

Standard Planning Agreements for Medium Sized Sites

Home Builders Federation (HBF) response

The Home Builders Federation (HBF) is the principal representative body for private sector home builders and voice of the home building industry in England and Wales. HBF member firms account for some 80% of all new private homes built in England and Wales, and includes companies of all sizes, ranging from widely recognised national firms, through regionally-based businesses and small local companies.

HBF welcomes the Governments' attempts at streamlining the planning process to create more efficient decision making. Improved standardisation is an important element of this work. HBF research conducted in 2025 demonstrates that the average time taken for a Section 106 (s106) agreement to be completed is 515 days, with the shortest timescale being 192 days (approximately 6 months). These timescales are delaying the delivery of much needed housing and it is imperative that they are reduced if the Governments housebuilding ambitions are to be realised.

It is not only the time that it takes for these agreements to be finalised that delays the delivery of new homes. The delivery of Affordable Housing is often a fundamental part of s106 agreements, but the industry is facing unprecedented issues in securing contracts with Registered Providers to acquire new Affordable Homes on-site which is slowing development, sometimes to a complete halt, and further eroding viability on many marginal schemes. These issues are disproportionately affecting medium-sized sites, as there is little interest from Registered Providers for sites with fewer than 20 Affordable units.

It is therefore critical that the cascade mechanism put forward in the consultation is mandatory rather than discretionary to ensure that applicants have the ability change tenure or mix, or ultimately deliver affordable housing via a payment in lieu of on-site provision, in the event that no Registered Provider can be secured. This measure is aimed at improving the efficiency of the planning and development process, making the regime more sensitive to changes in the appetite for Affordable Housing among RPs and building more homes more quickly. It would represent additional flexibility in the way that home builders discharge their planning obligations rather than any reduction in the quantum of those obligations.

This is an approach that is overwhelmingly supported by HBF members with 99.2% of respondents to HBF's Q4 sentiment survey of SME home builders agreeing that section 106 agreements should include a mandatory cascade mechanism allowing the tenure of Affordable

Homes to be varied or a payment made in lieu where, after reasonable efforts, no Registered Provider (RP) or housing association can be secured to acquire them. Without this, the current situation of an increasing number of stalled sites will not be resolved and housing delivery will be adversely impacted as a result.

There appears to be some resistance to this, however, having a cascade in an agreement is not the same as needing to trigger the cascade and this would only happen if there was evidence through the marketing of affordable housing units (stage one of the cascade) that would demonstrate a lack of Registered Provider interest. If the cascade is retained as discretionary, s106 agreements will still take an unreasonable length of time to finalise purely as a result of this element being negotiated and efforts to standardise the agreements will be wasted.

Question 1

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

Yes / No / Not sure . Please explain your answer.

Whilst many applicants will use legal professionals to negotiate s106 agreements on their behalf, increased standardisation of planning agreements may lead some applicants on smaller less complex applications to negotiate independently with the LPA.

As such, it would assist if roles and responsibilities and the methods for checking title and addressing any title related issues could be clarified through guidance.

Question 2

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

Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.
Please explain your answer, including any views on the list of excluded works and activities set out within it.

The proposed definition of commencement is welcome and is proportionate in light of clause 4 (“Conditionality”) which allows for the trigger for obligations to be brought forward if required.

Question 3

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

Please explain your answer.

HBF does not consider there is a need to rename the term. Commencement is clearly included in the definitions and is expressed as excluding work usually included in the Section 56(4) definition which is sufficiently clear.

Question 4

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

Please explain your answer.

HBF considers that it would be beneficial to include a definition of “Expert” and this should be defined as a planning professional for the avoidance of doubt.

Question 5

Do you agree with the drafting of this clause?

Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.

Please explain your answer, particularly if you disagree.

Question 6

Do you agree with the drafting of this clause?

Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.

Please explain your answer, particularly if you disagree

Question 7

Do you agree with the drafting of this clause?

Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.

Please explain your answer, particularly if you disagree.

Question 8

Do you agree with the drafting of this clause?

Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.

Please explain your answer, particularly if you disagree.

Question 9

Do you agree with the drafting of this clause?

Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.

Please explain your answer, particularly if you disagree.

Question 10

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

Strongly Agree/Partly Agree/Neither Agree nor Disagree/**Partly Disagree**/Strongly Disagree.

Please explain your answer, particularly if you disagree.

HBF considers that in practice, a landowner may not wish to assume responsibility for the obligations where a developer holds an option and may expect the developer to take responsibility. Both parties may nevertheless need to execute the deed to ensure that the land is bound. The standard drafting should accommodate this arrangement without imposing

primary liability on a developer before it acquires an interest unless the parties expressly agree otherwise.

Question 11

Do you agree with the drafting of this clause?

Strongly Agree/Agree/Neither Agree nor Disagree/Disagree/Strongly Disagree.

Please explain your answer, particularly if you disagree.

There is concern that the clause places an obligation on a developer with any interest in the land, which could extend to a conditional contract or option agreement. The obligation should only be placed on a developer when they have taken ownership of some or all of the land.

Question 12

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

Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.

Please explain your answer, particularly if you disagree.

Question 13

Do you agree with the drafting of this clause?

Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.

Please explain your answer, particularly if you disagree.

Question 14

Do you agree with the drafting of this clause?

Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.

Please explain your answer, particularly if you disagree.

Question 15

Do you agree with the drafting of this clause?

Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.

Please explain your answer, particularly if you disagree.

Question 16

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

Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.

Please explain your answer, particularly if you disagree.

For a straightforward medium site under the control of a single owner or developer, detailed ringfencing provisions may not be necessary. However, HBF nevertheless considers that the template should include optional drafting that allows liability to be ringfenced where a medium site contains separate ownerships, phases or development parcels.

The drafting should distinguish between obligations that apply to the development as a whole and those generated by, or relating exclusively to, a particular owner, phase or parcel. A party should not become liable for an obligation relating to land that it does not own or control, or for a payment triggered solely by the construction or occupation activity of another developer. On larger phased, consortium or multi developer sites (outside this consultation), ringfencing will commonly be essential.

Question 17

Do you agree with the drafting of this clause?

Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.
Please explain your answer, particularly if you disagree.

As stated above, liability should be severable and the drafting amended to reflect this.

Question 18

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

Please explain your answer.

HBF is not aware of specific examples of this.

Question 19

Do you agree with the drafting of this clause?

Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.
Please explain your answer, particularly if you disagree.

In addition to the current wording of the clause, HBF considers that it is commonplace for an agreement to require the Owner to notify the Council of a transfer of ownership. Whilst this isn't necessary for individual house sales, it is relevant for other parties and is a normal and balanced provision.

Question 20

Do you agree with the drafting of this clause?

Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.
Please explain your answer, particularly if you disagree.

Question 21

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

Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.

If so, please explain your answer and provide relevant examples of where a title warranty has been useful (or has alternatively been a hindrance), where possible.

Title warranty should not be necessary where title has been confirmed by the Local Authorities review. As an alternative, guidance should be produced which sets clear expectations as to what should be disclosed in regards to title information so the LPA can be satisfied that all relevant information has been submitted. This would avoid the need for title warranty.

Question 22

Do you agree with the drafting of this clause?

*Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.
Please explain your answer, particularly if you disagree.*

If guidance was provided, then there is no need for title warranty. If a title warranty clause is retained, it should be a focused warranty that relevant possessory interests have been disclosed can be useful alongside up to date title information. It should not duplicate the Council's title review, extend to matters outside the owner's knowledge or become a substitute for proportionate title investigation. A wider warranty should only be sought where an obligation makes it necessary.

Question 23

Do you agree with the drafting of this clause?

*Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.
Please explain your answer, particularly if you disagree.*

Question 24

Do you agree with the drafting of this clause?

*Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.
Please explain your answer, particularly if you disagree.*

Question 25

Do you agree with the drafting of this clause?

*Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.
Please explain your answer, particularly if you disagree.*

The deed should cease to have effect where the permission can no longer lawfully be implemented. However, there can be genuine disagreement about whether a permission was validly implemented or has lapsed, so the deed should not terminate automatically while that issue remains unresolved.

Question 26

Do you agree with the drafting of this clause?

Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.

Please explain your answer, particularly if you disagree.

Question 27

Do you agree with the drafting of this clause?

Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.

Please explain your answer, particularly if you disagree.

Question 28

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

Strongly Agree/**Partly Agree**/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.

Please explain your answer, particularly if you disagree.

The Council should not move directly from non payment or a suspected breach to enforcement and cost recovery. The clause as written requires written notification, discussion, a reasonable opportunity to remedy the issue and appropriate escalation before formal enforcement action and recoverable costs arise. Costs should be proportionate, evidenced and recoverable only from the party responsible for the breach. The inclusion of an AND between the requirements of clause a and clause b could prevent the escalation straight to cost recovery.

Question 29

Do you agree with the drafting of this clause?

Strongly Agree/Partly Agree/Neither Agree nor Disagree/**Partly Disagree**/Strongly Disagree.

Please explain your answer, particularly if you disagree.

HBF considers that clarity is required in relation to Court proceedings and the following should be added: “unless enforcement action results in Court proceedings then costs will follow any award by the Court”. This will ensure that Council’s cannot claim costs more than once.

It is also imperative that monitoring fees should be proportionate, transparent and evidenced.

Question 30

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

Please explain your answer, particularly where guidance may be helpful in clarifying which indices to use in the template.

Indexation can disproportionately impact on development viability, sometimes for reasons outside of the developers control. On medium sized sites, which can typically come forward more quickly than large complex sites, there should be no reason to apply indexation and to an indexation free period should be allowed for, rather than applying indexation from the date of signing of the agreement.

Downward inflation should also be accommodated in the drafting so that costs to the developer can reduce where appropriate.

Question 31

Do you agree with the drafting of this clause?

*Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.
Please explain your answer, particularly if you disagree.*

Each calculation should show clearly the base contribution, the selected index, the base index figure, the current or forecast index figure and the resulting amount so that it can be checked easily. Where a forecast index is used, it should be applied consistently and reconciled upwards or downwards when the final figure becomes available. The Council should not seek an additional payment when a forecast increases while refusing a corresponding rebate when it falls. Double indexation must be prevented where the underlying contribution rate has already been updated.

Question 32

Do you agree with the drafting of this clause?

*Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.
Please explain your answer, particularly if you disagree.*

Question 33

Do you agree with the drafting of this clause?

*Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.
Please explain your answer, particularly if you disagree.*

Question 34

Do you agree with the drafting of this clause?

*Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.
Please explain your answer, particularly if you disagree.*

Question 35

Do you agree with the drafting of this clause?

*Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.
Please explain your answer, particularly if you disagree.*

Question 36

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

*Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.
Please explain your answer, particularly if you disagree.*

HBF considers that it would be appropriate to have deemed approval in the event that the LPA has not done so within 20 Business Days. This would significantly reduce current delays in approval of submissions related to planning obligations and ensure that housing delivery can proceed without risk in the event that no response has been received.

Question 37

Do you agree with the drafting of this clause?

Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.

Please explain your answer, particularly if you disagree.

LPAs need to be incentivised to discharge planning obligation submission quickly in order for housing delivery not to be delayed. This clause fails to address the issue of delay sufficiently and a deemed approval should be included.

Approval under the section 106 agreement should not reopen matters already approved through the planning permission, reserved matters, planning conditions or another relevant approval process.

Question 38

Do you agree with the proposed timescales in this clause?

Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.

Please explain your answer, particularly if you disagree.

Question 39

Do you agree with the drafting of this clause?

Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.

Please explain your answer, particularly if you disagree.

In the interest of expediting dispute resolution, for medium-sized sites, HBF suggest: (a) a 10 Business Day initial negotiation period; (b) if unresolved, referral to expert determination within 5 Business Days; (c) expert to determine within 20 Business Days. The total process should not exceed 8 weeks.

The expert's costs should be borne by the unsuccessful party or shared equally at the expert's discretion.

Question 40

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

Dispute resolution is not regularly used and many developers will seek to agree matters with local authorities, although this can cause significant delay. It remains necessary to have a clear dispute resolution mechanism which incentivises reasonable behaviour by both parties and

provides a backstop where negotiation fails. The provisions should therefore be retained but designed to be proportionate in cost and timescale to the scale of development.

Question 41

Do you agree with the drafting of this clause?

Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.
Please explain your answer, particularly if you disagree.

Question 42

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

Please explain your answer.

HBF considers this to be a welcome advancement of the s106 process and should be included as an option.

Question 43

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

Yes/No/Not sure.

Please explain your answer, including any views on what would be helpful to include in this guidance.

Guidance should establish designated and monitored email addresses, standard forms, automatic acknowledgements, deemed service rules, treatment of bounce backs and junk filtering, changes in personnel and a fallback service method.

Question 44

Do you agree with the drafting of this clause?

Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.
Please explain your answer, particularly if you disagree.

The wording of clause 27 for the Unilateral Undertaking should be updated to reflect that of Clause 30.3 and 30.4 of the Bilateral Agreement, copied below as these are currently missing:

30.3 A notice, consent or approval required or authorised to be given under this Deed shall be deemed to be served as follows:

(a) if personally delivered, at the time of delivery; or Draft template: Bilateral S106 Agreement for Medium Sites 16

(b) if posted by recorded delivery at the time when it would be received in the ordinary course of business;

(c) if by email, at the time that the email was sent.

30.4 To prove such service, it shall be sufficient to prove that:

(a) personal delivery was made;

(b) that the envelope containing such notice, consent or approval was properly addressed and delivered into the custody of the postal authority in a pre-paid first class recorded delivery envelope; or

(c) if by email, by notification of a delivery receipt for such email to the correct email address as previously notified in writing between the parties.

The wording of the clause for the Bilateral Agreement is acceptable.

Question 45

Do you agree with the drafting of this clause?

Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.

Please explain your answer, particularly if you disagree.

Question 46

Do you agree with the drafting of this clause?

Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.

Please explain your answer, particularly if you disagree.

Question 47

Do you agree with the drafting of this clause?

Strongly Agree/Partly Agree/Neither Agree nor Disagree/**Partly Disagree**/Strongly Disagree.

Please explain your answer, particularly if you disagree.

The wording is acceptable for the Bilateral Agreement, but the same wording should be included for the Unilateral Undertaking.

Question 48

Do you agree with the drafting of this clause?

Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.

Please explain your answer, particularly if you disagree.

Question 49

Would guidance on the timing of contributions be useful?

Yes / No / Not sure

Please explain your answer, particularly any views on what would be helpful to include in this guidance.

The consultation document refers to the need to ensure timely delivery of community facilities and infrastructure, however, there is an opportunity for guidance to also highlight the need to ensure that the timing of financial contributions does not adversely impact cash flow to the

extent that it adversely hinders the delivery of new homes. An appropriately balanced approach needs to be taken.

Too often the trigger of obligations are disproportionately weighted to either commencement or the early delivery of homes when cash flow is already stretched by on-site requirements. Because of the way that small and medium-sized home builders are financed, often with site-by-site development finance, this has a disproportionate impact on cashflow and overall viability.

Financing terms have shifted since the global financial crisis in 2008. Loan-to-Cost ratios are lower than they were historically, and equity recycling typically takes place much later in the life cycle of a development site than was the case in previous generations. This is widely recognised as a key challenge for SMEs with many government loan schemes and finance products having been designed to address this problem. The combination of a risky, complex and time-consuming planning process has driven this change in the financing landscape and led to a vast reduction in the number of small and medium-sized home builders in the sector. This consultation is a critical opportunity to begin to address this long-term decline.

To ensure development can be progressed a more proportionate approach is recommended. Guidance to this effect would be welcomed.

Question 50

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

Please explain your answer.

As stated above, HBF acknowledges that the payment of financial contributions has a role to play in the timely delivery of infrastructure, however, this cannot be at the expense of the delivery of housing. A balanced, proportionate approach needs to be taken to ensure that the applicant does not face unreasonable requirements that hinder cash flow to the extent that the progression of development on site is hindered.

Question 51

Do you agree with the drafting of this Schedule?

Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.

Please explain your answer, particularly if you disagree.

Question 52

Do you agree with the drafting of this Schedule?

Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.

Please explain your answer, particularly if you disagree.

Question 53

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

Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.

Please explain your answer, particularly if you disagree.

Question 54

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

Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.

Please explain your answer, including whether you envisage any difficulties in ringfencing or accounting for the interest.

Question 55

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

Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.

Please explain your answer, particularly if you disagree.

HBF research estimates that the total value of unspent developer contributions held by Local Authorities in England and Wales amounts to £9 billion. This is a staggering amount of money which is being held and not delivering the infrastructure that communities need. More than £2bn of this funding – intended to mitigate the impact of development and support local communities – has been held, unspent, for more than five years.

This failure represents a huge opportunity cost for communities and leads to the perception in some instances that developers and development are not providing the infrastructure, services and facilities that residents need or demand.

Whilst it is recognised that some infrastructure projects require pooled funding, given the medium sized nature of these sites, it is unlikely that large scale infrastructure projects are going to be required. Pressure needs to be placed on Local Authorities to deliver the infrastructure secured via these financial contributions in a timely manner and five years (rather than ten) is an appropriate time for them to do so.

Question 56

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

Yes/**No**/Not sure.

Please explain your answer, including how long after the expiry of the default period for return of unspent contributions should the LPA have to wait before being allowed to do this.

There must be an obligation on the council to approach the owner in the first instance and a right for the owner to recover the unspent monies within a reasonable period of time. Adequate safeguards should also be introduced, requiring the alternative mitigation to meet the CIL Reg 122 tests and only in agreement with the applicant or developer.

Question 57

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

*Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.
Please explain your answer, including whether any tenures should be added, removed, or defined differently.*

The consultation documents state that Discounted Market Sale tenure is used in the delivery of Build to Rent schemes but HBF considers that tenure is also frequently used on residential schemes and it would be appropriate to include the definition in the standard template. Discount Market Sale is an Affordable tenure that is popular with homebuyers, widely understood by developers and favoured by some councils. It has been important for some developments affected by the crisis in the s106 Affordable Housing market where RPs have lacked the appetite to acquire Affordable Homes. Instead, a reversion to DMS has transferred sales risk to home builders, accelerated development and established Low Cost Home Ownership dwellings that remain as Affordable Housing in perpetuity. However, not all DMS is badged as First Homes or provided for through that mechanism.

Question 58

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

*Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.
Please explain your answer, particularly if you disagree.*

Given the issues the industry is facing with the delivery of affordable housing, the ability to change the tenure and mix of affordable housing in order to respond to the market, quickly and efficiently is central to the delivery of schemes.

It would be helpful if guidance could be produced as to how these changes are dealt with in the planning permission, for example whether s96A applications should be acceptable to change approved drawings, or that tenure plans are not included in the approved list of drawings at all.

Question 59

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

*Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.
Please explain your answer, particularly if you disagree.*

Service charge regulation risks adding complexity to the s106 process, particularly given the level of service charge is unlikely to be known at planning permission stage.

The Government is already introducing greater transparency and consumer protection through the Leasehold and Freehold Reform Act 2024, including standardised service charge information, enhanced reporting requirements and stronger rights to challenge unreasonable charges. Additional provisions in Section 106 agreements would risk duplicating this framework and creating inconsistent local requirements.

Where affordable, market, private rented and shared ownership homes benefit from the same services and amenities, costs should be apportioned on a consistent, objective and tenure neutral basis.

Different charges may be appropriate where homes receive different services, but the template should not impose fixed caps that prevent recovery of legitimate management, maintenance, insurance and estate costs. These matters should remain within the wider statutory framework, supported by transparent information for Affordable Housing Providers and residents.

Question 60

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

*Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.
Please explain your answer, particularly if you disagree.*

Local authority allocation schemes may be an appropriate starting point for rented affordable housing, but should not automatically govern every tenure. A time-limited cascade is needed where restrictive or outdated local criteria prevent homes from being occupied or transferred. Given the issues that medium sites are having securing offers and contracts with Registered Providers, eligibility criteria should be sufficiently flexible so as not to compound this issue.

Question 61

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

*Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.
Please explain your answer, particularly if you disagree.*

Question 62

Do you agree with the drafting of this definition?

*Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.
Please explain your answer, particularly if you disagree.*

As suggested elsewhere, the approval period for the Affordable Housing Scheme should be 20 Business Days or deemed approval should apply in order to avoid unnecessary delay.

Question 63

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

Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.

Please explain your answer, including any aspects of delivery, transfer arrangements or Affordable Housing Provider requirements that you think should be amended.

HBF considers that the inclusion of an “Affordable Housing Contribution” definition to be positive, however, this provides an opportunity to rationalise the approach to calculating that contribution. As noted in the consultation document, the approach to calculating these varies significantly across LPAs and often leads to developer overpaying to provide a financial contribution in lieu of affordable housing on site, which adversely impacts scheme viability.

The calculation should be carried out based on a residual land value comparison, not gross development value to ensure that the contribution is fair and equitable to the delivery of affordable housing on site. The template should be updated to this effect.

Question 64

Do you agree with the drafting of these provisions?

Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.

Please explain your answer, particularly if you disagree.

Question 65

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

Please explain your answer.

The challenges are numerous and include:

- (a) RP reluctance to acquire small numbers of units on medium-sized sites due to management economics and geographic dispersal;
- (b) disagreements over specification, price, and practical completion standards;
- (c) delays in RP board approvals and Homes England funding;
- (d) tenure mix not matching local RP demand or strategic priorities and a lack of flexibility on this; and
- (e) the increasing specification gap between Homes England requirements and market housing standards, which also adds cost.

Question 66

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

Please explain your answer, particularly your views on the implications of increasing or reducing the specified 3-month time period.

The effectiveness of the provision depends on its acceptance by Affordable Housing Providers and, particularly, their lenders. These provisions are often heavily negotiated. Government should secure sector support for the notice procedure, three month period, valuation arrangements and protected amount so that the clause can be accepted without repeated local negotiation.

Question 67

Do you agree with the drafting of this paragraph?

*Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.
Please explain your answer, particularly if you disagree.*

Question 68

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

*Strongly Agree/Partly Agree/Neither Agree Nor Disagree/Partly Disagree/Strongly Disagree.
Please explain your answer, particularly if you disagree.*

As Government is aware, the industry is facing well-publicised issues with Registered Providers lacking appetite contract on medium sized sites. There are multiple reasons for this, including the number of affordable housing units being offered, financial capacity of Registered Providers and tenure mix not aligning with Registered Provider requirements. Thousands of Affordable Housing units remain uncontracted, as evidenced through MHCLG's own s106 clearing house service through a mixture of types of units being incompatible with the demands of RPs or simply because of the financial position of relevant local or regional RPs.

While the market for s106 Affordable Homes is often perceived as a simple bilateral relationship between developers and RPs, there is a lack of recognition that the product mix is largely determined by the local planning authority through the s106 agreement. This frequently leaves a fundamental disconnect between the negotiated mix of Affordable tenures on the site and the actual demand from RPs.

Question 69

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

*Strongly Agree/Partly Agree/Neither Agree Nor Disagree/Partly Disagree/Strongly Disagree.
Please explain your answer, particularly if you disagree.*

As noted above, it is in the developers interest to secure a contract for the affordable housing required. The prescribed initial marketing period of six months is unreasonable and will lead to significant delays to the delivery of housing, particularly on sites of this size. An initial period of three months is more appropriate.

In addition, where offers have been received but rejected, the developer should have the opportunity to explain why.

Once an offer is accepted, the developer should have a further three months to enter into contract. If no contract is secured, a further three months marketing may be required.

As this isn't a discharge of an obligation, the template should include for the avoidance of doubt the timescales in which the Council needs to be respond and for deemed approval to apply where they don't respond within that time period.

Question 70

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

*Strongly Agree/Partly Agree/Neither Agree Nor Disagree/Partly Disagree/Strongly Disagree.
Please explain your answer, particularly if you disagree.*

Whilst HBF does not object to the principle of this, it should be clear that the offer made by the local authority needs to be reasonable and they should not be given preferential treatment or a last look at other offers that have been received. There is a risk that local authorities could take advantage here as they act as the registered provider and the planning authority or seek to delay matters by not approving movement down the cascade if they are interested in the site.

Throughout the s106 Affordable Housing crisis, HBF has become aware of a small number of local authorities proactively entering the market for Affordable units to address the systemic financial issues facing housing associations or simply to support the delivery of small sites where housing associations are generally uninterested in taking the s106 packages.

Question 71

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

*Strongly Agree/Partly Agree/Neither Agree Nor Disagree/Partly Disagree/Strongly Disagree.
Please explain your answer, particularly if you disagree.*

Question 72

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

*Strongly Agree/Partly Agree/Neither Agree Nor Disagree/Partly Disagree/Strongly Disagree.
Please explain your answer, particularly if you disagree.*

It is clearly necessary that the developer is not adversely impacted as a result of not being able to secure a contract with a Registered Provider and that the viability of the development is not hindered by the financial contribution.

As such the calculation needs to be fair and equitable and should be based on a Residual Land Value comparison not a comparison between Gross Development Value, which would result in the developer effectively overpaying for the delivery of affordable housing. This is central to the success of having the cascade as a workable solution.

Question 73

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

Please explain your answer, particularly your views on including an approach based on a comparison of the Gross Development Value (GDV) of the proposed scheme with the GDV of the scheme assuming affordable housing was provided on-site.

As highlighted above, this is entirely the wrong approach. Clear guidance needs to be provided to ensure that a Residual Land Value comparison is used and not gross development value. Using Gross Development Value ignores the cost of development and the benchmark land value which are both included in the RLV calculation. By relying solely on GDV, the value of the scheme will be overstated when affordable housing is removed and will not take account of any costs including the contribution itself. As such the GDV will appear significantly higher than reality and payments could well render schemes unviable on this basis.

Question 74

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

- *contributions should be capable of being spent across the LPA area from receipt*
- *the permitted geographic area should widen over time if contributions remain unspent*
- *contributions should be subject to more limited geographic restrictions*
- ***another approach***
- *not sure*

Please explain your answer.

Given the significant need for affordable housing, HBF considers it to be reasonable for a geographical cascade to be in place which permits the spread of contribution spending subject to certain criteria being met. Given the prospect of significantly larger LPAs, it would not be appropriate for the contribution to be spread far and wide initially as it would not benefit local residents.

Question 75

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

- *no repayment provision should apply*
- *repayment should apply after 5 years*
- *repayment should apply after 10 years*
- *repayment should apply after a different period*
- *another approach*
- *not sure*

Please explain your answer.

This period aligns with other obligations and also places an appropriate emphasis on the delivery of affordable housing by the local authority to address the significant need.

Question 76

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

- *contributions should be paid earlier in the development process*
- *contributions should be paid in phased instalments linked to development progress*
- *contributions should be paid at a later stage of development*
- *another approach*

Please explain your answer.

This reflects the approach to on site delivery and HBF sees no reason to shift from this approach.

Question 77

Do you agree with the drafting of this provision?

Strongly Agree/Partly Agree/Neither Agree nor Disagree/Partly Disagree/Strongly Disagree.

Please explain your answer, particularly if you disagree.

Question 78

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

Question 79

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

Question 80

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