

PLYMOUTH CITY COUNCIL STANDARD HEADS OF TERMS
ANNEX: CONTRIBUTIONS /OBLIGATIONS SCHEDULE

Transfer of property/open space/play areas/amenity space

Definitions (to be included in Clause 1):

“Open Space Land”	means the land shown for identification purposes coloured [.....] on the Plan
“Open Space Works”	works to be carried out under paragraph [.....] as set out in the Schedule
“Open Space Works Specification”	a specification for the carrying out of Open Space Works and the maintenance specification to be agreed in writing between the Owner/Developer and the Council prior to Commencement of the Development
“Open Space Contribution”	means the sum of £..... towards the provision and/or improvement of open space/ play space facilities, (financial contribution triggered on commencement unless justification accepted for later payment).

A Where property to be transferred to Council

- 1 No more than [specify no. of dwellings/square metres as applicable] within the Development shall be Occupied unless the Owner shall have transferred to the Council the Open Space Land on the terms set out in the Sixth Schedule

B Alternative approach where property is to be transferred to the Council

- 1 The Owner and the Council hereby agree as follows:
 - 1.1 The Owner shall sell and the Council shall buy the Open Space Land on the terms set out in the Sixth Schedule *
 - 1.2 Completion of the transfer of the Open Space Land referred to in paragraph 1.1 above shall take place on or before Occupation of [specify no. of dwellings/square metres as applicable] within the Development

C Where the transferee of land has not been identified; this is often the case for example where the land is for a nature reserve or affordable housing

- 1 No more than [specify no. of dwellings/square metres as applicable] within the Development shall be occupied unless prior thereto the Owner shall (by signing and sending the Agreement to the Transferee) offer to sell to the Transferee the Open Space Land which offer may be accepted by the Transferee signing and returning the Agreement to the Owner within [specify appropriate period] from the date of the offer in respect of which time shall be of the essence

* all transfers of land to the Council must have the appropriate authorisation in place, prior to agreement to buy the land.

Community Facilities

Definitions (to be included within clause 1):

- “Community Facilities Land” means the site of the Community Facilities shown for identification purposes only coloured [.....] on the Plan having an area of [.....] hectares and referred to in paragraph [.....] of the Third Schedule
- “Community Facilities” means the provision of a community hall/[health centre] as shall be agreed with the local planning authority, as provided in paragraph [...] of the Third Schedule
- “Community Facilities Floorspace” means not less than [.....] square metres of floorspace (gross external) to be provided within the Development for the purposes referred to in paragraph [.....] of the Third Schedule in accordance with the Specification
- “Community Facilities Contribution” means the sum of [.....] pounds (£[.....]) towards the provision of the Community Facilities
- “Community Uses” means []
- “Specification” means the specification set out in the Seventh Schedule

2 The Owner [and/or the Developer] covenants and agrees:

- 2.1 to provide and lay out (including construction of buildings) the Community Facilities Land in accordance with the Specification and to the Council’s satisfaction for the purpose of accommodating the Community Facilities
- 2.2 to complete the works of provision and laying out on or before [specified number] Dwelling[s] [is/are] made available for occupation
- 2.3 The Community Facilities Land shall only be used for one or more of the Community Uses

OR

- 2.1 to provide the Community Facilities Floorspace in the following phases:
- (a) not to Occupy more than [specified number] Residential Units until [specified area] square metres of Community Facilities Floorspace has been provided
- (b) not to Occupy [specified number] Residential Units until [specified number] square metres of Community Facilities Floorspace has been provided
- 2.2 The Community Facilities Floorspace shall only be used for one or more of the Community Uses

OR

To pay the Community facilities Contribution within [number to be specified] days of the Commencement of Development

CCTV

Definitions *(to be included in clause 1):*

- “CCTV” means closed circuit television covering the [specify public areas] to be provided in accordance with paragraph [.....] of the Third Schedule
- “CCTV Contribution” means the sum of [specify amount] indexed to be paid by the Developer/the Owner to the Council and expended by the Council in accordance with paragraph [.....] of the Third Schedule
- “Public Realm” means the areas open to the public [for example - within the town centre or other specified public space] which shall be subject to surveillance by CCTV

3 Prior to the Commencement of the Development the Developer shall agree with the Council a detailed scheme for the installation of CCTV to monitor the [specify areas] [the Public Realm] which scheme shall include details of:

- (a) the number and location of the CCTV cameras to be installed;
- (b) the specification of the CCTV cameras to be installed which shall be of similar standard to that of the Council's cameras
- (c) phasing of the installation

and shall thereafter install the CCTV in accordance with the agreed scheme [and connect it to the Council's existing CCTV system]

OR

3 Prior to the Commencement of the Development the Developer shall pay the CCTV Contribution to the Council which shall be used by the Council to increase the CCTV monitoring capacity within the Public Realm

OR

To pay the CCTV Contribution to the Council prior to Occupation of [specify number of units] [or within [.....] months of the Commencement of Development, which shall be used by the Council to increase the CCTV monitoring capacity within the Public Realm

Affordable Housing

Definitions (to be included in clause 1)

- “Affordable Housing”** subsidised housing that will be available to persons who cannot afford to rent or buy houses generally available on the open market;
- “Affordable Housing Units”** that part of the Development comprising [] residential units [**describe mix of units**] within the buildings together with [] car parking spaces shown on drawing nos [**drawing references**]; or any one or more of them
- "Affordable Housing Land"** means the land shown edged [green] on the Plan.
- 1.1 No more than []% of the Market Housing Units shall be Occupied until the Affordable Housing Land has been transferred to the Registered Social Landlord for nil value with the benefit of the following:
- 1.1.1 full and free rights of access both pedestrian and vehicular from the public highway to the Affordable Housing Land;
- 1.1.2 full and free rights to the passage of water soil electricity gas and other services through the pipes drains channels wires cables and conduits which shall be in the adjoining land up to and abutting the boundary to the Affordable Housing Land all such services to be connected to the mains.
- “Market Housing Units”** that part of the Development which is general market housing for sale on the open market and which is not Affordable Housing;

“Mortgagee”	any mortgagee or chargee of the Registered Social Landlord 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;
“Mortgagee’s Duty”	the tasks and duties set out in paragraph 1.4 to the [Affordable Housing] Part of the Third Schedule
“Practical Completion”	issue of a certificate of practical completion by the Owner’s architect or in the event that the Development is constructed by a party other than the Owner the issue of a certificate of practical completion by that other party’s architect;
“Protected Tenant”	any tenant who: <ul style="list-style-type: none"> (a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit (b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit (c) has been granted a shared ownership lease by the Registered Social Landlord in exercise of that persons’ statutory right in respect of a particular Affordable Housing Unit;
“Registered Social Landlord”	a registered social landlord as defined in Part 1 of the Housing Act 1996 who is registered with the Housing Corporation pursuant to Section 3 of that Act and has not been removed from the register pursuant to Section 4 of that Act and who is approved by

the Council (such approval not to be unreasonably withheld or delayed).

Affordable Housing –Extract from affordable housing IPS describes various options to deliver affordable housing obligations:

Heads of Terms for Model Legal Agreement 1:

Developer builds and transfers affordable housing units to Registered Social Landlord

Owner(s) and Developer(s) covenant with the Council:

- To identify land(s) within the development site for the provision of affordable housing (affordable housing land) of sufficient area(s) to permit the number of affordable housing units proposed by the Council and approved by the Owner(s) and Developer(s) to be constructed thereon (approval not to be unreasonably withheld or delayed). The location of the affordable housing land to be proposed by the Owner(s) and Developer(s) for approval by the Council. Such approval not to be unreasonably withheld or delayed.
- To construct within a specified time trigger (see para.6.4) affordable housing on the affordable housing land to the minimum standards specified in the latest version of the Housing Corporation publication Scheme Development Standards and NHBC cover or equivalent.
- Not to use the affordable housing for any purpose except the agreed affordable housing provision.
- To supply to the Council within a specified time trigger written evidence of a sale agreement made between the Owner(s) and the Developer(s) and a RSL (previously approved by the Council) for the transfer of the affordable housing land and the affordable housing constructed thereon.
- Not to construct on the development site more than a specified number of dwellings to be sold on the open market until the Owner(s) and the Developer(s) have transferred the affordable housing land (fully serviced and accessible by vehicles and pedestrians) together with the affordable housing constructed thereon to the RSL pursuant to the sale agreement. The Council may agree phased provision and transfer of the affordable housing on large scale development sites.
- To procure transfer of the affordable housing land (together with the affordable housing constructed thereon) to the RSL pursuant to the sale agreement at a discounted purchase price calculated using the prevailing Housing Corporation Total Cost Indicators and Grant Rates.
- To supply to the Council a certified copy of the Transfer made between the Owner(s) and the Developer(s) and the RSL.
- In the event of the Owner(s) and Developer(s) not entering into a sale agreement with an approved RSL, after using reasonable endeavours, to provide an alternative method of securing affordable housing (such method to be approved by the Council).
- S106 Agreement to incorporate (if appropriate) Mortgagee-in-possession clause.
- Provisions of Agreement relating to financial contributions e.g. commuted sums for education or community provision, shall not be binding on the affordable housing land once the affordable housing land has been transferred to the approved RSL.

Heads of Terms for Model Legal Agreement 2:

Developer transfers affordable housing land and enters a separate build contract with Registered Social Landlord ("Acquisition and works")

Owner(s) and Developer(s) covenant with the Council:

- To identify land(s) (affordable housing land) within the development site for the provision of [X] affordable housing units the location of which is to be proposed by the Owner(s) and Developer(s) for approval by the Council. Such approval not to be unreasonably withheld or delayed.
- Not to use the affordable housing land for any purpose except the agreed affordable housing provision.
- To supply to the Council within a specified time trigger written evidence of a sale agreement and a works contract made between the Owner(s) and the Developer(s) and a RSL (previously approved by the Council) for the transfer of the affordable housing land and the construction of the affordable housing thereon.
- Not to construct on the development site more than a specified number of dwellings to be sold on the open market until the Owner(s) and Developer(s) have transferred the affordable housing land (fully serviced and accessible by vehicles and pedestrians) together with the affordable housing constructed thereon to the RSL. The Council may agree phased provision and transfer of affordable housing on large scale development sites.
- To procure transfer of the affordable housing land to the RSL pursuant to the sale agreement at a discounted purchase price calculated using the Housing Corporation Total Cost Indicators and Grant Rates. The purchase price and works contract to include land costs, works costs, on-costs and a contingency sum.
- In the event of the Owner(s) and Developer(s) not entering into a sale agreement with an approved RSL, after using reasonable endeavours, to provide an alternative method of securing affordable housing (such method to be approved by the Council).
- S106 Agreement to incorporate (if appropriate) Mortgagee-in-possession clause.
- Provisions of the Agreement relating to financial contributions e.g. commuted sums for education or community provision, shall not be binding on the affordable housing land once the affordable housing land has been transferred to the approved RSL.

Heads of Terms for Model Legal Agreement 3:

Developer transfers serviced affordable housing land and funds to Registered Social Landlord

- To identify land(s) (affordable housing land) within the development site for the provision of affordable housing of sufficient area(s) to permit the number of affordable housing units proposed by the Council and approved by the Owner(s) and Developer(s) (approval not to be unreasonably withheld or delayed) to be constructed thereon. The location of such land(s) to be proposed by the Owner(s) and Developer(s) for approval by the Council. Such approval not to be unreasonably withheld or delayed.
- To supply to the Council within a specified time trigger written evidence of a sale agreement made between the Owner(s) and the Developer(s) and a RSL (previously approved by the Council) for the transfer of the affordable housing land to the approved RSL at nil consideration.
- Not to construct on the development site more than a specified number of dwellings to be sold on the open market until the Owner(s) and the Developer(s) have transferred the affordable housing land (fully serviced and accessible by vehicles and pedestrians) to the RSL pursuant to the sale agreement. The Council may agree phased provision and transfer of affordable housing land on large scale development sites.
- To supply to the Council a certified copy of the Transfer made between the Owner(s) the Developer(s) and the RSL.
- To pay to the Council simultaneously with the transfer of the affordable housing land to the RSL a sum for the provision of affordable housing calculated using the Housing

Corporation Total Cost Indicator and Grant Rates. The sum to be bonded if payment to be made after the commencement of development.

- In the event of the Owner(s) and Developer(s) not entering into a sale agreement with an approved RSL, after using reasonable endeavours, to provide an alternative method of securing affordable housing (such method to be approved by the Council).
- S106 Agreement to incorporate (if appropriate) Mortgagee-in-possession clause.
- Provisions of the Agreement relating to financial contributions e.g. commuted sums for education or community provision, will not be binding on the affordable housing land once the affordable housing land has been transferred to the approved RSL.

N.B. Where a named RSL is party to a Section 106 agreement in any of the above cases, the RSL will covenant with the Council to enter into a nomination agreement and to agree rent levels and any other special provision in a form to be agreed by the RSL which does not impede or reduce the level of private funding.

Heads of Terms for Model Legal Agreement 4:

Affordable Housing provided and managed by developer with no Registered Social Landlord involvement

Owner(s) and Developer(s) covenant with the Council:

- To identify land(s) (affordable housing land) within the development site for the provision of affordable housing of sufficient area(s) to permit the number of affordable housing units proposed by the Council and approved by the Owner(s) and Developer(s) (approval not to be unreasonably withheld or delayed) to be constructed thereon. The location of such land(s) to be proposed by the Owner(s) and Developer(s) for approval by the Council. Such approval not to be unreasonably withheld or delayed.
- Not to construct on the development site more than a specified number of dwellings to be sold on the open market until the Owner(s) and the Developer(s) have constructed the required number of affordable housing units on the affordable housing land.
- Not to use the affordable housing land for any purpose except affordable housing.
- Not to permit or allow the affordable housing land (together with the affordable housing units constructed thereon) to be occupied by any person(s) except person(s) satisfying the agreed occupancy criteria. Within specified time trigger and prior to the occupation of any affordable housing unit to enter into nomination and management agreements and rent/purchase price agreement with the Council.

Heads of Terms for Model Legal Agreement 5:

Off-site financial contributions

Owner(s) and Developer(s) covenant with the Council:

- To pay to the Council within a specified time trigger a commuted sum for the provision of affordable housing. The sum to be calculated using the prevailing Housing Corporation Total Cost Indicators and Grant Rates.
- The commuted sum to be bonded if payment is to be made after the commencement of development. The bond document to be agreed with the council

The Council covenants with the Owner(s) and the Developer(s):

- To use the commuted sum received from the Owner(s) and Developer(s) for the provision of affordable housing within The City of Plymouth.
- If the commuted sum (or any part of it) has not been spent or committed for payment within a period of 5 years from the date of payment, to repay the part not spent or not committed for payment to the Owner(s) and the Developer(s) (together with interest accrued thereon at HSBC base rate from time to time in force from the date payment is received until repayment by the Council).

Heads of Terms for Model Legal Agreement 6:

Low cost market housing

Owner(s) and Developer(s) covenant with the Council:

- To construct within a specified time trigger on the development site in location(s) proposed by the Owner(s) and the Developer(s) and agreed by the Council an agreed number of affordable housing units, the unit size and type of housing to be approved by the Council.
- Not to dispose of the affordable housing units to any person(s) except person(s) approved by the Council (such approval not to be unreasonably withheld or delayed if such person(s) satisfy the criteria laid down in current housing allocations policy).
- To dispose of the affordable housing units at a consideration not exceeding XXXXXXX (to be defined within the S106 Agreement).
- Not to transfer any one of the affordable housing units to any person(s) unless that person(s) enters into a charge in favour of the Council to the effect that upon any subsequent disposal of the affordable housing unit that person(s) will pay to the Council upon completion of the sale a sum of money equal to the % discount received at the time of their purchase of the property as it relates to the open market value of the unit at the date of sale.

The Council covenants with the Owner(s) and the Developer(s):

- Not to use the sum received by it for any purpose except providing affordable housing within the City of Plymouth .

Heads of Terms for Model Legal Agreement 7

Mortgagee-in-possession clause

The affordable housing clauses within the agreement shall not apply to:

- Any mortgagee or chargee of the RSL holding a legal charge on the affordable housing land.
- Any Assured tenant, who has exercised their Right to Acquire and to the mortgagee of such tenant.
- Anyone who has acquired their property on shared ownership terms and their mortgagee.

Affordable Housing covenants

1. The Owner [and/or the Developer] covenants and agrees (example covenants):
 - 1.1 No more than [] of Market Housing Units shall be Occupied until all of the Affordable Housing Units have been constructed in accordance with the Planning Permission and made ready for residential occupation and written notification of such has been received by the Council.
 - 1.2 From the date of Practical Completion of the Affordable Housing Units they shall not be used other than for Affordable Housing save that this obligation shall not be binding on:
 - 1.2.1 any Protected Tenant or any mortgagee or chargee of the Protected Tenant or any person deriving title from the Protected Tenant or any successor in title thereto and their respective mortgagees and chargees; or
 - 1.2.2 any Mortgagee provided that the Mortgagee shall have first complied with the Mortgagee's Duty
 - 1.2.3 any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor.
 - 1.3 No more than [%] of the Market Housing shall be Occupied until the Affordable Housing Units have been transferred to the Registered Social Landlord on terms that accord with relevant Housing Corporation funding requirements current at the date of construction of the Affordable Housing Units.1.4 the Mortgagee shall prior to seeking to dispose of the Affordable Housing Units pursuant to any default under the terms of its mortgage or charge shall give not less than [] months' prior notice to the Council of its intention to dispose and:
 - (a) in the event that the Council responds within [] months from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Units can be made in such a way as to safeguard them as Affordable Housing then the Mortgagee 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 1.4.(a) within the [] months then the Mortgagee shall be entitled to dispose free of the restrictions set out in this Part of the Third Schedule
 - (c) if the Council or any other person cannot within [] months of the date of service of its response under paragraph 1.4(a) secure such transfer then provided that the Mortgagee shall have complied with its obligations under paragraph 1.4(a) the Mortgagee shall be entitled to dispose free of the restrictions set out in this Part 2 of the Third Schedule

PROVIDED THAT at all times the rights and obligations in this paragraph 1.4 shall not require the Mortgagee 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 Mortgagee in respect of moneys outstanding under the charge or mortgage

Heads of Terms for Model Legal Agreement 8

Where justified - Off site affordable housing contributions:

Means a financial contribution of [...] pounds (£[...]) towards the provision of affordable housing within the boundaries of Plymouth City Council.

To pay the Affordable Housing Contribution within [number to be specified] days of the Commencement of Development

Public Art/Public Realm

Definitions (to be included in clause 1):

“Public Art Contribution” means a financial contribution of [.....] pounds (£[.....]) towards the provision of public art such provision to be entirely at the discretion of the Council in terms of size nature artistic influence and geographical location within the [Council area, or specified area]

Alternative definition:

“Public Art Contribution” means a financial contribution of [.....] pounds (£[.....]) towards the provision of Public Art which will include where appropriate sculpture, street furniture, landscaping and/or architectural detailing within [specify area] [within or within the vicinity of the Development as the Owner and Council may agree]

“Public Realm” means the areas open to the public [specify area]

3 To pay the Public Art (or Public Realm) Contribution within [number to be specified] days of the Commencement of Development

OR if later payment justified

4 To pay the Public Art Contribution to the Council in its capacity as local education authority prior to Occupation of [specify number of units] [or within [.....] months of the Commencement of Development]

OR

5.1 To include as part of the Development a permanent work of Public Art to the value of the Public Art Contribution which is integral to the Development and permanently affixed to the Development Land the precise nature of the work of art and its precise location on the Development Land to be approved by the Council prior to Occupation of any part of the Development

5.2 The said work shall be provided on or before [specify date or event]

Education Contribution

Definitions (to be included in clause 1):

“Education Contribution” means the sum of [.....] pounds (£[.....]) to provide additional educational facilities within the [specify area] required as a consequence of the Development

OR

“Primary School Contribution” means the sum of [.....] pounds (£[.....]) towards the cost of providing additional places at existing primary schools within the [specify local education within the [specified area]]

“Secondary School Contribution” means the sum of [.....] pounds (£[.....]) towards the cost of providing additional places at existing secondary schools serving the [specify area]

Covenants

To pay the Education Contribution within [number to be specified] days of the Commencement of Development

OR if later payment justified

To pay the Education Contribution to the Council in its capacity as local education authority prior to Occupation of [specify number of units] [or within [.....] months of the Commencement of Development]

Note: Education obligation spending areas will be identified from the *School Implementation Plan 2005-2015*

Details of the education strategies can be found at www.pgfl.plymouth.gov.uk > Lifelong Learning Department > School Organisation > School Organisation Plans.

Transport/Highways Works

Not to Commence the Development prior to entering into the Highways Agreement if required.

Transport Contribution

Definitions (to be included in clause 1):

“Transport Contribution”	means the contribution of [.....] pounds (£[.....]) to be paid to the Council to provide the Transport Facilities
“Transport Facilities”	means [describe any facilities required:- improved public transport facilities]
“Highway Contribution”	means the contribution of [.....] pounds (£[.....]) to be paid to the Council to provide the Highway Facilities
“Highway Facilities”	means [describe any facilities required:- highway infrastructure investment]

Covenants

6.1 To pay to the Council the Transport/Highway Contribution towards the provision of the Transport/Highway Facilities within [.....] days of the Commencement of Development

OR

6.2 To undertake and complete the Transport/Highway Facilities prior to Occupation of [specify number] Residential Unit(s)