land or a part of it?**

Agree.

#### **Question 11**

**Do you agree with the drafting of this clause?**

Agree.

## **Mortgagee's consent – Clause 8**

### **Question 12**

**Do you agree that the drafting of this clause gives financial certainty, particularly to lenders?**

Neither Agree nor Disagree. It is a matter for financiers rather than LPAs.

### **Question 13**

**Do you agree with the drafting of this clause?**

Agree.

## **Future charges – Clause 9**

### **Question 14**

**Do you agree with the drafting of this clause?**

Agree

## **Council Covenants – Clause 10 of the bilateral agreement**

### **Question 15**

**Do you agree with the drafting of this clause?**

Agree

## **Liability – Clause 10 of the unilateral undertaking and clause 11 of the bilateral agreement**

### **Question 16**

**Do you agree that this clause should include drafting to allow for ringfencing of liability for obligations?**

Agree with the reasoning.

### **Question 17**

**Do you agree with the drafting of this clause?**

Agree.

**Exemptions – Clause 11 of the unilateral undertaking and clause 12 of the bilateral agreement**

**Question 18**

**Are you aware of instances where exemptions for individual owners and occupiers of residential dwellings and/or commercial units have hindered the effective enforcement of planning obligations against developers?**

No.

**Question 19**

**Do you agree with the drafting of this clause?**

Agreed.

**Release – Clause 12 of the unilateral undertaking and clause 13 of the bilateral agreement.**

**Question 20**

**Do you agree with the drafting of this clause?**

Agree.

**Title Warranty – Clause 13 of the unilateral undertaking and clause 14 of the bilateral agreement**

**Question 21**

**Do you agree that a title warranty is necessary to include alongside the title information supplied by the applicant to the LPA?**

Agreed.

**Question 22**

**Do you agree with the drafting of this clause?**

Agree.

**Future Permissions – Clause 14 of the unilateral undertaking and clause 15 of the bilateral agreement**

**Question 23**

**Do you agree with the drafting of this clause?**

Agreed. This is a pragmatic approach to addressing the risk of s73 permissions being issued inadvertently without the necessary deed of variation and it makes for greater efficiency in dealing with applications.

**Future Development – Clause 15 of the unilateral undertaking and clause 16 of the bilateral agreement**

**Question 24**

**Do you agree with the drafting of this clause?**

Agreed.

**Termination of this Deed – Clause 16 of the unilateral undertaking and clause 17 of the bilateral agreement**

**Question 25**

**Do you agree with the drafting of this clause?**

Agree.

**Severance – Clause 17 of the unilateral undertaking and clause 18 of the bilateral agreement**

**Question 26**

**Do you agree with the drafting of this clause?**

Agree.

**Notifications – Clause 18 of the unilateral undertaking and clause 19 of the bilateral agreement**

**Question 27**

**Do you agree with the drafting of this clause?**

Agreed.

**Legal Costs (Monitoring Fees and Enforcement costs) – Clause 19 of the unilateral undertaking and clause 20 of the bilateral agreement**

**Question 28**

**Do you agree that a clause on enforcement costs is necessary and reasonable?**

Agreed.

**Question 29**

**Do you agree with the drafting of this clause?**

Agree.

**Indexation – Clause 20 of the unilateral undertaking and clause 21 of the bilateral agreement**

**Question 30**

**Do you have any views on which indices are appropriate and should be applied to particular types of contributions?**

The Retail Price Index (RPI) or the Building Cost Information Services Tender Price Index (BCIS TPI) or the Index of Civil Engineering Contracts (CECI ) depending on the type of clause.

**Question 31**

**Do you agree with the drafting of this clause?**

Agree.

**Interest on late payments – Clause 21 of the unilateral undertaking and clause 22 of the bilateral agreement**

**Question 32**

**Do you agree with the drafting of this clause?**

Agree.

**VAT – Clause 22 of the unilateral undertaking and clause 23 of the bilateral agreement**

**Question 33**

**Do you agree with the drafting of this clause?**

Agree this seems fair and reasonable.

**No Waiver – Clause 23 of the unilateral undertaking and clause 24 of the bilateral agreement**

**Question 34**

**Do you agree with the drafting of this clause?**

Agree.

**Registration – Clause 24 of the unilateral undertaking and clause 25 of the bilateral agreement**

**Question 35**

**Do you agree with the drafting of this clause?**

Agree.

## **Approvals – Clause 26 of the bilateral agreement**

### **Question 36**

**Do you agree that the proposed timescale of 20 Business Days strikes a balance between giving the parties a reasonable timescale to work towards, without imposing an absolute obligation on the LPA?**

What happens if the local authority requires inputs from third parties (outside of its control)? It is important this is not an absolute provision, and longer time periods are allowed where necessary.

### **Question 37**

**Do you agree with the drafting of this clause?**

Agree.

## **Dispute Resolution – Clause 27 of the bilateral agreement.**

### **Question 38**

**Do you agree with the proposed timescales in this clause?**

Agree.

### **Question 39**

**Do you agree with the drafting of this clause?**

Agree.

### **Question 40**

**Please provide any examples of how existing dispute resolution provisions have been used in practice for medium sites.**

Not able to provide any as they are not common, however consideration is needed as to whether the dispute mechanism should be via an expert or an arbitrator. An expert could impose an outcome that is different to the developer's and the LPA's position, resulting in neither party being happy. Whereas an arbitrator will choose between the two positions. POS considers that the latter is the better approach.

## **Third parties – Clause 25 of the unilateral undertaking and Clause 28 of the bilateral agreement**

### **Question 41**

**Do you agree with the drafting of this clause?**

Agree.

**Notices – Clause 27 of the unilateral undertaking and clause 30 of the bilateral agreement.**

**Question 42**

**Do you have any views on the use of email to serve notices, consents, and approvals and on streamlining the s106 process?**

The use of email seems reasonable.

**Question 43**

**Would supplementary guidance be useful to support parties in the electronic delivery of notices via email?**

Yes. Whilst an email address must be stated, guidance (or perhaps something in the draft obligation) is needed if an email “bounce-back” is received because of some fault or an out-of-office response is received. In those cases, it is clear that the email has not been served on a person, so it would be clear that service has not been carried out successfully.

**Question 44**

**Do you agree with the drafting of this clause?**

Agree.

**Duty to act reasonably – Clause 31 of the bilateral agreement.**

**Question 45**

**Do you agree with the drafting of this clause?**

Agree.

**No fettering of discretion – Clause 28 of the unilateral undertaking and clause 32 of the bilateral agreement**

**Question 46**

**Do you agree with the drafting of this clause?**

Agree.

**Electronic Execution – Clause 33 of the bilateral agreement**

**Question 47**

**Do you agree with the drafting of this clause?**

Agree - this provision should help speed up the process.

**Delivery – Clause 29 of the unilateral undertaking and clause 34 of the bilateral agreement**

**Question 48**

**Do you agree with the drafting of this clause?**

Agree.

**Schedule 2 of the unilateral undertaking and bilateral agreement – Financial Contributions**

**Question 49**

**Would guidance on the timing of contributions be useful?**

Yes.

**Question 50**

**Do you have any views on the timing of payment of contributions?**

**Please explain your answer.**

Contributions where there is a viability consideration or where affordable housing should include phasing payments (or reviews) to take account of changing circumstances.

**Question 51**

**Do you agree with the drafting of this Schedule?**

Yes.

**Schedule 3 of the bilateral agreement – Council's Covenants with the Owner**

**Question 52**

**Do you agree with the drafting of this Schedule?**

Agreed.

**Question 53**

**Do you agree that discharged planning obligations should be removed from the local land charges register?**

Yes, it might be helpful to have them recorded as discharged so that future developers or owners might understand the complete planning history.

#### **Question 54**

**Do you agree with the requirement for contributions to be held in an interest-bearing account and that, in the case of any repayment, this should include interest accrued?**

Agreed.

#### **Question 55**

**Do you agree with the default timescale of 5 years for repayment?**

Agree.

#### **Question 56**

**Where contributions have not been spent but there has been no request for repayment from the Owner, would it be appropriate to have a provision to allow the LPA to spend the contribution on other mitigation for the development in the vicinity of the development?**

Yes.

### **Part 2: Standard templates for medium sites - draft affordable housing schedules for Full and Outline Planning Permission**

#### **Schedule 1 – Affordable housing**

##### **Definitions**

#### **Question 57**

**Do you agree that the affordable housing tenure definitions included in the template are appropriate?**

Yes.

#### **Question 58**

**Do you agree that changes to affordable housing provision and tenure mix should be capable of being agreed in writing with the LPA without requiring a deed of variation?**

Yes.

#### **Question 59**

**Do you agree that the template should include provisions to regulate service charges for affordable housing?**

No. POS questions whether controlling service charges is a planning matter. Affordable housing is generally provided by Registered Providers and the legislation that governs that legal regime is where these provisions should be.

## **Eligibility**

### **Question 60**

**Do you agree with the approach to defining “eligibility”?**

Yes. The approach to the standardising planning agreements for medium-sized sites is to help Small and Medium Enterprise (SME) builders. The approach to defining eligibility is consistent with this objective.

### **Question 61**

**Do you agree that eligibility criteria should be required to be in line with the Local Authority allocation scheme, rather than specifying the precise criteria in the agreement?**

Yes - for the same reason as question 60.

## **Affordable Housing Scheme**

### **Question 62**

**Do you agree with the drafting of this definition?**

Yes.

## **Owner’s covenants**

### **Question 63**

**Do you agree with the proposed approach to securing the delivery and transfer of affordable housing?**

Agree.

### **Question 64**

**Do you agree with the drafting of these provisions?**

Agree.

### **Question 65**

**Are there any requirements that tend to create difficulty in securing an Affordable Housing Provider or delay the transfer of affordable housing?**

Not from a planning perspective.

## **Enforceability**

### **Question 66**

**What are the implications of the current drafting of paragraph 4.1 of the Full Planning Permission schedule and 3.1 of the Outline Planning Permission schedule for Affordable Housing Providers' financing?**

Neither Agree nor Disagree

### **Question 67**

**Do you agree with the drafting of this paragraph?**

Neither Agree nor Disagree

**Cascade Mechanisms and Affordable Housing payments made in lieu.**

### **Question 68**

**Do you agree with the inclusion of a discretionary cascade mechanism where affordable housing cannot be delivered on site?**

Yes

### **Question 69**

**Do you agree with the proposed operation of the cascade mechanism, including the order of stages, marketing opportunities and associated timescales?**

Agree

### **Question 70**

**Do you agree with the proposed approach of including local authorities as potential purchasers/providers of the affordable housing units at the first stage of the cascade mechanism?**

Agree.

**Timing of contributions following the cascade mechanism**

### **Question 71**

**Do you agree that Affordable Housing Contributions payable following the operation of the cascade mechanism should be paid at the same stage of occupation as the affordable housing would have been delivered otherwise?**

Neither Agree Nor Disagree

## **Calculation of Affordable Housing Contribution**

### **Question 72**

**Do you agree with the proposed approach for the calculation of Affordable Housing contributions?**

Agree.

### **Question 73**

**What further details would be useful to include in guidance on the calculation of Affordable Housing contributions for the development of LPA policies?**

Neither Agree Nor Disagree

## **Geographic limitations**

### **Question 74**

**Which approach to the geographic use of Affordable Housing contributions do you prefer?**

Unlike site-specific mitigation, affordable housing delivery often depends on assembling funding packages, securing delivery partners and bringing forward suitable schemes across the local authority area. Contributions should be capable of being spent across the LPA area from receipt as this gives the greatest flexibility to deliver affordable housing. The need for affordable housing is a plan-wide policy requirement and is not mitigation relating to the development as such.

## **Repayment provisions**

### **Question 75**

**What should be the default approach to the repayment of unspent Affordable Housing Contributions?**

c) Repayment should apply after 10 years.

A default repayment period of 10 years would provide local planning authorities with a realistic opportunity to deploy contributions effectively whilst still providing appropriate protection for developers where funds remain unused for a prolonged period. A shorter repayment period risks reducing the effectiveness of the contribution by limiting the authority's ability to align funds with affordable housing delivery opportunities.

This approach is consistent with the objective of maximising affordable housing delivery whilst maintaining certainty regarding the long-term treatment of unspent contributions.

### **Question 76**

**What approach should be taken to payment triggers for Affordable Housing Contributions that are agreed at the outset instead of on-site provision?**

Contributions should be paid in phased instalments linked to development progress.

## **Schedule 1: Annex 1 Affordable Housing Mix (Full Planning Permission template only)**

### **Question 77**

**Do you agree with the drafting of this provision?**

Agree.

## **Public Sector Equality Duty and environmental principles**

### **Question 78**

**Do you have any comments on any potential impacts for you, or the group or business you represent, and on anyone with a relevant protected characteristic that might arise under the Public Sector Equality Duty as a result of the proposals in this document?**

No.

### **Question 79**

**Is there anything that could be done to mitigate any impact identified?**

N/A

### **Question 80**

**Do you have any views on the implications of these proposals for the considerations of the 5 environmental principles identified in the Environment Act 2021?**

No.

*POS is the single credible voice for public sector planners, pursuing good quality and effective planning practice. The Society's aim is to ensure that planning makes a major contribution to achieving sustainable development in ways that are fair and equitable and achieve the social, economic and environmental aspirations of the community.*

*We operate in three main ways:*

- *As a support network for planners in the public sector*
- *As promoters of best practice in planning*
- *As a think tank and lobbying organisation for excellence in planning practice*

*Where we can, we will work across the sector to craft proposals that have widespread support from the people who operate the planning system at the coalface: landowners, developers, agents, legal, local authorities and politicians. We will be both radical and practical as we look for solutions to tangible problems that will make a real difference to crucial areas. Our objective is to improve the planning system to enable it to deliver its key aim of sustainable development. It is within this context that we have set out this advice to Government so we can plan together for a better future.*