

**Blaenau Gwent County Borough Council**  
Cyngor Bwrdeisdref Sirol Blaenau Gwent



Supplementary Planning Guidance - Note 7

# Planning Obligations

September 2011

**BLAENAU GWENT COUNTY BOROUGH COUNCIL**

**SUPPLEMENTARY PLANNING GUIDANCE NOTE 7**  
**PLANNING OBLIGATIONS**

**SEPTEMBER 2011**

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## **1. Introduction**

### **1.1 Planning Obligations**

Planning obligations are an established and valuable tool within the development control process. They provide a mechanism that makes it possible for an otherwise acceptable development proposal to go ahead by securing the provision of infrastructure, facilities and services, which will be created by the new development, thereby mitigating any negative impact on the local community arising from the development. They are commonly used to bring development proposals in line with the objectives of sustainable development as set out in local and national policy.

A planning obligation is a legal agreement, executed as a deed, between the Council and the Applicant/developer and any other parties who may have an interest in the land. An obligation either requires the developer to do something, such as the payment of a commuted sum, or restricts what can be done with the land following the granting of planning permission. The exact nature of each agreement depends upon the individual circumstances of the site and the proposed development.

### **1.2 Aims and Objectives of this Guidance**

Supplementary Planning Guidance (SPG) is prepared to give detailed guidance on how policies and proposals in the current development plan are to be implemented. This SPG is prepared in the context of Planning Policy Wales 4<sup>th</sup> Edition (2011) and Circular 13/97 on Planning Obligations, as supplementary guidance for the Blaenau Gwent County Borough Council Unitary Development Plan 1996-2011 (UDP) and, in due course, for the emerging Blaenau Gwent Local Development Plan 2021 (LDP).

The SPG is intended to improve clarity and transparency for all involved in and with an interest in the development process by explaining Blaenau Gwent's approach to planning obligations, with regard to: the types of matters about which the Council will seek to negotiate, the thresholds and formulae that will be applied where appropriate, the procedures that will be employed in the implementation of this guidance and the subsequent monitoring of planning obligations.

Part One of this guidance sets out the context and general information regarding planning obligations. Part Two comprises topic based Annex's that go into detail on the type of obligations that occur most frequently in the development process.

The SPG refers to a wide range of matters that may be the subject of planning obligations. However, the Council does not propose a blanket approach in applying the SPG as not all of these matters will be relevant to every planning application. Accordingly the guidance will not replace the individual negotiation of planning obligations; instead each case will continue to be considered on its own merits taking into account the nature of the proposed development, the site and its local context.

### **1.3 Preparation and Status of the Guidance**

Section 38(6) of the Planning and Compulsory Purchase Act (2004) states that the determination of a planning application must be in accordance with the development plan unless material considerations indicate otherwise. The Welsh Government advises that an adopted SPG may be a material consideration provided it is consistent with the development plan. This SPG has been prepared in accordance with the policies and guidance set out in:

- Welsh Office Circular 13/97: Planning Obligations
- Planning Policy Wales 4<sup>th</sup> Edition (2011)
- Technical Advice Note 2: Planning and Affordable Housing (2006)
- Technical Advice Note 5: Nature Conservation and Planning (2009)
- Technical Advice Note 6: Planning for Sustainable Rural Communities (2010)
- Technical Advice Note 16: Sport, Recreation and Open Space (2009)
- Technical Advice Note 18: Transport (2007)
- Technical Advice Note 22: Planning for Sustainable Buildings (2010)
- Blaenau Gwent County Borough Council Unitary Development Plan 1996-2011

The weight afforded to the SPG is increased if it has been prepared in consultation with the general public and interested parties, and if it has been the subject of a Council resolution.

The draft SPG has been prepared with involvement from the Council and other stakeholders and was subject to a four week public consultation exercise which aimed to involve all interested parties and members of the public. The comments received have been considered and, where appropriate, changes have been made to the SPG to address the comments received. The amended document, together with a consultation report outlining the responses and corresponding actions was presented to the Council's Executive Committee on 1<sup>st</sup> September 2011, where it was resolved to adopt the guidance. The SPG is a material consideration carrying significant weight in the determination of planning applications and appeals.

The SPG will be reviewed and updated as appropriate. Contained in the SPG are external data sources and guidance that are current at the time the document is published, but which will inevitably require updating from time to time. The guidance aims to refer to the most up to date issue of the data and / or guidance to ensure that the advice contained herein remains relevant. Where data and / or guidance are updated following the adoption of this SPG, the latest issue or equivalent guidance should be referred to. The Council will undertake an annual review and, where appropriate, publish updates on its website at [www.blaenau-gwent.gov.uk](http://www.blaenau-gwent.gov.uk).

The Council has prepared and consulted upon the deposit draft of the Local Development Plan (LDP) which will replace the Blaenau Gwent UDP in due course. New policies relating to planning obligations will be subject to independent assessment at an Examination before being adopted by the Council. The draft policies of the deposit LDP are included within this document for clarity, but upon adoption of the LDP an amendment to the SPG will be required. It is anticipated that this will not result in substantial changes to the content of the SPG as the approach to planning obligations within this guidance and the LDP has been developed in accordance with current national policy guidance and good practice.

This SPG supersedes the Council's adopted Supplementary Planning Guidance Note 8 'Affordable Housing in New Developments' (2008).

## **2. Legislation, Guidance and Policy Context**

### **2.1 Legislation and Guidance**

The legislative basis for planning obligations is Section 106 of the *Town and Country Planning Act 1990* (amended by Section 12 of the *Planning and Compensation Act 1991*). Typically obligations are negotiated in the context of granting planning permission and are used to secure provisions to enable the development of land that are not suitable or capable of being contained in a condition attached to a planning permission. The legislation allows planning obligations to:

- **Restrict the development of use of land;**
- **Require specific operations to be carried out;**
- **Require land to be used in a specified way;**
- **Require a sum of money to be paid to the Council in accordance with a payment schedule.**

A planning obligation - which may take the form of a Bilateral Section 106 Agreement or a Unilateral Undertaking - is a legally binding agreement which usually runs with the title of the land rather than with the person entering into the agreement. Planning obligations are therefore enforceable against the original covenantor and their successors in title.

Welsh Office *Circular 13/97: Planning Obligations* provides guidance on the implementation of planning obligations in Wales by setting out the benefits that can be secured from planning obligations and the role of development plan policy. It also identifies broad principles governing the use of planning obligations, based on the fact the planning system should operate in the public interest and should aim to foster sustainable development. Importantly the Circular sets out five policy tests which require planning obligations to be sought only when they are:

- (a) Necessary;**
- (b) Relevant to planning;**
- (c) Directly related to the proposed development;**
- (d) Fairly and reasonably related in scale and kind to the proposed development; and**
- (e) Reasonable in all other respects.**

The guidance contained within this SPG is based upon recognition of the need to satisfy the five policy tests.

More recently, Part 11 of the *Planning Act 2008* provided for the introduction of the Community Infrastructure Levy to fund the provision of infrastructure in England and Wales. The Community Infrastructure Levy Regulations came into force on 6<sup>th</sup> April 2010. Regulation 122(2) gives legal effect to three of the tests from Circular 13/97, as follows:

***“a planning obligation may only constitute a reason for granting planning permission if it complies with the three tests...namely, that it is:***

- (a) necessary to make the development acceptable in planning terms;***
- (b) directly related to the development; and***
- (c) fairly and reasonably related in scale and kind to the development.”***

## 2.2 National Policy Context

*Planning Policy Wales 3<sup>rd</sup> Ed. (2010)* (PPW) sets out the key requirements of the 1990 Act and Circular 13/97, providing national context for development plan policies. PPW is supplemented by topic based *Technical Advice Notes* (TANs). Where appropriate, reference is made to the relevant TAN in each of the topic based Annex's of this guidance.

## 2.3 Local Policy Context

The policy context for negotiating planning obligations is set out in the Council's Unitary Development Plan (UDP). Although the UDP contains no general policies specifically relating to the use of planning obligations, the Council's requirement for planning agreements is outlined explicitly in relation to several policy areas, as detailed in policies EN14, H11, T4, M4 and M18. The need for planning obligations is also alluded to in the context of the

regeneration benefits to be achieved from new development as set out in General Policy G1 below:

## **General Policy G1**

**Regeneration will be secured by favouring developments which:**

- (A) Strengthen and broaden the economic base and increase employment opportunities; and/or**
- (B) Improve infrastructure and secure the re-use of land or buildings and the improvement of their surroundings, and/or**
- (C) Benefit the most economically deprived parts of Blaenau Gwent, and/or**
- (D) Improve leisure and community facilities to enhance the quality of life for residents, and/or**
- (E) Conserve or enhance Blaenau Gwent's character and appearance, and/or**
- (F) Strengthen and broaden the housing supply and provide increased flexibility and choice of residential accommodation.**

The relevant UDP policies regarding the provision of infrastructure, facilities and services specific to the planning obligation matters detailed in this guidance are set out at the beginning of each of the topic-based Annex's.

The overarching policy context set out in the emerging Local Development Plan (LDP), which is to be the subject of independent examination in due course, states:

### **Policy DM4 Infrastructure Provision**

**Proposals for new development will be required to meet the infrastructure needs that it generates, including the improvement or provision of infrastructure, services and community facilities. Where on site provision cannot be achieved, off-site provision or a financial contribution will be required. Arrangements for the provision of infrastructure will be secured by the use of planning conditions attached to a planning permission or planning obligations in legal agreements or via the Community Infrastructure Levy. The Council will seek to ensure that, where appropriate, the impact of new development is mitigated to ensure that it contributes the regeneration of local communities in Blaenau Gwent**

The relevant draft LDP policies regarding the provision of planning obligations are set out at the beginning of each of the topic-based Annex's. The SPG will be reviewed following the adoption of the LDP to ensure that it is relevant and consistent with the policies, aims and objectives of the LDP.

## **3. The Use of Planning Obligations**

### **3.1 The Use of Planning Obligations in Blaenau Gwent**

Blaenau Gwent Council faces significant challenges in respect of the regeneration of the Borough. This manifests in many social, economic and physical issues, which can often be exacerbated by the impact of new development. Planning obligations are therefore an important mechanism to help mitigate these impacts and ensure new development makes a positive and sustainable contribution to the County Borough. It must be recognised that planning obligations will only be sought to mitigate the impact of the development itself and not to remedy existing deficiencies in infrastructure and services that may already exist.

The Council endorses the principles of the use of planning obligations as set out in Circular 13/97, including the fundamental principle that planning permission may not be bought or sold.

It understands that this principle is best served when negotiations are conducted in a way which is seen to be fair, open and reasonable. To this end, this guidance provides clarification to all interested parties on where, when and what planning obligations will be sought in association with new development in Blaenau Gwent.

Circular 13/97 further advises that unacceptable development should never be allowed because of unrelated benefits, and acceptable development should never be refused simply because an applicant is unwilling to offer such benefits. Planning Agreements are voluntary and require the co-operation of the developer in order to be delivered. However, where a developer fails to show they can adequately mitigate the impacts their development, either through planning obligations or other measures, it is likely that the planning application will be refused or determination delayed until such time that the developer agrees to make the necessary provision or addresses the impact of the development via revisions to the design of the scheme.

In preparing this SPG, the Council has also reflected upon and taken into account the Government advice that planning obligations should not duplicate planning conditions. If there is a choice between the use of a condition and an obligation, preference will be given to a planning condition as this affords the developer a right to appeal. It is also a more straightforward basis for amendment or removal that provides the Council with a more robust enforcement mechanism in the event that the provisions contained within the condition are not fully satisfied.

Following the adoption of this SPG all planning applications that meet the thresholds and triggers set out in the Annex's to the guidance will come within its remit. This includes applications for the renewal of extant planning permissions. The SPG represents a material change in the planning circumstances since the original permission was granted and will therefore be taken into account in determining such applications. The planning obligation requirements set out in the Annex's to this guidance are summarised in Table 1 below.

### 3.2 Circumstances in which Planning Obligations will be Sought

The Council will normally seek planning obligations on larger scale developments or where development may impact on a particularly sensitive site. The Council recognises that, due to the post-industrial character of the area, it is the norm for the majority of development sites in the Borough to give rise to abnormal development costs, due to a legacy of mining operations or contamination for example. The ability of smaller scale developments to absorb these costs, deliver planning obligations and return a reasonable profit for the developer is considered both unrealistic and unreasonable. The thresholds set out in Table 1 have been set taking these issues into account.

The Council however reserves the right to seek planning obligations on smaller development sites where there are specific impacts created by the proposed development, which if not met would prevent planning permission being granted.

The formulae contained in the guidance are provided as a guide to developers as to the Council's general expectations in respect of planning obligations. However, each case will be considered on its own merits having regard to existing provision in the area and the quantity and quality of existing facilities and services.

Where a site is sub-divided, the Council will treat such sites in their totality. In these circumstances each sub-divided plot will be required to provide a contribution towards the relevant obligation proportionate to its size and relative to the impact of the development. Where the new development involves more than one developer, the Council may seek joint contributions from developers to mitigate the combined impacts.



Where developments are proposed that fall short of a threshold by up to 10%, it will be necessary for the Council to consider whether the proposals constitutes deliberate under development of the site to avoid the planning obligation requirement. If so, there is planning case law to support a stance that the requirement should be applied. As a general rule, a minimum density of 35 dwellings per hectare will be considered appropriate. Where site specific constraints make lower densities necessary, this will be considered by the Council on a site by site basis.

**Table 1 Summary of Planning Obligation Requirements**

Type of Obligation	Residential development threshold	Commercial development threshold	Obligation
Annex 1: <b>Affordable Housing</b>	30 dwellings on Allocated Sites (Policy H2) 10 dwellings or 0.28ha all other sites.	-	10% on-site provision and/or commuted sum
Annex 2: <b>Highways &amp; Transport</b>	No Threshold	No Threshold	Site specific according to need
Annex 3: <b>Educational Facilities</b>	10 dwellings	-	Provision of additional capacity according to need via a commuted sum: Primary Place = £9,438.52 Secondary Place = £14,421.68
Annex 4: <b>Recreation &amp; Public Open Space</b>	10 dwellings	-	Provision of additional capacity according to need, via on site provision or commuted sum: Outdoor Sport: £680 per dwelling Children's Play Space: £3,120 per dwelling
Annex 5: <b>Biodiversity &amp; Geodiversity</b>	No Threshold	No Threshold	Mitigation and/ or compensation according to specific impact
<b>Annex 6: Regeneration</b>			
(i) Employment & Enterprise	10 dwellings or 1ha	1000 sqm or 1 ha	Agreement to provide training /employment or commuted sum. Provision on a case by case basis.
(ii) Community Safety	No Threshold	No Threshold	Site specific according to need
(iii) Town Centre Improvements	-	1000 sqm retail	Site specific according to need
(iv) Public Art	10 dwellings or 1ha and/or publicly accessible	1000 sqm or 1 ha and/or publicly accessible	1% of Build Costs Provision on a case by case basis
(v) Community Facilities	10 dwellings	-	Provision of additional capacity according to need at a rate of 0.5 sqm of community floor space per dwelling or a commuted sum of £584.50 per dwelling

### 3.3 Types of Obligations

Planning obligations may be sought for a wide range of facilities, infrastructure and / or services in association with new development. The topic based Annexes listed in Table 1 and appended to this guidance explain the Council's approach to those obligations which tend to occur most frequently. However, the Council reserves the right to seek obligations relating to matters not covered by this SPG where there is sufficiently robust evidence to justify such obligations. These will be negotiated separately on individual schemes as appropriate.

In the majority of cases, the Council will encourage developers to provide facilities and infrastructure on site to serve the future occupiers of the new development. Where this is the case these 'in kind' contributions will be taken into account when assessing the requirement for any additional 'off-site' contributions. Where a development is considered to meet all of its needs on site by mitigating its impact through in-kind contributions, it is unlikely any additional contributions will be sought.

Where a development is unable to accommodate new facilities or infrastructure on-site or it is deemed more appropriate to deliver them in an off-site location, for example the upgrade of a local play area, a financial 'commuted' sum will be sought in lieu of on-site provision to enable the Council to make the necessary provision. In these cases, it is the Council's intention to ensure that the commuted sum is spent in the vicinity of the development to ensure that the future occupiers directly benefit. This may be in the same or an adjacent Electoral Ward depending on various factors, such as the type of facilities/ infrastructure being provided and how accessible the proposed location is to the new development. If a commuted sum is identified to deliver a specific project this project should be specified in the legal agreement.

The Council recognises that in some cases, the infrastructure required to make a development acceptable may go beyond the scope of an individual development and be required of a number of developments, such as the provision of a new access road into a strategic development site. In these cases it may be considered appropriate to pool contributions from these developments towards the required infrastructure.

Where new open spaces, facilities or biodiversity features are provided, the developer will need to provide for the long-term maintenance and/ or management of the site. This can be achieved by establishing a management company or trust to undertake the site management in perpetuity. This will be secured within the legal agreement so that if the management company defaults on its obligations or becomes bankrupt, the obligation transfers equally to the individual dwelling/ unit owners within the site. This default obligation will be registered as a Local Land Charge.

Alternatively, the Council may agree to adopt the land/ facility from the developer, which will entail the transfer of the land/ facility to be accompanied by a commuted sum to cover the maintenance of that facility over a minimum 20 year period. The Council will not normally entertain the adoption of land or facilities other than in exceptional circumstances.

Whether or not a planning obligation is necessary and, if so, its nature and value, can often only be established when the full details of a planning application are known. In determining Outline planning applications a legal agreement will be required to provide for the principle of specific obligations with the value and details to be determined when the full details of the scheme are known. This will occur on the submission of an associated Reserved Matters application or on any subsequent full planning application.

### 3.4 Who may enter into a Planning Obligation?

As planning obligations run with the land, all owners, lessees, mortgagees and any other

person having an interest in the land must be signatories. Planning obligations are legally enforceable against the owner(s) (including their successors in title) of the land to which the obligation relates. This means that generally only parties with an interest in the land can enter into obligations even if a prospective purchaser/developer has applied for the planning permission (although it is possible for prospective purchasers to be party to the obligations where they have exchanged contracts to purchase).

#### **4. Procedural Considerations**

##### **4.1 Process of Negotiating Planning Obligations**

The Council seeks to ensure that planning applications are progressed as quickly and efficiently as is reasonably possible. To this effect the Council has set out a procedure for negotiating planning obligations and Service Level Standards which are attached at Appendices A and B respectively of this SPG.

During pre-application discussions and the subsequent assessment of a planning application, the Council as Local Planning Authority will consider as and where planning obligations should be sought in relation to a proposed development, taking into account responses from consultees and the advice contained in this SPG. The planning case officer will negotiate with the developer to agree the Heads of Terms of the legal agreement and the planning obligations to be contained therein. Any discussions or draft agreements will be without prejudice to the final decision of the Council on any subsequent planning application.

Since all parties with an interest in the land may need to be party to any S106 agreement relating to that land, an applicant must also inform and involve landlords and anyone with an interest in the land, such as a bank with a charge or mortgage, at an early stage. The Council will require evidence of title to the land, details of the solicitor acting for the applicant and full details of all parties that are to be subject to the agreement as early as possible in the process.

The Council will seek to agree the Heads of Terms of the legal agreement prior to the planning application being presented to Planning Committee or receiving a resolution to grant planning permission. The planning report accompanying the recommendation will detail the draft Heads of Terms together with the reasons that they are being requested. Following the date of a resolution to grant planning permission subject to the completion of a legal agreement to secure planning obligations, the applicant will have a period of six months to finalise and sign the legal agreement. Any agreement that has not been signed within six months and cannot be signed imminently will need to be reconsidered by Planning Committee or under delegated powers. It is the Council's intention to finalise all legal agreements well within the six month period in the interests of good practice and facilitating development in the Borough.

##### **4.2 Process of Drafting a Legal Agreement**

A planning obligation may take the form of a Section 106 Agreement or a Unilateral Undertaking. In most cases, it is expected that the Council will seek to finalise planning obligations via a S106 agreement. However, in circumstances where only the developer needs to be bound by the agreement with no reciprocal commitments by the Council or any other party, the Council is willing to accept Unilateral Undertakings where a developer wishes to submit one for consideration. This can speed up the application process if submitted and agreed in advance of the Planning Committee meeting.

A S106 legal agreement will usually be drafted by the Council's legal department. Where possible the Council will use the standard model clauses set out at the end of each of the

topic based Annex's of this guidance as a basis for drafting the agreement. Where the applicant chooses to draft the legal agreement themselves, the agreement will need to satisfy the planning obligation requirements deemed necessary by the Local Planning Authority and must be checked by the Council's legal department. This includes where the applicant presents a Unilateral Undertaking to the Council.

Standard legal templates and clauses have been prepared by the Law Society's Planning and Environmental Law Committee (June 2010). The Council has prepared templates of a standard Section 106 Agreement and Unilateral Undertaking based upon the Law Society Model which will be posted on the Council's website ([www.blaenau-gwent.gov.uk](http://www.blaenau-gwent.gov.uk)).

#### 4.3 Commencement, Modification or Discharge of Planning Obligations

All planning obligations come into effect at the time that the planning permission is granted. Planning permission will not be formally granted until the legal agreement has been finalised and signed by all parties. Once granted all planning obligations are placed on the Local Land Charges Register until such time that they are discharged.

A planning obligation contained in a signed legal agreement may be modified or discharged by agreement, executed as a deed, between the Council and the relevant party or by way of application to the Council after *five* years from the date of the agreement.

#### 4.4 Trigger Points and Phasing

Where a planning obligation has been drawn up seeking a developer to provide facilities, services or commuted sums, the legal agreement must contain clearly defined trigger points which specify when a particular planning obligation is due to ensure that the delivery of those obligations is timely. The trigger points will usually be at key stages in the implementation of the planning permission such as 'the commencement of development' or 'first beneficial occupation'. When deciding upon appropriate trigger points the Council and the developer will need to consider when the facilities or services being delivered by the planning obligation are needed to serve the development and also have regard to site viability and delivery issues. It is essential that the trigger points are clear, specific and enforceable to ensure that planning obligations are delivered.

When assessing major developments or mixed-use schemes the phasing of the development is often an important consideration. Legal agreements provide a useful mechanism to ensure that developments are phased to secure the delivery of mixed communities and appropriate infrastructure. When stipulating phasing obligations, the Council will need to have regard to site specific circumstances and viability issues.

#### 4.5 Development Viability and Development Appraisal

Developers should make themselves aware of the likely planning obligation liabilities associated with a proposed development to ensure that these are reflected in land value assumptions. Where an applicant submits that the planning obligation requirements associated with a scheme are too onerous and will potentially render the proposed development scheme unviable, they will be expected to submit an 'open book' financial assessment of the costs and anticipated profits of the scheme based on properly sourced evidence in accordance with the Council's procedure for Financial Assessment attached at Appendix A.

Depending on the nature and complexity of the proposed development scheme the Council will seek verification of viability information either from the Council's own Estates Department or from the District Valuer; the latter at the expense of the developer. Where the Council

undertakes a viability appraisal in-house it will use the Three Dragons Development Appraisal Toolkit (DAT), which has been adopted by the Council. The DAT uses a residual method to calculate land value which enables a determination of the economic viability of a development based upon a variety of circumstances. The District Valuer will usually be engaged to undertake a development appraisal for larger-scale and more complex schemes, or where an applicant wishes an independent third party to carry out the assessment.

Where a development appraisal indicates that the planning obligations should be reduced in order to make a scheme viable, any subsequent reduction in obligations is only likely to be justified where there may be planning merit and/or public interest in the site being developed, e.g. the development of a contaminated site or regeneration of an urban area. Each case will be considered on its own merits and any decision to reduce obligations will not constitute a precedent in relation to future development schemes.

#### 4.6 Reduced Planning Obligations

Where a reduction in planning obligations is justified on the basis of unusual market circumstances, the Council will usually require developers to agree to a time limiting clause of two years. If the development has not reached a specified stage of completion within two years of the date of the agreement, the agreement will require review in order to take account of any subsequent change in market conditions which might make the normal planning obligation requirements feasible.

#### 4.7 Re-negotiation and Deferment of Planning Obligations

In circumstances where a development already approved cannot proceed on the basis of the cost of planning obligations, the Council will consider re-negotiating the planning obligations using the process outlined above. In some cases, it may be possible to retain the existing legal agreement subject to a Deed of Variation to enable a deferred payment plan. Any request for a deferment of payment must be made in writing and accompanied by financial justification. This justification may be referred to the District Valuer for independent verification. The request will be considered by the Council taking into account the site specific details and justification for the deferment.

#### 4.8 Prioritising Planning Obligations

Where a reduction in planning obligations is agreed by the Council on the grounds of viability, the priority of each of the obligations will be determined on the basis of whether the proposed development would be considered so unacceptable without the obligation as to form a reason for refusal of the planning application. The assessment to make this judgement will be informed by evidence submitted to the Local Planning Authority by the Council Service Areas taking into account the site specific circumstances of the development and corporate priorities, for example priorities set out in the Council's Community Strategy. The priorities for a specific scheme will be determined on a case by case basis. Where a case is made for reducing and prioritising planning obligations this will be clearly set out by the planning case officer in the planning report and accompanying recommendation for consideration by the Planning Committee.

#### 4.9 Payment of Contributions

Payment of commuted financial contributions will generally be sought upon the commencement of development unless it is agreed that an alternative stage in the development is appropriate and acceptable. For larger scale proposals, the Council will consider the payment of phased contributions where appropriate. In such cases the planning obligation set out in the legal agreement will detail the phasing and timing of payments.

All financial contributions will be index linked from the date the agreement is signed to the date of payment. In addition, any amounts that are overdue will be charged interest (usually at 4% above the base lending rate of Barclays Bank Plc) payable from the date that the payment was due until the date it is received by the Council. Where it is deemed necessary the Council may require the developer to pay a bond to ensure the delivery of necessary obligations.

Any financial contributions that remain unspent by the Council at the end of a time period specified in a legal agreement will, upon request of the payee, be returned to the payee with any interest accrued, unless otherwise agreed in writing.

#### 4.10 Legal, Management and Monitoring Fees

Developers will be expected to pay the Council's reasonable legal fees for drafting, amending, checking and dealing with a legal agreement (normally calculated at an hourly rate). The Council's legal costs will be payable on signature of the agreement, regardless of whether the development actually goes ahead.

From the date of the adoption of this SPG the Council is also introducing a separate fee system to cover some of the costs incurred in managing and monitoring planning obligations. The fee will be calculated based on 10% of the planning application fee, subject to a minimum fee of £500. This is considered a fair and reasonable approach based on the assumption that the larger and more costly a development proposal is, the greater number of planning obligations are produced and the more complex an agreement is to monitor. The management and monitoring fee will be payable on signature of the agreement prior to the granting of planning permission.

#### 4.11 Monitoring and Enforcement

The Council's Planning Control Team will monitor planning obligations to ensure that they are complied with in full by the developer and the Council. It should be noted that it is the responsibility of the developer to notify Planning Control upon commencement of development and also when any triggers specified in the agreement are reached.

An annual monitoring report will be prepared at the end of each financial year summarising the types of planning obligations completed and how any contributions that have been collected have been used.

Where it is found that an agreement is not being complied with the Council will, in the first instance, informally seek to enforce compliance with the legal agreement. If this approach remains unsuccessful the breach will be recorded on the Local Land Charges Register and the Borough Solicitor will consider the most appropriate course of action to be taken. This may comprise serving a Mandatory Injunction upon the landowner and/or signatory of the agreement, or debt recovery proceedings to ensure compliance.

#### 4.12 Freedom of Information Requests

During the planning application process, the Council recognises that some of the information submitted during the negotiation of planning obligations will have been submitted in the expectation of commercial confidence which is acknowledged. Whilst the Council will take such expectation properly into account when dealing with any requests under the Freedom of Information Act (2000) or the Environmental Information Regulations (2004) applicants should be aware that the Council must in all cases comply with its statutory responsibilities.

Heads of Terms for the obligations will be set out in the Planning Officers report which becomes publicly available upon a resolution to grant permission. Signed legal agreements, both S106 and Unilateral Undertakings, are a matter of public record. The Council keeps a register of all such legal agreements and retains a copy of each legal agreement on the relevant planning application file. The register and relevant planning application files are available for members of the public to view at the Council's Planning Control office.

## **5. Further Information and Advice**

Copies of this guidance and accompanying documents can be downloaded from the Council's website at [www.blaenau-gwent.gov.uk](http://www.blaenau-gwent.gov.uk).

Further information can be sought from:

Planning Control Section

Tel: 01495 355555

E-mail: [planning@blaenau-gwent.gov.uk](mailto:planning@blaenau-gwent.gov.uk)

Planning Control Section  
Neighbourhood Services Division  
Blaenau Gwent County Borough Council  
Council Offices  
High Street  
Blaina  
Gwent NP13 3XD

## **ANNEX 1: AFFORDABLE HOUSING**

The Welsh Government National Housing Strategy '*Better Homes for People in Wales*' (2001) is based upon a central vision that everyone in Wales should have the opportunity to '*live in good quality, affordable housing; to be able to choose where they live and decide whether buying or renting is best for them or their families*'. In '*One Wales*' (2007) the Welsh Government committed to increasing the supply of affordable homes in Wales by at least 6,500 by 31<sup>st</sup> March 2011. This intention has been repeated by the Welsh Government in its recent document '*Improving Lives and Communities*' (2010) which aims to '*increase the number of affordable homes for purchase and rent*'. The planning system has been identified as having a key role in increasing the supply of affordable housing for local people. Accordingly the Council will seek to secure affordable housing via planning obligations.

### **1.1 Policy and Guidance**

The following policy and guidance are relevant to this topic. Overarching Development Plan policies, legislation and generic national planning policies relating to planning obligations are set out in Part One of this document.

Planning Policy Wales 4<sup>th</sup> Ed. (2011) paragraphs 3.7.1-3.7.5, Chapter 9, in particular paragraphs 9.2.14-9.2.19, 9.2.23 and 9.3.5. Paragraph 9.3.5 states:

*'Where development plan policies make clear that an element of affordable housing, or other developer contributions, are required on specific sites, this will be a material consideration in determining relevant applications. Applicants for planning permission should therefore demonstrate and justify how they have arrived at a particular mix of housing, having regard to the development plan policies. If, having had regard to all material considerations, the local planning authority considers that the proposals for a site does not contribute sufficiently towards the objectives of creating mixed communities, then the authority will need to negotiate a revision of the mix of housing or may refuse the application.'*

Welsh Office Circular 13/97 Planning Obligations, in particular paragraph B11

Technical Advice Note 2: Planning and Affordable Housing (2006) in particular paragraphs 10.14, 12.1-12.7

Technical Advice Note 6: Planning for Sustainable Rural Communities (2010) in particular, paragraphs 4.1.1-4.2.4 and 4.23.1

Blaenau Gwent County Borough Council Unitary Development Plan (2006) Policy H11

Blaenau Gwent County Borough Council Local Development Plan Deposit Draft (2011) Policies SP4, DM8 and DM9

Blaenau Gwent County Borough Council Local Housing Market Assessment (2006)

Blaenau Gwent County Borough Council Affordable Housing Delivery Statement 2009-2011 (2009)

Blaenau Gwent County Borough Council Empty Property Strategy 2009-2012 (2009)

District Valuer Services on behalf of BGCBC. Study into the Economic Viability of Providing Affordable Housing in Blaenau Gwent (August 2010)



## 1.2 Definition of Affordable Housing

Affordable Housing is housing that is provided for people who would not otherwise be able to purchase or rent houses without a subsidy. Affordability is calculated through an assessment of the ratio of household income to earnings, to the prices of property to buy or rent available in the open market in Blaenau Gwent. The following definition of Affordability and Affordable Housing is based upon Planning Policy Wales 3<sup>rd</sup> Ed. (2010) and TAN 2 (2006):

*Affordable Housing for the purposes of the planning system is housing where there are secure mechanisms in place to ensure that it is accessible to those who cannot afford market housing (having regard to local incomes, income multipliers and local house prices / rents), both on first occupation and for subsequent occupiers. Where staircasing to full ownership takes place any subsidy should be recycled to provide replacement affordable housing.*

Affordable Housing includes:

**Social Rented housing** – is that provided by local authorities and Registered Social Landlords (RSLs), including Linc Cymru, Melin Homes, Tai Calon and United Welsh Housing Association in the County Borough of Blaenau Gwent. Rents are set at Welsh Government Benchmark Rent levels.

**Intermediate housing** – is that where prices or rents are above those of social rent but below market housing prices or rent. These can include:

**‘Low Cost Home Ownership’** also known as **‘Equity Sharing’** are schemes where people identified as being in need can purchase a home on the open market with an interest free equity free loan of typically around 30% of the purchase price, provided by an RSL. The loan is secured as a second charge on the property, and is repayable either on the sale of the property, or when the owner wishes to stair-case up to 100% ownership. No rent is charged on the outstanding equity. A mechanism is in place to ensure the discount remains in place for as long as the need exists.

**‘Intermediate Rent’** where rental levels are above social rent but below market rents.

**Rural Exception housing** – is new housing provided outside of the development boundary in existing settlements where it can be proven there is demonstrable need for affordable housing for local people in the interests of maintaining a balanced rural community and occupancy is restricted to ensure that need continues to be met in perpetuity.

**Special Needs housing** – is housing where one or more members of the household are defined as having a special need (e.g. frail elderly, a medical condition, a physical disability, a learning disability, a mental health problem, a severe sensory disability) and alternative accommodation is required to satisfactorily meet the health needs of the members of the household.

All other types of housing are referred to as Market Housing which is private housing for sale or rent where the price is set in the open market and occupation is not subject to control by the local authority or RSL. Low cost market housing does not meet the Welsh Government’s definition of affordable housing for land use planning purposes.

## 1.3 Assessing the Need for Affordable Housing

The Blaenau Gwent Local Housing Market Assessment (2006) identified an overall requirement for 1,269 additional dwellings over the 5-year period to 2011. Of this overall

requirement for the 5-year period 433 affordable housing units (34%) are required. The annual affordable housing requirement equates to 86 additional affordable units in Blaenau Gwent per year over the five years, which is made up of 40 intermediate units and 46 social rented units per year. In terms of overall percentages the five year housing requirement is for 66% market housing, 18% social rented and 16% intermediate.

The Council will take a flexible approach to stipulating the type of affordable housing to ensure the development meets the need of the local area (as set out in the Local Housing Market Assessment) and assists in the delivery of mixed and balanced communities.

## **1.4 Meeting the Need for Affordable Housing**

### **1.4.1 Affordable Housing Development Threshold**

A Study into the Economic Viability of Providing Affordable Housing in Blaenau Gwent (2010) has been undertaken to develop the evidence base in support of the delivery of affordable housing in the County Borough and, in particular, to guide the policy approach to be included in the Blaenau Gwent Local Development Plan Deposit Draft (2011).

Whilst the Local Housing Market Assessment (2006) justifies the Council seeking 34% of affordable housing on all new sites over 30 units (or 1 ha or more), the Viability Study confirmed that the existing requirement to provide 20% affordable housing on residential development sites meeting these thresholds cannot be supported in the current economic climate nor in the short or medium term.

Taking into account the viability evidence and the scale and type of development opportunities in the County Borough, the Council will seek to negotiate **at least 10% affordable housing provision on all proposals for residential development of: (a) 30 or more dwellings on allocated sites covered by Policy H2 of the adopted UDP, and (b) 10 or more dwellings, or sites in excess of 0.28 gross site area, on all other proposals for residential development.** This will include where the simultaneous or later development of adjacent sites causes either of these thresholds to be exceeded. The percentage is by definition a minimum threshold and a higher percentage of affordable housing provision will be sought where the development can support it. Reference to threshold (a) in respect of 30 dwellings on allocated sites covered by Policy H11 of the UDP will be removed on the adoption of the LDP in accordance with draft Policy DM8.

The 10% threshold will be reviewed if house prices rise in the County Borough by 10% or more. This rise will be identified via Annual Monitoring of the Local Development Plan and the threshold will be amended through a review of this Supplementary Planning Guidance.

### **1.4.2 Delivering Affordable Housing On Site**

Guidance from the Welsh Government (TAN 2) makes it clear that there is a strong presumption that affordable housing will be provided on site so that it contributes to the development of socially mixed communities. The Council concurs with this position and the preferred approach is for developers to accommodate and provide the affordable housing requirement on-site within qualifying residential developments, in accordance with current design requirements and good practice. It is the Council's preference for a Registered Social Landlord (RSL) approved by the Welsh Government to work in the Local Authority area to be involved in the development and management of affordable housing to ensure control over subsequent changes of ownership and occupation.

The size, type and tenure of the 10% affordable housing to be provided on-site as a general rule will consist of 50% Social Rented units and 50% Intermediate units. However, this may

vary from site to site dependent on the size of the development, the location of the site and the requirements of the individual area, taking into account the findings of the Local Housing Assessment. Tenure Neutral affordable housing may also be considered appropriate, where the tenure of the housing is not predetermined but can vary according to the needs, means and preferences of households over the lifetime of a development. The required mix for a particular site will therefore be determined in consultation with the Council on a case by case basis.

Social Housing Grant (SHG) funding provided by Welsh Government has been cut significantly and will not be available to assist in funding affordable housing provided as part of market housing developments now or in the foreseeable future. Therefore, the expectation is that **social rented affordable housing** will need to be delivered without the benefit of SHG. Figure 1 identifies the values at which social rented affordable housing should be transferred from the developer to the RSL where no SHG is available. The Council's requirement is for social rented housing to comply with the Welsh Government's Design Quality Requirements (DQR) whether or not SHG is available to deliver it (see section 1.6.1).

**Figure 1 Discounted Fixed Values for the transfer of Social Rented Units from a Developer to an RSL (August 2011)\***

Unit Type	Type	Value
1 Bed 1 Person	Flat	£20,911
1 Bed 2 Person	Flat	£30,019
2 Bed 3 Person	Flat	£31,402
2 Bed 3 Person	Bungalow	£48,408
2 Bed 3 Person	House	£37,752
2 Bed 4 Person	House	£45,892
3 Bed 4 Person	House	£47,504
3 Bed 5 Person	House	£48,343
4 Bed 6 Person	House	£61,339
4 Bed 7 Person	House	£61,338

\* The table identifies the values at which affordable housing should be transferred from a developer to an RSL. These figures have been generated by capitalising the rental income i.e. the amount of borrowing that the net rent to the RSL will support. The values are derived from the WAG benchmark rents which apply throughout the County Borough.

In the unlikely scenario that SHG were to be made available to RSLs (currently at a rate of 58% of the Welsh Government's Acceptable Cost Guidance (ACG)), social rented units should be transferred from the developer to the RSL at the full rate of ACG less on-costs.

**Intermediate rented affordable units** should be transferred at a value no greater than the intermediate values set out in Figure 2. Again, no SHG will be available for this type of affordable housing. The Council will normally require intermediate affordable units to be DQR compliant or, as a minimum, they should meet the Welsh Government's Welsh Housing Quality Standard (WHQS).

**Figure 2 Maximum Values for Intermediate Housing Units for Rent for the transfer of units from a Developer to an RSL (August 2011)\***

Unit Type	Type	Value
1 Bed 1 Person	Flat	£28,832
1 Bed 2 Person	Flat	£28,814
2 Bed 3 Person	Flat	£43,465
2 Bed 3 Person	Bungalow	£43,465
2 Bed 3 Person	House	£43,448
2 Bed 4 Person	House	£43,465
3 Bed 4 Person	House	£50,260
3 Bed 5 Person	House	£50,243
4 Bed 6 Person	House	£74,406
4 Bed 7 Person	House	£74,406

\* The table identifies the maximum prices that intermediate housing should be available at. These values apply throughout the County Borough.

The social rented and intermediate rented discounted values set out in Figures 1 and 2 above represent an average of the operating assumptions of the RSLs developing within the County Borough of Blaenau Gwent, and have been compiled with their support. The figures will be updated on an annual basis in consultation with the RSLs to reflect changes in rents, economic circumstances and the findings of the latest LHMA. These updates will be published on the Council's website alongside the Planning Obligations SPG.

Where intermediate units are available for sale (for example through low cost home ownership schemes), these should be transferred from the developer to the RSL with a minimum discount of 40% of market value.

If it is not possible for the developer to build the units, an alternative method of on site provision would be for the provision of serviced land to be transferred at no cost to the RSL, the location of which will need to be determined by the Local Authority with a developer providing a commuted sum towards build costs. The level of contribution will be determined at planning application stage and should be equivalent to the subsidy a developer would provide if they were to build the dwellings. The land transferred should be of a sufficient size to accommodate the required proportion of affordable housing as negotiated based on a 35 units/hectare average density or an appropriate proportion of the identified site capacity, whichever is greater.

#### 1.4.3 Delivering Affordable Housing Off-Site

The Council will only agree in exceptional circumstances for all affordable housing provision to be delivered off-site. Off-site provision may be in the form of delivery of the affordable housing on another site, off-site land provision with a commuted payment or a stand alone commuted payment. The developer will need to evidence the means of delivering the provision, including availability/control of the land and obtaining planning permission for the development where appropriate. A sequential approach to the location of off-site provision will be appropriate, with the preference being for the provision of affordable housing within the same settlement. If this is not achievable then provision should be made within the same Local Housing Market Area

and then, only if no other options are available, provision may be acceptable elsewhere in the County Borough where there is evidence of need.

Circumstances that might justify full off-site provision of affordable housing include:

- Where the Council or an RSL consider management of the affordable housing on site cannot be effectively secured, or
- The development site is in an unsuitable location with no or limited local services/facilities nearby, or
- The affordable housing is more effectively secured by bringing vacant stock back into active use, e.g. via the Council's Empty property Strategy, or
- Providing the affordable housing elsewhere in the local area is more likely to widen housing choice and encourage better household mix, or
- It is not physically possible to provide affordable housing of the size or type that is needed in that area, or
- Other exceptional situations where the Council considers that it may be more appropriate to fund another affordable housing scheme in the housing market area.

#### 1.4.4 Delivering Affordable Housing with Commuted Payments

In exceptional circumstances where on-site provision is not considered appropriate and off-site units cannot be delivered as an alternative site is not available, the Council will consider whether a commuted payment in lieu of on site affordable housing provision would be appropriate.

The commuted sum should be of equivalent value to the developer contribution if the affordable housing was provided on site. This will be determined by calculating the difference between the residual value of providing 100% market housing and the residual value of providing the required levels and mixes of affordable housing.

**Figure 3      Calculation of Commuted Sum for Provision  
of Off-Site Affordable Housing**

$$\text{RV (100\%)} - \text{RV (AH\%)} = \text{financial contribution}$$

*where*

RV 100% = The residual value of a site with 100% market housing

RV (AH%) – The residual value of a site after the specific target for affordable housing is applied e.g. 10% affordable housing

Where the contributions secured would fund less than a whole dwelling, contributions can be pooled until sufficient funding has been secured for the provision of one or more dwellings. The provision of affordable units should then be provided in the same settlement as the application site. Should no suitable options for the provision of affordable housing be available within a specific settlement, provision should be made within the same Local Housing Market Area. If neither of the options is achievable within an appropriate timeframe, the Local Authority retains the right to spend the money elsewhere in the County Borough.

Alternatively, the Local Authority may determine on a site-by-site basis that financial contributions collected may be used for the following:

- The purchase and refurbishment of long-term empty properties by a RSL, in accordance with the Council's Empty Property Strategy (2009), which will be managed as affordable housing
- Delivery of the Mortgage Rescue scheme.
- The provision of Homebuy Loans.
- Supplementing onsite affordable housing provision on other developments in the local area.
- The development of supported or adapted housing.
- The purchase and refurbishment of properties to meet special needs housing requirements.
- Any other measures that can be categorised as affordable housing.

Commutated payments will be calculated at the time of application and will be set out within the legal agreement. In order to ensure that contributions reflect the conditions at the time the contribution becomes payable, the legal agreement will contain an indexation formula to determine any inflationary increases to be paid as part of the commuted sum.

#### 1.4.5 Delivering Part of an Affordable Dwelling

Where the application of the 10% requirement would create 'part' of an affordable dwelling the Council will expect the 'whole dwellings' to be provided on site and the 'partial dwelling' to be provided via a developer contribution in-lieu of on-site provision. For example, a development of 36 dwellings would require 3.6 affordable dwellings to be provided in the form of 3 units on-site and 0.6 units via a developer contribution.

The developer contribution will be calculated by identifying the average dwelling size to be provided on the development site, e.g. 2-bed 3 person unit, and ascertaining the Current Market Value of this unit, e.g. by commissioning the District Valuer Service. The discounted affordable fixed values for the transfer of Social Rented Units from a Developer to an RSL that applies to this unit, as identified in Figure 1 (or later updates), will be deducted from the Current Market Value to calculate the subsidy for that unit. The developer contribution is then based on what percentage of the unit needs to be delivered. The formula is set out in Figure 4.

This mechanism does not preclude the developer from rounding up the partial dwelling to a whole affordable dwelling and providing this on site as part of the development scheme.

The approach is considered an equitable means of achieving the full affordable housing potential from each qualifying development. It ensures that the new development provides the appropriate mix of homes and enables the Council to utilise the developer contribution for partial dwellings towards the provision of affordable homes in off-site locations in the locality, preferably within the Local Housing Market Area (see section 1.4.4).

**Figure 4 Calculation of Developer Contribution for the Provision of 'Part' of an Affordable Dwelling**

$$\text{Commuted Sum (C)} = (\text{A} - \text{B}) \times \text{D}$$

*where*

A = Open Market Value

B = Affordable Value of the average unit size on the site (as defined in Figure 1 of the SPG)

C = Developer Contribution

D = % "part of property"

1.4.6 Affordable Housing Exemptions & Viability

The 10% affordable housing development threshold has been set taking account of current and projected future development viability in the County Borough. The expectation is that landowners and developers should make themselves aware of the affordable housing requirement together with any additional planning obligation requirements set out in this SPG, the UDP and emerging LDP when entering into land negotiations. The requirement to contribute towards other planning obligations does not negate the need for developers to contribute towards affordable housing.

However, it is accepted that on occasion there may be exceptional circumstances where the 10% affordable housing threshold may need to be relaxed. For example, where a development proposal would deliver considerable regeneration benefits or where there are other exceptional unforeseen abnormal development costs which would render the development proposal financially unviable. In such circumstances the Council will require an assessment to be undertaken of the viability of the scheme, as outlined in Part One of this document, to establish the appropriate quantum of affordable housing provision.

Affordable Housing units are not exempt from making contributions towards other planning obligation requirements where they would have an impact on infrastructure provision, e.g. Education. However, should these additional obligations render a development unviable the Council will require an assessment to be undertaken of the viability of the scheme as outlined in Part One of this document.

Provision for affordable housing will not be sought from residential development proposals relating to student accommodation, nursing homes, hostels and non-self contained residential accommodation.

1.4.7 Rural Exception Sites

To ensure rural communities are sustainable the Council must address the affordable housing needs of rural communities. In the context of the deposit draft Local Development Plan (LDP) 'rural' is classified as areas outside of existing settlement boundaries. It should be noted that all 'rural' areas in Blaenau Gwent are in close proximity to existing settlement boundaries. Whilst it is accepted that the affordable housing need can be met within the main settlements through the general affordable housing framework set out above, it is nevertheless acknowledged that there may be a need for sites outside of development boundaries to provide affordable housing to meet local needs.

Policy DM9 in the deposit draft LDP sets out strict criteria governing the release of sites for affordable housing where there is a genuine local need for affordable housing within the settlement and where the need cannot be met on an alternative site. The criteria also ensure that unsuitable developments that would detrimentally affect the environment will not be approved. Planning obligations will be required to restrict the occupancy of rural exceptions dwellings to local people in need of affordable housing.

## **1.5 Ensuring Affordable Housing remains Affordable**

When providing homes with an affordable rent or sale price there is a need to ensure that the homes are occupied by people who are in local housing need both on the first occupation and in respect of successive occupiers. Where the dwelling units are to be managed by a Registered Social Landlord (RSL) occupancy controls are not necessary as RSLs have their own established occupancy criteria. Any equity generated by the sale of affordable housing will be retained and recycled for affordable housing purposes. The Council will control future occupancy through planning obligations contained within S.106 agreements to restrict the occupancy of the dwelling to those households who are in local need of affordable housing, and ensure that future sale and rental prices are affordable. Model Heads of Terms are included at the end of this chapter that covers a number of eventualities, including on-site provision, financial contributions and rural exceptions sites.

## **1.6 Affordable Housing Design Requirements**

### **1.6.1 Design Standards**

The Council is committed to ensuring that all new housing is built to a high standard of design including affordable homes. The Council will not consider departing from these standards other than in exceptional circumstances.

All new and refurbished housing built for RSLs for Social Rent, irrespective of whether Social Housing Grant is received, must be designed and built in accordance with the Welsh Government 'Development Quality Requirements: Design Standards and Guidance (July 2005)' (DQR) and must meet the 'Secured by Design' standard (SBD). It is also the Council's expectation that all other Intermediate housing products aim to achieve DQR, but, as a minimum, meet the Assembly Government's Welsh Housing Quality Standard. DQR, SBD and WHQS cover issues such as space standards, accessibility, energy efficiency and security

The Welsh Government require all new dwellings after 1<sup>st</sup> September 2010, including affordable housing, to meet a minimum Code for Sustainable Homes Level 3 (TAN 22: Code for Sustainable Buildings, June 2010). It is acknowledged that meeting sustainability criteria can conflict with delivering affordability but the long-term impacts off-set this additional cost. Where possible the Council will actively promote high levels of sustainability in new house building aiming to achieve higher Code Levels in the future.

The Council's aspiration is that all new affordable homes also meet 'Lifetime Homes' standards. The concept of Lifetime Homes aims to develop housing to meet the changing needs occurring through one family's lifetime, or the varying needs of numerous occupations in the same house. Developing homes that are fit for purpose through a person's life will help ensure tenancies are sustained regardless of the circumstances, helping people stay within their communities.

### **1.6.2 Dwelling Types and Sizes**

A mix of dwelling types and sizes (both market and affordable) will be required on all sites to create balanced sustainable communities. In determining the types of homes, developers



should have regard to the nature of the site and consult the Council at the earliest stage to agree the details of the affordable housing, including ensuring that the units assist in meeting local housing need in the area.

### 1.6.3 Integration of Market and Affordable Homes

In pursuit of creating mixed and balanced communities affordable housing should be properly integrated physically and visually with the market housing. The same design considerations should be applied to the design and appearance of the affordable housing as to the open market housing so that they are indistinguishable, including build quality, materials, details, levels of amenity space and privacy. The affordable housing should be ‘pepperpotted’ in small groups throughout the site. Planning applications should include plans which identify the location of the affordable homes.

In communities experiencing severe housing pressure, the Welsh Government has confirmed it will exceptionally provide local authorities with the ability to secure 100% affordable housing on development sites.

## 1.7 **Securing Affordable Housing**

Where affordable housing is provided by the developer, the Council will normally expect the affordable housing element to be completed before 50% of the development is finished, to ensure that the affordable homes are delivered in a timely manner alongside market homes. Planning obligations will be used to secure phased completion by making provision for ‘trigger points’ in S106 agreements to ensure that the affordable housing is provided at agreed stages. Developers should bear this requirement in mind when designing the development, including identifying the location of the affordable units.

## 1.8 **Standard Heads of Terms**

The following definitions and clauses are suggested for use as appropriate in Section 106 legal agreements and unilateral undertakings where an affordable housing contribution is required.

### Definitions:

**‘Affordable Housing Land’** means the land hatched on plan (ref...) attached to this Deed where the Affordable Housing Units are to be provided

**‘Affordable Housing Obligation’** means a planning obligation to be determined at the time of submission of full details of the development (or any subsequent full application) to be secured by the Council in accordance with the adopted Planning Obligations SPG as amended from time to time, to provide for affordable housing in association with the development

**‘Affordable Housing Payment’** means the sum of ...pounds (£...) to be paid to the Council in lieu of part or all on site affordable housing provision to be used to provide, enable or enhance affordable housing in the wider area to meet local housing needs.

**‘Affordable Housing Units’** means either a Social Rented Unit or an Intermediate Unit constructed and made ready for occupation by those whose incomes generally deny them the opportunity to rent or purchase suitable housing on the open market

**‘Chargee’** any mortgagee or chargee of the RSL or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925

**‘Current Market Value’** shall be determined by the District Valuer Service and means the price at which an affordable housing unit might reasonably be expected to be sold by private treaty, assuming:

- (i) a willing seller and willing buyer
- (ii) a reasonable period in which to negotiate the sale
- (iii) that such affordable housing unit is freely exposed on the open market taking no account of the restrictions contained within this Schedule
- (iv) on terms comparable to those which would apply generally to a sale of a housing unit in the general housing market within the locality of the site

**‘Fully Serviced’** means that the land has proper connections within its boundary so as to connect it to surface water drainage facilities and to mains foul drainage facilities water gas electricity and telecommunications and enjoys direct access to the public highway or a roadway constructed to adoptable standards (connecting to the public highway) which is the subject of an Agreement under Section 38 of the Highways Act 1980

**‘Intermediate Units’** means (...) % of the affordable housing, Plot Numbers (...) as set out on Plan Ref (...) to be constructed in accordance with the Welsh Governments Development Quality Requirements

**‘Market Housing Units’** means that part of the development which is general market housing for sale on the open market and which is not affordable housing

**‘Nominated RSL’** means Melin Homes, Linc Cymru, United Welsh Housing Association, Tai Calon or such other RSL with Welsh Government approved development status in Blaenau Gwent County Borough as from time to time by approved by the Council to administer the provisions of this part of the Schedule whose appointment shall be notified by the Council to the Developer in writing

**‘Notice Period’** means the period of three months from the date of receipt by the Nominated RSL and the Council of the Sale Notice

**‘Occupy / Occupation’** use of land or buildings for the purposes permitted by the planning permission but not including occupation by personnel engaged in construction, fitting out or marketing

**‘Practical Completion’** means completed so that the works can be used for the purpose and operated in the manner for which they were designed and fitted out so that they are available for occupation

**‘Registered Social Landlord (RSL)’** means a Registered Social Landlord within the meaning of the Housing Act 1996

**‘Sale Notice’** means a Notice served by the Developer upon the Council and the RSL which informs the Council and the RSL of the commencement of construction of an Affordable Housing Unit

**‘Social Rented Units’** means (...) % of the affordable housing, Plot Numbers (...) as set out on Plan Ref (...) to be constructed in accordance with the Welsh Governments Development Quality Requirements

Clauses:

The Developer shall enter into a legal agreement to secure obligations with regard to the provision of affordable housing as appropriate when the full details of the proposal are submitted as Reserved Matters or in conjunction with any subsequent full planning application.

The Affordable Housing Land shall be used for the provision of the Affordable Housing Units and not occupied or used in any other manner.

The Developer shall (transfer) sell the Affordable Housing Land to the Nominated RSL fully serviced with all associated rights of access at a (nil) value ascribed to the land by the District Valuer for the purpose of affordable housing.

The Developer shall construct the Affordable Housing Units in accordance with the planning permission and to a standard which satisfies the Design Quality Requirements (2005) issued by the Welsh Government.

The Developer shall pay to the Council (c/o...) immediately prior to the commencement of development the Affordable Housing Payment, index linked to the Retail Price Index (RPI).

The Council undertakes to utilise the Affordable Housing Payment to provide, enable and enhance affordable housing provision to meet local housing needs.

No more than ...% of the Market Housing Units shall be occupied until 100% of the Affordable Housing Units have been transferred to the Nominated RSL on terms that accord with relevant Welsh Assembly funding requirements current at the date of construction of the Affordable Housing Units.

Within seven days of the commencement of construction of each affordable housing unit the Developer shall: (i) serve a Sale Notice on the Nominated RSL and offer to sell the Affordable Housing Unit to the Nominated RSL at the Affordable Value pursuant to the provisions of this agreement and (ii) serve a copy of the Sale Notice on the Council (c/o...). The Developer shall not sell any Affordable Housing Unit without having first served a Sale Notice on the Nominated RSL and the Council.

The Nominated RSL may accept the offer referred to in paragraph (...above) by signing and returning a copy of the Sale Notice to the Developer within the Notice Period.

If the Nominated RSL does not accept the offer referred to in paragraph (...above) or fails to respond within the Notice Period the Developer shall be at liberty in the case of a Social Rented Unit to dispose of the Social Rented Unit free from the obligations set out in this Schedule provided that an Affordable Housing Payment is paid to the Council within 7 days of the completion of the sale of the relevant Social Rented Unit equivalent to the difference between the Affordable Value and the Market Value.

During the Notice Period, the Nominated RSL or the Council shall be entitled to introduce any prospective purchasers with respect to the Intermediate Units. If at the expiry of the Notice Period no prospective purchaser has been nominated by the Nominated RSL or the Council who shall have exchanged contracts within 8 weeks of the end of the Notice Period the Developer shall serve a further Sale Notice on the Nominated RSL and the Council offering to sell the Intermediate Unit to the Nominated RSL for the Affordable Value.

If the Nominated RSL does not accept the offer referred to in paragraph (... above) within 28 days from the date of service of the said Notice the Developer shall be entitled to sell the

relevant Intermediate Unit as general market housing free from the obligations in this Schedule provided that an Affordable Housing Payment is paid to the Council within 7 days of the completion of the sale of the relevant Intermediate Unit equivalent to the difference between the Affordable Value and the Market Value.

Any Chargee shall prior to seeking to dispose of an Affordable Housing Unit pursuant to any default under the terms of the mortgage or charge shall give not less than 3 months prior notice to the RSL of its intention to dispose and

- (a) in the event that the Council responds within 3 months from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Unit can be made in such a way as to safeguard them as Affordable Housing then the Chargee shall co-operate with such arrangements and use its best endeavours to secure such transfer
- (b) if the Council does not serve its response to the notice served under paragraph (...above) within the 3 months then the Chargee shall be entitled to dispose free of the restrictions set out in this Schedule which shall from the time of completion of the disposal cease to apply
- (c) if the Council or any other person cannot within 3 months of the date of service of its response under paragraph (... above) secure such transfer then provided that the Chargee shall have complied with its obligations under paragraph (... above) the Chargee shall be entitled to dispose free of the restrictions set out in this Schedule which shall from the time of completion of the disposal cease to apply

PROVIDED THAT at all times the rights and obligations in this paragraph shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council must give full consideration to protecting the interest of the Chargee in respect of moneys outstanding under the charge or mortgage.

## **ANNEX 2: HIGHWAYS AND TRANSPORT**

Sustainable, cohesive, safe communities rely on an effective transportation network to provide good access to employment, shopping, leisure and other facilities. Indeed it plays a key role in enhancing the quality of life of residents and in combating social exclusion for disadvantaged individuals and groups. A key aim of national and local policy is to encourage greater use of walking, cycling and public transport as alternatives to the private car.

The importance of the provision of an effective transport network in Blaenau Gwent is high in an area where only one in three households own a car, and it is required to facilitate and support economic growth, regeneration and development. The success of the recently opened Ebbw Vale to Newport railway line is testament how investment in public transport facilities can support these aims.

The Council's view is that unless additional transport capacity and improvements to the network can be provided to support new development in an area, it will not be possible to develop in a sustainable or acceptable manner. The Council will therefore seek planning obligations for highways infrastructure and sustainable transport improvements where appropriate.

### **2.1 Policy and Guidance**

The following policy and guidance are relevant to this topic. Overarching Development Plan policies, legislation and generic national planning policies relating to planning obligations are set out in Part One of this document.

Planning Policy Wales 4<sup>th</sup> Ed. (2011) paragraphs 4.6.4, 7.6.1, Chapter 8, in particular 8.3.4, 8.4.1, 8.7.1, 8.7.2, 8.7.5 and 10.2.6.

Paragraph 8.7.5 states that *'where necessary, planning conditions may legitimately be imposed on the grant of planning permission to secure on-site transport measures and facilities as part of the proposed development. Planning obligations may also be used in appropriate circumstances to secure off site improvements in public transport, walking and cycling, where such measures would be likely to influence travel patterns to the site involved.'*

Technical Advice Note 18: Transport (2007)

TAN18 states in paragraph 9.22 that *'planning authorities may use planning obligations to secure improvement in roads, walking, cycling and public transport, whether as a result of the proposal on its own or cumulatively with other proposals and where such improvements would be likely to influence travel patterns either on their own or as part of a package of measures'*.

Paragraph 9.25 makes clear that the objective of using planning obligations in relation to transport should be to *'secure satisfactory accessibility to sites by all modes with the greatest degree of access being achieved by public transport, walking and cycling.'*

Welsh Office Circular 13/97: Planning Obligations paragraphs B10 and B14

The South East Wales Regional Transport Plan (2009)

The Regional Transport Plan vision is: *'A modern, accessible, integrated and sustainable transport system for South East Wales, which increases opportunity, promotes prosperity for*

*all and protects the environment; where walking, cycling, public transport, and sustainable freight provide real travel alternatives’.*

In implementing this vision the South East Wales Transport Authorities (including Blaenau Gwent) will seek to ensure that Local Development Plans, supplementary planning guidance and development control processes establish a pattern of land use that reduces the need to travel and maximises the potential for sustainable transport infrastructure and services, secure contributions towards improvements to the transport network and ensure that all significant development proposals are accompanied by effective travel plans.

Blaenau Gwent Unitary Development Plan (2006) Policies T1, T4, T5, T7, T8, T9, D1

Blaenau Gwent Local Development Plan Deposit Draft (2011) Policies SP9 and DM1

## **2.2 Circumstances in which Obligations will be sought**

A planning obligation relating to highways and transport may apply to any scale and any type of development, according to the specific characteristics of the proposed site and the potential impact from the proposed development. Sites will be considered on a case by case basis. Accordingly no standard threshold or trigger is applicable. Prospective developers are advised to enter into discussions with the Council at the earliest opportunity to determine if a highways or transport obligation is applicable. Where a proposed development may impact upon a trunk road, it is advisable to also consult with the Welsh Government.

Planning obligations will always be sought in respect of development proposals where highways and transport measures are necessary to make a development acceptable in planning terms, and cannot otherwise be secured by planning condition. These measures will normally, but not exclusively, be provided within the immediate vicinity of the site.

## **2.3 Nature and Scale of Obligation**

The Council’s approach to addressing the growing demand for transport is to ensure that all new developments minimise demand for access by car while maximising opportunities for access by sustainable transport modes, especially walking, cycling and public transport. As such, obligations will contain an emphasis on maximising opportunities for additional trips to be made by sustainable transport modes as well as ensuring that the highway network is capable of accommodating road traffic movements associated with a development in a safe and efficient manner.

### **2.3.1 Transport Statements**

The nature and extent of obligations for highways and transport will be informed, where relevant, by a Transport Statement submitted to accompany a planning application. Paragraph 8.7.2 of PPW 4<sup>th</sup> Ed. Sets out the circumstances in which a Transport Statement should be provided, as set out below.

The Transport Statement should include an evidence based estimate of the modal split of trips to be generated by the development expressed as the percentage of journeys by private car transport and the percentage of travel by other modes (public transport, walking and cycling).

Account will be taken with regard to the trips generated by existing land uses/operations on a proposed development site to ensure that any obligation fairly reflects the *additional* trip impact arising from the development proposal. For the purposes of this SPG, sites that have been vacant for three years or more will not have an existing trip allowance.

<b>Use</b>	<b>Threshold</b>
Food Retail	> 1,000 m <sup>2</sup> gross floor area
Non-Food Retail	> 1,000 m <sup>2</sup> gross floor area
Cinemas and Conference Facilities	> 1,000 m <sup>2</sup> gross floor area
Leisure Facilities	> 1,000 m <sup>2</sup> gross floor area
Business	> 2,500 m <sup>2</sup> gross floor area
Industry	> 5,000 m <sup>2</sup> gross floor area
Distribution and Warehousing	> 10,000 m <sup>2</sup> gross floor area
Hospitals	> 2,500 m <sup>2</sup> gross floor area
Higher and Further Education	> 2,500 m <sup>2</sup> gross floor area
Schools	All new schools
Stadia	> 1,500 seats
Housing	> 100 dwellings
Hotels	> 1,000 m <sup>2</sup> gross floor area

### 2.3.2 Highways and Transport Works

Highways and transport facilities will generally comprise local works specific to the site (i.e. within the site, adjacent to it or within its immediate environs). Some facilities will be included in the design and layout of the development site, or in the immediate vicinity of the site, and can be secured by way of planning conditions (including Grampian conditions in the case of the latter). Other facilities beyond the site boundary will be secured by way of a Section 106 legal agreement.

Where specific works to highway infrastructure are required, the Council will also require agreement under section 278 of the Highways Act 1980. All highway infrastructure works must be undertaken to adoptable standards and offered to the Council for adoption, as appropriate (see below).

Developers will be expected to provide parking and access, including any works to the highway necessary to construct access to the site and connection with any adjacent footway. Development will also be required to include pedestrian and cycle access, in addition to any principal access where these would provide more direct and convenient routes to and from the development for cyclists and people on foot. This will include providing links to the existing footway and making access to nearby transport stops and other local facilities as convenient as possible. Wherever possible, obligations will be sought towards specific measures within the immediate vicinity of the site that may be required to enhance access to local facilities by sustainable modes. This shall include where development occurs in close proximity to identified local sustainable transport schemes and programs that have been identified as a priority for the Council, including the walking, cycling and public transport schemes identified in the Local Development Plan programme.

In designing provisions for the site access and parking, developers will need to have regard to Manual for Streets (2007) and TAN 18 (and any subsequent replacement document adopted as SPG) which is a material consideration for all planning proposals with access and parking implications.

Examples of highway and transport obligations that may be sought include:

- Highway measures e.g. junction upgrades, signalisation of junctions, highway transport infrastructure, modification to waiting / parking restrictions, traffic management schemes
- Funding for improved public transport facilities / infrastructure serving a site, e.g. bus stops, lay-bys, dedicated bus lanes, taxi bays.

- Funding for additional or improved bus services linking the site with local facilities (usually at least three years worth of subsidy required)
- Funding for provision or promotion of public transport information services and ticket availability
- Funding for new and existing pedestrian and cycle routes serving the site including enhancement of public rights of way (e.g. surfacing, lighting, signage) and secure cycle parking with emphasis on secure-by-design principles
- Funding of mitigation measures such as off site car parking/ public off street parking where this complements local strategies
- Funding towards operation of a car club where car parking is limited
- Road safety schemes and controlled parking zones
- Maintenance of individual structures e.g. retaining walls, culverts
- Travel plan initiatives.

Proposed obligations should demonstrate that such provision mitigates the effect of the development and provides sufficient transport capacity/improvements to the network to accommodate movement generated by the development.

### 2.3.3 Delivery of Works

The Council's expectation is that highways and transportation works should be delivered directly by the developer in accordance with details and specifications to be agreed with the Council. The developer would be required to fund the development of the detailed scheme and carry out the works to the appropriate standard.

In exceptional circumstances, a financial sum to contribute towards off-site facilities/infrastructure to be delivered by the Council may be acceptable in principle. In such cases, the developer will be required to provide a detailed scheme for the works accompanied by full costings. The scheme should be submitted for agreement with the Council and upon agreement the corresponding payment made. The Council will then use the payment to undertake the works in accordance with the agreed scheme.

### 2.3.4 Maintenance of Works

In all circumstances, highways and transportation works undertaken as part of a planning obligation will be required to be maintained in perpetuity. Where features such as retaining walls, culverts and other structures would form part of the highway a proposal may be refused if appropriate maintenance is not provided. In such cases, the developer may choose to redesign a scheme to avoid the need for the specific feature.

To maintain the infrastructure/works/land the developer can either choose to establish a management company to operate in perpetuity, secured by legal agreement, or can request that it be adopted by the Council. Any transfer of land or infrastructure must be accompanied by a commuted sum to enable the Council to undertake the maintenance of the infrastructure/works/land for a period of 20 years. In such cases, the infrastructure/works/land must be to adoptable standard and have been maintained at such standard for a minimum period of one year. The Council will consider adopting infrastructure/works/land on a site by site basis.

## 2.4 **Standard Heads of Terms**

The following definitions and clauses are suggested for use as appropriate in Section 106 legal agreements and unilateral undertakings where highways and transport contributions are required.



Definitions:

**‘Highways Agreement’** means an Agreement to undertake specific works within the public highway under Section 278 of the Highways Act 1980

**‘Highways Infrastructure Land’** means the land hatched on plan (ref...) attached to this Deed where the Highways Infrastructure Works are to be undertaken

**‘Highways Infrastructure Obligation’** means a planning obligation to be determined at the time of submission of full details of the development (or any subsequent full application) to be secured by the Council in accordance with the adopted Planning Obligations SPG, as amended from time to time, to provide for Highways Infrastructure Works required to meet the needs of the development

**‘Highways Infrastructure Payment’** means the sum of ... pounds (£...) to be utilised to provide the Highways Infrastructure Works in accordance with the Highways Infrastructure Works Scheme

**‘Highways Infrastructure Works’** means the works to the public highway which are required to ensure the occupiers of the development can move safely and efficiently

**‘Highways Infrastructure Works Scheme’** means a detailed specification of works to address the need generated by the development to include initial provision and management for a period of 20 years

**‘Sustainable Transport Land’** means the land hatched on plan (ref...) attached to this Deed where the Sustainable Transport Works are to be undertaken

**‘Sustainable Transport Obligation’** means a planning obligation to be determined at the time of submission of full details of the development (or any subsequent full application) to be secured by the Council in accordance with the adopted Planning Obligations SPG, as amended from time to time, to provide for Sustainable Transport measures required to meet the needs of the development

**‘Sustainable Transport Payment’** means the sum of ... pounds (£...) to be utilised to provide the Sustainable Transport Works in accordance with the Sustainable Transport Works Scheme

**‘Sustainable Transport Works’** means the works to the sustainable transport network which are required to provide realistic sustainable transport options to and from the site

**‘Sustainable Transport Works Scheme’** means a detailed specification of works to address the need generated by the development to include initial provision and management for a period of 20 years

Clauses:

The Developer shall enter into a legal agreement to secure obligations with regard to highways infrastructure and sustainable transport as appropriate when the full details of the proposal are submitted as Reserved Matters or in conjunction with any subsequent full planning application.

The Highways Infrastructure Land (Sustainable Transport Land) must be used for the provision of the Highways Infrastructure Works (Sustainable Transport Works) in accordance

with the Highways Infrastructure Works Scheme (Sustainable Transport Works Scheme) and not occupied or used in any other manner.

The Developer shall transfer the Highways Infrastructure Land (Sustainable Transport Land) serviced as appropriate with all associated rights of access at no cost immediately prior to the commencement of development.

The Developer shall submit the Highways Infrastructure Works Scheme (Sustainable Transport Scheme) prior to the commencement of development for agreement with the Council. Approval of the scheme shall not be unreasonably withheld or delayed.

The Developer shall undertake the provision of the Highways Infrastructure Works (Sustainable Transport Works) in accordance with the Highways Infrastructure Works Scheme (Sustainable Transport Works Scheme) agreed with the Council. The Highways Infrastructure Works (Sustainable Transport Works) shall be completed (and transferred to the Council) prior to the occupation of the n<sup>th</sup> dwelling.

The Developer shall pay to the Council (c/o...) immediately prior to the commencement of development the Highways Infrastructure Payment (Sustainable Transport Payment), index linked to the Retail Price Index (RPI).

The Council undertakes to utilise the Highways Infrastructure Payment (Sustainable Transport Payment) to provide the Highways Infrastructure Works (Sustainable Transport Works) in accordance with the Highways Infrastructure Works Scheme (Sustainable Transport Works Scheme).

The Council undertakes to accept the transfer of the Highways Infrastructure Land (Sustainable Transport Land) and utilise the land in the provision of the Highways Infrastructure Works (Sustainable Transport Works).

The Developer shall not commence any development prior to entering into the Highways Agreement with the Council.

No occupation of the development shall take place until the Highway Infrastructure Works are completed up to base course level.

The Highway Infrastructure Works will be maintained by the Developer, at their expense for a minimum period of 12 months following completion. Following this period, and subject to any defects being remedied satisfactorily, the Council will adopt the Highway Infrastructure Works.

Prior to beneficial occupation the developer will submit a detailed Travel Plan for the development setting out the targets for modal shift and mechanisms for achieving the targets including costs for the approval of the Council to include a designated budget for implementation of ...pounds (£...). The Travel Plan will thereafter be implemented in accordance with the approved details.

## ANNEX 3: EDUCATIONAL FACILITIES

Education infrastructure is an integral part of achieving and maintaining sustainable communities. The need for the provision of high quality education facilities is recognised in Blaenau Gwent's Community Plan 2006-2009, the Draft Blaenau Gwent Community Strategy 2010-2030 and the 2008-2012 Corporate Improvement Plan. The Councils future approach to education delivery will be guided by the 21<sup>st</sup> Century Schools Programme, as set out in the 21<sup>st</sup> Century Schools Strategic Outline Plan.

All new residential development that is likely to accommodate school aged children creates additional demand for places at existing schools and places pressure upon educational services. Where a new development generates additional pupil numbers in excess of existing or planned capacity at local schools the Council will, where appropriate, seek planning obligations to mitigate the impact and provide for the additional pupils.

### 3.1 Policy and Guidance

The following policy and guidance are relevant to this topic. Overarching Development Plan policies, legislation and generic national planning policies relating to planning obligations are set out in Part One of this document.

Planning Policy Wales 4<sup>th</sup> Ed. (2011) paragraphs 2.4.4, 3.7.1-3.7.5, 4.4.2, 9.2.9, 9.3.5, and 12.1.1

Welsh Office Circular 13/97 Planning Obligations paragraphs B7 and B10

Welsh Office Circular 09/2006 Measuring the Capacity of Schools in Wales paragraphs 2.19 and 3.16

Blaenau Gwent County Borough Unitary Development Plan (2006) Policy G1

Blaenau Gwent County Borough Local Development Plan Deposit Draft (2011) Policies SP4 and DM4

Blaenau Gwent County Borough Council Children & Young People's Plan 2008 – 2011

Blaenau Gwent County Borough (2010) Council Education Transformation Strategy

Blaenau Gwent County Borough Council (2010) 21<sup>st</sup> Century Schools Strategic Outline Plan

Audit Commission (2002) Trading Places – A Review of Progress on the Supply and Allocation of School Places paragraph 7

### 3.2 Circumstances in which Obligations will be Sought

A planning obligation for educational facilities **will be sought from new residential development comprising 10 or more dwellings**, but will only be required where the development is likely to result in the generation of additional pupil numbers in excess of existing or planned capacity at local schools.

### 3.2.1 Assessing Pupil Capacity

School pupil capacity will be calculated in accordance with National Assembly for Wales Circular 09/2006: *Measuring the Capacity of Schools in Wales*. The Blaenau Gwent Children and Young People's Plan (CYPP) identifies that a number of the County Borough's educational facilities are operating at, or beyond, capacity, or are likely to operate at, or beyond capacity during the life of the UDP/LDP.

Assessment of pupil capacity for each proposed residential development will take into account existing numbers of Primary and Secondary school pupils in the catchment schools serving the proposed development, together with the planned pupil capacity in those schools. The requirement for school places generated by permitted or allocated residential development both within or immediately adjacent to the relevant catchment area will also be taken into account.

Empty pupil places do not necessarily equate to there being excess capacity at the school as it is generally accepted that schools should not operate at 100% capacity to enable planning for future year's provision. The Audit Commission reported in their 2002 report, *Trading Places*, that *'it is unrealistic and probably undesirable to aim for a perfect match of pupils and places at each school. Some margin of capacity is necessary to allow parents choice ... Not all unfilled places are surplus'*. Similarly, Circular 09/2006 supports the rounding down of capacity by up to 10% to allow for instances where the particular circumstances of the school skew the capacity, e.g. split sites, irregularities in the size of rooms, provision of Special Educational Needs facilities etc. Furthermore, excess capacity is required to ensure pupil places are available for inward migration into a school catchment area and to accommodate rising birth rates.

Accordingly, when assessing pupil capacity the Council will apply a **band range of between 5% and 10%** depending on the circumstances of the individual school. This enables a higher pupil capacity to be retained where exceptional circumstances can be justified by the Council in relation to a specific school.

Circular 09/2006 identifies that demountable accommodation is usually considered as being unsuitable permanent accommodation and such accommodation is therefore excluded from capacity calculations for the purposes of planning obligations.

### 3.2.2 Exemptions

Obligations for education provision will not be sought for one bedroom residential units, studio flats, sheltered/elderly person housing, care homes, rest homes, nursing homes and student accommodation, on the basis that such developments are unlikely to house school age children. Affordable Housing development, either as part of a site or forming the whole of the development site, will not be exempt from the requirement.

## 3.3 **Nature of the Obligation**

Obligations will in most cases form a financial sum (Education Facilities Payment) to be paid to the Council at an agreed stage in the development. The Payment would be utilised by the Local Education Authority (LEA) to provide the required works to increase the capacity of a specified school.

In exceptional circumstances, it may be preferable for the obligation to comprise the transfer of land or works by the developer in lieu of part or all or a financial payment. In these circumstances, the Council's expectation is that the works should be delivered directly by the developer in accordance with details and a specification to be agreed with the Council. The

developer would be required to fund the development of the detailed scheme and carry out the works to the appropriate standard.

Any transfer of land or works should be accompanied by a commuted sum to enable the Council to undertake the maintenance of the land / facility for a minimum period of 20 years. Any commuted sum will be calculated on a case by case basis.

### **3.4 Use of the Education Facilities Payment**

An Education Facilities Payment towards the upgrading/ extension of existing educational facilities will be sought if the implementation of the development will result in the generation of additional pupil numbers in excess of existing or planned capacity at local schools. The recipient school will usually be the catchment school serving the development. However, there may be circumstances where an alternative school is deemed a more appropriate recipient. For example, it may be more accessible to the development or may better provide the capacity required. The use of the payment will therefore be determined on a case by case basis by the LEA in conjunction with the Local Planning Authority with the objective of achieving optimum pupil capacity in the vicinity of the development site.

Education Facilities Payments may be used to increase school capacity by:

- Provision of new classrooms / learning environments
- Replacement of existing demountable facilities with permanent facilities
- Improvements and refurbishments to provide additional capacity
- Provision of additional facilities necessitated by the additional demand

Where a Payment is agreed to provide additional capacity and the school in question is then subject to strategic re-organisation, the Payment may be transferable to the next closest relevant school at the time of construction where additional capacity is required and can be created to mitigate the impacts of the development. This principle would also apply where a school is closed down on the grounds of poor/substandard accommodation.

### **3.5 Methodology for Calculating the Education Facilities Payment**

The methodology for calculating the Payment is based upon the anticipated pupil yield of the development multiplied by the costs per pupil for the provision of the education facility. The Council's yield data is categorised into 'primary' provision (including nursery facilities up to age 11) and 'secondary' provision (including post-16 education).

Based upon the 2001 Census data, local surveys and school rolls data for the County Borough, the pupil yield factors utilised by the Council are:

- 0.30 primary school places per relevant residential unit
- 0.20 secondary school places per relevant residential unit.

For example, development of 10 dwellings, all of which are two-bedroom or above, based upon the pupil yield factors applied by the Council, has the potential to generate a requirement for an additional 5 school places: 3 Primary places and 2 Secondary places.

To calculate the relevant education contribution, the additional number of primary and secondary school places generated over and above the existing and/or planned capacity of the relevant schools needs to be multiplied by the cost of providing a primary or secondary school place. The cost of providing additional primary and secondary school places is derived from the former Department for Children, Schools and Families (DCSF) (now the Department

for Education (DfE)) Education Projects Cost and Performance Data. The DCSF advises that the costs per pupil for the construction of accommodation to provide for additional pupil places for 2006-2007 are:

Primary School Place	£10,372
Secondary School Place	£15,848

The DCSF applies location factors to translate these figures to locally relevant costs. According to the November 2007 DCSF location factors, the national range is from 0.91 in areas such as Bury and Derby and 1.16 in the Central London Boroughs. Whilst these figures relate only to England, it is considered that, in the absence of any comparable figures for Wales, a location factor of 0.91 should be applied to Blaenau Gwent. Therefore the costs per pupil for the construction of accommodation to provide for additional pupil places for 2006-2007 are:

<b>Primary School Place</b>	<b>£ 9,438.52</b>
<b>Secondary School Place</b>	<b>£14,421.68</b>

These figures do not include site acquisition costs, site abnormalities or ICT equipment. Costs will be reviewed annually and updated on the Council's website to reflect current DfE guidance.

The formula for calculating the Education Facilities Payment is set out in Figure 1. This assumes that a contribution is required in respect of both primary and secondary education. However, in practice the Payment will be applied on a pro-rata basis depending on whether the development generates a requirement for primary or secondary provision, or both.

<b>Figure 1      Formula for Calculating the Education Facilities Contribution</b>	
<b>Additional Primary School Demand</b>	<b>Additional Secondary School Demand</b>
(Primary Capacity - Number of Qualifying Dwellings x 0.3)	(Secondary Capacity – Number of Qualifying Dwellings x 0.2)
x	x
DCSF Costing £9,438.52	+      DCSF Costing £14,421.68
=	
<b>Required contribution for provision of additional Primary and Secondary School Places</b>	

Figure 2 below sets out a worked example of how an Education Facilities Contribution would be calculated for a hypothetical development in relation to a theoretical Primary School; demonstrating how all the variables set out in this section are applied.

The formula set out in Figure 2 is applied when the actual number of dwellings to be provided on site is finalised. However, in the case of Outline planning applications agreement on this matter is not always reached until the Reserved Matters stage. In these cases the planning obligation will be identified as the 'per dwelling' charge that will apply on all qualifying dwellings based on the cost data for a primary and secondary place at the time planning permission is granted, or at the time the Reserved Matters application is submitted.

**Figure 2 Calculation of Education Facilities Contribution: Primary School**

**Name of School:** A School, Tredegar  
**Development:** A Development Site, Tredegar (planning ref: C/2010/0678)  
 75 dwellings (5 x 1-bed, 30 x 2-bed, 35 x 3-bed, 5 x 4-bed)

**Number of Qualifying Dwellings (2-bed & above):** 70

**School Pupil Capacity:**

a)	Calculated pupil capacity (Welsh Government Formula)	=	365.0
b)	Minus minimum reserve capacity of 5%		18.3
	<b>Total Capacity:</b>	=	346.7
c)	Minus current pupil population or forecast pupil population (whichever is highest)		315.0
	<b>Remaining Places:</b>	=	<b>31.7 places</b>

d) **Pupil Places Created by Existing Planning Permissions/Housing Allocations:**

Development/Allocation	Actual or Estimated No. of dwellings		
Chicken Farm Road Development	8		
Coal Yard Allocated Housing Site	35		
<b>Total Dwellings:</b>	<b>43</b>		
Total No. of dwellings x 0.30		=	<b>12.9 places</b>
Available Pupil Places		=	<b>18.8 available places</b>

e)	Actual Number of qualifying dwellings (70) Multiplied by 0.30	=	<b>21 additional places</b>
	Remaining places available		<b>- 2.2 available places</b>

f)	<b>Education Facilities Contribution</b>		
	Shortfall of pupil places generated by the development (if applicable and rounded up or down as appropriate)	=	2
	Multiplied by £9,438 (cost of primary place)	=	<b>£18,876 contribution</b>

g) **Comments:** Insufficient pupil places in catchment therefore a contribution is required.

### 3.6 Standard Heads of Terms

The following definitions and clauses are suggested for use as appropriate in S106 legal agreements and unilateral undertakings where an education obligation is required.

#### Definitions:

**'Education Facilities'** means the works to be undertaken to provide for (...) no. of additional primary school places and (...) no. of additional secondary school places

**'Education Facilities Obligation'** means a planning obligation to be determined at the time of submission of full details of the development (or any subsequent full application) to be secured by the Council in accordance with the adopted Planning Obligations SPG as amended from time to time, to provide for additional educational facilities to meet the needs of the Development

#### *Full Planning Application*

**'Education Facilities Payment'** means the sum of ... pounds (£...) to provide for (...) no. of additional primary school places and (...) no. of additional secondary school places at appropriate schools serving the Development

#### *Outline Planning Application (1)*

**'Education Facilities Payment'** means the commuted payment to be calculated using the Council's formula contained in the adopted Planning Obligations SPG in place at the time of submission of Reserved Matters to provide for additional primary school places and additional secondary school places at appropriate schools serving the Development

#### *Outline Planning Application (2)*

**'Education Facilities Payment'** means the sum of ... pounds (£) per dwelling to provide for additional primary school places and the sum of ... pounds (£) per dwelling to provide for additional secondary school places calculated in accordance with the formula in the adopted Planning Obligations SPG in place when outline planning permission was granted and for use at appropriate schools serving the Development

**'Education Facilities Scheme'** means a detailed specification of works to be undertaken to provide for (...) no. of additional primary school places and (...) no. of additional secondary school places

**'Education Land'** means the land hatched on plan (ref...) attached to this deed where the Education Facilities are to be provided

#### Clauses:

The Developer shall pay to the Council (c/o...) immediately prior to the commencement of development the Education Facilities Payment, index linked to the Retail Price Index (RPI).

The Developer shall transfer the Education Land to the Council fully serviced with all associated rights of access at no cost immediately prior to the commencement of development.

The Developer shall submit the Education Facilities Scheme prior to the commencement of development for agreement with the Council. Approval of the scheme shall not be unreasonably withheld or delayed.



The Developer shall undertake the provision of the Education Facilities in accordance with the Education Facilities Scheme agreed with the Council. The Education Facilities shall be completed and transferred to the Council prior to the occupation of the (n<sup>th</sup>) dwelling.

The Developer shall enter into a legal agreement to secure an Education Facilities Obligation as appropriate when the full details of the proposal are submitted as Reserved Matters or in conjunction with any subsequent full planning application.

The Council undertakes to utilise the Education Facilities Payment to provide for (...) no. of additional primary school places and (...) no. of additional secondary school places at appropriate schools serving the Development.

The Council undertakes to accept the transfer of the Education Land and utilise the land in the provision of the Education Facilities.

## **ANNEX 4: RECREATION AND PUBLIC OPEN SPACE**

Formal and informal public open space can have a significant recreational and amenity value, in turn contributing to the quality of life, health and well being of residents, and to biodiversity and the environment. The Council recognises that opportunities to participate in good quality recreational activities are essential to the healthy, mental, physical and emotional well being of children and adults alike. This is recognised in the Council's Play Strategy (2004) which sets out the priorities for the development and improvement of play and recreation facilities in the County Borough.

Where a proposed new development will exacerbate an existing shortfall in public open space and recreational facilities by placing additional pressure on existing services, or the scale of the development would in itself create the need for a wholly new facility, the Council will seek planning obligations to provide appropriate new facilities or the improvement of existing facilities to ensure that adequate capacity is created.

The Council will seek the provision of outdoor playing space, which includes outdoor sport and children's playing space, using the Fields in Trust (FIT) Benchmark Standards (2009), as a *target*. The FIT standards take into account the quality, quantity and accessibility of existing provision and the individual characteristics of the site and the proposed development. Owing to the natural topography that characterises the County Borough, existing development tends to be dense and linear in nature, concentrated along the three main valleys and on steep valley sides, which means that it may not always be possible to adhere strictly to the FIT standards due to the difficulty of physically providing new facilities within these constraints. However, the Council will endeavor to adhere to the FIT standards as closely as possible in delivering recreation and open space facilities within the County Borough.

### **4.1 Policy and Guidance**

Planning Policy Wales 4<sup>th</sup> Ed. (2011) paragraphs 2.4.4, 3.7.1-3.7.5, 4.4.2, 9.2.9, 9.2.11, 9.3.5, Chapter 11 in particular 11.3.2

Technical Advice Note 16: Sport, Recreation and Open Space (2009), in particular paragraphs 3.13 – 3.18, 3.27, 4.2, 4.13 – 4.15

Welsh Office Circular 13/97 Planning Obligations paragraphs B7, B10 and B14

Blaenau Gwent County Borough Council Unitary Development Plan (2006) Policies R4, R5 and R6

Blaenau Gwent County Borough Council Local Development Plan Deposit Draft (2011) Policies SP9, DM4, DM13

Blaenau Gwent County Borough Council Play Strategy 2004 Onwards (2004)

Blaenau Gwent County Borough Council Sport and Active Living Strategy 2006/11 (2006)

### **4.2 Circumstances in which Obligations will be Sought**

All major residential development of 10 or more dwellings may be required to make provision for on-site children's play facilities and a financial contribution towards the enhancement of existing and the development of off-site outdoor sports space (as identified in the FIT Standards) where the development would cause or exacerbate a deficiency in provision.

Planning obligations will therefore be sought in appropriate circumstances to mitigate the impact of the development.

The Council's Play Strategy (2004) identifies existing static play facilities within the County Borough (known as Local Play Areas, Visitor Play Areas, Multi-Use Games Areas (MUGA) and Wheeled Sports Areas). The Strategy also sets out an implementation program; identifying those Wards where there is a need for new facilities, improvements to existing facilities and decommissioning. The Strategy therefore provides a basis for identifying whether or not a development is likely to generate the need for planning obligations in relation to play provision.

The Council's Leisure Services Division maintains up-to-date information on the capacity of all play, sport and recreation facilities in the County Borough. Accordingly, the advice of Leisure Services will always be sought to determine the impact of each qualifying development on local facilities and this will form the evidence base of any request for planning obligations.

Exemptions to the above requirement apply in specific circumstances. A contribution towards the enhancement and development of play areas, including MUGA and Wheeled Play Areas, will not be sought from studio and one-bed dwellings, sheltered and elderly housing and other specialist forms of development where children in the 0-14 age range will not be resident. Similarly, a financial contribution towards the enhancement and development of playing fields and recreational facilities will not be sought from sheltered housing as the future residents are unlikely to utilise playing fields. Affordable Housing development, either as part of a site or forming the whole development site, will not be exempt from the requirement.

### **4.3 Nature and Scale of Obligation**

Where planning obligations have been identified to mitigate the impact of a development, the obligation may comprise the direct provision of facilities within the development itself, off-site provision on land controlled by the developer and/or a financial contribution to the Council in lieu of direct provision. In the case of off-site provision, the facility should preferably be provided within the electoral Ward in which the development is located, or the adjacent Ward where a development site is located close to a Ward boundary.

#### **4.3.1 Children's Play, Recreation & Sport**

It is the Council's preference that new children's play facilities, typically a Local Area Equipped for Play (LEAP), are delivered directly by the developer on site to contribute towards the achievement of an appropriate level of accessible play facilities. The developer must first agree a specification with the Council, fund the development of the detailed scheme, carry out the works to the appropriate standard and complete the facility within an agreed timeframe. The future management of the facility should be planned for by the establishment of a management company. Alternatively, the Council may agree to adopt formal play facilities on the condition the land/facility is transferred at nil cost to the Council and a commuted sum is provided equivalent to 20 years management costs.

Due to the modest scale of residential development sites and/or local topography it is anticipated that in some cases it will not be reasonable or practical to require the provision of new play facilities on site. Due to the strategic nature of sports provision it is also the Council's preference to manage the delivery of outdoor sports facilities in lieu of on-site provision. In these circumstances the Council will require a commuted Open Space and Recreation Payment which will be used to mitigate the impact of the development by upgrading existing facilities within the vicinity of the site. The commuted contribution is calculated in accordance with the FIT standards and is set out below.

In the case of residential developments of a scale sufficient to require a Neighbourhood Area Equipped for Play (NEAP) - typically 88 dwellings upwards - the developer will be required to make on site provision, as set out above. If play provision has not initially been planned into the development the Council will require the layout to be revised to accommodate it in accordance with current published standards. In exceptional cases the Council may prefer to deliver and adopt the on-site facility on the condition the developer transfers the land to the Council at nil cost and pays a commuted sum equivalent to the cost of providing the facility and its management over a 20 year period.

#### 4.3.2 Informal Public Open Space

There may be opportunities for the provision of publicly accessible informal open space in association with major residential and commercial development (e.g. retail or employment). For example, an area of land may be set aside as public open space due to the need to provide a Sustainable Urban Drainage System or as part of a biodiversity mitigation scheme. Up to date information, such as the Heads of the Valleys Accessible Natural Green Space Assessment, can be used in determining the level of green space provision in relation to specific development sites. Where such opportunities occur the Council will seek to secure the long-term management of the area through the establishment of a management company. The Council will normally not consider adopting informal public open space.

#### 4.3.4 Allotments

Provision for serviced allotments will be sought in line with national standards where these can be provided on site and serve the needs of the development. The Council's preference would be for the allotments to be transferred at nil cost to the local Allotment Authority to ensure that they are appropriately managed in perpetuity.

### 4.4 **Methodology for Calculating Provision of Recreation and Open Space**

#### 4.4.1 Fields in Trust Standards of Provision (2009)

The Fields in Trust definition of outdoor playing space is '*space that is accessible and available to the general public, and of a suitable size and nature for sport, active recreation and play.*' Facilities falling within this definition include:

- Facilities for pitch based sports, such as football or cricket, including training areas
- Facilities for outdoor sports such as bowls, athletics and tennis, including training areas
- Designated areas for children's play containing a range of facilities and an environment designed to provide focused opportunities for outdoor play, including play areas and playgrounds of all kinds
- Amenity open space suitable for casual or informal play, particularly in residential areas
- Facilities for teenagers and young people

Contributions to the open space standard do not comprise areas of the public realm, such as public rights of way, footpaths, cycleways, highways and other circulation space. Likewise woodland, ornamental gardens, incidental landscaping, roadside verges and drainage basins cannot be included.

The Fields in Trust Benchmark Standard for outdoor playing space provision is **2.4 hectares / 1000 population** and is sub-divided between Outdoor Sport and Children's Playing Space, as set out in Figure 1.

<b>Figure 1 Fields in Trust Benchmark Standard</b>	
Outdoor Sport	<b>1.6 hectares</b> / 1000 population (of which 1.15 hectares should be for pitch sports)
Children's Play Space	<b>0.8 hectares</b> / 1000 population (of which 0.25 hectares should be equipped / designated children's play space and 0.55 hectares should be casual / informal children's play space)
<b>Total Playing Space Provision</b>	
<b>2.4 hectares / 1000 population</b>	

Although Fields in Trust advocate that the benchmark standard detailed in Figure 1 should be a minimum, the standard states that '*where the minimum standards cannot be met, due to the scarcity of open land, the local planning authority should adopt them as a target*'. As such due to the topographical characteristics of Blaenau Gwent the FIT standard is utilised as a *target* rather than a minimum standard.

#### 4.4.2 Recreation & Open Space Provision

The Council's approach to assessing if a new residential development will be required to make provision for recreation and open space, and calculating the amount of provision, is as follows:

- i. The expected occupancy of the development is first estimated by multiplying the total number of qualifying proposed dwellings by the average household size in Blaenau Gwent, which is 2.4 persons/household (Source: 2001 Census).
- ii. An assessment is undertaken of existing provision for children's play space and outdoor sport within the vicinity of the site using the FIT recommended distances to facilities, recommendations contained in the Blaenau Gwent Play Strategy and additional information from Leisure Services on any current programmed new or improved provision. Where it is determined that the development creates or exacerbates an existing deficiency in provision, an obligation will be required.
- iii. To determine the scale of provision, the area in square metres required for each category of children's play space and outdoor sport deemed relevant to the development proposal are calculated using the assumed occupancy per dwelling and FIT standards of provision. The categories (in sqm) are then multiplied by the number of qualifying dwellings to give the total amount of recreation and open space provision that is generated by the development (see Figure 2).

**Figure 2 Calculating Recreation & Open Space Provision for new Residential Development**

$$\begin{aligned} &\text{Quantum of Outdoor Sports Space per dwelling} = \\ &[(1.6 \text{ FIT} \times 10,000 \text{ sqm}) / 1000] \times 2.4 \text{ occupancy} \\ &+ \\ &\text{Quantum of Children's Play Space per dwelling} = \\ &[(0.8 \text{ FIT} \times 10,000 \text{ sqm}) / 1000] \times 2.4 \text{ occupancy} \\ & \times \\ &\text{no. of qualifying dwellings} \\ &= \\ &\text{Quantum (sqm) of Outdoor Sports and Children's Play Space generated by} \\ &\text{the development} \end{aligned}$$

Using the formula in Figure 2 the requirement for recreation and open space per dwelling in Blaenau Gwent can be calculated, as follows:

<b>Total Provision</b>	<b>57.6 sqm</b> per dwelling <i>subdivided as follows</i>
<b>Outdoor Sport</b>	<b>38.4 sqm</b> per dwelling (of which 27.6 sqm should be for pitch sports)
<b>Children's Play Space</b>	<b>19.2 sqm</b> per dwelling (of which 6 sqm should be equipped / designated children's play space and 13.2 sqm should be casual / informal children's play space)

The form and type of the open space and recreation facilities provision and the manner in which it will be delivered will be determined on a site by site basis.

#### 4.4.3 Recreation & Open Space Payment

An Open Space and Recreation Payment will be sought if an open space and recreation obligation is required and the preferred approach to addressing the impact is in the form of a commuted sum rather than direct provision by the developer. Open Space and Recreation Payments may be utilised to increase open space and recreation capacity by the provision of additional space / facilities created by the extra demand or by the upgrading of existing facilities to increase their capacity.

The precise use of the payment will be determined by the Council according to the individual circumstances of the development and existing provision in the catchment area. For example, it may be appropriate to spend a payment on a small self-contained project, or the decision may be taken to pool the payment with other revenue, particularly where there is a reasonable prospect of attracting match funding and creating added-value, to deliver a larger-scale project.

The value of the Open Space and Recreation Payment will be based on the current costs per square metre of providing the categories of open space and recreation set out in the FIT standard. The costs are based on the actual costs of providing new facilities and associated works. The costs will be reviewed every April and fixed for a period of 12 months. The current costs are set out at Figure 3 and an updated schedule of costs will be published annually on the Council's website.

<b>Figure 3: Cost of Provision of Recreation and Play Space Facilities in Blaenau Gwent County Borough based on the Fields in Trust Benchmark Standard</b>	
<b>Cost of Provision of Outdoor Playing Space Facilities (at January 2011)</b>	<b>£</b>
<b>Local Equipped Area for Play, LEAP - 400m<sup>2</sup></b>	
Equipment	28,000.00
Safety Surface	10,000.00
Groundworks	19,000.00
Fencing	8,000.00
<b>TOTAL</b>	<b>65,000.00</b>
<b>Cost per m<sup>2</sup></b>	<b>162.50</b>
<b>Playing Fields - 8500 m<sup>2</sup></b>	
Groundworks & Drainage	70,000.00
Soil, Seed, Turf	80,500.00
<b>TOTAL</b>	<b>150,500.00</b>
<b>Cost per m<sup>2</sup></b>	<b>17.71</b>
<b>FIT Standards as applied in Blaenau Gwent</b>	<b>£</b>
<b>Children's Play Space - 19.2 m<sup>2</sup> per dwelling x cost per m<sup>2</sup></b>	<b>3,120.00</b>
<b>Outdoor Sport - 38.4 m<sup>2</sup> per dwelling x cost per m<sup>2</sup></b>	<b>680.00</b>
<b>TOTAL CONTRIBUTION PER DWELLING</b>	<b>3,800.00</b>
<b>Additional Costs Applicable in Specific Circumstances</b>	<b>£</b>
<b>Children's Play Space - 20-year Management Commuted Sum</b>	<b>41,357.00</b>
<i>Where a new facility is provided by the developer/Council and adopted by the Council based on an annual maintenance cost of £1200 increased by 2% inflation per annum over the 20 year period and the replacement of safety surfacing in year 10.</i>	
<b>Playing Fields - 20-year Management Commuted Sum –</b>	<b>267,271.00</b>
<i>Where a new facility is provided by the developer/Council and adopted by the Council based on an annual maintenance cost of £11,000 increased by 2% per annum over the 20 year period.</i>	
<b>Changing Facility/Pavilion Option 1</b>	<b>650,000.00</b>
<i>Cost includes car parking and access, and a pavilion with changing and welfare facilities.</i>	
<b>Changing Facility/ Pavilion Option 2</b>	<b>450,000.00</b>
<i>Cost includes car parking and access, and a pavilion with changing facilities only</i>	

Using the costs in Figure 3 the maximum cost of providing recreation and open space per dwelling, per category of play space in Blaenau Gwent in 2011/12 is as follows:

Outdoor Sport	<b>£ 680 per dwelling</b>
Children's Play Space	<b>£ 3,120 per dwelling</b>
<b>Total Cost Per Dwelling</b>	<b>£ 3,800</b>

#### **4.5 Design Guidance for Recreation and Public Open Space Facilities**

The Council will assess proposals for new recreation and public open space facilities taking into account guidance set out in the Fields in Trust document 'Planning and Design for Outdoor Sport and Play' (2009). It is accepted that each site will have its own character and that guidelines should therefore be interpreted appropriately according to individual circumstances. The primary function of the guidance is to create and maintain useable spaces that have a positive impact on the health and well being of surrounding occupiers and raise the quality of the development.

The Council has adopted minimum standards for the installation of all new play equipment in the form of European Standards, BSEN 1176:1998 Parts 1-7, for equipment, and BSEN 1177:1998, for safety surfacing. Compliance with these standards will be a requirement on all new developments and proof of compliance will be required prior to installation. All equipment will be inspected for continued compliance with the European Standards to ensure retained equipment is maintained correctly, and new equipment has been correctly installed, sited and maintained.

The design of all new facilities must fully comply with the Disability Discrimination Act (DDA) 1995. The gradient of footpaths, size of steps, height of handrails and visual obstructions that may be encountered on route to a play or recreation facility are among the factors to be considered.

The Council will only adopt a public open space/ facility if constructed to the required standard and pass an independent post installation inspection by RoSPA (Royal Society for the Prevention of Accidents) or FIT (Fields in Trust). Where the Council does not adopt the on site provision the liability to maintain the facility will remain with the developer or property owners.

#### **4.6 Standard Heads of Terms**

The following definitions and clauses are suggested for use as appropriate in Section 106 legal agreements and unilateral undertakings where a recreation and public open space contribution is required.

**'Open Space and Recreation Facilities'** means the public open space and / or recreation facilities which meet community needs and are publicly available

**'Open Space and Recreation Land'** means the land shown for identification purposes hatched on plan (ref...) attached to this Deed where the Open Space and / or Recreation Facilities are to be provided

**'Open Space and Recreation Obligation'** means a planning obligation to be determined at the time of submission of full details of the development (or any subsequent full application) to be secured by the Council in accordance with the adopted Planning Obligations SPG as amended from time to time, to provide for additional Open Space and Recreation Facilities to meet the needs of the development

**'Open Space and Recreation Facilities Scheme'** means a detailed specification of works to provide for Open Space and / or Recreation Facilities to address the need generated or exacerbated by the development to include initial provision and management for a period of 20 years



*Full Planning Application*

**‘Open Space and Recreation Payment’** means the sum of ... pounds (£... ) to be utilised to provide or enhance Open Space and / or Recreation Facilities in accordance with the Open Space and Recreation Facilities Scheme

*Outline Planning Application (1)*

**‘Open Space and Recreation Payment’** means the commuted payment to be calculated using the Council’s formula contained in the adopted Planning Obligations SPG in place at the time of submission of the Reserved Matters to be utilised to provide or enhance Open Space and / or Recreation Facilities in accordance with the Open Space and Recreation Facilities Scheme,

*Outline Planning Application (2)*

**‘Open Space and Recreation Payment’** means the sum of ... pounds (£... ) per dwelling to be utilised to provide or enhance Outdoor Sport Facilities and / or the sum of ... pounds (£... ) per dwelling to provide or enhance Children’s Play Facilities secured in accordance with the formula in the adopted Planning Obligations SPG in place when outline planning permission was granted to be utilised in accordance with the Open Space and Recreation Facilities Scheme

**‘Recreation Facilities Maintenance Payment’** means a financial contribution of ... pounds (£...) to be paid to the Council as a commuted sum to maintain the Recreational Facilities for a period of 20 years in accordance with the Open Space and Recreation Facilities Scheme

**‘Open Space Maintenance Payment’** means a financial contribution of ... pounds (£...) to be paid to the Council as a commuted sum to maintain the Public Open Space Land for a period of 20 years in accordance with the Open Space and Recreation Facilities Scheme

Clauses:

The Developer shall enter into a legal agreement to secure obligations with regard to open space and recreation as appropriate when the full details of the proposal are submitted as Reserved Matters or in conjunction with any subsequent full planning application.

The Open Space and Recreation Land must be used for the provision of the Open Space and Recreation Facilities in accordance with the Open Space and Recreation Facilities Scheme and not occupied or used in any other manner.

The Developer shall transfer the Open Space and Recreation Facilities Land fully serviced with all associated rights or access at no cost immediately prior to the commencement of the Development

The Developer shall submit the Open Space and Recreation Facilities Scheme prior to the commencement of the Development for agreement with the Local Planning Authority. Approval of the scheme shall not be unreasonably withheld or delayed.

The Developer shall undertake the provision of the Open Space and Recreation Facilities in accordance with the Open Space and Recreation Facilities Scheme agreed with the Council. The Open Space and Recreation Facilities shall be completed (and transferred to the Council) prior to the occupation of the (.n)<sup>th</sup> dwelling.

The Developer shall pay to the Council (c/o ...) immediately prior to the commencement of development the Open Space and Recreation Payment index linked to the Retail Price Index (RPI).

The Developer shall pay to the Council (c/o ...) the Open Space and/or Recreation Facilities Maintenance Payment index linked to the Retail Price Index (RPI) concurrent with the transfer of The Open Space and Recreation Facilities to the Council.

The Council undertakes to utilise the Open Space and Recreation payment to provide the Open Space and Recreation Facilities in accordance with the Open Space and Recreation Facilities Scheme.

The Council undertakes to accept the transfer of the Open Space and Recreation Facilities Land and utilise the land in the provision of the Open Space and Recreation Facilities.

The Council undertakes to utilise the Open Space and/or Recreation Facilities Maintenance Payment to manage the Open Space and/or Recreation Facilities in an appropriate manner for a period of 20 years.

## **ANNEX 5: BIODIVERSITY AND GEODIVERSITY**

Conserving and enhancing biodiversity and geodiversity is one of the key aims of sustainable development. Blaenau Gwent's outstanding landscape is characterised by narrow valleys with fast flowing rivers and streams, wooded slopes, and large area of upland habitat rich in ponds, unimproved grassland and heathland habitats. Industrialised sites previously used for coal mining and heavy industry have been reclaimed or naturally regenerated, resulting in the creation of natural spaces that are valuable for wildlife. Within the County Borough there are two sites protected for their National nature conservation value - Brynmawr Sections and Cwm Merdogg Woodlands Sites of Special Scientific Interest (SSSI). Located adjacent to the Borough within the Brecon Beacons National Park are two European sites of nature conservation value - Usk Bat and Cwm Clydach Special Areas of Conservation (SACs). The Borough also has a large number of local sites of nature conservation interest including, Sites of Importance of Nature Conservation Value (SINCs) and Local Nature Reserves (LNRs), which are plotted on the Deposit Draft Local Development Plan Constraints Map. The Local Blaenau Gwent Biodiversity Action Plan (2010) contains targets and action plans for local habitats and species of significance that are at risk or whose status is uncertain.

The principles of biodiversity conservation also apply to geodiversity and geological conservation, which is a matter of significance in the Borough. The geology of the area is dominated by Carboniferous Limestone, Millstone Grit, Lower Coal Measures, Upper Coal Measures and Pennant Series and includes the Brynmawr Sections SSSI, a designated geological site of national importance. Geological evaluations carried out by LANDMAP have also identified outstanding features which have the potential to be designated as Regionally Important Geological and Geomorphological Sites (RIGS).

To address the impacts of development, the Council will, where appropriate, seek planning obligations to provide for the protection and enhancement of biodiversity and geodiversity interests and in doing so ensure that necessary management and monitoring of these interests is undertaken.

### **5.1 Policy and Guidance**

The following policy and guidance are relevant to this topic. Overarching Development Plan policies, legislation and generic national planning policies relating to planning obligations are set out in Part One of this document.

Planning Policy Wales 4<sup>th</sup> Ed. (2011) paragraphs 4.3.1, 4.4.2, 4.5.3, 4.8.1, 4.10.8, Chapter 5 in particular, 5.2.8, 5.5.1 – 5.5.3, 7.6.1 and 9.3.5

Paragraph 5.2.8 states that *'the planning system has an important part to play in meeting biodiversity objectives by promoting approaches to development which create new opportunities to enhance biodiversity, prevent biodiversity losses, or compensate for losses where damage is unavoidable.'*

Paragraph 5.5.3 states that *'in some cases it will be necessary to refuse planning permission on conservation grounds. However, local planning authorities must always consider whether environmental issues could be adequately addressed by modifying the development proposal or by attaching appropriate planning conditions or obligations.'*

Welsh Office Circular 13/97 Planning Obligations, in particular paragraphs B7, B11 and B14

Technical Advice Note 5: Nature Conservation and Planning (2009), in particular Chapter 4.7

TAN 5 confirms that under Section 40(1) of the Natural Environment and Rural Communities Act (NERC) 2006, every public authority has a duty to, '*have regard so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity.*' Nature conservation incorporates both biodiversity, geodiversity, to include flora, fauna, geological and geomorphological features.

The Conservation of Habitats and Species Regulations (2010)

Blaenau Gwent County Borough Council Unitary Development Plan (2006) Policies EN1, EN12, EN13, EN14, EN15, EN16, EN17, EN20, EN21, EN24

Blaenau Gwent County Borough Council Local Development Plan Deposit Draft (January 2011) Policies SP10, DM4, DM14, DM15, DM16

Blaenau Gwent County Borough Council Local Biodiversity Action Plan (Revised) (2010)

Blaenau Gwent County Borough Council, Best Practice in Biodiversity and Geodiversity Conservation in Planning and Development, Draft Supplementary Planning Guidance (March 2008)

The draft Best Practice in Biodiversity and Geodiversity SPG supplements policies in the adopted UDP and draft LDP with guidance that is focused on local issues, design and good practice in development. Importantly it links together the Development Plan and Local Biodiversity Action Plan. When adopted it should be read alongside this SPG.

Please note that in the remainder of this Annex reference to 'biodiversity' incorporates 'geodiversity' unless otherwise stated.

## **5.2 Circumstances in which Obligations will be Sought**

An obligation relating to biodiversity may apply to any scale and any type of development according to the specific characteristics of the proposed site and the potential impact from the proposed development. There is no standard threshold or trigger.

In considering proposed development, the most up to date information sources will be used to evaluate the ecological value of the site and the potential impacts of the development. In most cases, developers will be required to provide this information in the form of up-to-date ecological surveys. Existing records can also be accessed from the South East Wales Biodiversity Records Centre (SEWBRC). This information will then be assessed against the Blaenau Gwent LBAP, Section 42 listings (NERC Act 2002) and the relevant National and European legislation. All proposals will be considered on their individual merits and assessed on a case by case basis.

Planning obligations (as opposed to planning conditions) may be used where mitigation, compensation or enhancement measures require a long-term or complex commitment, or where a financial contribution and / or transfer of land is required. The nature and scale of the obligation(s) will reflect the impact of the development and the need for improvements, management and monitoring of biodiversity.

## **5.3 Nature of the Obligation**

In determining whether it will be necessary to seek a planning obligation for biodiversity the effect of the proposed development on the biodiversity interest of the site and the surrounding area needs to be established and these effects considered with regard to the adopted policies

in the development plan. Biodiversity does not respect planning application site boundaries and therefore both on site impacts and impacts remote from the development site will be considered.

To ensure that biodiversity is fully incorporated and best practice observed in development proposals the Council will rely on a systematic Five Point Approach to Planning Decisions for Biodiversity, as set out in the Good Practice Guide: Planning for Biodiversity (RTPI) (1999) and advocated in TAN 5 (2009). A summary of the 5-point approach is detailed in Figure 1.

**Figure 1 A Five Point Approach to Planning Decisions for Biodiversity**

1. Adequate Information: *Is more information about the site's biodiversity resource needed? Is more information about the development and its potential effects needed? Is the significance of the effects clear? Is there internal or external expertise that can help to inform the decision?*
2. Avoidance of Harm: *Have all adverse effects on priority species and habitats been avoided wherever possible?*
3. Mitigation to Reduce Unavoidable Harm: *Where adverse effects are unavoidable have they been or can they be minimised by use of mitigation measures that can be guaranteed, for example by conditions or planning obligations?*
4. Compensation to offset Residual Harm: *Where, despite mitigation, there will be residual adverse effects that mitigation cannot reduce further, have they been or can they be compensated by measures that try at least to offset the harm? Can the compensatory measures be guaranteed by conditions or planning obligations?*
5. Biodiversity & Geodiversity Enhancement: *Where there would be no significant harm to wildlife habitats, are there opportunities to provide new benefits for wildlife, for example by wildlife creation or enhancement and can these new benefits be guaranteed by planning obligations?*

### 5.3.1 Information

To establish the impact of development adequate information on the biodiversity interest of a site is required. Information is available from various sources including the LBAP, which identifies habitats and species of importance and the 'Biodiversity Action Reporting System' ([www.ukbars.defra.gov.uk](http://www.ukbars.defra.gov.uk)) which also maps designated sites and other habitats of existing importance detailed in the LBAP. SEWBReC hold records of species and habitats that can be accessed by the Council. This information together with the LBAP will act as a guide, indicating which species and habitats may be present and whether they are important for nature conservation. As this does not necessarily represent a full picture of the biodiversity present on a site and the locality, the developer will also be required to undertake full ecological surveys at an appropriate time of year by a qualified person to enable proper consideration to be given to the potential impacts of the proposed development on the habitats and species present.

### 5.3.2 Avoidance

The protection and enhancement of priority species and habitats can best be achieved by avoidance of any development impact on those features. This is the first principle that will be applied to all planning applications that may have an adverse impact on biodiversity – mitigation and compensation is not an alternative if avoidance is possible. The development plan policies provide protection for internationally, nationally and locally designated sites that

have features of significant biodiversity value. The justification for approving development which does not avoid sites and/or features of biodiversity value will be considered by the Council and other statutory consultees against the sites' conservation status/biodiversity value.

***Some impacts on biodiversity cannot be mitigated or compensated for, e.g. the loss of ancient woodland. In these circumstances the Council will require a development scheme to be redesigned to avoid the impact.***

### 5.3.3 Mitigation

Where there is no alternative site and where avoidance is outweighed by the wider merits of the development then mitigation against potentially damaging impacts of the development has to be planned for at the earliest stage. It is a fundamental objective that the proposed mitigation should deliver **no net loss** of biodiversity when developments are implemented and that biodiversity gains should be achieved wherever possible. Mitigation can involve a range of measures, including site layout changes, specifying a preferred timing of development, the provision of buffer zones and off-site enhancements. Some examples of the type of obligations, including mitigation measures, which may be required to address biodiversity impacts, are detailed in Figure 2.

#### **Figure 2 Examples of Biodiversity Obligations**

- Restricting development in identified/sensitive areas to avoid harm to existing biodiversity features.
- Undertaking specific measures to address the requirements of an identified species or habitat to avoid or reduce impacts.
- Securing on-site works required to enhance existing features, e.g. woodlands, hedgerows, ponds, grassland, bird nesting boxes, bat roosting boxes
- Securing the creation of new biodiversity features within a site, e.g. wildlife planting, pond creation and nature reserve area.
- Securing a financial contribution to enhance or create appropriate biodiversity assets nearby, e.g. accessibility improvements, interpretation facilities, stepping stone habitats.
- Securing a long-term programme of monitoring and/or management associated with the development or a nearby related site.

The range of mitigation measures that are identified for a site should form the basis of a 'mitigation action plan'. A mitigation action plan should include evidence of the potential success and effectiveness of the proposed mitigation measures, techniques should be provided along with actual project examples, and details of long-term management, monitoring and funding. Mitigation action plans will be required for all protected species and habitats. For European protected species this will be required as part of a European protected species development licence. Figure 3 details the key points that should be considered in the preparation of a mitigation action plan

### 5.3.4 Compensation

Where the impacts of the development on biodiversity cannot be fully mitigated and the wider merits of the development dictate that the site cannot be avoided, compensation measures should be used to off-set the residual harm. In considering ecological compensation the precautionary principle should be applied. The general rule is that ecological compensation

should achieve a **net gain** to make up for the fact that an artificially created habitat is of lower biodiversity value. Accordingly, the Council requires that compensation should be a greater extent than what is being replaced. The increased amount, or replacement ratio, is set at **1:125 or 25%** above the area to be replaced as artificially created habitats are likely to have a lower value for biodiversity and therefore a greater area is required. For example a 5 hectare area of grassland which is to be developed must be compensated for by a 6.25 hectare area of grassland. This is the **minimum** that would be accepted and the ratio could be increased if, for instance, ecological networks have to be maintained or to avoid fragmentation of important existing habitats. It should be noted that the artificial creation of new habitats is not always successful and should only be used where other possible compensation measures have been exhausted.

Compensation should ideally require ‘like for like’ habitat replacement through restoration or extension of existing habitat, or creation of new habitat. However, this is not always possible and in exceptional cases constraints, such as ground conditions, substrates and drainage, may dictate that it would be practical to create alternative compensatory habitat and/or biodiversity features. These may also be provided to deliver local biodiversity species and habitat targets set out in the LBAP and other Council biodiversity enhancement plans. When compensatory habitats are not ‘like for like’ then the replacement ration may need to be greater than the 1:125 to guarantee net biodiversity gain.

The Council’s preference for the delivery of compensation is via on-site creation of substitute habitats, but off-site creation and/or enhancement close to the point of loss will be considered. Ideally substitute habitats should be established prior to the loss of the original features. Some examples of the type of obligations, including compensation measures, which may be required to address biodiversity impacts, are detailed in Figure 2.

The range of compensation measures that have been identified for a site will form the basis of a ‘compensation action plan’, which should include evidence of the potential success and effectiveness of the proposed compensation methods, techniques should be provided along with actual project examples, and long-term management and funding should be included (see Figure 3).

<b>Figure 3 Preparing a Mitigation/Compensation Plan</b>	
<b>A Mitigation/Compensation Action Plan should contain:</b>	<b>Mitigation/Compensation Measures should:</b>
<ul style="list-style-type: none"> <li>• Aims and Objectives</li> <li>• Mitigation/Compensation Measures</li> <li>• Means of Delivery</li> <li>• Timescales</li> <li>• A scheme of Management, Monitoring and Reporting</li> </ul>	<ul style="list-style-type: none"> <li>• Be technically feasible</li> <li>• Demonstrate good practice</li> <li>• Be ecologically viable in both size, extent and siting</li> <li>• Be fully resourced</li> <li>• Have a guaranteed long-term funding commitment</li> </ul>

### 5.3.5 Enhancement

The planning system can also have a positive role to play in delivering positive benefits for biodiversity beyond simply avoiding adverse effects. For example, highways verges and areas of informal open space in new developments may be managed to enhance the nature

conservation value. Accordingly, the provision of enhancements for biodiversity will be encouraged by the Council as part of new development.

#### 5.3.6 Management and Monitoring

The longer term monitoring and management of habitats/habitat features must be fully addressed on sites (both on and off-site) that have been subject to either mitigation or compensation, or both. In circumstances where the developer provides new facilities within the site it will be necessary to ensure a suitable management and monitoring plan and the provision of resources to implement the plan for an agreed period of time. Monitoring may also be required to ensure that mitigation and/or compensation is adequate and for measures to be in place to amend the mitigation/compensation if necessary. A Management Plan (to include a monitoring programme as appropriate) should be produced in accordance with the Countryside Council for Wales' 'Minimum Format Management Plan' and should include appropriate financial costings.

The Council will not normally consider adopting any land that forms part of a development site, unless proven that the site contains features of outstanding biodiversity significance. Accordingly, in exceptional circumstances it may be appropriate to transfer a specified part of the site to the Council, together with a commuted sum, to enable the Council to undertake the long-term management of the land.

Where a Management Plan is not provided prior to determination of the planning application, a planning obligation will be necessary, requiring the developer to enter into a Management Agreement. Similarly, the provision of commuted sums to implement management plans will need to be the subject of planning obligations.

### 5.4 **Scale of the Obligation**

The Council's approach to identifying the need for planning obligations for biodiversity means that nature and extent of each obligation should directly relate to the impact of the proposed development on the biodiversity interest of the site and the locality. The obligations required will therefore vary on a site by site basis and will be informed, where appropriate, by the preparation of mitigation and compensation action plans, and management plans.

The Council's preference is for mitigation/compensation measures to be delivered directly by the developer in accordance with the details and specification agreed with the Council. The developer is expected to fund the development of the detailed scheme, implement the measures to the appropriate standard and manage the site for an agreed period of time.

Where a commuted sum to contribute towards off-site mitigation/compensation is agreed in principle, the agreed measures will be costed with reference to SPON's External Works and Landscape Price Book, management costings for the agri-environment scheme 'Tir Gofal' (or its replacement 'Glastir'), and records of similar habitat/species management work undertaken by the Council or other local authorities in the region.

Where a Management Plan is required it must provide reasonable costings for implementation of the proposed measures for a period of a minimum of 5 years. Where significant changes are anticipated a 10 year management plan may be required which would necessitate updating after the first 5 years.

Where an area of land is to be transferred into Council ownership, the land shall be transferred free of charge and accompanied by a commuted sum to enable the Council to undertake the required management over an agreed time period.



Where the management of an area of land will be undertaken by a third party appropriate arrangements will need to be put in place via planning obligations to expedite the process, for example the transfer of commuted sums to the third party, the production of a management plan or the setting up of a management company.

## 5.5 Standard Heads of Terms

The following definitions and clauses are suggested for use as appropriate in Section 106 legal agreements and unilateral undertakings where a biodiversity obligation is required.

### Definitions:

**'Biodiversity Land'** means the land hatched on plan (ref...) attached to the deed where the Biodiversity Works shall be provided.

**'Biodiversity Obligation'** means a planning obligation to be determined at the time of submission of full details of the development (or any subsequent full application) to be secured by the Council in accordance with the adopted Planning Obligations Supplementary Planning Guidance as amended from time to time, in the interest of protecting biodiversity/geodiversity resources at the site.

**'Biodiversity Payment'** means the sum of ... pounds (£...) to undertake the Biodiversity Works

**'Biodiversity Safeguarded Land'** means the land hatched on plan (ref...) attached to this deed where no development or occupation shall occur in the interests of protecting biodiversity and/or geodiversity resources.

**'Biodiversity Scheme'** means a detailed specification for the avoidance/mitigation/compensation/ enhancement of wildlife habitats or features or biodiversity/geodiversity importance on the specified land including timescales and costings.

**'Biodiversity Works'** means the works to be undertaken to avoid/mitigate/compensate/enhance wildlife habitats or features of ecological importance on the specified land in accordance with the Biodiversity Scheme.

**'Management Agreement'** means an agreement for the management of an area of land under the terms of Section 39 of the Wildlife and Countryside Act 1981 (as amended)

**'Management (and Monitoring) Plan'** means a detailed and costed scheme submitted in support of the planning application for the management (and monitoring) of the specified land over a period of ...years produced in accordance with the Countryside Council for Wales Minimum Format Management Plan.

**'Management (and Monitoring) Payment'** means the sum of ... pounds (£...) to fully implement the Management (and Monitoring) Plan.

### Clauses:

The Developer shall under no circumstances utilise or occupy the Biodiversity Safeguarded Land.

The Developer shall transfer the Biodiversity (Safeguarded) Land to the Council with all associated rights of access at no cost immediately prior to the commencement of development.

The Developer shall submit the Biodiversity Scheme prior to the commencement of development for the written approval of the Local Planning Authority. Approval of the Scheme shall not be unreasonably withheld or delayed.

The Developer shall undertake the provision of the Biodiversity Works in accordance with the Ecology and Biodiversity Scheme agreed with the Council. The Works shall be completed (and transferred to the Council) prior to the occupation of the n<sup>th</sup> dwelling.

The Developer shall fully implement the requirements of the Management (and Monitoring) Plan submitted in support of the planning application and agreed with the Council.

The Developer shall submit the Management Agreement prior to the commencement of development for the written approval of the Local Planning Authority. Approval of the Agreement shall not be unreasonably withheld or delayed.

The Developer shall fully implement the provisions of the Management Agreement.

The Developer shall pay the Council (c/o...) immediately prior to the commencement of development the Management (and Monitoring) Payment, index linked to the Retail Price Index (RPI).

The Council undertakes to accept the transfer of the Biodiversity (Safeguarded) Land and utilise the land as a Local Nature Reserve and for any purpose necessary and incidental thereto for no other purpose whatsoever.

The Council undertakes to utilise the Biodiversity Payment to undertake the Biodiversity Works as specified within the Ecology and Biodiversity Scheme.

The Council undertakes to utilise the Management (and Monitoring) Payment to fully implement the Management (and Monitoring) Plan.

The Developer shall enter into a legal agreement to secure a Biodiversity Obligation as appropriate when the full details of the proposal are submitted as Reserved Matters or on conjunction with any subsequent full planning application.

## ANNEX 6: REGENERATION

Blaenau Gwent suffers a legacy of deprivation in terms of income, health, education and opportunity, and business performance is lagging behind other parts of Wales. According to the new Welsh Index of Multiple Deprivation (2008) 21% of the Borough's 'small areas' (as defined by the Welsh Government) are in the most deprived 10% in Wales. This is the second highest proportion in Wales. Statistically the most deprived areas are in Tredegar Central & West, Sirhowy and Ebbw Vale North, although deprivation is evident in many parts of the Borough.

The Blaenau Gwent 2009 Regeneration Strategy seeks to address these issues on a variety of levels, principally via programmes targeted at economic development, skills and training and physical regeneration. Accordingly it sets out six principles for regeneration and identifies a number of actions that must be implemented to meet its vision for 2018. Some of the actions will involve significant new, physical developments in the shape of buildings, new facilities, reclaimed former industrial sites and new places of employment. Other projects will involve working with communities, business, learners and disadvantaged people from across the Borough in a broad range of activities.

New development can have a significant role in meeting the Council's regeneration objectives and the creation of sustainable communities. In appropriate circumstances the Council considers that regeneration benefits can be delivered by the planning system in the form of planning obligations (by means of financial contributions or provision in-kind) in the following areas:

**Employment and Enterprise:** Provision of targeted recruitment and training programmes and encouraging local procurement in the construction phase of new major development; and

**Physical Regeneration:** Ensuring that new major development contributes to enhancing community safety, town centre regeneration, existing community facilities and high quality public realm through the use of public art.

The relevance of these matters will depend on the scale, nature and location of the proposed development. Developers are encouraged to engage in pre-application discussions as early as possible to determine if planning obligations are likely to be sought in the interests of regeneration.

### 6.1 Policy and Guidance

Planning Policy Wales 4<sup>th</sup> Ed. (2011) paragraphs 2.4.4, 3.7.1-3.7.5 , 4.4, 4.4.2, 4.5.1, 4.10, 7.1.5, 7.5.1, 7.6.1, 9.2.9, 9.3.5, 10.2.5, 10.2.8,

Welsh Office Circular 13/97 Planning Obligations paragraphs B2, B7 and B10

Blaenau Gwent County Borough Unitary Development Plan (2006) Policies G1, S1, S2, S3, S4, EN5, EN6

Blaenau Gwent County Borough Local Development Plan Deposit Draft (2011) Policies SP3, SP7, SP8, DM2, DM4

Turning Heads: A Strategy for the Heads of the Valleys 2020 (June 2006)

Blaenau Gwent Regeneration Strategy (Adopted September 2009)

## Making a Difference – A Community Strategy for Blaenau Gwent 2010-2030 Consultation Draft (2010)

### 6.2 Employment and Enterprise

The socio-economic conditions within the County Borough reveal that improving the prospects for employment, training and enterprise is a high priority. In Blaenau Gwent in January 2009 7.3% of the working age population claimed Job Seekers Allowance (a total of 3,062 people), which is the highest rate in Wales. There are also higher proportions of people claiming incapacity benefits, income support and pensions credit in Blaenau Gwent than the Welsh average. Long-term unemployment is a persistent problem. In January 2009, 31% of claimants had been unemployed for over six months, and over 16% for a year. The proportion of claimants under 25 is 37%. The proportion of the working age population who are economically active is 70.9%, which is much lower than that of Wales. It is predicted that these indicators will further deteriorate, making the case for increased regeneration activity even clearer.

In 2008 employment levels in Blaenau Gwent were lower than those of Wales as a whole – 67.9% of Blaenau Gwent's working age population compared with 71.5% in Wales. Despite improvements since 2002, Blaenau Gwent still suffers from low levels of skills. Surveys show most adults would like to be involved in learning, but experience some barriers that stop them. The majority of employers who recruit young people report a significant skills gap.

The Council recognises that new development, both public and private sector, provides important training, employment and procurement opportunities which will aid the social and economic regeneration of the Borough and help create sustainable communities. It will therefore seek to maximise opportunities, via planning obligations, for new development to contribute towards ensuring that the local workforce and businesses are actively involved in the development of the area. This may be through the provision of recruitment initiatives, job opportunities and facilitation of skills training, or active consideration of local suppliers and sub-contractors in procurement processes. This approach will ensure that the benefits of development are realised for the local community for years to come.

#### 6.2.1 Circumstances in which obligations will be sought

The Council considers that **major development schemes** (defined as 10 dwellings and above, commercial developments of 1,000sqm and above, or where the site area is 1 ha or larger) provide important recruitment and training opportunities for the local workforce/job seekers of Blaenau Gwent in relation to the construction phase of the development and, where appropriate, the business of the end user. Similarly, new development presents opportunities for the procurement of materials and services from local sources and suppliers to ensure that the investment is fed back into the local economy. The Council will therefore encourage developers and businesses to work with them, together with local employment and training partners, suppliers and contractors in delivering these opportunities.

The type and level of the planning obligations sought will be subject to negotiation on a case by case basis and will depend upon a number of factors including, inter alia:

- The nature and scale of the development;
- The level of internal training opportunities likely to be provided by the developer/operator;
- Likely employment generation from the development;
- The number of jobs and gross floor space to be lost or replaced;

- The nature and number of existing jobs affected by the proposed development;
- In the case of vacant sites or premises, the previous use and job creating potential/ employment levels based upon worker/ floorspace ratios for those uses;
- Identified recruitment and training issues or problems related to specific uses and the local area.

### 6.2.2 Nature of the Obligation

Depending on the nature and context of the development proposal (as detailed above), planning obligations will be either: the provision of an Employment and Enterprise Payment, to be paid to the Council at an agreed stage of the development, or the direct provision of employment/training opportunities and local procurement by the developer/end user.

Where planning obligations are used to facilitate the direct provision of these benefits by the developer/end user, the Council will aim to ensure that 'social benefits clauses' are included to promote initiatives that will allow local supply chains to benefit and local people to be employed and/or trained as an integral part of the development process. For example, these clauses may require developers/employers to sign up to and implement Local Labour Agreements, Local Employment Charters and Best Endeavour's Agreements. For the purposes of this SPG these agreements are generically termed an 'Employment and Enterprise Scheme'.

Where an Employment and Enterprise Payment is agreed, contributions could be used to support existing training initiatives or new programmes carried out by the Council, the developer or other partners (as agreed by the Council and developer) in support of local regeneration. Wherever possible, the project to be funded will be set out in the legal agreement together with the timing of payments and the timing of the delivery of the project.

### 6.2.3 Identification and Delivery of Employment and Enterprise Obligations

Nominated officers in the Council's Project Team will work together with its key partners and agents (the Welsh Government, JobMatch, Job Centre Plus etc.) to facilitate the process of identifying the need for, the nature of and value of planning obligations in relation to employment and enterprise. They will also work with the developer/end user to support the drawing up of the relevant Employment and Enterprise Scheme and the delivery of projects and programmes arising from those schemes. The Council and its partners and agents do not, however, promise to provide suitable agencies, trainees or labour to contractors and employers. All appointment, recruitment, supervision and discipline responsibilities rest with the employers.

Where the use of an Employment and Enterprise Payment is not specified in a legal agreement its use will be determined by the Council according to the individual circumstances of the development. This will ensure that the most appropriate project is targeted by the Payment.

## 6.3 **Community Safety**

The need to create safe and accessible environments, where crime and disorder or fear of crime does not undermine quality of life or community cohesion, is a fundamental principle of building sustainable communities. The ability of people to feel safe in their community is an important factor in achieving and sustaining health and well-being. Indeed this is one of the seven key themes of the Council's Draft Community Strategy 2010-2030.

Furthermore, the Council has a statutory duty under section 17 of the Crime and Disorder Act 1988 to “*exercise its functions with due regard to...the need to do all it reasonably can to prevent crime and disorder in its area including anti-social behaviour, substance misuse and other behaviour adversely affecting the local environment*”. In doing so the Council must review how current service provision impacts on crime and disorder reduction and how it can take active steps to reduce crime and disorder in the County Borough.

Even where the principles of Secured by Design have been applied to a new development, the design and layout may not always be sufficient to achieve satisfactory safety and crime prevention measures, for either community safety purposes or for the security of the site itself. Planning obligations may therefore be sought from new development to fund the provision of additional community safety infrastructure/schemes.

### 6.3.1 Circumstances in which an obligation will be sought

The Council considers that where a particular development impacts beyond its immediate site by generating concerns about community safety in the local area it is reasonable to expect planning obligations to be provided for community safety schemes. Planning obligations are considered important to offset the identified impacts on a local area and to make a scheme acceptable in planning and safety terms.

The Council does not deem it appropriate to set a threshold or trigger for the provision of planning obligations for community safety. Whilst it considers that **major development** schemes (defined as 10 dwellings and above, commercial developments of 1,000sqm and above, or where the site area is 1 ha or larger) by virtue of their larger scale have the potential to generate local safety issues, equally, **smaller scale development** schemes depending on their nature and location may also give rise to community safety concerns. Development proposals that are **within or adjacent to town centres** are considered however to have a greater potential to produce community safety issues.

### 6.3.2 Assessing the need for Community Safety obligations

The type and level of the planning obligations for community safety will be assessed on a case-by-case basis and will depend upon a number of factors including, inter alia:

- The scale, location and nature of the proposed development;
- The proximity of the development to a town centre;
- The ability of a development to incorporate crime prevention measures within the scheme itself, i.e. Secured by Design principles and community safety infrastructure; and
- Evidence suggesting that the development proposal will be likely to have an impact beyond its immediate surroundings by generating concerns for community safety, cohesion and well-being.

The Council will identify the need for new development to contribute towards community safety schemes on the advice of the Police Architectural Liaison Officer of the Heddlu Gwent Police Constabulary and the Council’s Community Safety Team. They will provide advice on Secured by Design principles and the nature of any identified community safety schemes/facilities/payments generated by the development.

### 6.3.3 Nature of the Obligation

Depending on the nature and context of the development proposal (as detailed above), planning obligations will be either: the provision of a financial sum (Community Safety Payment) to be paid to the Council at an agreed stage of the development for the provision of

on or off-site community safety infrastructure, or the direct provision of on-site community safety infrastructure (normally by the developer). The Council will only seek an obligation where it can be demonstrated that, where appropriate, the development incorporates Secured by Design principles, but that these alone are not adequate to overcome community safety concerns

A Community Safety Payment will primarily be for the off site delivery of new infrastructure or the upgrading/extension of existing infrastructure by the Council to off-set the need generated by the development. The Payment will be required to cover the cost of the identified infrastructure, including the cost of the designing the scheme, installation, and running and maintenance costs over an agreed period of time.

In the case of the provision of infrastructure that is to be provided by the developer, the Council's expectation is that the developer should carry out the direct delivery of the works in accordance with details and specification to be first agreed with the Council. The developer will be required to fund the development of the detailed scheme and carry out the works to an appropriate standard. If land or infrastructure is to be transferred to the Council, they must be accompanied by a commuted sum towards the running and maintenance costs over an agreed period of time.

#### 6.3.4 Use of the Community Safety Payment

The specific use of a Community Safety Payment will be determined by the Council according to the nature of the community safety issues raised by the development. This will ensure that the most appropriate scheme is targeted by the Payment.

In the case of the upgrade/extension of a facility/infrastructure, the facility that will benefit from the Payment will be specified in the legal agreement, together with the delivery/timing of the Payment. Where a Payment is made to deliver an entirely new facility either by the Council or the developer the project to be funded/delivered will be set out in the legal agreement along with timing of payments and the timing of the provision of works, transfer of infrastructure to the Council etc.

Examples of suitable community safety schemes to be funded by the Community Safety Payment or provided directly by the developer might include:

- The installation and networking of CCTV, including provision of a new system or extension/improvement of an existing system;
- Provision of improved signage, street lighting and landscaping along adjacent routes and development to improve pedestrian connectivity and cohesion between the new development and existing communities;
- Contributions towards the operation of the Council's Contact Centre.

### 6.4 **Town Centre Improvements**

The town centres of Blaenau Gwent - Ebbw Vale, Tredegar, Brynmawr and Abertillery - are the focal point of the community. Ideally they should be thriving places in which residents enjoy living, working and shopping, places that can instill a shared sense of local pride and attract business and jobs. However, many of the Borough's town centres remain sub-standard and lacking in quality and choice in retailing and services and have suffered from environmental dilapidation due to a lack of investment and economic decline.

The Council is acutely aware of the issues facing the town centres, which are addressed in its Regeneration Strategy. The town centres are at the heart of its 'Community Hubs' approach;

the idea of accessible, sustainable and inclusive settlements. The Hubs – in the areas of Ebbw Vale, Tredegar, Upper Ebbw Fach and Lower Ebbw Fach – are proposed as the focus of the key investment programmes and will create real opportunities throughout their local areas, offering a wide range of facilities and services. Indeed, there are Town Centre Action Plans in place for each of the town centres that identify regeneration schemes.

The Council's Community Hub model aligns with the innovative HARPS approach (Holistic Area Regeneration Plans) being introduced to inform the Heads of the Valleys investment programme. HARPS will tackle the economic, social and environmental issues within the Community Hubs with a programme of activity which is based on a robust analysis of need and opportunity. HARPS will target existing resources, not just HoV investment but the resources of all stakeholders.

The Council is of the opinion that some new commercial development can place undue pressure on existing town centres that are already struggling to maintain their vitality and viability, and these developments should be required to provide planning obligations for town centre improvements to make a positive contribution to the centre as a whole.

#### 6.4.1 Circumstances in which an obligation will be sought

The Council considers that **major retail developments** (defined as where the floorspace to be created exceeds 1000 square metres or the site area is 1 ha or more), including change of use, in Ebbw Vale, Tredegar, Brynmawr and Abertillery have the greatest potential to place the existing facilities/services provided in a town centre under pressure. This might include development proposals within and adjoining the town centres or out of town developments depending on the scale and nature of the proposal. Planning obligations are therefore considered essential to offset these impacts and enhance the town centres by providing enhancements that contribute towards improving their vitality and viability.

For clarification, retail developments include those uses which fall within Part A (Classes A1, A2 and A3) of the Town and Country Planning (Use Classes) Order 1987 (as amended).

#### 6.4.2 Assessing the need for a town centre improvements obligation

In accordance with UDP Policies S3 and S4, proposals for new retail developments outside/within town centres will be permitted if they can satisfy all of the relevant criteria within those policies. In particular, ensuring the proposal will not undermine the vitality and viability of the town centres. Draft LDP Policy SP3 reinforces the need to ensure new town centre development improves vitality and viability. In the case of major retail developments it may be appropriate to seek planning obligations to provide improvements within the town centres to offset any potential impact of the proposal.

In identifying whether planning obligations for town centre improvements should be sought, the Council will consider each proposed development on its own merits, taking into account factors such as the scale of the development, its location in relation to the town centre and up to date information on the performance or 'health' of the town centre. The Council's Town Centre Managers will advise on these issues using the Town Centre Action Plans and HARPS that have been prepared for each centre. These plans identify the existing needs and opportunities of the centres and therefore provide a sound base to enable the impact of a proposed development on that town centre to be understood and a tangible mitigation strategy to be designed.



### 6.4.3 Nature of the Obligation

The planning obligation sought will be proportional to the impact of the development on the town centre and the needs of that centre and may therefore vary considerably. Planning obligations will usually be sought via the provision of a financial sum (Town Centre Improvement Payment) to be paid to the Council at an agreed stage of the development, but there may be occasions where it is more appropriate for the improvement to be delivered on site by the developer as an integrated part of the development scheme.

A Town Centre Improvement Payment will primarily be sought where the requirement is for the off-site delivery of works or other town centre management measures. The Payment will therefore be calculated on a case by case basis to reflect the actual cost of the designing and delivering the works or measures. If the provision of a new facility within a town centre is considered necessary to mitigate the impact, a sum for the maintenance of that facility may also be sought as part of the overall Payment. The Council will use the Payment to carry out appropriate town centre improvement works/ measures to mitigate the impact of the development.

Where it is agreed that the developer will deliver works/facility on site, the Council's expectation is that the developer should directly deliver the scheme in accordance with details and a specification to be first agreed with the Council. The developer will be required to fund the development of the detailed scheme and carry out the works to an appropriate standard. The Council will not normally adopt land or facilities that have been delivered as part of a development. The responsibility for the long-term maintenance of those facilities therefore rests with the developer/landowner in perpetuity.

### 6.4.4 Use of a Town Centre Improvement Payment

The specific use of a Town Centre Improvement Payment will be determined by the Council according to the identified impact of the development on the town centre. Wherever possible the use of the Payment will align with the programme of activity set out in the HARPS for each of the town centres. This will ensure that the use of the payment is targeted and, where appropriate, pooled with other funding sources to maximise its regeneration impact on the centre. Where a Payment has been identified for use for a particular project, or the developer is required to deliver specific works on site, this will normally be specified in the legal agreement.

Examples of suitable schemes for a Town Centre Improvement Payment might include, inter alia:

- Creation or enhancement of pedestrian routes between the new development and the town centre;
- Public realm works;
- New or improved street furniture;
- Improved signage;
- Parking management;
- Improved access for people with impaired mobility;
- Provision of recycling facilities;
- Streetcare / street warden schemes; or
- Marketing and promotion initiatives.

## 6.5 Public Art

Public art is an important contributor to the achievement of high-quality urban design and can help to raise the quality of development, as set out in Planning Policy Wales 3<sup>rd</sup> Ed. (2010) and Technical Advice Note 12: Design (2009). Public art, integrated with buildings and landscape, is an important cultural asset that can enhance and enliven the local environment and contribute towards the regeneration of an area. Public art should be commissioned and designed by artists for particular buildings or sites, which are accessible to the public.

Public Art can take a wide variety of forms in public locations. For example, it can be a permanent or temporary work, inside or outside a building, as an integral part of a building or freestanding in an open space, such as paintings, sculpture, murals, memorials, street furniture, lighting and facilities for performance arts or cultural events. It can either be incorporated within the development site, located near to the development or in a central location (such as the town centre) to which the future occupiers of the development will have access.

The Council will encourage public art to be incorporated within new development. Planning obligations and planning conditions will therefore be sought to secure public art in order to ensure that new development contributes towards the enhancement of the public realm.

### 6.5.1 Circumstances in which an obligation will be sought

The Council does not consider it appropriate to set a trigger or minimum threshold for public art provision. However, as a rule **major development schemes** (defined as 10 dwellings and above, or 1000 square metres and above of commercial floorspace, or development sites of 1ha and above) and/or development proposals that are **publicly accessible** will be encouraged to make provision for public art.

The Council uses a principle called 'Percent for Art' as a basis for securing public art. 'Percent for Art' is a long established funding mechanism for the commissioning of public art. The Arts Council of England endorsed 'Percent for Art' in 1988 as an important means to integrate the work of artists into planned development of public space.

The Council is interpreting the 'Percent for Art' principle as 1%, as a fixed figure from the average building cost, per residential dwelling (i.e. basic building plus fixtures). For non-residential development, the 1% will be applied to the average construction costs of the basic building(s). Developers should therefore set aside a minimum of 1% of their project budget specifically for the commissioning and delivery of public art features. The public art scheme should also incorporate sufficient measures for the appropriate future maintenance of the artwork.

### 6.5.2 Assessing the need for public art provision

In identifying whether planning obligations/conditions for public art should be sought the Council will consider each proposed development on its own merits. The following list provides examples of circumstances in which planning obligations for public art may be required:

- Major development proposals;
- Development proposals requiring the preparation of a Masterplan or Development Brief;
- Large-scale redevelopment proposals;
- Development in or in close proximity to Town and Local Centres;
- Development in 'Landmark' locations, e.g. entry points to a town/ at major road junctions/ transport interchanges/ sites of local significance;

- Construction hoardings, e.g. large-scale/ long-term projects can justify the provision of temporary artwork;
- Developments that are accessible to the community, e.g. buildings, spaces etc.

### 6.5.3 Nature of the obligation

Where public art is required the Council's preferred route is the integration of public art into the development scheme as part of the design process. This approach results in a higher quality design that adds value to the wider public realm and the development itself. Developers are therefore encouraged to provide public art on-site in lieu of a financial contribution. The developer will be required to fund the development of the detailed scheme, adhere to the Council's commissioning process for public art and carry out the works to an appropriate standard. The responsibility of the long-term maintenance of the artwork and duty of care rests with the developer/landowner in perpetuity.

Where it is not possible to integrate public art into the development scheme itself, or it is considered preferable to provide public art off-site to meet an identified local need, a commuted sum will be sought in the form of a Public Art Payment which will be used by the Council to implement public art. The Payment will be sought on the basis of the Percent for Art principle. To calculate the Percent for Art the developer will be required to provide a detailed written estimate of the building costs of their proposal. Where developers fail to do this the Council will calculate the Payment based on current costs for the provision of the proposed floorspace derived from the Building Cost Information Service (BCIS). The Payment will include a sum for future maintenance depending on the nature and location of the artwork.

Due to the individual nature of public art the public art provision sought in relation to development proposals will almost certainly differ on a case by case basis. However, where a development can be linked with opportunities for public art/ public realm enhancement that have been identified in existing plans, such as the Council's Arts Development Programme or the HARPS programmes for the town centres (see section 6.4), these may assist in informing/guiding the nature of public art provision.

The Council's Arts Development Team will advise on the provision of public art in new development. It will be a requirement of any public art scheme to involve a local artist (and ideally the local community) in formulating the design and fabricating the artwork. The Arts Development Team will provide advice and support with regard to the appropriate commissioning process.

### 6.5.4 Use of a Public Art Payment

The specific use of a Public Art Payment will be determined by the Council. The preference will be for the identification of a specific project in the vicinity of the development site that accords with Council programmes for public art provision/ public realm improvements. However, it may sometimes be appropriate to pool Payments for use in the implementation of wider arts initiatives in the County Borough.

## **6.6 Community Facilities**

Community facilities play a key role in meeting the needs of society and contribute towards achieving sustainable, balanced communities. Community facilities are those used by local people primarily for social and/or leisure purposes. Accordingly, the quality, quantity and location of provision impacts upon quality of life and community cohesion. Where development is likely to increase the need for such facilities and therefore place existing facilities under pressure, the Council will seek planning obligations towards the improvement of existing facilities.

A community facility is defined as a building or space where community led activities for community benefit are the primary use and the facility is managed, occupied or used primarily by the voluntary, community or public sector. Community facilities can be located in a wide range of venues. For the purposes of this SPG community facilities include, inter alia, community centres and meeting places, community halls, community learning, adventure play centres, libraries and leisure centres. Facilities which are not included in the definition of 'Community Facilities' include privately run amenities, such as members only clubs, schools, religious buildings, police stations and children's play areas.

#### 6.6.1 Circumstances in which Obligations will be Sought

The Council considers that major residential development proposals have the potential to materially increase the demand on local community facilities to a level that may exceed the existing and/or planned capacity of local facilities.

The Council will seek a contribution towards enhanced community facilities for **residential development of 10 or more dwellings** where it can be demonstrated that the development would result in a level of demand that exceeds local capacity. In exceptional cases large scale development proposals may be required to make provision for new on-site community facilities in the interests of creating sustainable communities.

Included in the definition of residential development are student accommodation, elderly people's accommodation and similar forms of development over 25 units/bedrooms in size where no on-site community facilities are provided as an integral part of the development.

#### 6.6.2 Assessing the Capacity of Community Facilities

The Council will undertake an assessment on a case-by-case basis to determine whether or not the proposed development would result in an increase in demand that exceeds the existing and/or planned capacity of the local community facilities serving the site, or whether it would generate a specific impact on a local community facility. In assessing which community facilities the development will impact upon the catchment areas of local facilities will be considered in relation to the proposed development site.

There are a variety of ways with which the Council identifies community facility capacity/ need. These include: needs assessments, consultation with key community groups in the area, community led plans and audits of existing facilities. In carrying out the capacity assessment the Council's Leisure Services division will use the most up to date information available. For example, a Leisure Buildings Audit has recently been carried out to assess current provision of leisure facilities in the Borough. This information will serve to advise whether a new residential development creates or exacerbates a deficiency in the quantity, quality and/or accessibility of community facilities in the vicinity of the site and will highlight whether there is a clear need in the existing area. If no local need is identified a planning obligation will not be sought.

#### 6.6.3 Nature of the Obligation

Depending on the scale and nature of the development proposal, obligations relating to community facilities will be either: the provision of a financial sum (Community Facilities Payment) to be paid to the Council at an agreed stage of the development, the transfer of land to the Council together with a financial payment to deliver the facility, or the direct provision of a new facility by the developer.

A Communities Facilities Payment will primarily be sought where the requirement is for the off-

site upgrading/extension of an existing facility. In the case of the upgrading/extension of an existing facility the Payment will be calculated in accordance with the formula set out in Figure 1 below. The Council will use the Payment to upgrade/extend an existing facility to meet the need generated by the development.

In the case of the provision of an entirely new facility that is to be funded by the developer but delivered by the Council, the developer will be required to fund the development of the detailed scheme, together with the cost of its initial provision. A financial contribution to cover maintenance costs over a 20 year period will also be required. The scheme should be submitted to the Council for agreement and the corresponding Payment made. A land transfer to the Council may also be required to enable the works to be delivered. The Council will use the Payment to undertake the works in accordance with the agreed scheme.

Where it is agreed that the developer will deliver a new facility on site, the Council's expectation is that the developer should carry out the direct delivery of the works in accordance with details and specification to first be agreed with the Council. The developer will be required to fund the development of the detailed scheme and carry out the works to the appropriate standard. If land or facilities are to be transferred to the Council, they must be accompanied by a commuted sum to enable the Council to maintain the facility for 20 years.

#### 6.6.4 Use of the Communities Facilities Payment

The specific use of a Communities Facilities Payment will be determined by the Council according to the individual circumstances of the development and capacity of the community facilities serving that development. This will ensure that the most appropriate scheme is targeted by the Communities Facilities Payment.

In the case of the upgrade/extension of a facility, the community facility that will benefit from the Payment will be specified in the legal agreement, together with the delivery/timing of the Payment. Where a Payment is made to deliver an entirely new facility either by the Council or the developer the project to be funded/ delivered will be set out in the legal agreement along with details of timing of payments and the timing of the provision of the works, land transfer etc.

Examples of suitable schemes for Community Facilities Payments might include:

- Improvements to a community hall or centre to increase its use within the vicinity of the development site; or
- Improvements to an indoor leisure centre or play facility to increase its capacity proportionate to the impact of the new development; or
- Improvements to local library services where there are inadequate facilities to cater for the needs of the new development.

#### 6.6.5 Methodology for Calculating the Community Facilities Payment

Where a contribution towards community facilities is sought, the total will be derived from the current average build costs of a community facility as specified by the Building Cost Information Service (BCIS). The average build cost for community facilities is £1,169 per sqm in accordance with BCIS classification CI/SfB 532 (BCIS, 3<sup>rd</sup> Quarter, 2008). This figure will be reviewed annually to reflect changes in the capital costs of providing community buildings and updates will be published on the Council's website. For the purposes of agreeing planning agreements, it is assumed that one dwelling generates the need for an additional 0.5sqm of multi-purpose community floorspace.

The approach adopted by the Council toward the calculation of an appropriate community facility contribution therefore reflects the average build costs of new community centres and a standard community floorspace provision for each new dwelling as set out in Figure 1.

<p><b>Figure 1      Calculating the Communities Facilities Payment</b></p> <p style="text-align: center;">Build Cost per sq m (£1,169)</p> <p style="text-align: center;">x</p> <p style="text-align: center;">Community Floorspace Provision per Dwelling (0.5)</p> <p style="text-align: center;">x</p> <p style="text-align: center;">Number of Dwellings Proposed</p> <p style="text-align: center;">=</p> <p style="text-align: center;"><b>Total Community Facilities Payment</b></p>
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#### 6.6.6 Applications for Outline Planning Permission

The formula set out above is applied when the actual number of dwellings to be provided on site is finalised. However, in the case of Outline planning applications agreement on this matter is not always reached until the Reserved Matters stage. In these cases the planning obligation will be identified as the 'per dwelling' charge that will apply on all qualifying dwellings based on the cost data for a community facility at the time planning permission is granted, or at the time the Reserved Matters application is submitted.

### 6.7 Standard Heads of Terms

#### Definitions:

##### *Employment and Enterprise:*

**'Employment and Enterprise Contribution'** means the sum of ... pounds (£...) to enable the Council to implement a scheme for the provision of training and development or other such mechanism for residents within Blaenau Gwent County Borough.

**'Employment and Enterprise Scheme'** means a scheme for the provision of training and development or other such mechanism which enables local people to secure local employment within Blaenau Gwent County Borough.

##### *Community Safety:*

**'Community Safety Improvements'** means the provision or improvement of facilities, services or infrastructure to address community safety issues in Blaenau Gwent County Borough.

**'Community Safety Payment'** means a sum of [...] pounds [£...] to be set aside to provide community safety improvements in Blaenau Gwent County Borough.

##### *Town Centre Improvements:*

**'Town Centre Improvements'** means the provision or improvement of facilities, services or infrastructure serving [name] centre which will assist in enhancing the vitality and viability of

that retail centre.

**‘Town Centre Improvement Payment’** means a sum of [...] pounds [£...] to be set aside to provide town centre improvements within [name] centre.

*Public Art:*

**‘Public Art’** means art that is the original work of a living professional artist and is created for a particular place, commissioned by or working in collaboration with others such as architects, landscape designers, planners, developers, arts officers and community representatives or the provision of facilities which enable the creation of art.

*For Full applications:*

**‘Public Art Payment’** means a sum of [...] pounds [£...] to be set aside to provide public art on site and / or to be paid as a financial contribution to the Council for the provision of Public Art.

*For Outline applications:*

**‘Public Art Payment’** means the value of the public art to be provided on site, or the value of the financial contribution to be paid in lieu of on site provision, calculated as the average building costs of the development.

*Community Facilities*

**‘Community Facilities’** means the provision of facilities (a building or structure) or services which meet local community needs and are publicly available

**‘Community Facilities Land’** means the land hatched on plan (ref...) attached to this Deed where the Community Facilities are to be provided

**‘Community Facilities Payment’** means the sum of ...pounds (£...) to be utilised to provide or enhance Community Facilities in accordance with the Community Facilities scheme

**‘Community Facilities Scheme’** means a detailed specification of works to provide for Community Facilities to address the need generated or exacerbated by the development to include initial provision and management for a period of 20 years

Clauses:

*Employment and Enterprise:*

The developer shall pay the Employment and Enterprise Payment to the Council upon ....

*Or*

The developer shall submit the Employment and Enterprise Scheme to the Local Planning Authority for their approval prior to .... The scheme shall thereafter be implemented in accordance with the approved details.

*Community Safety:*

Prior to beneficial occupation of any part of the development, the developer shall provide details including timeframes for implementation of the community safety scheme to be provided on site. These details must be approved by the Council prior to the beneficial occupation and the works thereafter be implemented in accordance with the approved scheme.

The developer will provide the community safety scheme on site in accordance with the approved details and timeframes, and no later than ... after substantial completion of the development.

The developer shall pay the Community Safety Payment prior to the beneficial occupation of any part of the development.

*Town Centre Improvements:*

Prior to beneficial occupation of any part of the development, the developer shall provide details including timeframes for implementation of the town centre improvement scheme to be provided on site. These details must be approved by the Council prior to the beneficial occupation and the works thereafter be implemented in accordance with the approved scheme.

The developer will provide the town centre improvement scheme on site in accordance with the approved details and timeframes, and no later than ... after substantial completion of the development.

The developer shall pay the Town Centre Improvement Payment prior to the beneficial occupation of any part of the development.

*Public Art:*

Prior to beneficial occupation of any part of the development, the developer shall provide details including timeframes for implementation of the public art to be provided on site. These details must be approved by the Council prior to the beneficial occupation and the works thereafter be implemented in accordance with the approved scheme.

The developer will provide the public art on site in accordance with the approved details and timeframes, and no later than ... after substantial completion of the development.

The developer shall pay the Public Art Payment to the Council upon ....

*Community Facilities*

The Community Facilities Land must be used for the provision of the Community Facilities in accordance with the Community Facilities Scheme and not occupied or used in any other manner.

The Developer shall transfer the Community Facilities Land fully serviced with all associated rights of access at no cost immediately prior to the commencement of development.

The Developer shall submit the Community Facilities Scheme prior to the commencement of development for agreement with the Local Planning Authority. Approval of the scheme shall not be unreasonably withheld or delayed.

The Developer shall undertake the provision of the Community Facilities in accordance with the Community Facilities Scheme agreed with the Council. The Community Facilities shall be completed (and transferred to the Council) prior to the occupation of the n<sup>th</sup> dwelling.

The Developer shall pay to the Council (c/o...) immediately prior to the commencement of development the Community Facilities Payment, index linked to the Retail Price Index (RPI).

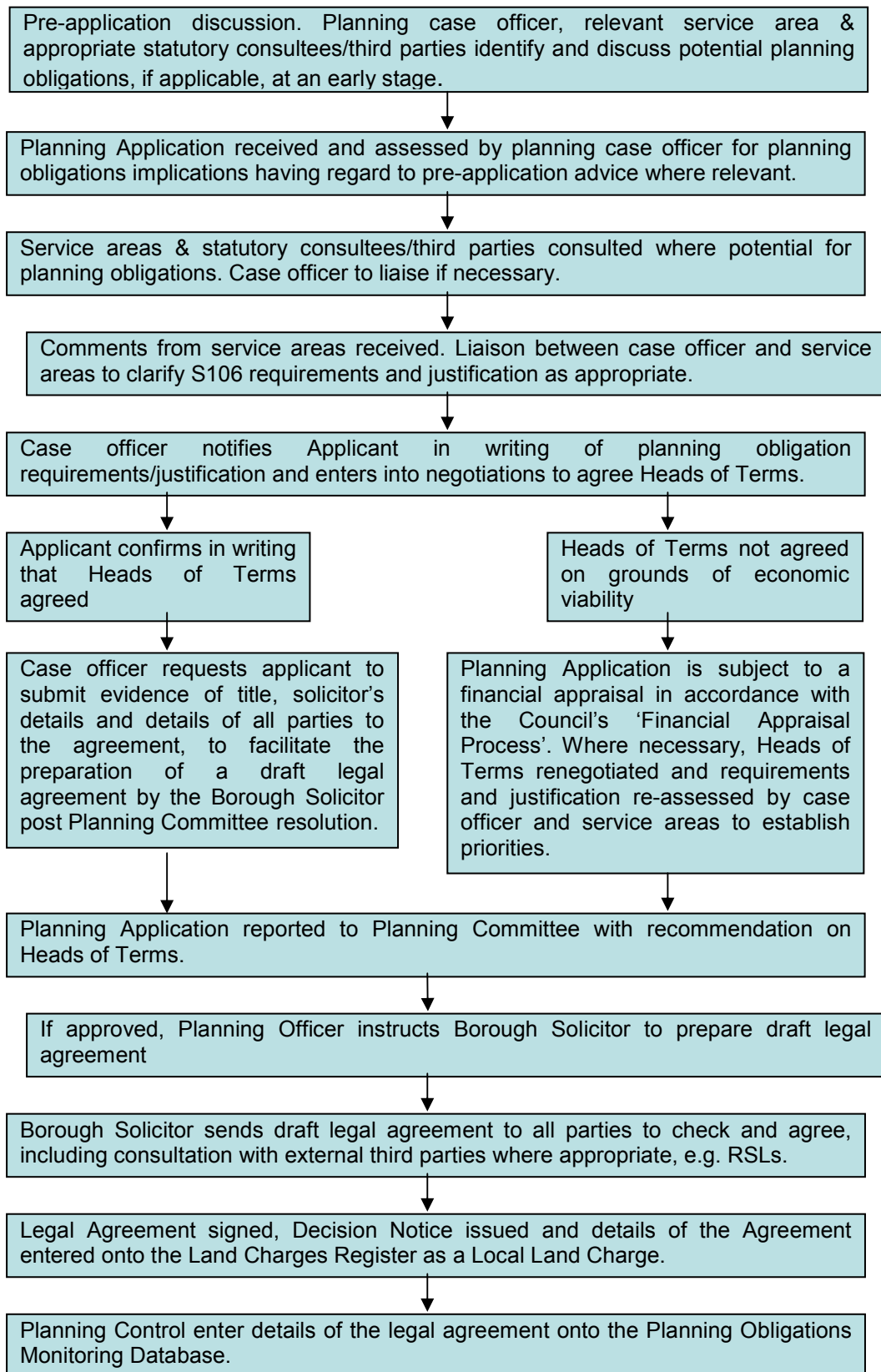


The Council undertakes to utilise the Community Facilities Payment to provide the Communities Facilities in accordance with the Community Facilities Scheme.

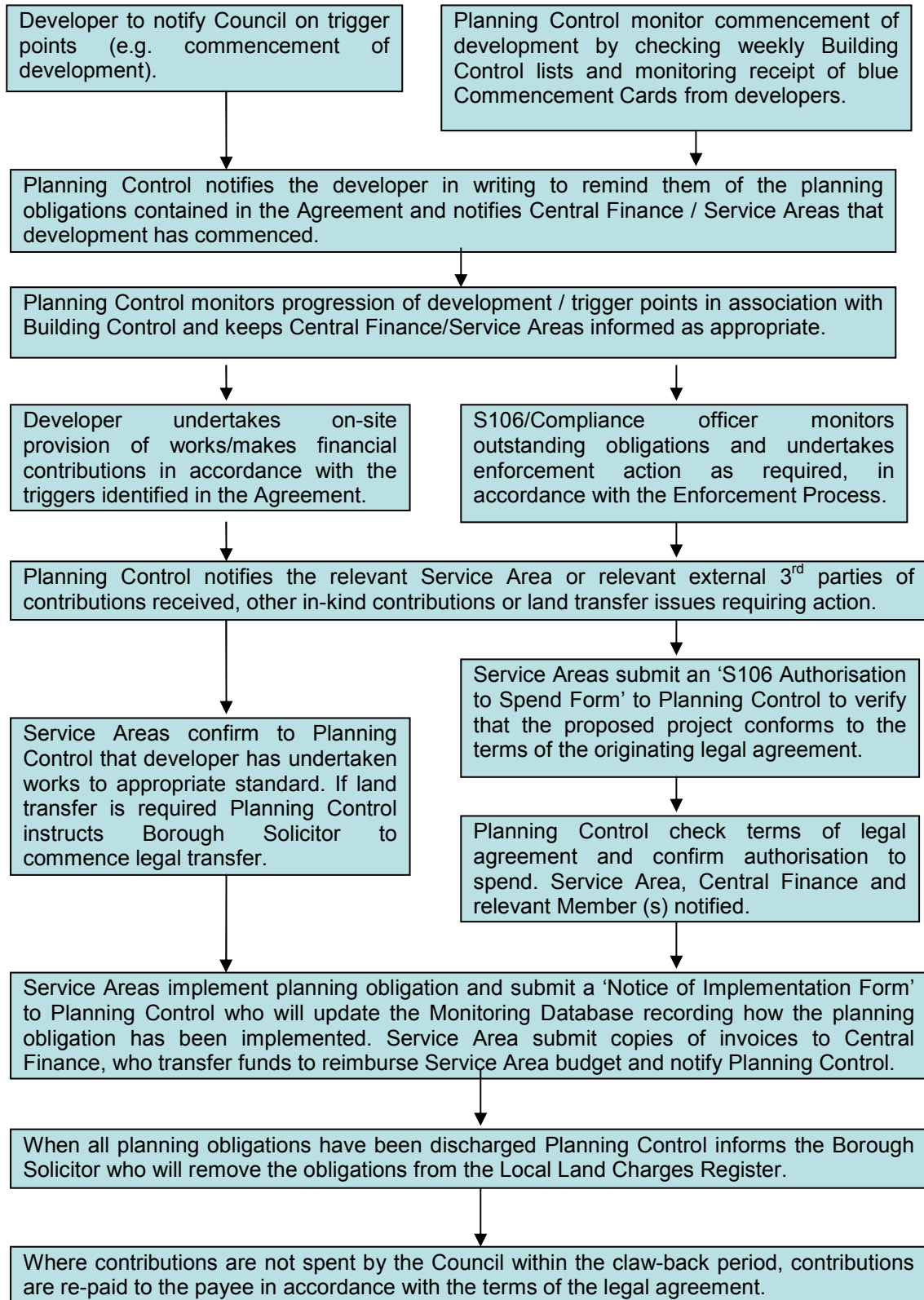
The Council undertakes to accept the transfer of the Community Facilities Land and utilise the land in the provision of the Community Facilities.

## APPENDIX A: PLANNING OBLIGATIONS PROCESS MAPS

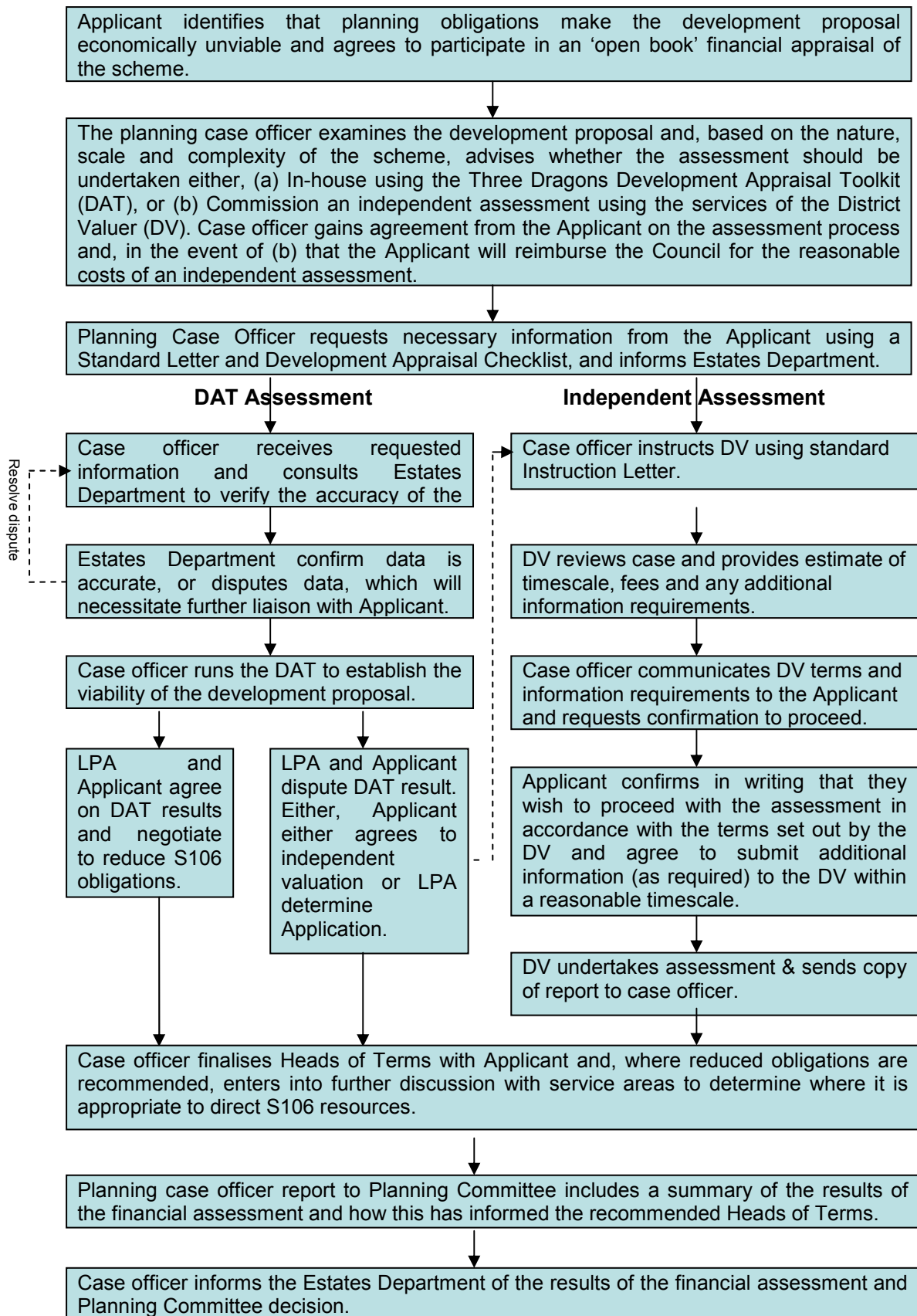
### Planning Obligations Process - Negotiation



### Planning Obligations Process – Implementation



### Planning Obligations Process – Financial Appraisal



## **APPENDIX B: PLANNING OBLIGATIONS SERVICE STANDARDS**

### **Introduction**

On the adoption of this SPG the Council will introduce a separate fee system for progressing and the subsequent monitoring of planning agreements or obligations. The implementation of the new fee system will allow Blaenau Gwent Council to provide an efficient approach to all matters relating to planning agreements, to the benefit of all parties involved.

These service standards have been devised to demonstrate the Council's commitment to delivering a quality service to developers and the interested persons in respect of all matters relation to planning obligations.

### **The aims of the planning obligations service are:**

**Clarity** – To ensure that developers are advised at the earliest opportunity what planning obligations are appropriate.

**Fairness** – To ensure individuals and developers are offered the same level of service.

**Speed** – To deal with planning obligation legal agreements as quickly as possible.

**Consistency** – To ensure that planning obligations are sought in accordance with national and local planning policies in a consistent manner

**Quality** – To ensure that planning obligations are successfully sought where they are necessary and that contributions resulting from new development are spent in a way that best meets the needs of the community of Blaenau Gwent.

**Transparency** – To ensure that all interested parties can have easy access to the Council's records relating to planning obligations.

The Council has a main point of contact for all issues relating to planning obligations in the Planning Control section:- Principal Planning Officer (Planning Obligations), Tel: 01495 355555 or E-mail [planning@blaenau-gwent.gov.uk](mailto:planning@blaenau-gwent.gov.uk)

### **The service you can expect from us when entering a planning agreement:**

The Council will provide pre-application advice on any developments which are likely to require a planning obligation so that developers are aware of the Council's requirements at an early stage.

The Council sets out in this Planning Obligations Supplementary Planning Guidance its expectations in respect of planning obligations and will keep this document up to date to improve clarity. Each case will be assessed on its own merits in the context of the guidance.

A suite of accompanying documents to the Planning Obligations SPG will be produced to further improve speed and clarity, including a draft S106 Agreement and Draft Unilateral Undertaking. These documents will be placed on the Council's website at [www.blaenau-gwent.gov.uk](http://www.blaenau-gwent.gov.uk).

Planning Committee reports will include details of the planning obligations to be secured through legal agreements.

Following approval from Planning Committee, the Council will aim to provide a first draft legal agreement to the developer or their solicitor within 3 weeks and thereafter the matter will be progressed as quickly as possible depending on the developer's acceptance of the agreement.

An annual report will be produced every April by the Local Planning Authority until complete implementation of the legal agreement, to let the developer know the Council's progress on the implementation of the planning obligation. At effective completion a closing report will be prepared outlining how the planning obligation has been implemented.

**The service you can expect from us as an interested party:**

The Council will encourage consultation and feedback on draft local policies and guidance, particularly through the ongoing preparation of the Local Development Plan.

A database of planning obligations will be set up to store information on all planning agreements so that requests for information can be easily answered and the information readily provided.

Public consultation will be carried out during the assessment of all planning applications and potential issues may be highlighted that could be addressed by means of planning obligations. However, each case will be considered on its own merits.

Planning obligations shall be constantly monitored to ensure they are implemented successfully to the benefit of the community of Blaenau Gwent in response to the pressures resulting from new development.

An annual report will be sent to Planning Committee outlining the Council's overall position on planning obligations in terms of receipts and spend. The report will be made publicly available.

**Customer comments and complaints:**

The Council is committed to improving customer service and we would like you to tell us if we are doing something well and suggest if there are areas where we could improve. However, if you are dissatisfied with the level of service you have received then please let us know.

In the first instance you should use the main point of contact for all issues relating to planning obligations in the Council's Planning Control section:- Principal Planning Officer (Planning Obligations), Tel: 01495 355555 or E-mail [planning@blaenau-gwent.gov.uk](mailto:planning@blaenau-gwent.gov.uk)

Alternatively you may write to:

Head of Planning & Building Control  
Planning Control Section  
Neighbourhood Services Division  
Blaenau Gwent County Borough Council  
Council Office  
High Street  
Blaina  
Gwent NP13 3XD

## APPENDIX C: GLOSSARY

**Acceptable Cost Guidance (ACG)** A document that is currently published by the Welsh Government that specifies the total cost of providing an affordable dwelling dependant on the size and specification of the dwelling proposed and its location.

**Affordable Housing** Subsidised and non-subsidised housing for people who can't afford to buy or rent on the open market (*see Annex 1 for definitions of the different types of Affordable Housing*)

**Affordable Housing Viability Study** A study undertaken to assess whether a specified level of planning obligations would compromise the viability of development schemes. The planning obligations set out in this SPG have been subject to viability testing.

**Building Cost Information Service (BCIS)** Administered by the Royal Institute of Chartered Surveyors it provides an Index identifying the inflationary % increase in the costs of construction year on year.

**Biodiversity** The whole variety of life on earth. It includes all species of plants and animals, their genetic variation and the ecosystems of which they are part.

**Code for Sustainable Homes (CfSH)** The national standard for the sustainable design and construction of new homes. The Code aims to reduce carbon emissions and create homes that are more sustainable.

**Commuted Sum** A sum of money paid by a developer to cover the future maintenance costs of specified areas or items that are going to be adopted and maintained at public expense.

**Compensation** Biodiversity compensation is usually carried out offsite and involves major habitat restoration or creation to offset what is being lost.

**Deed (of Variation)** A legal document which has been "signed, sealed and delivered" not just signed, but signed and witnessed, with a seal appended and formally handed over.

**Density** A measure of the number of dwellings per hectare.

**Detailed / Full Application** A planning application seeking full permission for a development proposal, with no matters reserved for later planning approval.

**Development Appraisal Toolkit (DAT)** An Access based database which provides the user, in most cases the local authority, with an assessment of the economics of residential development for specific schemes. It allows the user to test the economic implications of different types and amounts of planning obligations.

**Development Quality Requirements (DQR)** Standards issued by the Welsh Government that the housing of Registered Social Landlords in Wales must meet. The standards apply to new and refurbished housing and cover issues such as space standards, accessibility, energy efficiency and security.

**Geodiversity** A term for the non-biological aspects of nature - the natural range (diversity) of geological features (rocks, minerals, fossils, structures), geomorphological features (landforms and processes) and soil features that make up the landscape. It includes their assemblages, relationships, properties, interpretations and systems.

**Heads of Terms (HOTS)** Agreement in principle of the planning obligations that will be the subject of a planning legal agreement, either a UU or a S106 agreement.

**Intermediate Housing** This is a type of Affordable Housing where prices or rents are above those of social rented housing but below market housing and includes equity sharing schemes.

**Local Biodiversity Action Plan** The Local Biodiversity Action Plan is the agreed strategy for conservation and enhancement in a particular area which will help meet the UK Biodiversity Action Plan.

**Infrastructure** Basic facilities, services and installations needed for the community to function, such as transport and communications systems and including public institutions such as schools.

**Local Development Plan (LDP)** Local Development Plans set the context for local decision making in line with national policies by setting out an authority's objectives for the development and use of land in its administrative area and general policies to implement them.

**Local Equipped Areas of Play (LEAP)** An area of open space that is designated and equipped for children of early school age.

**Local Housing Market Areas** Geographical areas within which there are clear links between where people both live and work. These areas can be defined by patterns of household movement and are influenced by factors such as proximity to family, friends, employment, education and other facilities, and are likely to operate across local authority boundaries.

**Local Housing Market Assessment** The Local Housing Market Assessment analyses the number of additional houses, including affordable homes, needed in a local authority area as a result of the formation of households. Local Housing Market Assessments form an important part of the evidence base for policies on housing within local authorities, informing key strategic documents such as the Local Housing Strategy and Local Development Plan.

**Local Land Charge** A local land charge is a restriction or prohibition on a particular parcel or parcels of land, either to secure payment of a sum of money, or to limit the use (in the widest sense) to which the land may be put. A crucial feature of a local land charge is that it must be binding on successive owners or occupiers of the land in question.

**Lifetime Homes Standards** A design standard for residential property designed and built so that they can easily be adapted in the future to enable the current resident(s) to remain in their home regardless of any changes in their mobility.

**Material Consideration** A matter that should taken into account in deciding a planning application or on an appeal against a planning decision

**Ministerial Interim Planning Policy Statements (MIPPS)** Updates to National Planning Policy published by the Welsh Government

**Mitigation Measures** These are measures requested or carried out in order to limit the damage by a particular development or activity.

**Neighbourhood Equipped Play Area (NEAP)** A NEAP is an area of open space that is designated and equipped mainly for older children, but with opportunities for play for younger children too.



**Neutral Tenure** Where the tenure of affordable housing is not predetermined but can vary according to the needs, means and preferences of households over the lifetime of a development.

**Open Market Value** The value a property might reasonably fetch if sold on the open market where there is a willing buyer and a willing seller.

**Open Space** All land that is predominantly undeveloped other than by buildings or structures that are ancillary to the open space use. The definition covers the broad range of types of open space, whether in public or private ownership and whether public access is unrestricted, limited or restricted.

**Outline Application** A general application for planning permission to establish that a development is acceptable in principle, subject to subsequent approval of detailed matters.

**Planning Obligation** An agreement under section 106 of the Town and Country Planning Act regarding the use or development of land. An obligation can be made by agreement between the Council and a developer (a bi-lateral S106 agreement) or by a unilateral undertaking by the developer.

**Planning Policy Wales (PPW)** A document published by the Welsh Government that sets out National Planning Policy which is a material consideration in the determination of planning applications.

**Protected species** Plant and animal species afforded protection under certain Government Acts and Regulations

**Public art** The creation of an art or craftwork project designed and /or made by professional artists and craftspeople, which enhances the appearance of the public realm.

**Registered Social Landlord (RSL)** An independent housing organisation registered with the Housing Corporation under the Housing Act 1996. They may be Industrial and Provident Societies, registered charities or private companies.

**Reserved Matters Application** Planning application to determine the detailed matters “reserved” by an “outline” planning permission, e.g. siting, access, design and external appearance and landscaping.

**Retail Price Index (RPI)** An inflationary index based upon the increase in prices for a typical basket of goods.

**Section 106 Agreement (S106)** An agreement made under S106 of the Town and Country Planning Act 1990, containing covenants from one or more parties (who must have a legal interest in the land) to another party (usually the Council) (*see planning obligation*)

**Section 73 Application** Planning application for the variation of a condition, specifically for the purposes of extending the lifetime of the planning consent.

**Section 278 Agreement** Requirement to undertake off site highways works under a planning permission.

**Secured by Design (SBD)** Secured by Design focuses on crime prevention at the design, layout and construction stages of homes and commercial premises and promotes the use of security standards.

**Supplementary Planning Guidance (SPG)** A document prepared by the Local Planning Authority to provide more detailed local policy guidance to the policies contained in the adopted Unitary Development Plan or Local Development Plan.

**Sustainable Development** A generic term given to development which meets local needs whilst minimising harmful social, economic and environmental impacts. The widely used definition quoted by the World Commission on Environment and Development in 1987 states “Development which meets the needs of the present without compromising the ability of future generations to meet their own needs”

**Sustainable Urban Drainage System (SUDS)** A sequence of management practices and control structures designed to drain surface water in a more sustainable fashion than some conventional techniques.

**Technical Advice Note (TAN)** A document prepared by the Welsh Government to provide more detailed guidance to the policies contained in PPW.

**Transport Assessment (TA)** An appraisal of the likely traffic generation impacts resulting from new development, taking into account the measures which are required to improve road safety and promote walking, cycling and the use of public transport.

**Trigger Point** The stage in the development at which a planning obligation will be delivered by the developer, either in cash or in-kind, as set out in a signed UU or S106 agreement. Several trigger points may exist for one planning obligation to enable it to be delivered in phases.

**Travel Plan** Document detailing the potential transport impacts of a proposed development and the ways of mitigating against these impacts.

**Unilateral Undertaking (UU)** A legal agreement offered and signed only by the developer that binds the developer to make a payment or carry out works in kind for the benefit of another party (usually the Council) (*see planning obligation*).

**Unitary Development Plan (UDP)** The Blaenau Gwent UDP sets out the Council's policies and proposals for the development and use of land up to 2011 and forms the basis for decisions on individual planning applications.

**Welsh Government (WG)** The Welsh Government is the devolved government for Wales.