

DATED 7 October 2014

(1) THE MAYOR AND BURGESSES OF THE
LONDON BOROUGH OF ISLINGTON

(2) OBIDOS PROPERTIES LIMITED

**PLANNING OBLIGATION BY DEED UNDER
SECTION 106 OF THE TOWN AND COUNTRY
PLANNING ACT 1990**

**In respect of Royal London House, 22-25 Finsbury
Square, London EC2A 1DX**

Planning Application Reference P122324

Planning Appeal Reference APP/V5570/A/14/2213312



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Ref: TJJT/32990.2

LBI Ref: NPLN/2000/LA

THIS DEED is made the

7

day of

October

2014

BETWEEN:

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF ISLINGTON** of Town Hall Upper Street London N1 2UD ("the Council"); and
- (2) **OBIDOS PROPERTIES LIMITED** (incorporated in Jersey) of 40 Esplanade St Helier Jersey JE2 3QB whose address for service in the United Kingdom is 93 Park Lane, Mayfair, London W1K 7TB ("the Owner")

and the Council and the Owner shall together be known as "the Parties".

RECITALS

- (A) The Council is the local planning authority for the purposes of the 1990 Act for the area in which the Site is situated.
- (B) The Owner is the registered proprietor of the freehold of the Site with title absolute free from encumbrances under Title Number LN171001.
- (C) At a meeting on the Committee Date the Council's Planning Committee resolved to refuse the Planning Application and the Owner has lodged the Appeal to the Secretary of State against the refusal.
- (D) The Parties have agreed to enter into this Deed to secure the planning obligations contained in it in the event that the Appeal is allowed.

OPERATIVE PROVISIONS

1. Definitions

For the purposes of this Deed, the following expressions shall unless the context otherwise requires have the following meanings:

1990 Act: the Town and Country Planning Act 1990;

2010 Regulations: the Community Infrastructure Levy Regulations 2010;

Accessible Transport Contribution: the sum of **FORTY EIGHT THOUSAND POUNDS (£48,000)** to be paid by the Owner to the Council as hereinafter provided and to be spent by the Council towards the provision of accessible parking bays or alternative accessible transport measures and (where possible) to be provided in accordance with the following locational hierarchy:
i. the north side of Finsbury Square
ii. elsewhere in the vicinity of the Site;

Appeal: the appeal dated 6 February 2014 against the decision of the Council to refuse planning permission for the Development;

Appropriate:	the planning obligations within this Deed satisfying the requirement of Regulation 122 of the 2010 Regulations;
BEST:	the Council's Business Employment Support Team;
BTEC Hospitality Course:	the BTEC Level 3 Hospitality Course (or any equivalent course) operated by the School comprising (inter alia) specific course units relating to hospitality;
BTEC Hospitality Course Contribution:	the sum of THREE HUNDRED THOUSAND POUNDS (£300,000);
BTEC Work Experience Placements:	the provision of work experience placements (subject to interview) for all current students on the BTEC Hospitality Course as may be requested by the School such placements to each be of no less than one (1) week in duration and to be no less than 12 hours within each week;
Carbon Offset Contribution:	the sum of FOUR HUNDRED AND EIGHTY ONE THOUSAND THREE HUNDRED AND EIGHTY ^{ONE} POUNDS £481,381 to be paid by the Owner to the Council as hereinafter provided and to be spent by the Council on the reduction of carbon dioxide emissions from the existing building stock in the Borough of Islington; #2
COCP Response Document:	a detailed statement setting out how the Owner intends to comply with the Code of Construction Practice during the carrying out of the Development;
Code of Construction Practice:	the Council's Code of Practice for Construction Sites attached to this Deed at Schedule 7;
Code of Construction Practice Monitoring Contribution:	the sum of TWELVE THOUSAND EIGHT HUNDRED POUNDS (£12,800);
Code of Local Procurement:	the Council's local procurement code attached to this Deed at Schedule 6;
Committee Date:	23 July 2013;
Construction Phase:	the whole period of construction of the Development commencing with the first works of Implementation and ceasing on the date of Practical Completion of the Development;

Decision Letter:	the Inspector's decision letter in respect of the Appeal;
Development:	development of the Site pursuant to the Planning Permission;
District Heating Connection	the connection of a District Heating Network (including all necessary pipes, cables and conduits and any necessary plant and equipment) to the Development by the Council or by the Council's nominee (such nominee to be approved by the Owner) to enable the heat demands of the Development to be supplied by the District Heating Network (and topped up by energy supplied by the Heating Plant) in accordance with the Energy Statement approved by the Council under the terms of this Deed;
District Heating Network	an energy system providing energy and renewable energy or low carbon energy through a decentralised local area network within the Borough of Islington;
Draft Full Travel Plan	a written plan to be prepared in consultation with the Council and in accordance with the ATTrBuTE assessment criteria, Transport for London's guidance document "Travel Planning for new Development in London" and the Council's relevant planning policies which contains a set of potential measures to be included in the Full Travel Plan;
Employment and Training Code:	the Council's Employment and Training Code annexed hereto at Schedule 4;
Employment and Training Contribution:	the sum of THIRTY NINE THOUSAND FOUR HUNDRED AND SIXTY THREE POUNDS (£39,463);
Energy Statement	a written update of the draft energy statement dated 14 February 2013 submitted as part of the Planning Application such update to analyse and assess the technical and practical potential for the heat demands of the Development to be supplied by heat energy from a District Heating Network and by heat energy from alternative plant and equipment providing low carbon energy and which is in accordance with the Council's adopted planning policies from time to time and which demonstrates how the Development will achieve the relevant on-Site carbon dioxide emissions reduction target set out in such policies;

Expert:	an independent suitably qualified third party appointed to resolve disputes pursuant to Clause 13;
Financial Contributions:	(1) the Accessible Transport Contribution (2) the Carbon Off-Set Contribution; (3) the Code of Construction Practice Monitoring Contribution; (4) the Local Resident Hotel Employee Contribution (5) the Employment and Training Contribution; and (6) the Taxi Area Contribution;
Full Travel Plan	a written plan consisting of a package of practical measures to be prepared in consultation with the Council and in accordance with the ATTrBuTE assessment criteria, Transport for London's guidance document "Travel Planning for new Development in London" and the Council's relevant planning policies which is tailored to the Occupiers and users of the Development and which includes a full travel survey;
Green Performance Plan	a plan or plans for monitoring the performance of relevant buildings in use against key sustainability indicators which covers the first two years of Occupation of each such building (or part thereof) and sets out measurable performance targets and indicators, arrangements for the management and monitoring of the plan, provision by the Owner of a final report on the same at the end of the two year monitoring period and arrangements for addressing performance in the event that the agreed objectives are not met at the end of the two year monitoring period which arrangements shall include but not be limited to extension of the two years monitoring period, submission by the Owner of updating reports and implementation of new measures and/or processes to enable the relevant buildings to perform against the targets in the plan;
Highway Reinstatement Area:	the highways and footways in the vicinity of the Development as shown hatched green on the Highway Reinstatement Plan;
Highway Reinstatement Payment:	the sum calculated in accordance with paragraph 4 of Schedule 1 which is to be spent by the Council on the Highway Reinstatement Works;
Highway Reinstatement Plan:	the plan attached to this Deed at Schedule 5;

Highway Reinstatement Works:	the repair and reinstatement of the highway and footways within the Highway Reinstatement Area so as to repair and/or reinstate them to the same condition and standards as shown in the Schedule of Condition approved by the Council under paragraph 4.1 of Schedule 1;
Hospitality Training Contribution:	the sum of TWO HUNDRED THOUSAND POUNDS (£200,000) to be spent by the Council on the provision of hospitality training at venues within the local area for Local Residents who are not in employment;
Hotel:	the Montcalm Finsbury Square to be constructed at the Development;
Hotel Apprentice:	a person employed at the Hotel for a fixed term of no less than twelve (12) months as an apprentice to a Hotel Employee;
Hotel Employee:	a person employed on a permanent employment contract within the Montcalm Finsbury Square;
Hotel Employee Reimbursement Payment:	a sum to be calculated by deducting the Notional LRHE Contribution (as set out in paragraph 9.5 of Schedule 1) from the Local Resident Hotel Employee Contribution;
Hotel Employee Roll:	the number of Hotel Employees employed at the Hotel from time to time;
Hotel Trainees:	a person taking part in any of the training programmes set out in paragraph 8 of Schedule 1;
Implemented:	the first date on which any material operation (as defined by Section 56(4) of the 1990 Act) forming part of the Development begins to be carried out and the expressions Implementation and Implement shall be construed accordingly;
Index:	the Retail Prices (All Items) Index as published by the Office for National Statistics or (if such index is at the relevant time no longer published) such other comparable index or basis for indexation as the Parties may agree;
Index Linked:	linked to movements in the Index between the Committee Date and the date of the payment so that the particular payment is adjusted in accordance with the following formula:

Amount Payable = Relevant Amount x (A÷B)

where:

Relevant Amount = the payment to be Index-Linked

A = the figure for the Index which applied when the Index was last published prior to the date that the Relevant Amount is payable under this Deed

B = the figure for the Index which applied when the Index was last published prior to the Committee Date

PROVIDED THAT the Index Linked sum shall never be less than the original sum specified as payable under this Deed;

Initial Recruitment Period

the period of twelve (12) months from the date on which the use of the Hotel by paying guests commences;

Inspector:

the Inspector appointed by the Secretary of State to determine the Appeal;

Interest:

interest at three per cent above the base rate of the Co-operative Bank Plc from time to time;

Local Community Centres:

any of Betty Brunker Hall King Square
Community Centre Peregrine Hall Community
Centre St Lukes TRA Community Room
Tompion Hall Community Centre Vibast
Community Centre and Menard Court Community
Centre;

Local Resident:

an individual whose primary place of residence is within the Council's administrative area;

**Local Resident Hotel
Employee:**

a Local Resident employed as a Hotel Employee;

**Local Resident Hotel Employee
Contribution:**

the sum of **ONE HUNDRED AND TWENTY
FIVE THOUSAND POUNDS (£125,000);**

**Local Residents' Hotel
Employee Target:**

twenty-five per cent (25%) of the Hotel Employee Roll;

Montcalm Hotel Group:

any hotels operating in London under Montcalm London Hotels Limited (company number 07180507) and Montcalm Hotel (London) Limited (company number 01895614);

Non-Professional Hotel Job:	a job within the Hotel that is either semi-skilled and/or requires no previous experience in order for such job to be performed;
Occupation:	occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing, security operations or display and the terms “ Occupy ” and “ Occupied ” shall be construed accordingly;
Planning Application:	the application for planning permission submitted on behalf of the Owner to the Council and registered on 7 December 2012 and which was given reference number P122324 for change of use from Class B1 (offices) and Class D1 (education) to Class C1 (hotel) including ancillary restaurant and bar, demolition of roof level extensions and partial demolition of sixth and seventh floors, erection of 4 additional storeys provision of new front entrance and access ramp, and associated external alterations;
Planning Permission:	a planning permission comprised within the Decision Letter;
Practical Completion:	the date on which the Development (or relevant part of it) is properly certified as practically complete by the Owner’s relevant professional under the contract for the construction of the Development;
Recruitment Programme:	a timed programme for the ongoing recruitment of staff at the Hotel to reflect the employment requirements at the Hotel from time to time and (prior to the opening of the Hotel) to include no less than three (3) information sessions such sessions to be run by the Owner and to set out the prospective job opportunities at the Hotel and to provide details of (inter alia) the available jobs hours shifts pay conditions start dates person specifications and job descriptions of such prospective job opportunities;
Schedule of Condition:	<p>a schedule of condition relating to the highways and footways within the Highway Reinstatement Area which shall include but not be limited to details of:</p> <p>(a) the line and level of footways and carriageways; and</p>

- (b) the state of condition of access covers; surfacing; street furniture; channels and kerbs; street lighting; and gullies (to be checked for blockages);

Secretary of State: the Secretary of State for Communities and Local Government or any successor Secretary of State exercising planning functions under the 1990 Act;

Site: the land and premises known as Royal London House 22-25 Finsbury Square London EC2A 1DX which is shown edged red on the Site Plan and registered at the Land Registry under Title Number LN171001;

Site Plan: the plan attached to this Deed at Schedule 3;

Staff Mentors: a minimum of four (4) Hotel Employees;

Staff Mentoring Scheme: an annual programme for the mentoring of Hotel Trainees by the Staff Mentors at Local Community Centres which shall comprise no less than six (6) mentoring sessions in each calendar year;

the School: means the Central Foundation School for Boys;

Taxi Area Contribution: means the sum of **SEVEN THOUSAND FIVE HUNDRED POUNDS** (£7,500) to be spent by the Council towards the creation of an improved taxi and private car hire drop-off and pick-up area at the front of the Hotel and to include the cost of obtaining any requisite traffic management procedures under the Road Traffic Regulation Act 1984 (or other applicable statutory provisions)

Training and Employment Initiatives Contribution: the sum of **SIXTY THOUSAND FIVE HUNDRED AND THIRTY SEVEN POUNDS** (£60,537) to be spent by the Council on training and employment initiatives for Local Residents who are not in employment such initiatives to be held in Local Community Centres;

Work Experience Placements: the provision of up to a maximum of twenty four (24) work experience placements to be provided within the Montcalm Hotel Group for Local Residents who may be identified from time to time by BEST such placements to each be of no less than four (4) weeks in duration and no less than 12 hours within each such week;

2. Interpretation

- 2.1 Where in this Deed reference is made to clause paragraph schedule or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Headings appearing in this Deed are for ease of reference only and shall not affect the construction of this Deed.
- 2.4 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.5 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.6 Words denoting an obligation on a Party to do any act, matter or thing include an obligation to procure that it be done and words placing a Party under a restriction include an obligation not to cause, permit or suffer any infringement of the restriction.
- 2.7 Where any of the Owner's covenants in Schedule 1 place an obligation on the Owner to do or cause something to be done on or prior to Implementation or Occupation, the Owner shall not Implement or Occupy or permit Implementation or Occupation (as the case may be) of the Development until such covenant has been complied with in full.
- 2.8 Except where the context otherwise requires, references to a Party carrying out or performing an obligation in Schedule 1 shall mean that that Party shall bear the cost of carrying out or performing that obligation.
- 2.9 Any reference to an Act of Parliament shall include any modification extension substitution or re-enactment of that Act from time to time for the time being in force and shall include all instruments orders plans regulations permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.10 References to any Party to this Deed shall include the successors in title to that Party and to any person deriving title through or under that Party and in the case of the Council the successors to its statutory functions.
- 2.11 Save in respect of the Planning Permission (which at all times shall prevail) in the event of any conflict between the terms, conditions and provisions of this Deed and any document attached to it or referred to in it, the terms, conditions and provisions of this Deed will prevail.
- 2.12 The Interpretation Act 1978 shall apply to this Deed.
- 2.13 All Parts Schedules and Appendices attached to this Deed are to be read as if the same were incorporated into the main body of the Deed.

- 2.14 Where the agreement, approval, consent or expression of satisfaction is required by any Party against another under the terms of this Deed such agreement approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed.

3. Legal Effect

- 3.1 This Deed is made pursuant to Section 106 of the 1990 Act Section 1 of the Localism Act 2011 Section 111 of the Local Government Act 1972 Section 2 of the Local Government Act 2000, Section 16 of the Greater London Council (General Powers) Act 1974 and all other powers so enabling.

- 3.2 This Deed constitutes a planning obligation for the purposes of the 1990 Act and the Council is the local planning authority by whom the obligation is enforceable.

- 3.3 The Deed binds the Site and the obligations contained in it shall be enforceable against the Owner and against its or their successors in title and assignees and any person claiming the Site or any part of it through the Owner.

- 3.4 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site or that part of the Site in relation to which such breach occurs but without prejudice to the liability of such person for any subsisting breach of this Deed prior to the parting with such interest.

- 3.5 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission is quashed revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or it expires before the Development has been Implemented.

4. Conditional Effect

This Deed is conditional upon:

- (a) the grant of Planning Permission; and
- (b) Implementation of the Development.

5. Owner's Covenants

The Owner covenants with the Council to observe and perform those obligations on its part which the Decision Letter confirm as being Appropriate and which are contained in Schedule 1.

6. Council's Covenants

The Council covenants with the Owner to observe and perform the obligations on its part contained in Schedule 2.

7. Council's Legal Expenses

The Owner shall pay the Council's reasonable and proper legal and professional expenses incurred in the preparation of this Deed receipt of which is hereby acknowledged.

8. General

- 8.1 Nothing contained or implied in this Deed shall prejudice, fetter or otherwise affect the rights, powers, duties and obligations of the Council in the exercise by it of its statutory functions, rights, powers and/or obligations.
- 8.2 No waiver (whether expressed or implied) by the Council of any breach or default by the Owner or any person deriving title from it in performing or observing any of the covenants, terms or provisions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or provisions of this Deed or from acting upon any subsequent breach or default.
- 8.3 This Deed shall be registrable as a local land charge by the Council.
- 8.4 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid, illegal or unenforceable then such invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 8.5 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 8.6 The Owner agrees not to encumber or deal with the Site in any manner whereby any Party or successor in title may be prevented from carrying out its or their covenants and obligations contained in this Deed.

9. Title and Registration

- 9.1 The Owner covenants that it has full power to enter into this Deed and comply with the covenants, obligations and restrictions contained in it and that this Deed has been properly executed by it.
- 9.2 The Owner covenants that it is the freehold owner of the Site and that the Site is free from mortgages, charges or other financial encumbrances and that there is no person having any significant legal interest in the Site other than as notified in writing to the Council prior to the date of this Deed.
- 9.3 The Owner agrees to apply to the Chief Land Registrar to register this Deed in the Register of its title to the Site and to supply to the Council as soon as reasonably practicable after registration with official copies of such title to show the entry of this Deed in the Charges Registers of the same.
- 9.4 The Owner agrees to give the Council immediate written notice of any change in ownership of its interest in the Site occurring before all the obligations under this Deed have been discharged. Such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan.

10. Indexation

All sums payable to the Council under this Deed shall be Index-Linked.

11. Interest

Any money payable to the Council under this Deed shall be paid in full without deduction or set-off and if not paid on the date due shall in every case bear Interest on so much thereof as shall from time to time be due and owing from the date the payment was due to the date of actual payment.

12. Good Faith

12.1 The Parties agree with one another to co-operate together and act reasonably and in good faith in the fulfilment of their respective obligations under this Deed.

12.2 The Parties shall at all times use reasonable endeavours to ensure that the planning purposes underlying their respective obligations under this Deed are achieved and are carried out in accordance with good industry practice at the time of performance provided that this clause shall not imply or create any obligation upon any Party which is additional to the obligations contained in this Deed.

12.3 Where there is a reasonable [or best endeavours] obligation in this Deed and the Party responsible cannot fulfil the objective of the obligation then on request that Party shall provide an explanation of the steps it has undertaken in carrying out its reasonable or best endeavours obligation.

13. Disputes

13.1 In the event of any dispute or difference arising between the Parties in respect of any matter contained in this Deed, the Parties shall use their reasonable endeavours to resolve the same within 28 days of the dispute arising.

13.2 If after 28 days of the dispute arising the Parties are unable to resolve the dispute or difference, any Party may serve written notice on the others of its intention to refer the dispute in accordance with the following provisions of this Clause 13 specifying in such notice:

13.2.1 The nature basis and brief description of the dispute;

13.2.2 The clause or paragraph of this Deed pursuant to which such dispute has arisen; and

13.2.3 A written request to concur as to the appropriateness of the professional qualifications of the person (or body) they propose to be appointed under the following provisions of this Clause 13.

13.3 Any such dispute or difference notified under Clause 13.2 shall be referred to an independent and suitable person (the Expert) holding appropriate professional qualifications in light of the subject matter in dispute, to be appointed (in the absence of agreement as to the person (or body) nominated under Clause 13.2) by or on behalf of the President for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the Parties in the absence of manifest error.

13.4 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 13.3 or as to the appropriateness of the professional body

within 10 working days after any Party has given the other Parties to the dispute or difference a written request to concur as to the appropriateness or the professional qualifications of the person (or body) to be appointed pursuant to Clause 13.2 then such question may be referred by any Party to the President for the time being of the Law Society for him to appoint a solicitor to determine the appropriate professional body or person to resolve the dispute, such solicitor acting as an expert and his decision shall be final and binding on the Parties in the absence of manifest error and his costs and those of the parties to the dispute shall be payable by the parties to the dispute in such proportion as he shall determine.

13.5 The terms of reference of any Expert appointed to determine a dispute disagreement or difference shall include the following:

13.5.1 The Expert will reach his decision and communicate it to the Parties (with his reasons) within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event within 35 working days from the date of his appointment to act;

13.5.2 The Expert will call for representations from the Parties within 21 working days of a reference to him under this Deed and require the Parties to exchange representations within this period;

13.5.3 The Expert will allow the Parties 14 working days from the expiry of the period referred to under Clause 13.5.2 to make counter representations;

13.5.4 Any representations or counter representations received out of time may be disregarded by the Expert;

13.5.5 The Expert will be entitled to call for such independent expert advice as he thinks fit;

13.5.6 The Expert's costs and the costs of any independent expert advice called for by the Expert will be included in his award.

13.6 Nothing in this Clause 13 shall be taken to fetter the ability of the Council to carry out its statutory functions as local planning authority with power to enforce breaches of planning control arising from any breach of the obligations entered into by the Owner in this Deed or any other planning breach in respect of the Site and consequential and interim orders and relief.

14. Notices

14.1 Any notice or other communication to be given under or in connection with this Deed shall be in writing which for this purpose shall not include e-mail and such notices or other communications should be addressed as provided in this Clause 14.

14.2 Any such notice or other communication if so addressed shall be deemed to have been received if delivered in accordance with the provisions of the Law of Property Act 1925.

14.3 The address relevant addressee and reference for each party are:

for the Council:

Address: Strategic Planning and Regeneration, 222 Upper Street, London N1 1XR

Relevant addressee: Principal Planner – Obligations (section 106)

for the Owner:

Address: c/o Preci Management Services Limited, 93 Park Lane, London W1K 7TB

Relevant addressee: Peter Thomas

Reference: PCAT/L/1532

- 14.4 If a Party changes its address or addressee for the purposes of this clause it shall notify the other Parties in writing.

15. Indemnity

- 15.1 The Owner agrees to indemnify and keep the Council fully indemnified against all costs, claims demands proceedings expenses and liabilities for which the Council may become liable arising out of any failure by it or them to perform any of the obligations contained in this Deed save that such indemnity shall not apply in the event that any such costs claims demands proceedings expenses and liabilities arise out of negligence or omission by the Council or any of its agents.

- 15.2 Without prejudice to the generality of Clause 15.1 above, the Owner agrees to pay all costs, charges and expenses (including without limitation legal costs and surveyor's fees) reasonably incurred by the Council for the purpose of or incidental to the enforcement of any right or power of the Council or the enforcement of any obligation of the Owner arising under this Deed.

16. Regulation 122

Subject to the provisions of Clause 5 the Parties agree that the planning obligations in this Deed satisfy the requirements of Regulation 122 of the 2010 Regulations.

17. Contract (Rights of Third Parties) Act 1999

The Contract (Rights of Third Parties) Act 1999 shall not apply to this Deed and no person other than the parties to this Deed (and any successors in title or successor bodies) shall have any rights under or be able to enforce the provisions of this Deed EXCEPT THAT paragraph 10 of Schedule 1 is also for the benefit of the School who shall be entitled to enforce these provisions in its own right under the provisions of the Contract (Rights of Third Parties) Act 1999.

18. Jurisdiction

- 18.1 The validity, construction and performance of this Deed is governed by and construed in accordance with the law of England and Wales.

- 18.2 Each Party irrevocably waives any objection which it may have now or hereafter to proceedings being brought in the courts of England and Wales and any claim that proceedings have been brought in an inconvenient forum. Each Party further irrevocably agrees that a judgment in any proceedings brought in the courts of England and Wales will be conclusive and binding upon each Party and may be enforced in the courts of any other jurisdiction.

- 18.3 The Owner irrevocably appoints Preci Management Services Limited as its agent to receive on its behalf in England service of any proceedings or notices arising out of or in

connection with this Deed. Such service shall be deemed completed on delivery to such agent (whether or not it is forwarded to and received by the Owner).

- 18.4 The Owner shall procure that a legal opinion is supplied to the Council from Voisin in the form of the draft legal opinion contained in Schedule 8 dealing with the due formation of the Owner, their good standing, action to enable them to execute and assume their obligations under this Deed, valid execution, valid appointment of Precis Management Services Limited, 93 Park Lane, Mayfair, London W1K 7TB as its irrevocable agent for service of notices and valid choice of law and jurisdiction and such legal opinion shall be provided to the Council on or prior to the completion of this Deed.

EXECUTED AS A DEED and delivered as such on the date first written.

SCHEDULE 1

(Owner's Covenants)

1. NOTICES

1.1 The Owner will give the Council not less than 14 days prior written notice of each of the following dates:

1.1.1 Implementation of the Planning Permission;

1.1.2 Practical Completion of the Development; and

1.1.3 first Occupation of the Development.

1.2 The Owner will not Implement or permit Implementation of the Development until the notice referred to in paragraph 1.1.1 above has been duly given.

1.3 The Owner will not Occupy or permit Occupation of the Development until the notices referred to in paragraphs 1.1.2 and 1.1.3 above have been duly given.

2. FINANCIAL CONTRIBUTIONS

2.1 The Owner will on or prior to Implementation of the Development pay to the Council:

2.1.1 the Accessible Transport Contribution;

2.1.2 the Carbon Offset Contribution;

2.1.3 the Code of Construction Practice Monitoring Contribution;

2.1.4 the Local Resident Hotel Employee Contribution; and

2.1.5 the Employment and Training Contribution

2.1.6 the Taxi Area Contribution.

2.2 The Owner shall not Implement the Development unless it has paid the Financial Contributions in full to the Council.

2.3 The Owner will pay the Highway Reinstatement Payment to the Council in accordance with the provisions of paragraph 4 of this Schedule.

3. CONSTRUCTION EMPLOYMENT AND TRAINING

3.1 The Owner shall at all relevant times comply and ensure compliance with the Employment and Training Code

3.2 The Owner shall use its reasonable endeavours to ensure that at all times during the Construction Phase no fewer than thirteen (13) construction trade apprentices shall be employed at the Development always seeking to ensure that each apprentice shall be:

3.2.1 a Local Resident;

- 3.2.2 recruited through BEST;
 - 3.2.3 employed for not less than thirteen (13) weeks and paid at a rate not less than the London Living Wage;
 - 3.2.4 supported through pay day release to undertake relevant training; and
 - 3.2.5 provided with on-the-job training and supervised on-site by an experienced operative in a trade related to their training needs.
- 3.3 To facilitate compliance with the requirements of paragraph 3.2 the Owner shall work in partnership with BEST using reasonable endeavours to ensure that:
- 3.3.1 all contractors and sub-contractors provide information about all suitable vacancies arising as a result of the Construction Phase of the Development to BEST;
 - 3.3.2 BEST is notified of all suitable vacancies arising from the building contract for the Development for employees, self-employees contractors and sub contractors;
 - 3.3.3 BEST is supplied with a full labour programme for the Construction Phase of the Development (with six-monthly updates) demonstrating (i) what skills and employment are needed through the Construction Phase in order to comply with the requirements in paragraph 3.2 and (ii) measures to ensure that these needs are met as far as reasonably possible through the provision of local labour from Local Residents; and
 - 3.3.4 the Council is provided with a detailed six-monthly labour return for monitoring the employment profile of all workers referred by the Owner and employed during the Construction Phase pursuant to paragraph 3.2.
- 3.4 In the event that having used all reasonable endeavours and following Practical Completion the Owner has been unable to provide thirteen (13) work placements in accordance with this paragraph 3 (or a lesser number than 13) the Owner shall pay to the Council within 14 days of receipt of a written demand the sum of £5,000 for each of the placements that the Owner shall not have provided such sum or sums to be utilised by the Council towards employment and training initiatives in the Borough of Islington.

4. HIGHWAY REINSTATEMENT

- 4.1 The Owner shall not Implement or permit Implementation of the Development or continue or permit continuation of any further works under the Planning Permission in relation to any part of the Development until such time as an initial Schedule of Condition has been submitted to and approved in writing by the Council.
- 4.2 The Owner shall notify the Council in writing as soon as possible after works to construct the Development have reached the stage where further works will not adversely affect the Highway Reinstatement Area.
- 4.3 The Owner shall submit to the Council for its written approval (such approval to be in the Council's absolute discretion) a further Schedule of Condition and a specification for the Highway Reinstatement Works as soon as reasonably practicable after the Owner

has notified the Council under paragraph 4.2 above and in any event not later than 14 days after Practical Completion of the Development.

- 4.4 The Owner shall cooperate at all times with the Council to enable the Council to accurately and quickly estimate and, following its consideration of the Schedule of Condition and specification referred to in paragraph 4.3 above, to then quantify the full amount of the Highway Reinstatement Payment.
- 4.5 The Owner shall pay the Highway Reinstatement Payment in full upon the Council's written demand.
- 4.6 The Owner shall not Occupy or permit the Development to be Occupied until such time as the Council has calculated the full amount of the Highway Reinstatement Payment (acting in accordance with the provisions in this Deed) and the Highway Reinstatement Payment so calculated has been paid to it in full save that this provision shall not apply where the Owner has both complied with the obligation in paragraph 4.4 above and a period of twenty-eight (28) days has elapsed thereafter without the Council having specified the full amount of the Highway Reinstatement Payment.

5. LOCAL PROCUREMENT

- 5.1 The Owner shall at all times comply and ensure compliances with the Code of Local Procurement (including any reasonable requirements proposed by BEST) with the intention that works to the value of ten per cent (10%) of the total value of the construction contract are placed with companies and organisations located within the Council's administrative area.
- 5.2 In the event of non-compliance with paragraph 5.1 the Owner shall upon written notice from the Council immediately take all steps reasonably required by the Council to remedy such non-compliance.

6. CONSTRUCTION

Code of Construction Practice

- 6.1 The Owner shall at all times during the Construction Phase observe and comply and ensure compliance with the Code of Construction Practice.

CoCP Response Document

- 6.2 The Owner shall not less than one month before the carrying out of any works of Implementation prepare and submit to the Council for its approval a CoCP Response Document which shall include:
 - 6.2.1 a review of the Code of Construction Practice with specific reference to the Site's proposed construction programme;
 - 6.2.2 a statement of how the Owner will ensure compliance with the Code of Construction Practice; and
 - 6.2.3 a community liaison strategy which shall address at least the following concerns:

- (a) a telephone number and email address for enquiries concerns or complaints raised by the general public or affected bodies;
 - (b) a named community liaison manager ("Community Liaison Manager") to be responsible for dealing with all enquiries;
 - (c) provision for logging all enquiries along with the response given;
 - (d) a procedure for dealing with and actioning the enquiries from start to finish in an appropriate manner;
 - (e) provision for the Community Liaison Manager regularly update and keep updated members of the Council's public protection team in order to review complaints discuss monitoring results site progress and forthcoming work; and
 - (f) provision for the Community Liaison Officer to distribute a newsletter updating the community on Site issues in a format agreed with officers of the Council's public protection team.
- 6.2.4 The Owner shall not Implement or permit Implementation of the Planning Permission until a CoCP Response Document has been submitted to and approved in writing by the Council in accordance with this Deed.
- 6.2.5 The Owner shall at all times comply in all respects with the approved CoCP Response Document (and any amendments to it which may be approved by the Council in writing from time to time) and shall not carry out the Development unless in full compliance with such approved CoCP Response Document and in the event of non-compliance with this paragraph the Owner shall upon written notice from the Council immediately take all steps reasonably required by the Council to remedy such non-compliance.

7. DISTRICT HEATING NETWORK

- 7.1 The Owner will ensure that the Development is constructed to include a connection point for a District Heating Connection.
- 7.2 The Owner will ensure that the buildings comprised in the Development are capable of connecting to a District Heating Network with connections capable of:
- (a) providing tees, isolation valves and controls capacity in the hot water heaters to facilitate the connection of an interfacing heat exchanger at a later date;
 - (b) reserving space for heat exchangers to allow connection; and
 - (c) safeguarding route and space provision to permit the laying of pipework from the Heating Plant room to the Site boundary so that connections can be made at a later date to the District Heating Network.
- 7.3 The Owner will not Implement or permit the Implementation of the Development until a draft Energy Statement has been submitted to and approved in writing by the Council.

7.4 The Owner shall at all times comply in all respects with the approved Energy Statement (and any amendments to it which may be approved by the Council in writing from time to time) and shall not carry out the Development unless in full compliance with such approved Energy Statement and in the event of non-compliance with this paragraph, the Owners shall upon written notice from the Council immediately take all steps reasonably required by the Council to remedy such non-compliance.

7.5 Subject to the application of paragraph 7.1.6 below and any regulatory changes governing the communal supply of energy, the Owners will not Occupy or permit the Occupation of the Development until a District Heating Connection has been made to the Development to supply the heat demands of the Development in accordance with the Energy Statement approved under this paragraph 7.

7.6 If, prior to Practical Completion of the Development, the Owner demonstrates to the Council's reasonable satisfaction (supplying copies of all appropriate evidence) that the proposed connection charges to a District Heating Network are not reasonable and not economically viable, then the Owner will not Occupy or permit the Occupation of the Development until it has installed on-Site and at their own cost alternative or additional plant and equipment providing low carbon energy to serve the heat demands of the Development in accordance with the Energy Statement approved under this paragraph 7 AND the Owners shall, not later than 24 months after first Occupation of the Development provide the Council with copies of all such evidence and supporting information and documentation as may reasonably be requested or required by the Council (including copies of good quality combined heat and power annual returns) to demonstrate that such alternative or additional plant and equipment is fully operational in accordance with this paragraph 7.

7.7 The Owner will as soon as reasonably practicable after the date of this Deed enter into an agreement with the operator of the District Heating Network to secure the supply of heat energy from the District Heating Network to serve the heat demands of the Development. In the event that a District Heating Connection is not made in accordance with paragraphs 7.1.5 and 7.1.6, the Owner agrees that it will on the written request of the Council do all such things as are necessary to enable a District Heating Connection to be made on the same terms mutatis mutandis as paragraphs 7.1.5 and 7.1.6 subject to the following conditions:

(a) at least one year's prior written notice is given to the Owners by the Council;

(b) it would be economically viable for the Development to be connected to the District Heating Network.

8. HOTEL TRAINING

8.1 The Owner shall pay one-fifth of the Hospitality Training Contribution prior to the Implementation of the Development and a further one-fifth of the Hospitality Training Contribution on each of the second third fourth and fifth anniversaries of such Implementation.

8.2 The Owner shall provide the Work Experience Placements within each year following the Occupation of the Development.

- 8.3 The Owner shall provide the Staff Mentoring Scheme within each year following the Occupation of the Development.
- 8.4 The Owner shall pay one-fifth of the Training and Employment Initiatives Contribution prior to the Implementation of the Development and a further one-fifth of the Training and Employment Initiatives Contribution on each of the second third fourth and fifth anniversaries of such Implementation.
- 8.5 The Owner shall provide for the use of Local Community Centres in relevant training sessions any Hotel uniforms, kitchen whites and/or catering equipment that the Owner (in its absolute discretion) no longer requires for the purposes of operating the Hotel.

9. **HOTEL RECRUITMENT**

- 9.1 The Owner shall notify BEST of all potential job vacancies arising in each of the hotels within the Montcalm Hotel Group and shall interview suitably qualified candidates.
- 9.2 The Owner shall submit the Recruitment Programme to the Council for its approval no later than four months prior to Occupation of the Hotel.
- 9.3 From the approval of the Recruitment Programme and thereafter for the lifetime of the Hotel the Owner shall use its reasonable endeavours to use the approved Recruitment Programme to assist it in the recruitment of Local Resident Hotel Employees for the carrying out of Non-Professional Hotel Jobs up to the Local Residents' Hotel Employee Target.
- 9.4 The Owner shall notify the Hotel Employee Roll to the Council prior to the commencement of the approved Recruitment Programme and thereafter upon reasonable request by the Council.
- 9.5 The Local Resident Hotel Employee Contribution shall be reduced by a notional sum equivalent to:
 - (a) two thousand five hundred pounds (£2,500) upon each occasion of the recruitment during the Initial Recruitment Period of each new Local Resident Hotel Employee; and
 - (b) a notional sum equivalent to twelve thousand five hundred pounds (£12,500) upon each occasion of the recruitment during the Initial Recruitment Period of a Hotel Apprentice.

being known as "the Notional LRHE Contribution".

- 9.6 In the event that a Hotel Apprentice is employed the number of Local Resident Hotel Employees required to meet the Local Residents' Hotel Employee Target shall be reduced by five (5) during the period of employment of each such recruited Hotel Apprentice.
- 9.7 The Owner shall notify the Council (giving brief reasons for its decision) on each occasion that a Local Resident deemed suitable by BEST as a potential Local Resident Hotel Employee is refused an offer of employment as a Local Resident Hotel Employee by the Owner.

- 9.8 The Owner shall provide one meeting room within the Montcalm Finsbury Square free of charge to local not-for-profit groups for up to a maximum of six (6) days in each calendar year for the lifetime of the Hotel.
10. **BTEC HOSPITALITY COURSE**
- 10.1 The Owner shall pay the BTEC Hospitality Course Contribution to the School in ten equal instalments starting on the Implementation of the Development and on each of the nine anniversaries of such Implementation thereafter.
- 10.2 The Owner shall notify the Council in writing within five days of each payment being made to the School under paragraph 10.1 of this schedule.
- 10.3 The Owner shall provide the BTEC Work Experience Placements within each year in which the BTEC Hospitality Course is being run by the School.
- 10.4 The Owner shall (if required to do so by the School) procure the provision of no less than 6 hours of contact teaching hours per course unit for the period in which each applicable unit is being taught.
- 10.5 For the lifetime of the period during which the BTEC Hospitality Course is being run by the School the Owner shall use its reasonable endeavours to use the Recruitment Programme to recruit per annum five (5) graduates of the BTEC Hospitality Course as Hotel Employees.
- 10.6 Upon the Council's written request the Owner shall provide written details to the Council of its compliance with the obligations in paragraphs 10.3 to 10.5 inclusive.
11. **GREEN PERFORMANCE PLAN**
- 11.1 The Owner shall submit for the Council's approval a draft of the Green Performance Plan not later than 6 months from the date of first Occupation of the Development.
- 11.2 The Owner shall submit a final report on the implementation of the approved Green Performance Plan at the end of the nominated monitoring period of two years (or such extended period as the Parties may otherwise agree) to the satisfaction of the Council.
- 11.3 If the final report submitted under paragraph 11.2 shows that the agreed targets have not been or are not being met, the matter will be investigated to identify causes of underperformance and potential mitigation measures. Where measures are identified which it would be reasonably practicable to implement, an action plan comprising such measures will be prepared by the Owner's relevant building manager and agreed with all Occupiers or their representatives and then issued to the Council.
- 11.4 If it is not reasonably practicable to implement measures sufficient to achieve the original targets contained in the approved Green Performance Plan, a revised target which is achievable will be discussed between the Parties and (if it is satisfied) agreed by the Council.
- 11.5 The Owner shall at all times comply in all respects with the approved Green Performance Plan (as amended, if amended, from time to time) and in the event of non-compliance with this paragraph 11.5, the Owner shall upon written notice from the

Council immediately take all steps reasonably required by the Council to remedy such non-compliance.

12. TRAVEL PLAN

- 12.1 The Owner shall not Occupy or permit the Occupation of any part of the Development until the Owner has submitted the Draft Full Travel Plan to the Council for the Council's written approval.
- 12.2 The Owner shall submit the Full Travel Plan to the Council for the Council's written approval no later than six months after first Occupation of the Development.
- 12.3 The Owner shall submit the Travel Plan Update to the Council no later than the 3rd anniversary of first Occupation of the Development.
- 12.4 The Owner shall ensure that all owners and occupiers of the Development are made aware of the Draft Full Travel Plan or Full Travel Plan and any revision in any promotional material and on written request by an occupier/user provided with a copy of the Draft Full Travel Plan or Full Travel Plan at the Owner's expense.
- 12.5 The Owner shall use all reasonable endeavours to ensure that the owners and occupiers of the Development comply with the provisions of the Full Travel Plan and any revisions thereto.

SCHEDULE 2

(Council's Covenants)

1. The Council covenants with the Owner to use all sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they have been paid or for such other purposes for the benefit of the Development as the Owner and the Council shall agree from time to time PROVIDED THAT the Council may in any event spend up to 5 (five) per cent of the sums on the costs of implementing and monitoring compliance with this Deed which sum shall not include the legal costs incurred in drawing up this Deed.
2. The Council will (so far as it is lawfully and reasonably able to so do) upon the written request of the Owner and payment of its reasonable administrative costs at any time after each or all of the obligations of the Owner under this Deed have been performed or otherwise discharged issue written confirmation of such performance or discharge and effect the cancellation of relevant entries in the Register of Local Land Charges or if such cancellation is for any reason impossible to secure thereon a note of such performance or discharge in respect of this Deed.
3. The Council shall on written request by the Owner or the party that actually paid the sum provide to the Owner such evidence as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this Deed.
4. If any of the Financial Contributions or any part thereof have not been expended or committed by the Council within a period of five years from the date of payment (except in the case of the Notional LRHE Contribution where the period shall be 5 years from the expiry of the Initial Recruitment Period) in each case the Council shall upon receipt of written notice from the Owner at the expiry of the period of five years aforesaid return the unexpended or uncommitted sums to the party that paid the Financial Contributions together with the accrued interest.
5. For the avoidance of doubt the sums or any part of them shall be deemed to have been committed if the Council has entered into any contract or given any undertaking (whether enforceable at law or otherwise) the performance or fulfilment of which will require the Council to expend such sums in the future.
6. The Council covenants with the Owner to pay the Local Resident Hotel Employee Reimbursement Payment to the Owner no later than twenty-eight (28) days after the expiry of the Initial Recruitment Period.

SCHEDULE 3

(Site Plan)

EMPLOYMENT AND TRAINING CODE

September 2013

1.0 Planning Obligations and Section 106 Agreements

- 1.1 Islington Council is committed to improving job opportunities for local residents, especially those who are disadvantaged in the labour market. This commitment aligns itself with the objectives of many other organisations such as the Greater London Authority, London Councils, the Skills Funding Agency and DWP Jobcentre-plus.
- 1.2 The purpose of the Employment and Training Code is to outline and give information regarding the roles and responsibilities of Council officers and developers in complying with planning obligations relating to employment and training. Planning obligations aimed at providing employment and training for local unemployed residents will be required from any development sites which meet one or both of the following thresholds:
 - Developments containing 10 residential units or more, hotels, student accommodation or hostels with 20 or more rooms, or an uplift in business/employment floorspace of 500m² Gross External Area (GEA) or more. These developments are required to provide **on-site construction training opportunities during the construction phase**.
 - Developments with an uplift in business / employment floorspace of 500m² or greater (GEA). These developments are required to provide **employment and training opportunities, including apprenticeships, aimed at enabling local unemployed people to gain employment in the development once it begins operating commercially**.
- 1.3 Such planning obligations are used as part of the planning application process to address planning issues and impacts arising from a development proposal. They also help to ensure that new development is sustainable and assist in meeting the objectives of the Council's Policies and Strategies, including Islington's Core Strategy (February 2011) and its Corporate Plan 2012-15, which builds on the recommendations of the Council's Fairness Commission.
- 1.4 Planning obligations are normally agreed between the Council, land owners and developers in a legal agreement called a Section 106 agreement and are intended to make a development acceptable which would otherwise be unacceptable in planning terms.
- 1.5 The Employment and Training Code is designed to support contractors in fulfilling their commitments by clarifying what is required from the outset as well as the time-frame needed to achieve satisfactory results. The Council's Business Employment Support Team (BEST) will seek to work in partnership with contractors to assist them in meeting obligations.
- 1.6 The details of amounts paid either in wages to employees and trainees or directly as a financial contribution to the Council towards the employment and training activities it undertakes are negotiated and agreed before being embedded in the final Section 106 agreement.
- 1.7 The policy justifications and formulae on which this and other planning obligations are based are specified in Islington Council's Supplementary Planning Document (SPD) on Planning Obligations, which was published for consultation on 5th August 2013.

2.0 Policy Context

National

- 2.1 The National Planning Policy Framework (NPPF) highlights the importance of promoting development that is economically as well as socially and environmentally sustainable. The planning system can play an active role in guiding development to sustainable solutions where economic growth secures higher social and environmental standards (NPPF paragraphs 7-8).

London

- 2.2 Development can help to maximize opportunities for community diversity, inclusion and cohesion, sustaining continued regeneration efforts and redressing persistent concentrations of deprivation. The London Plan (2011) states that boroughs are encouraged to investigate with developers the possibility of providing local businesses and residents with the opportunity to apply for employment during the construction of developments (London Plan paragraph 4.64) and jobs and training opportunities including apprenticeships in the resultant end use (London Plan Policies 4.12 and 2.9). London Plan Policy 8.2 further emphasises that importance should be given to securing opportunities for learning and skills development in the use of planning obligations and that development proposals should address strategic as well as local priorities in planning obligations.

Islington

- 2.3 One of the six priorities of the Islington Corporate Plan (2012-2015), building on the Islington Fairness Commission Report (June 2011), is for the cycle of poverty to be broken.
- 2.4 According to the Indices of Deprivation (IMD 2010), Islington is the 14th most deprived borough in England and fifth most deprived in London. Over half of Islington's Lower Layer Super Output Areas (LSOAs) are among the 20% most deprived LSOAs nationally and 53% of Islington's population lives in a deprived LSOA. Only ten other local authorities have a higher proportion of their population living in deprived local areas.
- 2.5 Despite significant employment growth over the last 15-20 years, levels of worklessness in Islington remain very high (Census 2011 found 6% of Islington residents aged 16-74 to be unemployed). This has been exacerbated by a shift towards a highly skilled, knowledge based economy, resulting in significant skills gaps between many of Islington's unemployed residents and the types of jobs being created, which are inaccessible without complementary employment and training opportunities.
- 2.6 Islington's Core Strategy objective 8 is: "tackling worklessness through training and employment initiatives". Policy CS 13 requires that opportunities for employment, training and other measures to overcome barriers to employment are provided through the construction phase of a development, as well as through the end use of a building. This is to ensure that some of the benefits of London's large construction and other employment markets go to resident workers, to help reduce local unemployment and barriers to employment. Using local labour also reduces the need to travel which will help to ensure that development is more environmentally sustainable, in line with Policy CS 10.
- 2.7 Full information on how the Code of Employment and Training helps to deliver these objectives are set out below.

3.0 Islington Council Employment and Training contacts:

Business and Employment Support Team
Islington Council
Islington Town Hall
London N1 2UD
best@islington.gov.uk
020 7527 3465

Pascal Coyne
Business and Employment Support team Development Officer Strategy and Community Partnerships
Islington Council
Islington Town Hall
London N1 2UD

0207 527 3371
pascal.coyne@islington.gov.uk

- 3.1 Pascal's role includes liaising between the Council's regeneration, planning and legal departments and in particular with the planning obligations team negotiating Section 106 agreements. Once planning obligations have been agreed and signed and the planning permission implemented, Pascal will meet with the developer and/or their principle contractor to discuss and agree actions regarding dispatching the undertakings agreed in the heads of terms and set out within this Code.

Stav Aristokle / Ray Manning
Business and Employment Support Team Development Officers (
Islington Council
Strategy and Community Partnerships
Islington Council
Islington Town Hall
London N1 2UD

Tel: **020 7527 3559**- Mobile: **0782 690 4358**
Stav.aristokle@islington.gov.uk

Tel: **020 7527 3484**
Ray.manning@islington.gov.uk

- 3.2 The BEST development officer's role is to liaise between developers and their contractors/sub-contractors. Stav is usually the primary contact at BEST in regards to both employment & construction skills training, but she is on maternity leave during 2013, and in her absence the other officers are the key contacts. BEST have an established working relationship with many primary developers in the borough. Stav, or her appointed officer, is the single point of contact initially and will nominate agents both within and outside the Council who will undertake all aspects of the recruitment.

4.0 The Code

Construction Phase

- 4.1 We require that the developers meet with the LBI BEST at least 1 month in advance of tendering contracts to undertake the code specifics.
- 4.2 **The developer is required to state clearly in tender documentation, prior to selecting the main contractor, that bids need to take into account the following requirements relating to this code:**
- 4.3 All contractors and sub-contractors appointed will be required to liaise with the LBI BEST to ensure the successful and consistent application of this code.
- 4.4 At the pre-contract meeting (1 month in advance of tendering) the contractor shall provide a detailed programme and an up to date schedule of works.
- 4.5 Each paid construction training placement will be paid by the developer or their contractor and / or their sub-contractor(s). Ideally, the wages will be to the level of the London Living wage. However, lawfully they must be no less than the national minimum wage. The duration of each paid placement will be no less than 13 weeks.
- 4.6 The numbers of paid placements agreed and written into the Section 106 agreement are themselves non-negotiable. The figures for paid placements may be specified in terms of trades however, and the exact numbers spread across trades for trainees. Other specifics of paid work placements, such as variance to the 13 weeks, must be agreed with the BEST Development Officer (Pascal, Ray or Stav) at the pre-contract meeting.
- 4.7 The developer / contractor will work with BEST to attain paid on-site construction training placements lasting no-less than 13 weeks from developments providing:
 - 10 residential units or above, hotels, student accommodation or hostels with 20 or more rooms
 - an uplift in business / employment floor-space of 500m² or greater (Gross External Area (GEA))
- 4.8 The developer / contractor will work with the BEST Development Officer to attain 1 Modern Apprenticeship per 5000 sq. m on any project where works are expected to last for at least 52 weeks.
- 4.9 The developer / contractor will liaise with the BEST team to arrange professional input to career days, teacher training and work experience to benefit the career development of Islington students'.

Contracts with sub-contractors

4.10 LBI BEST require the developer / principle contractor to:

- 4.11 Include a written statement in their contracts with sub-contractor(s) instructing them to liaise with the LBI BEST to discuss, agree and implement the specifics of the work placements.
- 4.12 Brief sub-contractor(s) on the requirements of the Employment and Training Code and ensure co-operation is agreed as a prerequisite to accepting sub contract tenders.

Recruitment

4.13 Target recruitment from the local area with the understanding that:

- 4.14 Pre-agreed paid work placement numbers should be fully met, as directed by the LBI *'Business and Employment Support Team'*.
- 4.15 Failure to comply with 4.14 will result in a financial penalty to the value of the minimum 13 week employment period plus the cost to the Council of providing an alternative employment outcome (see Islington Council's 2013 SPD - points 5.17-5.18)
- 4.16 The nominated delivery agent for the LBI 'BEST' will circulate vacancy details to suitable local resident facing services and match suitable candidates to job specifications for consideration at interview by the developer / contractor or sub-contractor/s.
- 4.17 All clients submitted for consideration by a Council nominated agency who fully meet the job specification shall be guaranteed an interview by the developer/contractor/sub-contractor/s.
- 4.18 One full apprenticeship should be provided per 5000 sq. m of development where works are expected to last for at least 52 weeks.

Monitoring

4.19 Provide regular monitoring and information on:

- 4.20 Trainee's progress on site, number of weeks engaged on site, skills attained, support needed (from LBI BEST) and any other relevant information as directed by the BEST team.
- 4.21 Standards of service, product and delivery arising from Local procurement activities.
- 4.22 A six to eight week basis, via e-mail, phone fax or liaison meeting.

Managing trainee's and productivity

4.23 LBI Business Employment Support Team can where necessary:

- 4.24 Provide CSCS card funding and safety equipment and tools for local people taken on through the project.
- 4.25 Identify on-going training needs and provide for these if necessary, where eligibility allows.
- 4.26 Conduct a Health and Safety assessment and assess prior learning.
- 4.27 Organise post placement support visits, for liaising with the relevant supervisor to ensure both parties are satisfied with progress and/or make any necessary interventions to achieve sustainability of employment.

4.28 The main contractor is obliged to:

- 4.29 Ensure employees' are supervised at all times on site by a named qualified and/or experienced operative in a trade related to their identified training needs.
- 4.30 Ensure employees' will work on site under the direction and control of the contractor.
- 4.31 Take the potential for a lower rate of productivity fully into account when allowing for the level of resource and supervision required for programmed outputs and targets.

- 4.32 Allow / enable trainees to attend college-based courses either on a day release or block release basis as required / appropriate. These can be organised through LBI BEST. The contractor must be aware that payments to apprentices will continue during this period.

Operational (post-completion phase)

- 4.33 **Developer to inform lease holder of the Council's aspirations to secure employment opportunities for local unemployed residents arising from new developments and encourage them to attend liaison meetings with LBI BEST to:**
- 4.34 Meet with BEST to plan employment opportunities for local people within the building/s particularly if the building use involves the following occupational sectors: Hospitality; Leisure; Tourism; Cultural/Creative; Childcare; Health and Social Care; Retail; Finance and Business.
- 4.35 Discuss co-operation with Islington's BEST and the Education and Pathways to Employment board in their liaison with schools, colleges and training providers to assist with curriculum development and provide at least x number of work placements per year in partnership with the BEST team for students so that they are provided with knowledge of the world of work and are better prepared to work in business and commerce.
- 4.36 Inform LBI BEST of the company internal training programmes and policy of promotion and progression within the organisation (such knowledge will help the recruitment process).
- 4.37 The Council will assist the contractor and sub-contractor(s) in identifying suitable local companies in order to source goods and services from Islington companies to supply the on-going operational needs of the development.

Recruitment

- 4.38 **Where binding agreements have been established undertake the following requirements** (otherwise the following is sought within the context of the business tenants commitment to corporate social responsibility):
- 4.39 Occupiers and their personnel departments to meet with LBI BEST to discuss their staffing structures and the skills required to facilitate the development of a customised recruitment/training course which will enable local people to acquire the skills needed to gain employment.
- 4.40 Occupiers to advertise vacancies through local networks as directed by the Council's BEST service.
- 4.41 Occupiers of the building to refer vacancies to local projects as directed by LBI BEST so that local people can be assisted in making relevant applications for employment.
- 4.42 The BEST service and their partner resident facing services will screen applications against job specifications (the specification being deemed realistic and necessary for someone to undertake the job tasks).
- 4.43 In larger developments, development of traineeships to help new people in the industry to assist with shortages of staff in researched skills shortfall areas.
- 4.44 Linkage with the Government's Flexible Fund and other Jobcentre-plus programmes that could include payment of a subsidy to a company, or providing work experience for people undergoing vocational training.

Monitoring

4.45 Tenants and their contractors and sub- contractors to:

- 4.46 Allow LBI BEST officers to monitor staff employed on site in order to be able to feedback achievements on the above. Such feedback will be required on all recruits.
- 4.47 Return monthly or quarterly spreadsheets to LBI's BEST officers.

5.0 Extracts from the draft Planning Obligations Supplementary Planning Document (SPD) (published for consultation from 5 August – 20 September 2013)

- 5.1 The number of placements that are sought is based on the estimated number of construction jobs likely to be created by each development, based on information provided for completed developments in the borough and the extent of local training and support needs based on unemployment figures. In 2011, 6% of Islington residents aged 16-74 were unemployed (Census 2011).
- 5.2 The number of placements sought is as follows:

Formula - Construction placements

1 construction training placement per:

20 residential units;

20 student/ hotel/ hostel bedrooms;

1,000 sq m new commercial and employment floorspace

- 5.3 Should it not be possible to provide these placements, the Council will seek an equivalent contribution for construction training, support and local procurement to enhance the prospects of the use of local employment in the development. This is based on the following formula:

Formula - Employment and training contribution – Construction

Number of construction placements (based on formula above) x cost of providing construction training and support per placement (£5000)= contribution due

- 5.4 This is based on the average costs of providing construction training and support per person in Islington.
- 5.5 An employment and training contribution will also be sought to improve the prospects of local people accessing new jobs created in the proposed development. This is based on the proportion of Islington residents who require training and support as set out in the following formula:

Formula - Employment and training contribution – Operation of development

Occupancy of development (number of employees) x proportion of Islington residents requiring training and support (6%) x cost of training/ support per person (£2500) = contribution due.

- 5.6 Projected occupancy is based on average employment densities (see Appendix 2). The cost is based on the average costs of providing training and support relating to the end use of a development per person in Islington.
- 5.7 The Code of Local Employment and Training further sets out the details of the ways in which the occupier of a development with employment uses may be expected to work with the Council. This may relate to issues such as the creation of employment opportunities for local people and assisting Islington's BEST team working in partnership with the LBI Education and Pathways to Employment group in their liaison with schools, colleges and training providers to support curriculum development and the provision of work experience/ placements.
- 5.8 Both obligations are consistent with the 'three tests' that a planning obligation should meet, as outlined in the CIL Regulations 2010 (as amended) as well as in NPPF paragraph 204. Planning obligations should only be sought where they meet all of the following tests:
- necessary to make the development acceptable in planning terms;
 - directly related to the development; and
 - fairly and reasonably related in scale and kind to the development.

6.0 Conclusion

- 6.1 The Employment and Training Code will improve the economic activity and wellbeing of unemployed local people.
- 6.2 The intentions of Islington's development plan and Corporate Plan are to reduce poverty, deprivation and unemployment. This can be achieved by providing local unemployed people with access to employment and assistance with sustaining employment, and raising levels of attainment through training opportunities facilitated by new commercial development taking place in the borough.
- 6.3 This Code thereby meets Council objectives. Additionally, it helps employers by improving the skills of the local workforce, making recruitment easier and less costly. Finally, the Code also helps to meet the aims and objectives of other key stakeholder organisations such as the Greater London Authority, the Skills Funding Agency (SFA), London Councils and the DWP job centre plus.

LOCAL PROCUREMENT CODE.

SECTION 106.

1. INTRODUCTION

The purpose of this code is to maximise the opportunities available to local businesses from property developments taking place in Islington both during and after the construction phase. The council will seek procurement agreements to benefit local businesses.

The code is also designed to support developers and contractors in fulfilling their commitments to the planning agreements by clarifying what is required from the outset. Although the wording is emphatic, the Council's regeneration department and in particular the dedicated Section106 Officer seek to work in partnership with contractors to assist them in meeting specifications. This document is in line with the objectives of other organizations such as the London Development Agency and Government Office for London.

2. CONSTRUCTION.

We will request that the developers meet with London Borough of Islington's Environment and Regeneration department at least 1 month in advance of tendering contracts to undertake the code specifics.

The developer is required to state clearly in tender documentation, prior to selecting the main contractor that bids need to take into account the following requirements relating to local benefit:

- 2.1 All contractors and sub-contractors appointed will be required to liaise with LBI Regeneration to ensure the successful and consistent application of agreed local benefits.
- 2.2 The main contractor will provide the Council with the estimated timing of their procurement programme and a schedule of works packages to be let.
- 2.2.1 The developer/ contractor will work with **Islington Business Enterprise Team (IBET)**, to: include local companies on their tender lists wherever possible and to achieve the procurement of construction contracts and goods and services from companies and organisations based in Islington towards a target of 10% of the total value of the construction contract.
- 2.3 LBI regeneration will provide a pre-screened directory of local companies in construction, fitting-out and furnishing trades in support of local procurement agreements.

Contracts with Sub Contractors.

LBI Regeneration require the developer/ main contractor to:

- 2.4 Include a written statement in their contracts with sub contractors encouraging them to liase with IBET to discuss, agree and implement the specifics. (A directory of local suppliers will be supplied to subcontractors by LBI regeneration).
- 2.5 Brief subcontractors on the requirements of the Local Procurement code and ensure cooperation is agreed as a prerequisite to accepting sub contract tenders.

3. MONITORING

Provide regular monitoring and information to the Council on a six to eight week basis, via e-mail, phone, fax or liaison meeting providing details of:

- 3.1 all local companies which are sent a tender enquiry or a tender invitation detailing the date and the works package or items concerned;
- 3.2 the outcome of all works packages tendered, where there is a local company on the tender list, stating whether the local company was unsuccessful, successful or declined to tender - LBI regeneration can help with this paperwork to assist in the monitoring process
- 3.3 the standards of service, product and delivery arising from Local procurement activities.

4. POST CONSTRUCTION

We will require the developers to encourage occupiers and their contractors to consider the applications to tender received from local firms for the provision of goods and services"

The developer and their agents shall use reasonable endeavours to provide opportunities for local businesses to bid/tender for the provision of estate management services.

The Council will assist the developer, occupier and their contractors in identifying suitable local companies to bid for contracts and to source local goods and services.



ISLINGTON



CODE OF PRACTICE FOR CONSTRUCTION SITES

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INTRODUCTION

We recognise that demolition and construction are an important part of our borough's development and improvement. However, in improving our working and living environment we must not ignore the effect of construction works on those in the surrounding neighbourhood.

As a result, we have developed this code of practice for the developer, contractors, community groups and commercial users, as guidance on good environmental practice.



We will provide information on the code early on in any planning application process and working to the code may become part of your planning conditions.

We plan to work with the developer and contractors in recognising and tackling the possible effects of construction. These can include air pollution, noise and vibration, traffic congestion, dust and contamination of land and water. By making contractors aware, at an early stage of our code of practice, they can put preventative measures in place from the start.

The code will apply to all types of building work: demolition, site preparation, excavation and tunnelling work, maintenance, construction and fit-outs. There will be some cases though, such as emergency work, where the guidelines in the code cannot be followed. Please contact the relevant council team as soon as possible in these cases. We also recognise that it may not be appropriate to apply the code in full for some smaller developments. In these cases we would expect you to follow the spirit of the code.

It will be the responsibility of the main contractor to make sure all other contractors and workers are aware of and follow the guidance in the code.

WORKING IN ACCORDANCE WITH
ISLINGTON COUNCIL'S CODE OF
CONSTRUCTION PRACTICE TO
ACHIEVE THE BEST ENVIRONMENTAL
PRACTICE IN THE MANAGEMENT OF
THIS DEVELOPMENT

Any enquiries ring the
24 hour Customer Hotline
on 0000 00 00 000 or contact
the Community Liason Officer



COMMUNITY RELATIONS

If you warn local residents and businesses about activities that are likely to take place on site, it will help reduce their concerns. If you have a point of contact for enquiries or complaints, it shows that you are taking responsibility for your actions and are aware of the surrounding community.

We will ask you to appoint a member of staff to work with the local residents, the business community and us. This liaison officer must be available at all times while the site is in use. You must display, on the site boundary, a contact board. This must include information such as the contractors' names, the name of the liaison officer, and a contact number and address for complaints.

You must also confirm that you are working to the standards shown in this code of practice and any registration to the considerate contractor scheme, if this is relevant. In the case of emergencies, you must also display a 24-hour contact number.

The liaison officer will be responsible for logging complaints and taking appropriate action.



LEGAL FRAMEWORK

This code is for guidance only. You should contact your own legal adviser if you are not sure of your legal obligations.

Where following the code of construction practice is a condition of your planning permission, any failure to keep to the code could result in us taking legal action. If the guidance is followed we should not need to serve statutory notices. However, if we do need to, we will use all available powers to enforce considerate working.

You may want to apply for prior consent for work on construction sites under section 61 of the Control of Pollution Act 1974. Here the code will help you make a successful application. You should contact the public protection division for advice and an information pack.

In terms of noise and controlling vibration, we expect you to use 'best practicable means' at all times. This means that you will have to use the most practical measures possible to control noise and vibration as defined in section 72 of the Control of Pollution Act 1974. You must also keep to recommendations and good practice as shown in British Standard 5228:1997, Noise and Vibration Control on Construction and Open Sites.

You are responsible for making sure that that all activities keep to all current codes of practice and other relevant documents.

At least two weeks before any work starts, you must send leaflets to the surrounding community, both residential and commercial, about the proposed work. This leaflet will need to include a start and likely finish date, and the contact name and number of the liaison officer. If works are to go beyond our standard working hours and we have agreed to this, you will need to send further leaflets giving details of the changes.



CONSIDERATE CONTRACTORS

We do not have our own considerate contractors scheme but we do encourage contractors to take part in the national scheme. For information on the scheme and how to apply go to considerate constructors at <http://www.ccscheme.org>.

Hours of working

Sites will be allowed to carry out noisy work
between the hours of: 8am - 6pm Monday to Friday
8am - 1pm Saturdays

Noisy works must not take place outside of these hours
(including Sundays or public and bank holidays).
As far as is reasonably practical you must keep to these hours.

We will only consider work outside these hours if it is necessary for access to roads or railway tracks or for reasons of safety and you must negotiate this with us. If you want to do this, please contact the public protection division at least seven days before you need access. You must provide us with details of the works and why you cannot carry it out during the main working hours. You must also give details of the measures you are taking to reduce noise levels, and the predicted noise levels at any specially sensitive buildings such as residential property, hospitals, schools and businesses.

We realise that some activities can take place on site without residents being disturbed. This work may be carried out outside our standard working hours if it does not disturb people at the nearest occupied property to where the work is taking place.

STANDARDS TO PROTECT THE ENVIRONMENT: THE SITE

Temporary Structures

If you have to erect scaffolds, hoardings, gantries and other temporary structures you will need to make an application to the streetworks team, (see useful contacts on page 18), whose details are at the back of this document.

All structures must have a clear path between them at least 1.2 to 1.8m wide. There should be no recesses for people to be able to hide in. All structures must be lit using bulkhead lights at 3m centres with a 110v supply and hoardings must be a minimum of 2.4m high.



No temporary structures should cover utilities covers (such as gas, water or electricity covers) or any street gullies. All gates on the site must open inwards and not onto the highway.

All temporary structures must be kept in a safe and well-maintained condition at all times, and must display an information board with the relevant contact details for the particular site.

We ask you to reuse hoardings in accordance with our sustainability policy (See page 14).





Cranes

If you need to use a crane or mobile access platform you will need a permit from our streetworks team. The streetworks team need 10 days notice before they can issue approval. If the permit is approved it may require you to work outside normal working hours for traffic reasons. If this is the case then you will need to contact our noise team at least one week before the start of works to get approval to vary the site working hours and inform local residents and businesses.

Road closures

If you require a temporary traffic order for a road closure you will need an application form six weeks prior to the proposed start date. This can be obtained from our streetworks team.

As with crane permits you may be requested to work outside normal working hours.

You should contact the public protection division at least seven days prior to the date of operation for approval and inform local residents and businesses.



Connections

If you require a new sewer connection you will need a licence from our streetworks team for the works to be carried out.

You may also require new supplies to the site from various utilities, such as gas, water and electricity. The sooner the streetworks team are informed of this information and proposed dates for the connections, the sooner these can be organised and any disruption reduced.

Nuisance

Construction works can cause unnecessary debris on the highway such as mud, spoil, concrete and dust. You must do everything you can to stop this happening. There should be facilities on your site for washing down vehicles, such as wheel washers or jet washers, and you must make sure lorries are covered when they leave the site. You must not wash mud, spoil, concrete and dust into street gullies.

Construction traffic

All vehicle movements to and from your site should be planned and agreed with us in advance and enforced with your contractors and drivers. There are roads designated within Islington for oversized or large vehicles. Vehicles must not park outside the site at any time of the day or night unless specifically agreed. Vehicles must enter the site immediately and are to leave the site in a safe and controlled manner. The area around the site or any road within Islington is not to be used as a "holding" area for deliveries.

There is to be no contractor parking on the highway at any time anywhere within Islington. We may require vehicles associated with the site to display stickers or markings, so they can be easily identified.

There are several lorry bans within Islington; these are areas, which have a 7.5T weight limit. Vehicles on or over this limit can load and unload within these areas but cannot drive through.

There are roads which have specific weight restrictions, due to weak structures, and vehicles over the limits must not go over them there are also height restrictions and again any vehicle over the height must not drive through.



Current restricted areas include

- the area bounded by City Road, Islington High Street, Essex Road, Balls Pond Road and Southgate Road (excluding New North Road)
- the area bounded by Pentonville Road, Islington High Street, Upper Street, Holloway Road, Camden Road and York Way (excluding Caledonian Road and Hillmarton Road)
- the area bounded by Dartmouth Park Hill, Highgate Hill, Holloway Road and Tufnell Park Road (excluding Junction Road)

Further areas are currently under construction or planned for implementation in future years. Developers should contact our council's traffic and engineering safety team for further information. (see useful contacts on page 18).

The following roads have bridges that have gross vehicle weight restrictions.

- | | |
|---------------------|----------------------------|
| ■ Wallace Road | ■ Wallace Road - Canonbury |
| ■ Highbury Grove | ■ Roman Way N7 |
| ■ King Henry's Walk | ■ Kingsbury Road |
| ■ Caledonian Road | ■ Clerkenwell Road |
| ■ Sussex Way | ■ Crouch Hill |
| ■ Wharf Road | ■ Willow Bridge Road |
| ■ Packington Street | |

The above list was correct at the time of publication, however developers should contact the bridges section of the council for up to date information on the current status of any bridges on their planned access route.

Routes for oversized vehicles are listed at Scotland Yard police headquarters.

When works are finished

We expect you to leave the area of highway that has been occupied by your works as you found it. If there is damage to the highway or gullies we will carry out the necessary repairs and you will be charged appropriately.



Air pollution and dust

We have declared the whole borough to be an 'air quality management area' and introduced measures to reduce air pollution levels whenever possible. Construction sites can be a major source of pollution if not managed and controlled properly and we expect all site operators working in Islington to achieve high standards of pollution and dust control.

The Building Research Establishment (BRE) has now published its 'Pollution Control Guides' available from HIS Rapidoc (BRE bookshop) at Willoughby Road, Bracknell, Berks, RG12 8DW (telephone 01344 404 407) or visit website www.brebookshop.com.

It is not possible to reproduce the BRE guide here, but the following points from the guide illustrate the sort of actions that should be considered at the pre-project planning, management, costing and operational stages.

Planning and management

- identifying construction activities likely to cause pollution problems along with methods to minimise them. Environmental risk assessments may need to be prepared for all activities identified as potentially generating pollution discharges, including identifying existing hazardous materials such as asbestos and polychlorinated biphenyl (PCB's)
- specify and select low emissions materials and fuel (low sulphur red diesel is now available) consider regular monitoring for particulate matter where there is a risk of dust affecting your neighbours together with appropriate remedial action

Site preparation, demolition, earthworks and landscaping

- use damping down sprays in dry weather, use wheel washers and regularly sweep around the site
- use screening and hoardings
- cover skips and loaded lorries
- use rubble chutes and handle materials carefully to avoid generating dust
- the use of concrete crushers on site will not generally be sanctioned in the city because of the potential to cause dust and nuisance to neighbours. Any crushing plant agreed will need to be authorised under the Environmental Protection Act 1990. Appropriate measures, such as enclosing the plant and built in water sprays will have to be used at all times

Haulage routes, vehicles and plant

- use the most modern and least polluting mechanical and electrical plant incorporating diesel exhaust particulate filters and oxidation catalysts wherever possible
- use ultra low sulphur gas oil or low sulphur 'red diesel' fuel in all qualifying vehicles and plant
- maintain plant engines and exhaust systems
- site plant exhausts must avoid public areas and air outlets on adjoining buildings
- provide hard standing at site entrance/exits with provision of wheel washing facilities and sweeping when appropriate

Materials handling, storage, stockpiles, spillage and disposal

- use silo or covered storage for cement and other powdered materials
- use sheeting for friable boards and building blocks
- use bundled areas (secure and impervious areas) for diesel fuel or chemicals
- undertake regular site inspection for spillage of cement and other powders
- fabrication processes and internal and external finishes
- cutting materials for building should be carried out offsite whenever possible
- use cutting and drilling plant with water sprays or dust extraction/collection wherever possible
- install screens round cutting areas and use water sprays near rear public areas
- use shears and guillotines where possible to replace disc cutters used on re-bar and decking etc
- carefully site the tar burners and asphalt burners; control their temperature and make sure the boiler lid stays in place whenever it is used
- you must not have bonfires on the site for any purpose
- make sure all equipment is properly maintained and switched off when not in use to reduce fumes.
- do not over rev equipment and vehicles when in use
- you must take precautions to control fumes from stored fuel oils
- consider carrying out regular monitoring where there is evidence of fumes and dust becoming airborne. Have contingency plans in place in cases of accidental release

For further information about air quality please contact our pollution team.

CONTAMINATED LAND

PPS23, 'Planning Policy and Guidance: Planning and Pollution Control' (June 2004) highlights the need to be aware of land contamination issues when considering planning applications. If you believe land may be contaminated, you are responsible for investigating the land to see what measures are needed to make sure it is safe and suitable for the purpose proposed.



In these cases it is your responsibility to prove to us that you have carried out a thorough risk assessment associated with land contamination. These assessments should be based on 'the suitable for use' approach and identify 'pollutant links'. This includes deciding where sources of contamination may be and identifying any risks to people, animals, plants or buildings on a site-by-site basis. You should carry out any investigation in consultation with our pollution team (see useful contacts on page 18). You should make recommendations based on this risk assessment and give them to us. If you believe work is necessary to deal with the contamination you should send us a full remediation statement for our approval.

Below we have listed some of the appropriate guidance:

- Construction Industry Research and Information Association, Remedial Treatment for Contaminated Land, volume 111 (Investigation and Assessment), Special Publication 103, CIRA (London), 1995
- British Standards Institution BS5930: 1999 Code of Practice for Site Investigation, BSI (London)
- British Standards Institution BS10175: 2001 Investigation of Potentially Contaminated Sites, Code of Practice, BSI (London)
- Department for Environment, Food and Rural Affairs and the Environment Agency. (2002) The Contaminated Land Reports: CLR 7-10. DEFRA 2002

WASTE DISPOSAL AND THE 'DUTY OF CARE'

In some cases the measure you take may involve digging up and disposing of soil. It is important that you get a licence for this activity. Section 34 of the Environmental Protection Act 1990 places a 'duty of care' on all those involved in dealing with waste, from creating it to disposing of it.

You must dispose of the material to an appropriately licensed or exempt waste-management site. You can get details about appropriate licensed sites from the Environment Agency (see useful contacts on page 18).

The requirements of the Waste Management Licence Regulations 1994 and associated code of practice mean that you must describe the waste in enough detail to make sure it is managed correctly.



Asbestos

Contractors are expected to carry out risk assessments for the works that they are to undertake. These should consider the presence of asbestos and the associated level of risk, together with the development of safe working practices.

A licensed asbestos-removal contractor should carry out work involving treating or removing asbestos products. You must keep to current statutory requirements and Health and Safety Executive (HSE) approved codes of practice and guidance.

A licensed contractor must deal with asbestos waste in line with Environment Agency requirements.

The following legislation applies.

- The Control of Pollution (Special waste) Regulations 1996
- Health and Safety at Work Act 1974
- The Asbestos Licensing Regulations 1983 and amendments

Noise

You may want to apply for 'prior consent for work on construction sites' under section 61 of the Control of Pollution Act 1974. Here the code will be most helpful in making a successful application. You should contact the public protection division for advice and an information pack (see useful contacts on page 18).

British Standard 5228 gives guidance on calculating noise levels from construction works and assessing the likely affects it will have on neighbouring residential premises; in particular if it is likely to generate complaints. We expect all contractors working onsite to keep to the guidance in British Standards 5228 (Parts 1, 2 and 4). This means that you will have to use the most practical measures possible to control noise, vibration and dust.



We do not have a noise standard for the borough; instead, we offer the following as a guide.

When you are planning your construction work you should carry out a background noise survey before work begins on the site. This should identify surrounding residential properties and the nearest property where construction noise could cause a problem. Average noise levels should be measured over 1 hour and 10 hours between 8am and 6pm.

If the predicted values are higher than the measured corresponding background values by 5dB(A) or less, you can consider that the effect of construction noise will not be significant.

If the predicted values are higher than the measured corresponding background values by between 5dB(A) and 10dB(A), you can consider the effect of the construction noise as acceptable, but you should still try to reduce it.

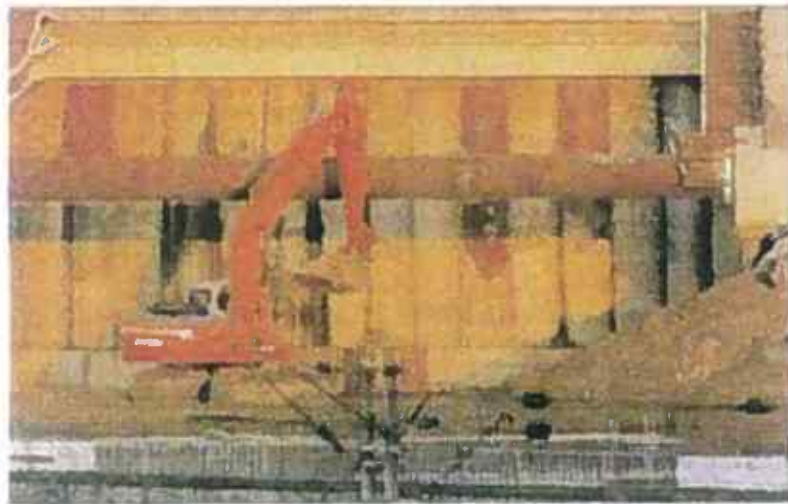
If the predicted values are higher than 10dB(A) above background, the effect is significant and you must review the equipment and methods you are using.

Vibration

With vibration, we have adopted the following levels in terms of temporary or short-term effects. We measure these as peak particle velocity (PPV).

To protect occupants, users and building structures from harm and damage, the following levels of vibration from all sources, during demolition and construction are not to be exceeded.

- 3mm/s PPV (3 millimetres per second peak particle velocity) for residential accommodation, listed buildings, offices in A2 use and those properties in a poor state of repair
- 5 PPV (millimetres per second peak particle velocity) for non-vibration-sensitive buildings



More stringent criteria may be necessary for commercial premises that are vibration sensitive, use such as hospitals, photographic studios and educational premises.

If construction vibration is likely to be continuous, it may be a better idea to set limits in terms of vibration dose value (VDV). Guidance can be found in British Standard 6472: 1992 'Evaluation of human exposure to vibration in buildings (1 Hz to 80 Hz)'.

Below, we have given some examples of methods to reduce, as far as possible, noise and vibration created by construction work. You can get more guidance from British Standard 5228:1997.

You should choose machinery, which has the quietest noise output available for the activity you are carrying out. If the activity is going to be noisy, you should consider other methods of working. You must make sure that people working onsite are not exposed to noise levels higher than those stated in the Noise at Work Regulations 1989.

Machinery and vehicles must be fitted with effective silencers wherever available, and kept in good working order. You should keep acoustic covers closed while they are being used. Equipment must be operated so it produces as little noise as possible. You must shutdown equipment when it is not in use.

Machinery must be based as far away from noise-sensitive properties as reasonably possible. You should also use barriers and enclosures if any activities are likely to be noisy at sensitive premises. You can find advice for constructing these structures in British Standard 5228 part 1 1997 (Appendix B3/ B4). You should also position port-a-cabins and stores as onsite barriers between noisy work and sensitive receivers. Hoardings to reduce noise breakout from activities should enclose sites. Gates and access points should not face onto any especially sensitive buildings such as residential property, hospitals, schools and businesses. Gates and access points should be kept open for as little time as possible.

All deliveries to the site and removing of waste must take place during our standard working hours (8am-6pm Monday to Friday and 8am-1pm Saturdays). Vehicles must not queue on the public highway. Wherever practical you should provide lorry-holding areas on the site.

If you are carrying out piling (driving steel or concrete piles into the ground for foundations), you must use methods, which will reduce the generation of noise and vibration. You should consider other methods for impact-driven piles, such as continuous flight auger-injected piles or auger-bored piles (where piles are drilled rather than hammered into the ground). You can get further advice on different sorts of piling from BS 5228 1992 part 4.

Fixed items of construction equipment should be electrically powered rather than diesel or petrol driven. If this is not possible, you should provide other protection against noise such as baffles, covers or enclosures.

You need to allow enough time for lengthy concrete pours. If overruns are likely, you should contact the council's noise team (see useful contacts on page 18).

Where possible, you should use equipment that breaks concrete by crushing it rather than drilling through it, as this produces less noise.

You should tell everyone onsite to reduce noise as far as possible both to protect the community and their own health and safety. You must not allow antisocial behaviour such as shouting, using radios and swearing.

Water

You must dispose of site run-off and wastewater produced as a result of site activities, in line with the requirements of the Environment Agency and Thames Water Utilities Ltd. You must have enough protection in place to make sure any dangerous materials used onsite do not come into contact with watercourses, groundwater or wastewater.

You should create a suitable drainage system onsite for the construction phase. This system should aim to minimise the quantity and improve the quality of water before it leaves a building. This will reduce flooding and pollution. You should investigate ways to reuse water that is usually wasted during construction. For example, you should collect, store and re-use water that collects on site for lower-grade uses.

For more advice, see sections 6.8, 6.9 and 6.10 of our Special Planning Guidance Green Construction document or contact our Environmental Policy Co-ordinator in the planning policy section (see useful contacts on page 18).

Pest Control

Before you start work onsite, you will need to put down bait for pests, such as rats. If an infestation occurs you will have to ensure that a specialist pest control company treats it. You need to take particular care when baiting land next to railway land or nature reserves that bait is not taken up by wildlife highlighted in our Biodiversity Action Plan.

You must also take preventative measures, such as, stopping and sealing all disused drains and sewers. You must not allow rubbish or materials that can easily rot onsite. Any catering onsite must pay strict attention to how food is delivered, handled, stored and disposed of.

STANDARDS TO PROTECT THE ENVIRONMENT – WASTE DISPOSAL, RECYCLING AND SUSTAINABILITY

Recycling

We are keen to promote the positive use of surplus or waste materials in reducing the effect on the environment and the costs of disposing of them. As a result, if possible, you should attempt to reuse any materials produced from demolition or construction work in the planned development.



Waste

You should aim to reduce the quantity of waste produced during demolition and construction by following the waste management priorities below:



You should develop a demolition waste audit of the development site before you demolish anything. You should then salvage any materials from the site if you can reuse them including:

- brick, concrete, hardcore
- subsoil, topsoil
- timber, metal, steel frames, plastics
- infrastructure – e.g. granite kerbs, signs

If possible, you should reuse these for lower-quality uses for example, access roads and footpaths, or as a concrete aggregate.

You should also develop a construction waste management plan, which tackles:

- waste arising through the development process
- ways of recycling waste
- ways of reusing and recycling waste

You can identify markets to sell or donate materials to, such as the British Research Establishment Materials Information Exchange, Waste Alert North London (the council is a member) and the Waste Exchange Listing Service (see www.click2waste.com).

For more advice, please refer to section 5 of our Special Planning Guidance Green Construction document on waste or contact our Environmental Policy Co-ordinator in the planning policy section (see useful contacts on page 18).

Protection of Trees

Before work starts, you must carry out a tree survey within the site. You should include those trees on adjoining land that are within a distance from the site boundary, equivalent to half the height of the tree. The survey should give the species, age, canopy spread and condition of the tree clump or individual tree, as well as the ground levels at the bottom of the trunks. You must send this together with any work proposed to the trees, to our planning department to see if any are protected by tree

preservation orders or are preserved because they are in a conservation area or are trees which may be worthy of protection.

If any tree is cut down without agreement or dies as a result of activity on the site, you must provide a replacement. You should agree these beforehand with our Tree Preservation Officer. Every tree you plant should be replaced until successfully established.



During work, you must make sure that you reduce, as far as possible, any negative effects on mature trees, for example:

- do not use trees for fixtures or fittings
- do not store materials against trunks or under the spread of the tree
- do not allow flames within 5 metres of the outer branches of the crown
- do not allow the soil level within the canopy spread of any trees to change
- if trenches are needed for services, these should be dug by hand beyond the edge of the tree canopy. You must not destroy roots over 2.5cm in length as this may damage the tree.

You can get extra advice from British Standards 3998 and our Tree Preservation Officer in the greenspace and leisure division (see useful contacts on page 18).



Ecology

Certain sites in the borough are home to valuable wildlife. These include railway land and nature reserves. Please refer to our Biodiversity Action Plan that will help you identify these sites at an early stage. These sites can be easily disturbed so you should get advice from our Nature Conservation Officer in our Greenspace team (see useful contacts on page 18).



Under the Wildlife and Countryside Act 1982, the law protects all species of bat and their roosts. If you believe that bats may be present in areas likely to be affected by the work, you must stop all work and contact our Conservation Officer in greenspace (see useful contacts on page 18).

Archaeology

If you know that a site has an archaeological importance, you will need an archaeological investigation as either a desktop study or a programme of on-site investigation or both. This will be attached as a condition to the planning permission relating to the development, or carried out before you take possession of the site. You should let know the Greater London Archaeological Service (based at English Heritage) about any archaeological matters (see useful contacts on page 18).

If you discover human remains, or possible human remains, you must immediately contact the police who will let the Home Office know. You should also contact the Greater London Archaeological Service if this is relevant.

USEFUL CONTACTS

Noise and Pollution Teams

Public Protection Division
222 Upper Street, London N1 1XR
T 020 7527 3258
E noise.issues@islington.gov.uk

Streetworks Team / Traffic & Engineering team

Street Management Division
Municipal Offices
222 Upper Street
London N1 1YA
T 020 7527 2000 (Street Scene)

Parking Services

Street Management Division
T 020 7527 1338
(for information on parking permits
and location of parking shops) or

Contact Islington

T 020 7527 2000

Environmental Policy Co-ordinator

Planning Policy Section
Municipal Offices
222 Upper Street
London N1 1YA
T 020 7527 2001

Considerate Contractors Scheme

PO Box 75
Great Amwell, Ware
SG12 9UY
T 01992 550050

English Heritage

Greater London Archaeological Advisory
Service
23 Saville Row
London, W1S 2ET
T 020 7973 3735

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Our Ref: DRW/106881 - new

The Mayor and Burgesses of the London Borough of Islington
Town Hall,
Upper Street,
London,
N1 2UD

[] 2014

Dear Sirs

Obidos Properties Limited (the "Company")

We have been asked to provide a legal opinion in connection with the entry into by the Company of a Planning Obligation by Deed under Section 106 of the Town and Country Planning Act 1990 (the "**Agreement**") between (1) The Mayor and Burgesses of the London Borough of Islington; and (2) the Company in relation to Royal London House, 22-25 Finsbury Square, London, EC2A 1DX.

References herein to "Document" is a reference to the Agreement.

In giving this opinion we have examined and relied on the following documents:

- (a) A copy of the Certificate of Incorporation of the Company dated 20th July 2010.
- (b) A copy of the Memorandum and Articles of Association of the Company.
- (c) Certified copy of the minutes of meetings of the Directors of the Company held on the [].
- (d) A copy of the Document executed by the Company.

We have made such legal and factual examinations and enquiries, including an examination of originals or copies or otherwise identified to our satisfaction of such corporate records, documents, certificates and papers as we have deemed necessary in order to enable us to render the opinions expressed herein. We have also relied on information revealed from a search conducted on the Company at the Registry of Companies in Jersey today (the "**Company Search**") and the response given in relation to an enquiry of the Viscount's Department in Jersey today (the "**Désastre Enquiry**") as to the existence of a Jersey désastre (bankruptcy) declaration in respect of the Company.

We have placed reliance upon that information contained in a certificate of incumbency dated [] given by a Director of the Company insofar as concerns the matters referred to therein (the "**Directors' Certificate**"). A copy of the Directors' Certificate is appended hereto.

In rendering this opinion, we have assumed, without independently verifying such assumptions:

- (i) the completeness and the conformity to original documents of all copies submitted to us;
- (ii) the Document and its obligations will be binding and enforceable under their governing law (other than where this is Jersey law);
- (iii) the due compliance with all matters of law by which the Document is governed or obligations performed other than where this is the law of the Island of Jersey;
- (iv) the genuineness of all signatures and seals on all documents and certificates submitted to us as executed originals or copies of the same. However, we have no reason to believe that the signatures or the seals (if any) on the Document are not genuine;
- (v) where reliance is placed on draft documentation, all documents will be executed in all material respects in the form of the draft documentation provided;
- (vi) where incomplete documents or signature pages only have been supplied to us for the purposes of issuing this opinion, the original documents have been duly completed and correspond in all material respects with the last version of the relevant documents received by us prior to giving this opinion;
- (vii) there are no documents or arrangements in place between the parties to the transactions which materially affect, amend or vary the terms of such transactions as disclosed by the Document;
- (viii) that each of the parties (other than the Company as a matter of Jersey law):
 - (i) has capacity and power;
 - (ii) has fulfilled all internal authorisation procedures and (other than as a matter of Jersey law) has obtained all applicable authorities; and
 - (iii) has obtained all necessary agreements, consents, licences or qualifications (whether as a matter of any law or regulation applicable to it or as a matter of any contract binding upon it),
to enable it to execute, deliver and perform its respective obligations under the Document (and such execution, delivery and performance has occurred or will occur) and that the Document will be binding upon all such parties;
- (ix) that the Document has been or will be entered into, and each of the transactions referred to therein is carried out by each of the parties thereto (and the officers thereof) in good faith and in fulfilment of any applicable fiduciary duty, for the purpose of carrying on their respective businesses, for the benefit of each of them respectively, for commercial purposes and on arm's length commercial terms;
- (x) that the Company is not insolvent or unable to pay its debts as they fall due as a result of

its entry into the transactions pursuant to the Document;

- (xi) that (save to the extent disclosed in the Document) the Company is acting as principal on its own behalf and not on behalf of any other person or in any other capacity;
- (xii) the information disclosed by the Company Search and the Désastre Enquiry was accurate and complete when made and/or obtained and would remain the same if such search and enquiries were repeated at the time of issue of this opinion, that all information required to be filed with or delivered to the Registry of Companies in Jersey and the désastre section of the Viscount's Department in Jersey in respect of the Company had been so filed or delivered at the time of such search and enquiries, and that such search and enquiries did not fail to disclose any information which had been filed with or delivered to the relevant department but had not been processed at the time when such search was conducted and such enquiries were made.

Our opinion is limited to the law of the Island of Jersey such as the same is in force at the date hereof. We express no opinion as to the law of any other jurisdiction.

Based on the foregoing, and subject to the following qualifications, we are of the opinion that:

1. The Company is a company duly organised and validly existing in good standing under the laws of the Island of Jersey and no liquidator or similar officer has been appointed to wind up the affairs of the Company and to the best of our knowledge no steps are being taken to so appoint a receiver or liquidator. In this paragraph "good standing" means only that it is not apparent from the face of the documents inspected during the search referred to above that the Company has failed to comply with any mandatory filing requirements of Jersey law.
2. The Company has all necessary power and authority to enter into the Document.
3. The Company has taken all necessary corporate action to authorise the execution of and performance of its obligations under the Document and the same has been properly executed on behalf of the Company.
4. The Document constitutes the legal, valid and binding obligations of the Company and the same are enforceable against it in accordance with their terms.
5. The obligations of the Company under the Document rank or when signed and delivered will rank at least pari passu with all other of its present and future unsecured and unsubordinated indebtedness and obligations (with the exception of any mandatorily preferred by law and not by contract).
6. No consent, permission, authorisation, order or approval of any governmental authority under the law of Jersey is necessary in connection with the execution and delivery by the Company of the Document or in connection with the performance by the Company of its obligations under the Document in Jersey.

7. The execution and delivery of the Document will not result in a violation of or be in conflict with, or constitute a default under (i) any term or provision of the Memorandum and Articles of Association of the Company, (ii) any law, statute or governmental regulation of Jersey, or (iii) to the best of our knowledge any judgement, decree or order.
8. On the basis of the results of the Company Search and the Désastre Enquiry and the information provided to us in the Directors' Certificate, there is no action, suit, proceeding, arbitration or investigation pending or threatened against the Company which places or may place in question the validity or enforceability of the Document or which would materially affect the performance of any of the obligations of the Company thereunder.
9. There are no registration taxes or other taxes or duties of any kind payable in connection with the entry into of the Document, the performance of the obligations under the Document or the enforcement of the Document in Jersey.
10. No deduction or withholding (whether on account of any present or future tax, levy, impost, duty, charge, fee, deduction or withholding of any nature whatever called, by whomsoever levied, collected, withheld or assessed or otherwise) will be required in Jersey from any payment by the Company under the Document, provided that no Jersey source income arises under the Document and that no such payments are made from or to accounts in Jersey.
11. The choice of English law to govern the Document is a valid choice of law and would be upheld by the courts of Jersey.
12. Any judgment obtained in a superior court of England and Wales would be recognised and enforceable in Jersey subject to the terms of the Judgments (Reciprocal Enforcement) (Jersey) Law 1960.
13. The Company is subject to the jurisdiction of the Courts of Jersey and is not entitled to claim any immunity from suit or execution of any judgment on the ground of sovereignty or otherwise.
14. There are no exchange control regulations in Jersey.

The qualifications hereinbefore referred are:

- (a) The term "enforceable" as used herein means that the obligations contained in the Document are of a type which the Jersey Courts enforce but it does not mean that they will necessarily be enforced in all circumstances in accordance with their terms. In particular:-
 - (i) enforcement may be affected or limited by bankruptcy, insolvency, liquidation, reorganisation and other laws and principles of general application relating to or affecting the rights of creditors;
 - (ii) enforcement may be limited by general principles of equity;
 - (iii) claims may be barred by prescription;

- (iv) claims may be subject to defences of set-off or counterclaim;
 - (v) enforcement of obligations may be invalidated by reason of fraud, duress, misrepresentation, or undue influence; and
 - (vi) matters of procedure upon enforcement of the Document will be governed by and determined in accordance with the *lex fori*.
- (b) The registration by the Jersey Court of a judgment of a superior court of England and Wales, Scotland, Northern Ireland, the Isle of Man and Guernsey in accordance with the provisions of the Judgments (Reciprocal Enforcement) (Jersey) Law 1960 will, if expressed in a currency other than the currency of Jersey, be registered as if it were a judgment for such sum in the currency of Jersey as, on the basis of the rate of exchange prevailing on the date of the judgment of the said superior court, is equivalent to the sum so payable.
- (c) The registration of a judgment under the Judgments (Reciprocal Enforcements) (Jersey) Law 1960 Law (the "**1960 Law**") may, and must in certain circumstances, be set aside. Article 6 of the 1960 Law provides that registration of a judgment shall be set aside if the Royal Court of Jersey is satisfied that:
- (a) the judgment is not a judgment to which the 1960 Law applies or was registered in contravention of the provisions of the 1960 Law;
 - (b) the courts of the country of the original court had no jurisdiction in the circumstances of the case;
 - (c) the judgment debtor, being the defendant in the proceedings in the original court, did not (notwithstanding that process may have been duly served on him in accordance with the law of the country of the original court) receive notice of those proceedings in sufficient time to enable him to defend the proceedings and did not appear;
 - (d) the judgment was obtained by fraud;
 - (e) the enforcement of the judgment would be contrary to public policy in Jersey; or
 - (f) the rights under the judgment are not vested in the person by whom the application for registration was made.

Article 6 of the 1960 Law further provides that registration of a judgment may be set aside if the Royal Court of Jersey is satisfied that the matter in dispute in the proceedings in the original court had previously to the date of the judgment in the original court been the subject of a final and conclusive judgment by a court having jurisdiction in the matter. Article 7 of the 1960 Law provides that the Royal Court of Jersey may set aside registration where it is satisfied either that an appeal is pending or that the applicant is entitled and intends to appeal against the judgment.

- (d) The choice of the laws expressed to govern the Document would not be recognised or upheld if the choice of law was not *bona fide* and legal or if there were reasons for avoiding the choice of law on the grounds of public policy. The choice of such laws would not be upheld, for example, if it was made with the intention of evading the law of the jurisdiction with which the contract had its most substantial connection and which law in the absence of such choice would have invalidated the contract or been inconsistent therewith. We are not aware of any reasons for avoiding the choice of law selected in the Document on the grounds of public policy.
- (e) The Royal Court of Jersey has power to stay an action where it is shown that there is some other forum, having competent jurisdiction, which is more appropriate for the trial of the action and where staying the action is not inconsistent with the rules of the Royal Court.
- (f) As a matter of Jersey law, the general rule is that a power of attorney is automatically revoked by the death, incapacity or bankruptcy of the donor or, if the donor is a body corporate, by its bankruptcy or dissolution.

However, a power of attorney which is expressed to be irrevocable and which is given for the purpose of facilitating the exercise of powers of a secured party under the 1983 Law or of powers given pursuant to a security agreement or pursuant to or in connection with or for the purpose of or ancillary to security governed by foreign law will not, so long as the relevant security interest or foreign security is effective, be revoked by the donor without the donee's consent, or be revoked by the death, incapacity or bankruptcy of the donor of the power or, if the donor is a body corporate, by its bankruptcy or dissolution.

- (g) We offer no opinion in relation to any representation or warranty made or given by the Company in the Document save to the extent that any such representation or warranty coincides with any opinion expressed herein. No enquiry or assessment has been made by us as to whether the Company will be in a position to fulfil its obligations under the Document.
- (h) We offer no opinion as to whether the acceptance, execution or performance of the obligations of the Company under the Document will result in the breach of or infringe any other agreement, deed or document entered into by or binding on the Company save for those items listed in opinion 7 hereof.
- (i) We have not advised the Company or its respective directors in respect of any of the transactions envisaged or effected by the Document.
- (j) A Jersey company may be immune from the jurisdiction of the Jersey courts under the provisions of The State Immunity Act 1978 (the "**1978 Act**") (as extended to Jersey by the State Immunity (Jersey) Order 1985) where, in relation to any foreign or commonwealth State other than the United Kingdom (the "**State**"), the proceedings relate to anything done by it in the exercise of sovereign authority of:
 - (i) the sovereign or other head of that State in his public capacity;
 - (ii) the government of that State; or

(iii) any department of that government,

and the circumstances are such that a State would have been so immune under the 1978 Act.

- (k) Provisions for default interest to be paid on overdue amounts may amount to an excessive penalty under the law of Jersey and such interest may therefore not be recoverable. In addition, within three years ending with the declaration en désastre (being the bankruptcy) of the Company or the commencement of a creditors' winding up of the Company, the Viscount (in the case of a désastre) or the liquidator of the Company (in the case of a creditors' winding up) may apply to the Royal Court for, inter alia, an order setting aside the whole or any part of a transaction entered into by the Company to the extent that such transaction amounts to an extortionate credit transaction. A transaction is extortionate if, having regard to the risk accepted by the person providing the credit, the terms are or were such as to require grossly exorbitant payments (whether unconditionally or in certain contingencies) in relation to the provision of credit, or it otherwise contravened ordinary principles of fair dealing. There is as yet no authority on what is required for a transaction to meet these tests. There is a presumption that unless the contrary is proved, a transaction with respect to which an application is made is or was extortionate.
- (l) Provisions as to severability contained in the Document may not be binding and the question of whether or not provisions relating to invalidity may be severed from other provisions in order to save such other provisions would be determined by the Courts of Jersey at their discretion.
- (m) To the extent that:
- (i) any restrictions imposed by the Document on the entitlement of the parties thereto (or any other person) to sue for the recovery of any monies owing to them; and/or
 - (ii) the Document's provisions as to allocation of payments in specified orders of priority and/or contractual subordination;

may, in either case, be held to be an attempt to oust the jurisdiction of the court and/or to avoid or modify the impact of applicable insolvency laws, such provisions may be contrary to public policy in Jersey. However, insofar as the Document contains close-out netting provisions, set-off provisions, contractual subordination provisions or non-petition provisions such provisions are enforceable pursuant to the Bankruptcy (Netting, Contractual Subordination and Non Petition Provisions) (Jersey) Law 2005 to the extent that such provisions in the Document fall within that Law.

- (n) In the case of the insolvency of a party to the Document (where that insolvency is one in respect of which the Jersey Courts have jurisdiction pursuant to the Bankruptcy (Désastre) (Jersey) Law 1990, as amended), the issue of set-off will be determined as follows:
- (i) where the Document does not establish procedures for the netting of obligations between the parties thereunder, the issue of set-off will be determined in

accordance with Article 34 of the Bankruptcy (Désastre) (Jersey) Law 1990, as amended, which provides that "where there have been mutual credits, mutual debts or other mutual dealings between the debtor and a creditor, an account shall be taken of what is due from the one party to the other as at the date of the declaration in respect of such mutual dealings, and the sum due from one party shall be set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively"; or

- (ii) where the Document establishes procedures for the netting of obligations between the parties thereunder, the issue of set-off will be determined in accordance with the relevant terms of the Document pursuant to the Bankruptcy (Netting, Contractual Subordination and Non-Petition Provisions) (Jersey) Law 2005.

In the event of a creditors' winding up of a Jersey company under the Companies (Jersey) Law 1991, as amended, the same rules as to setting off debts apply.

- (o) Nothing in this opinion is to be taken as indicating that the remedies of specific performance or injunction would be available in respect of any of the obligations of the parties to the Document.
- (p) A director of a Jersey company who has, directly or indirectly, an interest in a transaction entered into or to be entered into by the company or by a subsidiary of the company which to a material extent conflicts or may conflict with the interests of the company and of which he is aware is required to disclose to the company the nature and extent of his interest. Such disclosure is required to be made at the first meeting of the directors at which the transaction is considered after the director concerned becomes aware of the circumstances giving rise to his duty to make it or, if for any reason he fails to do so, as soon as reasonably practical after that meeting, by notice in writing delivered to the company secretary. Where a director fails to disclose an interest, the company, or a member of the company, may apply to court for an order setting aside the transaction concerned and directing that the director account to the company for any profit or gain realised and the court may so order or make such other order as it thinks fit.
- (q) The concepts of a receiver and an administrator are not known to Jersey law. Accordingly, it is not clear how the Jersey courts would regard a receiver or an administrator, whose appointments are provided for by the Document. However, the Bankruptcy (Désastre) (Jersey) Law, 1990 does give power to the Royal Court to assist the courts of such countries and territories as may be prescribed in all matters relating to the insolvency of any person to the extent that it thinks fit.
- (r) Any provision of the Document to the effect that calculations and/or certifications will be conclusive and binding will not be effective if such calculations and/or certifications are fraudulent or erroneous on their face and will not necessarily prevent judicial enquiry into the merits of any claim by the relevant party relative to any such calculation or certification.
- (s) Where any party to the Document is vested with a discretion or may determine a matter in its opinion Jersey Law may require that such discretion is exercised reasonably or that such opinion is based on reasonable grounds.

- (t) We express no view on any provision in the Document requiring written amendments and waivers of any provisions of the Document in so far as it suggests that oral or other modifications, amendments or waivers could not be effectively agreed upon or granted by or between the parties or implied by the course of conduct of the parties.
- (u) In order to maintain the Company in good standing under the laws of the Island of Jersey an annual fee must be paid and an annual return made to the Financial Services Commission in Jersey.
- (v) The information made available through the Company Search is limited. Details regarding the shares of a company are only given as at the first day of January in the relevant year. There is no requirement to file at the Jersey Financial Services Commission information regarding the secretary of a company, or regarding mortgages or charges created by a company or security interests created over the shares or assets of a company. However, charges created over immovable property situate in Jersey are registered with the Royal Court and may be ascertained by conducting a separate search at the Public Registry in Jersey.

Only public companies, and subsidiaries thereof, are required to file details of their directors, but a company search only reveals such details as at the date of the annual returns submitted by such companies. Only public companies are required to file copies of their accounts together with the auditors' reports thereon.

Time periods are allowed for the filing of documents with the Jersey Financial Services Commission. Accordingly, for example, a company search does not determine conclusively whether or not an order has been made or a resolution has been passed for the winding up of a company or for the appointment of a liquidator or other person to control the assets of a company, as notice of such matters might not be filed immediately and, once filed, might not appear immediately on a company's public file. Moreover, a company search carried out in Jersey is unlikely to reveal any information as to any such procedure initiated in any other jurisdiction.

- (w) The Désastre Enquiry may not determine conclusively whether or not a désastre declaration has been made. It should be noted that there is no formal register of désastre declarations.
- (x) The Royal Court of Jersey has jurisdiction in any action against a company incorporated in Jersey but may strike out any proceedings under inherent power or by virtue of Rule 6/13 of the Royal Court Rules 2004 and may stay or strike out any proceedings on such grounds as *forum non conveniens* or *lis alibi pendens*.
- (y) A guarantor which is a Jersey person or whose guarantee is sued upon before the Jersey courts or if the guarantee is governed by Jersey law may be entitled to claim "*droit de discussion*" that is, that the assets of the principal obligee whose obligations are guaranteed must be exhausted before any claim against the guarantor under the guarantee may proceed, unless the "*droit de discussion*" has been waived.

- (z) A co-guarantor or co-indemnitor which is a Jersey person or whose guarantee or indemnity to a third party is sued upon before the Jersey courts or whose guarantee or indemnity is governed by Jersey law, may claim (unless waived) "*droit de division*" so as to require the division of the guarantor's or indemnitor's liabilities in just proportions between each of the co-guarantors or co-indemnitors and regardless of whether each of such co-guarantors or co-indemnitors is able to satisfy the proportion of the debt attributed to such co-guarantor or co-indemnitor.
- (aa) The decision by the Company to transact with third parties must have been taken in good faith and in the best interests of the Company. If the third party has actual or constructive notice that the Company has entered into a transaction without sufficient cause or commercial benefit for the Company with that third party, such circumstances may lead to the transaction being set aside by the Royal Court of Jersey (in an action brought, for instance, by a creditor, shareholder or liquidator of the Company) on the basis that it represents a breach of the duties of the Directors of the Company to act in good faith and in their best interests.
- (bb) Jersey is not subject to the EU Savings Tax Directive. However, in keeping with Jersey's policy of constructive international engagement and in line with steps taken by other relevant third countries, the States of Jersey introduced with effect from 1 July, 2005 a retention tax system in respect of payments of interest, or other similar income, made to an individual beneficial owner resident in an EU Member State by a paying agent established in Jersey (the terms "beneficial owner" and "paying agent" are defined in the EU Savings Tax Directive). The retention tax system will apply for a transitional period prior to the implementation of a system of automatic communication to EU Member States of information regarding such payments. The transitional period will end only after all EU Member States apply automatic exchange of information and the EU Member States unanimously agree that the United States of America has committed to exchange of information upon request. During this transitional period, such an individual beneficial owner resident in an EU Member State is entitled to request a paying agent not to retain tax from such payments but instead to apply a system by which the details of such payments are communicated to the tax authorities of the EU Member State in which the beneficial owner is resident.

The retention tax system and the disclosure arrangements are implemented by means of bilateral agreements with each of the EU Member States, the Taxation (Agreements with European Union Member States) (Jersey) Regulations 2005 and Guidance Notes issued by the Policy & Resources Committee of the States of Jersey.

- (cc) Where a taxable supply made to a Company by a person registered as a taxable person under the Goods and Services Tax (Jersey) Law 2007, as amended (the "**GST Law**") has a value of less than £1,000, that Company will be required to pay goods and services tax in Jersey (currently at 5% of the value of the supply) on such supply if the supply is made under the retail scheme established under Article 43 of the GST Law and the supplier elects to charge goods and services tax on such supply. The relevant Company may be entitled to a refund of such goods and services tax, subject to compliance with the relevant provisions of the GST Law.

Where a taxable supply made to a Company by a person registered as a taxable person under the GST Law is a supply of goods for onward re-supply of such goods in Jersey in the same state in which they existed when supplied to that Company, the Company will be required to pay goods and services tax in Jersey (currently at 5% of the value of the supply) on such supply.

(dd) On the application of a liquidator (in a winding up) or of the Viscount (in a désastre) the Jersey Courts may make such an order as it thinks fit for restoring the position to what it would have been if the Company had not entered into either of the following types of transactions:

- (a) a transaction with any person at an undervalue at any time in the period of five years ending with the date of the commencement of the winding up of the Company or the declaration that the property of the Company is "en désastre" (a **"Transaction at an Undervalue"**); or
- (b) a transaction under which a preference is given at any time within the period of one year ending with the date of the commencement of the winding up of the Company or the declaration that the property of the Company is "en désastre" (a **"Preference"**);

provided that the Company was insolvent when it entered into the transaction or became insolvent as a result of the transaction, save for where the transaction was entered into with a person connected with the Company or with an associate of the Company, in which case, unless the relevant person or associate can prove that the Company was not insolvent or did not become insolvent as a result of the transaction, the requirement that the Company was insolvent at the time of the transaction or became insolvent as a result of the transaction need not be met.

(ee) The Company will be treated as having entered into a Transaction at an Undervalue with a person if:

- (a) it makes a gift to that person; or
- (b) it enters into a transaction with that person:
 - (i) on terms for which there is no "cause"; or
 - (ii) for a "cause" the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the "cause" provided by the Company.

The Jersey Courts will not make any order in respect of a Transaction at an Undervalue if it is satisfied that the Company entered into the transaction in good faith for the purpose of carrying on its business and that, at the time it entered into the transaction, there were reasonable grounds for believing that the transaction would be of benefit to the Company.

- (ff) The Company will be treated as having given a Preference to another person if:
- (a) that person is a creditor of the Company or a surety or guarantor for a debt or other liability of the Company; and
 - (b) the Company:
 - (i) does anything, or
 - (ii) suffers anything to be done;

that has the effect of putting the person into a position which, in the event of the winding up of the Company or its property being declared en désastre will be better than the position he or she would have been in if that thing had not been done.

The Jersey Courts may not make an order in respect of a preference given to any person unless the Company, when giving the preference, was influenced in deciding to give it by a desire to produce in relation to that person the effect referred to above. If the Company gave a preference to a person who was, at the time the preference was given, an associate of or connected with the Company (otherwise than by person only of being the Company's employees) the Company shall be presumed, unless the contrary is shown, to have been influenced in deciding to give the preference by the desire referred to above.

- (gg) There has been no decision in the Jersey courts regarding the enforceability of provisions that purport to fetter any statutory power of a Jersey company and, accordingly, such provisions may not be enforceable.

This Opinion is addressed to you for the benefit of yourselves and your professional advisers. Its contents shall not be released to and shall not be relied upon by any other person without our prior written permission.

Yours faithfully

Voisin
Advocates Solicitors & Notaries Public

EXECUTED as a deed by
affixing the common seal of
THE COUNCIL OF THE
LONDON BOROUGH OF
ISLINGTON
in the presence of



Authorised Officer

66424

SIGNED as a deed on behalf of
OBIDOS PROPERTIES
LIMITED, a company incorporated
in Jersey, by **ANDREW DE LA HAYE**
and **TIMOTHY GAULT**, being
persons who, in accordance with the
laws of that territory, are acting under
the authority of the company

Authorised Signatory

Authorised signatory

