



Meeting: Council

Date: 6 December 2012

Wards Affected: All

Report Title: Third Party Contributions towards the South Devon Link Road.

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1. Purpose

- 1.1 This report recommends that, in accordance with the council's legal obligation, third party contributions be collected to help meet funding commitments for the South Devon Link Road (SDLR), on a temporary basis until a Community Infrastructure Levy (CIL) is put in place.
- 1.2 Post 2014 and adoption of the new Local Plan, (CIL) is the most appropriate tool to pay for key infrastructure. Until this time, an interim arrangement is required to use S106 Contributions to contribute towards the SDLR.
- 1.3 The interim arrangements, in effect, seeks contributions to the South Devon Link Road. The Government has made it clear that in the current economic climate, it is not realistic to increase the overall amount of contribution sought from development. Therefore seeking a contribution for the SDLR will have a knock on effect of reducing the priority (and amount raised) of other contributions, such as affordable housing or sustainable development contributions (e.g. education, open space and off-site sustainable transport).
- 1.4 An update to the Planning Contributions and Affordable Housing SPD is proposed to ensure that S106 practice meets corporate priorities and complies with legal requirements. This would replace the current Update 3 (April 2011).

2. Proposed Decision (recommendation)

- 2.1 **Where new development impacts on, or contributes to the need for the South Devon Link Road, a S106 Contribution would be sought towards funding it.**
- 2.2 **In order to meet the council's financial commitments, contributions to the SDLR should be given a high priority when negotiating S106 Obligations, where lawful.**

3. **Action Needed**

3.1 The Planning Contributions and Affordable Housing (Update 3) will need to be further updated to reflect the changes recommended in this report.

4. **Summary**

4.1 Funding and planning permission for the SDLR has been approved and construction commenced, with completion in December 2015. The application for final approval was submitted to government in September 2011. This identified the scheme cost at £109.158m, to be funded as follows:

	£m
Bid to Department for Transport	76.390
Contribution from Devon and Torbay	27.998
Third Party Contributions, inc. Teignbridge	4.770
Total	109.158

4.2 The application notes that financial contributions will be sought from adjacent developments as identified in local development frameworks, **these contributions will be underwritten by councils**. The funding for the scheme also envisages “third party contributions” of £4.77m split equally between Torbay and Devon. There is a commitment of £500K from Teignbridge District Council, half of which would contribute towards Torbay’s total. This brings the Third Party contribution from Torbay to £2.135 Million (i.e. 4.77m minus 0.5m divided by 2). A S106 contribution of £248K from a development in Kingskerswell was granted planning consent in October 2011, which contributes to Devon’s total.

4.3 Torbay’s anticipated third party contribution, by year, to the SDLR as follows:

Source /Year	2015/16	2016/17	2017/18	Total
Third party contribution (£000s)	1,605	498.5	31.5	2.135

4.4 In the longer term, Community Infrastructure Levy (CIL) is the appropriate tool to help fund major infrastructure items. Torbay Council is preparing a CIL and a separate report covers this. However, a CIL cannot be charged until the Local Plan is adopted, and CIL charging/monitoring mechanism put in place. This is likely to be Spring 2014. CIL is highly unlikely to raise the amount required for the SDLR in 2015/16, as it will only apply to developments approved after a CIL is adopted.

- 4.5 Consequently there is a need to realign S106 Contributions to reflect current infrastructure spending priorities and the sum the Council has underwritten for the SDLR. This would be a stop gap measure until a CIL is adopted.
- 4.6 Whilst S106 contributions can be used to fund infrastructure, their use is strictly regulated by legal tests. They must (by law) be:
- (a) necessary to make the development acceptable in planning terms;
 - (b) directly related to the development; and
 - (c) fairly and reasonably related in scale and kind to the development.
- 4.7 Whilst it is possible to seek contributions for the SDLR, these must be related to the impact of development on the need for the new road, i.e. meet the tests outlined above. Appendix 1 sets out a policy background and seeks to assess the impact that development will have, based on trip rates, on the SDLR.
- 4.8 On this basis it is considered that seeking a contribution from development towards the SDLR is lawful, as an interim measure pending adoption of CIL. It is recommended that a contribution towards the SDLR be sought from strategic development with bay-wide significance. Broadly speaking these would be sites of 30 dwellings or more and/or sites of 1 ha or larger, or major out-of-centre retail development. For such developments, the impact on the SDLR will need to be assessed on a case by case basis (having regard to the TRICS based data in appendix 1). A smaller contribution towards the SDLR will be sought from all other developments based on the impact of development on the need for the road. A suggested methodology for calculating such contributions is set out at Appendix 1.
- 4.9 In the current economic climate, the viability of development is critical. The Government has recently reiterated the importance of ensuring s106 obligations do not stifle development. The Planning Contributions SPD and Update 3 set out advice on viability testing. In many cases there needs to be a prioritisation of Obligations in order to maintain development viability. The SDP (Update 3) already mitigates contributions for developments that create jobs, and it is not intended to implement the SDLR contribution in a way that harms economic activity or regeneration.
- 4.10 Contributions from development to the SDLR are likely to be achieved by 'redirecting' some contributions currently being secured for affordable housing or sustainable development, but importantly this approach will not have any greater impact on development viability. Moreover, the Planning Inspectorate is taking an increasingly hard line on requiring s106 contributions to be linked to specific projects, which makes it harder to justify broader "sustainable development" s106 contributions. An Update of the Planning Contributions SPD is proposed on this.
- 4.11 Prioritisation of S106 Contributions must be decided on case by case basis having regard to the tests of lawfulness, viability and corporate priorities. For example, the DfT funding of the SDLR expected sustainable transport measures to be put in place to relieve highway capacity. Local Transport Plan 3 (LTP3), which is a joint Devon County and Torbay Council plan, also prioritises walking, cycling and public transport as well as a new rail halt at Edginswell. However, given that £2.135m of third party contributions to the SDLR have been underwritten by the Council, it is recommended that these be given a high priority when negotiating a S106 package, until the required sum has been raised or CIL comes into force.
- 4.12 Whilst the Planning Contributions and Affordable Housing SPD sets out a range of

contributions, it is common in the current economic climate for the full set of S106 contributions set out therein to be un-viable. This necessitates a choice by the Council about which matters should be prioritised. Whilst this will have to be decided on a case by case basis, it is recommended that S106 contributions be sought having regard to the following order of priority:

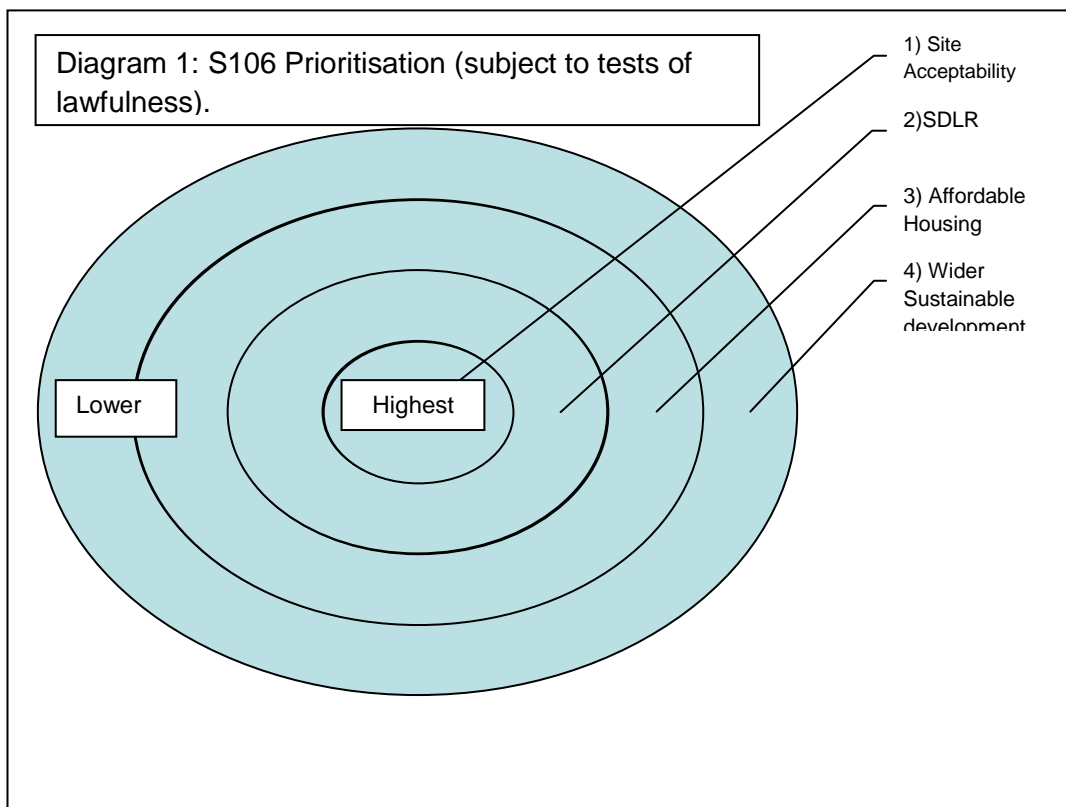
1) Site acceptability matters (Matters that are essential to make the site work in physical terms e.g. site access and directly necessary sustainable transport measures, flooding, landscaping, biodiversity, employment space (where part of on-site provision) etc.). Where possible these should be addressed through planning conditions or S278 Highways Agreements.

2) Contributions towards the SDLR. Strategic developments (30+ dwellings or 1 ha+ site or major out of centre retail/leisure development) based on an assessment of their impact. Smaller residential developments to be charged based on the impact calculation at Appendix 1.

3) Affordable Housing.

4) Wider sustainable development contributions (sustainable transport, education and lifelong learning, safer communities, open space). Note that specific projects must be identified by relevant departments in order for S106 to be sought.

Diagram 1 sets out this prioritisation order.



4.13 Over the last 4 years Torbay Council has collected around £1 million a year in s106, excluding affordable housing which is usually delivered directly on-site. The main recipient was sustainable transport (£1.8 m over 4 years) followed by education (£0.7m) and open space (£0.5 m). The main impact of this recommended change would be a shifting of priorities away from affordable housing and sustainable development contributions towards the South Devon Link Road. The Government has made it clear (for example in a Ministerial Statement of 6 September 2012) that Councils must be flexible in negotiating s106 Obligations in order to kick start development.

Supporting Information

5. Position

- 5.1 The South Devon Link Road is a clear commitment, and Torbay Council has underwritten third party contributions towards it. Not raising contributions from development will mean that a higher proportion is ultimately borne by council tax.

6. Possibilities and Options

- 6.1 Torbay could fund its entire contribution towards the SDLR through prudential borrowing. However there is an agreement with neighbouring authorities to seek an element from developers. Moreover, new development benefits from the SDLR and it is considered justified to request that they contribute towards its cost.
- 6.2 The SDLR is vital for Torbay's prosperity and economic recovery. The implications of prioritising the SDLR are set out above. The Council will need to weigh up other calls on S106 monies, such as affordable housing, on a case by case basis when considering planning applications.
- 6.3 The planning Inspectorate will not support S106 contributions that do not relate to specific projects needed as a result of development. This is making it increasingly difficult to seek wider sustainability contributions identified in the Planning Contributions SPD. Various minor amendments to the Planning Contributions are proposed to maximise the change of being successful at appeal.
- 6.4 Affordable housing is still within the ambit of S106 Obligations. However the government has made a number of announcements to emphasise that s106 contributions must not undermine development viability. The Montague report has specifically highlighted the effect of affordable housing requirements on the deliverability of development. Seeking contributions towards the SDLR is likely to impact on the level of affordable housing that can be negotiated from development.
- 6.5 It should be noted that nearly a third of Torbay households have no access to the private car. This group is the most vulnerable and the most likely to be affected consisting of the old, the disabled and those on low incomes. These people rely most heavily on sustainable transport.
- 6.6 Transport contributes over 20% of the Bay's Carbon footprint. Torbay's carbon footprint would begin to increase without sustainable transport measures such as cycling and walking and public transport to support development.

7. Preferred Solution/Option

- 7.1 To seek a S106 contribution towards the SDLR, where lawful to do so.

8. Consultation

8.1 This report is primarily about how to meet already agreed priorities within a legal framework.

9. Risks

9.1 S106 agreements must not undermine development viability and require choices to be made about S106 priorities. Increasing the priority given to the SDLR is likely to reduce the level of contributions available for other matters, especially sustainable transport and affordable housing. These matters are also important priorities for ensuring sustainable development.

9.2 S106 agreements must meet the tests of lawfulness outlined in the main report. It must therefore be sought on a case by case basis.

9.3 S106 Contributions cannot be pooled post April 2014. It is important that a CIL is put in place (which also required an adopted Local Plan) before this time.

9.4 Other projects are important to Torbay's strategic transport network, such as Edginswell Station (Devon Metro) and Western Corridor improvements. Focusing on the SDLR should not be at the expense of other key infrastructure items.

Appendices

Appendix 1 Detailed Policy Justification

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A1 Policy CF6 of the Adopted Torbay Local Plan seeks S106 contributions for infrastructure. Policy T21 of the Local Plan proposes the South Devon Link Road as a key element of infrastructure. The Torbay Infrastructure Delivery Study (2012) identifies the SDLR as a key piece of infrastructure needed to deliver growth. The Planning Contributions and Affordable Housing Supplementary Planning Guidance (2008) and Update 3 (April 2011) set out the council's policy on S106 Obligations.

A2 S106 obligations must meet the tests of Lawfulness in the 2010 CIL Regulations/ paragraph 204 of the National Planning Policy Framework. It is becoming increasingly difficult to seek "pooled" contributions where there is not a specific project identified which is directly related to development. The SDLR is a specific project that is directly linked to the acceptability of development within Torbay. It is also noted that the government approved the bid for the SDLR on the basis of third party contributions being sought towards it.

A3 Contributions will be sought for the South Devon Link Road based on an assessment of the impact that development has on the need for the road. For larger developments (broadly 30 dwellings or 1ha or more, and major retail or leisure developments) this will need a specific calculation of impact. TRICS data has been used to assess the impact of development on the highway network. Figures 8-10 (pp35-36) of the SPD and Update 3, which has been used to set the overall sustainable transport contribution. Subsequent discussions with Strategic Transport have confirmed that TRICS based figures remain a relevant methodology for assessing the impact of development on the highway network. However the SDLR is not funded through LTP 2, so its cost is additional to the sustainable transport calculation in Figure 8 (p35) of the SPD. A professional transportation assessment will need to be undertaken of larger developments- particularly commercial developments -on their impact on the need for the SDLR. As set out below, it is assessed that the average trip on the SDLR will equate to £1.67 based on a 5 year pay-off time.

A4 For smaller developments, it is likely to be more practicable to use the following charges, which are based on the impact of development on the need for the SDLR.

Standard Charges for Residential Development by Town Area (defined by Ward).

Table A4 Charge for Residential Development in Torquay.

Floor area	% of baseline charge (based on SPD)	Torquay residential charge for SDLR
Up to 54 sq m	0.47	£450
55-74 sq m	0.64	£620
75-94 sqm	0.87	£845
95-119 sqm	1	£975
120 + sqm	1.3	£1,300

Table A5 Charge for Residential Development in Paignton.

Floor area	% of baseline charge (based on SPD)	Paignton residential charge for SDLR
Up to 54 sq m	0.47	£340
55-74 sq m	0.64	£465
75-94 sq m	0.87	£635
95-119 sq m	1	£731
120 + sq m	1.3	£970

Table A6 Charge for Residential Development in Brixham .

Floor area	% of baseline charge (based on SPD)	Brixham residential charge for SDLR
Up to 54 sq m	0.47	£270
55-74 sq m	0.64	£370
75-94 sq m	0.87	£500
95-119 sq m	1	£578
120+sq m	1.3	£770

Calculating the Traffic Impact on the SDLR

A5 There are several ways in which the impact of new development on the need for the SDLR may be shown:

- (1) Dividing the likely number of market-supportable dwellings by the £2.125 agreed by DfT to be raised through developer contribution. (“Quick and dirty” way of calculating cost)
- (2) Calculating the cost per trip rate on the SDLR by dividing its total cost by total trips and apportioning the cost generated by new traffic (detailed methodology).

(1) Dividing the likely number of market-supportable dwellings by the £2.135 agreed by DfT to be raised through developer contribution.

A6 As noted in the main report, the SDLR bid, which DfT have agreed, seeks £2.135 million of developer contributions over 5 years. There is an additional council contribution of nearly £14 million.

A7 Whilst the Local Plan seeks to achieve 400 new homes per year (+ / - 25%) over the next 5 years, it would be unrealistic to seek s106 contributions for affordable homes. The Strategic Housing Market Assessment (2011 update) indicates that there is market demand for 316 homes per year- 201 (63.7%) 1 or 2 bedroom, 10 (3.3%) 3 bedroom 10 and 104 (33%) 4+ bedrooms. Contributions must be paid back over 5 years which equates to 1,580 dwellings (316 x 5).

A8 Assuming that 80% (£1.708m) of SDLR contributions will come from new dwellings (and 20% from commercial development), this makes an average contribution of £1,081 per average dwelling in Torbay.

(2) Calculating the cost per trip rate on the SDLR by dividing its total cost by total trips and apportioning the cost generated by new traffic.

A9 The A380 South Devon Link Road Kingskerswell Bypass Public Inquiry DCC Proof of Evidence (DCC/P/4) assessed car and LGV movements through Kingskerswell (Diagram 9 and Section 5). The DCC assessment is that traffic in the SDLR has remained virtually constant since 1988, with 33,022 average daily trips in 2008. Analysis of parallel routes (section 4) indicates that at least 2,312 trips per day are diverted to side roads that would reasonably be expected to use the SDLR (i.e. increase in peak hours traffic on the St Marychurch Road and Kingskerswell Road compared to the daytime average). This makes a total of 35,334 potential journeys on the SDLR per day (ignoring traffic growth).

A10 Seeking to recoup the cost of the road (£107.434 million) over 5 years, would represent a *cost per average trip* of £1.67 (35,334 x 365 days x 5 years).

A11 It is difficult to assess how many of these journeys are from Torquay residents. A reasonable assumption is that 50% of trips arise from Torbay residents: i.e. 17,770 trips per day (50% of 35,334 trips).

A12 Car and LGV movements on the A380 through Kingskerswell come 55% from Torquay, 30% from Paignton and 10% from Brixham. 5% are local movements from Kingskerswell. (For completeness Heavy Good Vehicles are 50% from Torquay, 30% Paignton and 10% from Brixham. 10% is local transport from Kingskerswell).

Impact of Local Residential Traffic on the SDLR

	% of car/LGV Movements	Journeys per settlement per day (50% of total movements)	No of dwellings	Torquay residential car journeys per average dwelling on SDLR/Kingskerswell per day. (movements/dwellings)	Av journey Per 5 years on SDLR	£107.734 m divided by Cost per trip (35,334 trips x 5years=64.5m).	Average cost per dwelling (cost per trip x 5 years trips)
Torquay	55%	9,774	31,000	0.32	584	£1.67	£975.28
Paignton	30%	5,331	22,000	0.24	438	£1.67	£731.46
Brixham	10%	1,777	9,000	0.19	346	£1.67	£577.82
Kingsker swell	5%	-	-	-	-	-	-
	100%	17,770	62,000	-	-	-	-

A13 Larger developments (30+ dwellings) and commercial developments will need to be assessed on a case by case basis, having regard to the direct impact on the SDLR. Most heavy goods vehicle movements will leave Torbay via the A380, so in principle a S106 contribution would be justified based on £1.67 per trip generated onto the SDLR, over 5 year period.

A14 The above section assumes that 50% of trips are from Torquay dwellings, and by inference the other 50% are commercial/tourism/work trips into Torbay.

A15 It is noted that employment generating uses enjoy mitigation for the number of jobs generated. Similarly, retail and commercial developments within defined town centres have a regeneration benefit. On this basis it is unlikely that an SDLR contribution would be sought to a class B1/B2 development, or town centre uses (leisure, retail etc) located within town centres, or key waterfront regeneration areas. There would be cases such as out of centre retail where a contribution would be appropriate to mitigate the impact on the SDLR.

A16 Further details are set out in the Planning Contributions SPD and Update 3 (2011).

These also set out an approach to viability testing. Where s106 contributions are argued to make development not viable, the Council will seek an independently commissioned assessment of viability and negotiate a package of reduced contributions, based on Council priorities. Where development impacts on the need for the SDLR, it is recommended that the following priority be applied:

- 1) Site acceptability matters (Matters that are essential to make the site work in physical terms e.g. site access and directly necessary sustainable transport measures, flooding, landscaping, biodiversity, employment space (where part of on-site provision) etc.). Where possible these should be addressed through planning conditions or S278 Agreement.
- 2) Contributions towards the SDLR. Strategic developments (30+ dwellings or 1 ha+ site or

major out of centre retail/leisure development) based on an assessment of their impact. Smaller residential developments to be charged based on the impact calculation above.

3) Affordable Housing.

4) Wider sustainable development contributions (sustainable transport, education and lifelong learning, safer communities, open space). Note that specific projects must be identified by relevant departments in order for S106 to be sought.

A17 Each application will need to be determined on its merits. However, because of the strategic importance of the SDLR, it is recommended that a high priority be given to contributions towards this. The Update to the SPD will need to be further updated accordingly.