

APPENDIX E

Delivery mechanisms: legal agreements

1. Mitigation measures that are identified and determined as necessary for a planning permission to be granted are normally specified in planning conditions and/or legal agreements.
2. The mechanisms by which such works or contributions are implemented are generally via one or more of the following legal agreements.

SECTION 106 AGREEMENTS

3. Section 106 of the Town and Country Planning Act 1990, as substituted by the Planning and Compensation Act 1991, allows a LPA to enter into a legally binding agreement (planning obligation) with a developer in relation to a proposed development.
4. Amongst other things, these 'section 106 agreements' can act as a mechanism for placing restrictions on developers in relation to the impacts of their developments, by requiring them to provide measures to minimise these impacts. Policy on the use of planning obligations is set out in ODPM Circular 05/05.
5. Typically, section 106 agreements include requirements to make contributions in kind, or to pay sums of money, and cover issues such as the securing of the community infrastructure necessary to meet the needs of the local community arising from the new development and/or mitigating the impacts of the proposed development.
6. In some circumstances, the LPA and/or highway authority may pool sums of money arising out of section 106 contributions towards larger mitigation measures than are possible from a single development.

HIGHWAYS ACT AGREEMENTS

7. Various provisions in the Highways Act 1980 influence or facilitate development-related works within the public highway or the creation of a new highway.
8. Section 4 provides for an agreement between the Secretary of State for Transport (the Secretary of State) and a local highway authority, where it is proposed to improve a trunk road and the works affect another highway under the local highway authority's control.
9. Section 5 provides for an agreement to allow a local highway authority to maintain and improve a highway (other than a trunk road), which the Secretary of State has procured.

10. Sections 6 to 9 relate to the delegation of certain functions with regard to trunk roads and urban roads and also facilitate agreements between local highway authorities for the transfer of the specified functions for a particular highway.
11. Section 274 provides for a local authority to contribute towards any expenses to be incurred by the Secretary of State if, in the opinion of the local authority, the expenditure is or will be of benefit to the local authority's area.
12. A developer may enter into a Section 278 agreement with an LHA for improvement works to local roads, as well as with the Secretary of State for works to the SRN. LPAs may also enter into an agreement with a developer under section 106 of the Town and Country Planning Act 1990, although the section 106 power does not extend to the Secretary of State.¹²
13. Where measures are required that affect both the local highway network and the SRN, there will be a requirement to enter into multiple-authority agreements that include the HA, LHAs and developers.

MULTIPLE-AUTHORITY SECTION 278 AGREEMENT

14. There are cases where multiple highway authorities, most commonly the Secretary of State and a local highway authority, need to form a joint legal agreement with a developer to ensure that a mutually required package of measures that affect both authorities' networks can be achieved and controlled. This could also apply to a situation whereby a development proposal is close to the border between two LHAs and the mitigation measures required might be capacity management controls at junctions within both LHA areas.
15. Whilst it may be less common, there might also be circumstances where three highway authorities are involved – for example, where the boundaries of two LHAs are close to a motorway junction and the impact from a development affects the networks within the jurisdiction of each LHA. In such circumstances, should capacity management measures be required that affect all three highway authorities, then the multiple-authority agreement would enable such works to be coordinated effectively.
16. The purpose of a multiple-authority agreement is to ensure that, where a combination of measures/controls is required to provide the appropriate mitigation for a development, and where such measures fall within multiple authorities' areas of jurisdiction, provision of the necessary complete combination can be guaranteed by legally enforceable agreement.
17. The goals and benefits of this type of agreement are:
 - achieving a coordinated approach among the LHAs, LPAs and the HA;
 - establishing complementary measures to control access and egress for developments;

¹² For s.278 agreements with the Secretary of State for Transport see *Guidance on Agreements with the Secretary of State for Transport under Section 278 of the Highways Act 1980*

- determining appropriate mitigation measures (highway improvement works or provision/improvement of public transport);
 - establishing a framework for enforcement of travel plan measures.
18. This type of agreement will require an additional form, which can be attached or included with a normal section 278 agreement. The additional form should set out the agreements among all parties (LHA(s), the Secretary of State and the developer), and it will:
- bind all parties to provide the works/actions set out in the agreement;
 - give 'step-in' rights to each highway authority if there is a default by any party in the fulfilment of the terms of the agreement; and
 - allow 'draw-down' of bond funds to complete works where these are the subject of a staged arrangement with triggers, such as non-achievement of travel plan targets.
19. The agreement would contain schedules specifying the works, which highway authority's area those works would be situated in, and what linkages/interactions exist among those works to meet fully the mitigation requirements.