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Dear Sir

### **Planning Performance and the Planning Guarantee – response to consultation**

Torbay is currently 'open for business' and securing investment, because it takes a positive, proactive and quality driven approach to development. Investors in Torbay tell us this is what they want. Torbay can make quicker decisions, as we did whilst Planning Delivery Grant operated, but history tells us this will result in poor quality outcomes, more planning applications being refused, less certainty for investors, less time for input by communities and/or greater delays at the pre-application stage. The consequence of this is that Torbay will be seen as 'closed for business'. That outcome is at odds with a Bill aimed at supporting growth.

It cannot be the intention of Government to penalize Torbay for securing the right outcomes for the Bay, its people and its investors, yet this would be the consequence of introducing the measures as proposed. The Council firmly believes that whilst the premise of the Planning Guarantee is laudable, the measure of 'poor performance' is wholly wrong and will promote poor outcomes. As part of this response, we suggest a more just, meaningful and deliverable mechanism for implementation. A summary of the Council's response is included on pages 2 and 3 of this letter.

Torbay has taken time to approve major developments over the past 2 years, because we have sought to approve the vast majority of major applications we receive. If Torbay were forced, in

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order to move out of the 'poorly performing' category, to determine all major applications within 13 weeks the result would be:

- Refusal of far more applications, with consequent increase in appeals and costs to scheme promoters;
- Reducing the amount of land available for development, at a time when we're looking to increase supply;
- Less development for the market to deliver;
- A negative impact on economic growth , with consequent impact on business rates and at a time when the new South Devon Link Road is under construction, at significant cost to the public purse.

As such, the Planning Guarantee may improve (by one measure) Torbay's planning performance on paper, but confine the Bay's economic performance into the 'poorly performing' category just at a time when we can see the green shoots of recovery.

### Summary

- **In the past:** Proposals for Planning Performance and the Planning Guarantee are similar to the quantity driven performance measures for Planning Delivery Grant. Under those measures, Torbay delivered quick decisions, but the measures were unpopular with investors, developers and communities and led to the perception that Torbay was closed for business.
- **Meeting client & customer needs:** Torbay Council deliberately changed its approach, 3 years ago, to better reflect client and customer needs. As a consequence Torbay is now seen as open for business. Torbay approves more than 90% of major planning applications; there have been no appeals against non-determination in the last 3 years; in the last 2 years Torbay has had only one major decision overturned at appeal; we have successfully introduced recession busting measures. We have secured high quality outcomes, new jobs and homes.
- **Unintended consequences:** The consequences of proposed new measures will be: more applications refused; less land available for development; less development for the market to deliver; a negative impact on growth, contrary to the NPPF and Growth & Infrastructure Bill.
- **Unjust:** It is unfair, unreasonable and unnecessary to penalize Torbay Council for taking steps to improve its performance for clients and customers by assessing that performance against one retrospective measure. It cannot be the intention of Government to penalize Torbay for securing the right outcomes for the Bay, its people and its investors.
- **Principle o.k.:** The Council considers the premises behind better Planning Performance and the Planning Guarantee to be acceptable, but the proposals for its implementation are wrong and unacceptable consequences would result.

The Council considers the following proposals to be just, meaningful and deliverable:

- 1. Two year performance assessment, including 12 months to improve: Torbay Council suggests that, for the first year of implementation, a Council's performance for the previous two years is assessed and a Council is given 12 months to improve its performance, if appropriate. If a Council is still considered poorly performing after 12 months, then it should be designated as such. After the first year of implementation performance should be assessed on an annual basis (looking back 12 months), with any Local Authority being given 12 months to improve its performance, by investing in its planning service, drawing on PAS resources etc.
- 2. A range of quantity and quality criteria, taken together: The Council suggests a range of criteria are used, collectively, to assess performance. These are: the availability of a pre-application service; validation timeframes; percentage of approvals for major developments; 13 week target (subject to a minimum no. of applications received threshold); member and officer agreement; percentage of appeals against non-determination; percentage of decisions on major applications overturned at appeal (subject to a minimum number of applications received threshold); implementation rates. These criteria can be adjusted, to secure steady and reasonable improvements in performance, but should not be applied retrospectively. PS2 returns need to be adjusted accordingly.

### **Torbay's context**

By way of context, the English Riviera has - like many other towns by the sea - been hit hard by the recession and by a lack of significant investment over the last 10 years or so. However, the Council remains extremely positive about the future, not least because we've seen more development activity recently and the new South Devon Link Road will bring much needed additional investment to the Bay.

Torbay has fantastic potential, not only in tourism but in sectors such as health, research and development, hi-tech manufacturing, and professional and financial services. We have already seen steady growth in SMEs, which is not at all surprising given the quality of life offered in the Bay. The Bay also has a wonderful natural environment. It is the world's only urban geopark; its marine environment is superb; it has large amounts of AONB; it has a wonderful historic environment and cultural heritage.

As such, whilst the Council actively seeks investment and new development in the Bay, it is extremely important we get the balance right and ensure high quality outcomes. The result is a positive approach to major development, at present, but one which is not wedded to meeting

determination targets at the cost of securing high quality investment opportunities. Our high number of major planning approvals takes time to achieve, as we work in partnership with developers and our communities to secure the best outcomes for the Bay's economy, communities and environment.

We are proud, but not complacent, about the way in which we work closely with international and national developers and investors. These include, for example:

- Galliford Try
- Abacus / Deeley Freed
- Akkeron
- Northern Trust
- Bloor Homes
- Mansells
- Harbour Hotel Group

We ask these developers and investors for comment on our performance and how we can respond best to new duties, pressures and market issues. Their feedback has informed this response.

### **So, how are we performing against our own high standards?**

- **Torbay is doing exactly what the Government wants** – being positive and flexible about development; using recession busting measures (including revised S106 arrangements) to ensure projects are viable and deliverable now, with 5000 jobs coming forward over the next 5 years as a result of new development. Recent figures show mortgage interest in Torbay has risen in the last 12 months, when interest in surrounding areas has declined. The Council's major developments team in Torbay is proactive, and, working closely with Councillors, landowners and developers is securing much needed development in the Bay.
- Torbay is one of the only Development Management Services in the Country to hold **ISO 9001**, awarded by the British Standards Institute (BSI), for its **quality management system**.
- **Torbay says yes to high quality development**. The recent approval for conversion of the Grade 2\* listed Oldway Mansion and enabling development in its historic gardens, which were until recently owned by the Council, is the result of 18 months hard work, between the Council, Torbay Development Agency, the developer, English Heritage and community. The development will provide at least 70 permanent jobs and 150 construction jobs. This is typical of Torbay Council's approach, which has resulted in Torbay saying yes to more than 90% of 25 major applications since January 2012.
- **Getting the right outcomes for Torbay** takes time. With its superb environment and significant socio-economic issues (with successful international businesses alongside 24% of children growing up in poverty) getting sustainable outcomes is not easy. Design is also

high on the agenda - Torbay has its own successful, independent Design Review Panel which covers its own costs. Securing sustainable development, as per NPPF requirements, needs careful balancing of difficult issues. We do that well in Torbay.

- **Torbay's approach to development is welcomed by all.** Members are involved early; more than 90% of planning service customers are happy; developers, agents and landowners prefer our positive, open, flexible approach. Communities are often heavily involved with development. We've had no formal complaints about the way in which we handle major developments. A scheme for 350 new homes and 1200 jobs had input from a community based project group, which secured huge support for the scheme, including CPRE. That same scheme does not yet have planning permission, because the applicant has repeatedly asked for more time to resolve S106 issues
- This is not just lip service, **we have embraced Neighbourhood Planning and Localism.** Torbay is a frontrunner for three neighbourhood plans, covering 100% of its area – unique in the country for a Unitary Authority so we understand. The Council has gone further than many other Councils in 'delegating' responsibility for allocating development sites to Neighbourhood Planning Forums. This empowers local communities, builds trust and communication and, we believe, will reduce the amount of opposition to major development proposals. These plans will add detail to our **recently published draft Local Plan** (see [www.torbay.gov.uk/newlocalplan](http://www.torbay.gov.uk/newlocalplan)). The new Local Plan seeks to reduce red tape, remove barriers to development whilst also achieving great outcomes for the English Riviera.
- **Torbay's approach is getting good results.** Major mixed use developments, new hotel and tourism developments, new manufacturing units and education facilities, new innovation centres and retail units, plus growth in existing businesses, will see more than 5000 new jobs created in Torbay over the next 5 years, helped by the new South Devon Link Road. Torbay has an approval rate of over 90% for these sorts of developments since January 2012 – this is commendable and what the Government wants.
- Due to the close working relationship between Members, officers and developers it is rare that Members of the Development Management Committee (DMC) go against officer advice. In the last 12 months, **95% of officer recommendations on Major Planning Applications to DMC were agreed.** This provides developers and investors with confidence in working with the Council at pre-application and pre-decision stages. Indeed, the Council is often asked by developers to hold back from making decisions to allow applicants to make important changes to their proposals.
- **Torbay's record on appeal** is also excellent. We lost 23% of appeals last year, far less than the national average of 33%. Only one appeal on a major development proposal has been allowed, showing that a near 100% record on the robustness of the Council's decisions and underlining that we're making high quality decisions on major investment proposals. There have been **no appeals against non-determination** on major applications

in Torbay in the past 3 years, demonstrating that developers are happy to work with us to achieve a mutually agreeable outcome even if this takes longer than 13 weeks.

- **Our recession busting measures are promoting development now.** A mixed use scheme in West Paignton is on site, delivering new jobs, new homes and much needed infrastructure improvements. Another scheme, currently under construction, is delivering a much needed £2M highway improvement without any public subsidy. We have delivered, on average, 31% affordable housing over the last 3 years – above target - and our deferred payments mechanism provides incentives for early delivery. A recent permission for residential development of one of four holiday parks (all in the same ownership) has secured investment in the three remaining holiday parks as well as delivering new homes. These sorts of developments require complex legal agreements, which take time to get right for all parties. Time taken on S106 agreements is the biggest single reason for an extended decision making period, but we're finding many developers are happy to use Committee resolutions to market and develop their product.
- **Quantity versus quality.** The Planning Guarantee seems to focus solely on speed of process, when the NPPF and Torbay's USP requires us to focus on quality outcomes and delivery. A pure quantity based system would not work for Torbay, or many other places, but we continue to evolve and are happy to review the way we do things. For example, we have recently reviewed the way we operate our pre-application service. We now charge for that service and, consequently, 90% of major development applications are valid on receipt, which is way above most LPAs, and applicants have greater certainty of outcome. This allows the clock to start ticking as soon as applications are received, rather than sitting for long periods of time in a pending tray.

*Galliford Try has advised that it "would always favour an outcome based approach as opposed to a ridged approval / refusal within 25 weeks, as our experience of time led targets has been very negative. Previous drivers such as the approval of applications within 13 weeks of registration led to widespread manipulation by LAs. We would regularly receive requests for spurious and copious amounts of information prior to an applications registration in order to defer the commencement of the 13 week period. We would also regularly have the "gun to head" approach from LAs whereby we would have a planning refusal if we did not withdraw our application prior to the expiry of the 13 week period. This level of manipulation was regularly denied by John Prescott and the Labour administration however it was a very real problem for developers."*

Given our approach, and the success it has achieved, we find it difficult to understand why – due to the application of one quantity based performance measure – the Government would want to penalize Torbay Council by categorizing it as poorly performing.

### **So, what impact might the Planning Guarantee have?**

The Council has several concerns about the Planning Guarantee and, specifically, measuring performance simply on the basis of one of two criteria.

As is evident, Torbay has embraced localism and embarked on an ambitious neighbourhood planning programme. We are concerned that centralisation of planning decisions will be perceived as running contrary to the Government's objectives for localism.

We are very mindful of the development industry's needs to reduce planning application timeframes and reduce costs. However, the Planning Guarantee is likely to increase time and costs, due to the re-introduction of a target driven culture based on speed of decision and not based on making a positive decision.

*Galliford Try have expressed the view that it would "never be its preference to pursue a planning application directly with the planning inspectorate and effectively forego the opportunity of an appeal, however, it would not rule out this "high risk" approach where time is of the essence or we feel that the performance of a LA, both through the pre-application and planning process as well as the engagement and views of locals (if strongly NIMBY), would lead us to believe that the application will not receive a fair hearing or appropriate support." Similarly, Mansells has advised that it doesn't see a direct approach to PINS "being used much, but is handy to have".*

History suggests that Local Authorities will feel obliged, in order to ensure their performance is seen as good, to refuse applications at the 13 week point rather than continue to work with applicants to a mutually acceptable conclusion. This will increase the number and cost of appeals, reduce the likelihood of new jobs, housing and infrastructure improvements and reduce the quality of outcomes locally.

Similarly, at the other end of the application process, Local Authorities would feel obliged not to validate planning applications until they were absolutely certain all necessary information had been submitted with the application. This would be frustrating, time consuming and costly to applicants – as past experience shows.

We believe the proposed measure, of determining 30% or more major applications in 13 weeks, will frustrate the development industry and the delivery of growth and infrastructure in Torbay far more than the positive, flexible approach used in Torbay.

### **Torbay is not complacent about its performance, there is always room for improvement**

There are a number of ways in which we continue to seek improvement in our planning performance.

1. We continue to explore the potential of Planning Performance Agreements, including relatively informal agreements. We haven't used them to date because our major developers find the current arrangements too cumbersome and inflexible. Indeed there is little action that can be taken in

reality if a PPA is not complied with. However, we note that Planning Performance Agreements are becoming a little more flexible and one or two major investors in Torbay, such as Galliford Try, will now consider using them.

*Mansells' view is that both approaches (flexibility and PPA) require trust and co-operation on all sides but a PPA can take too long to agree*

2. We have set up an Agent's Forum in Torbay, which provides an essential interface for communication and feedback.

3. We introduced, in December 2012, a Validation Checklist, to help ensure we receive high quality planning applications; are able to make quicker decisions; and to set out a framework for positive pre-application discussions.

*Galliford Try "would always support a collaborative approach to any business process, particularly planning, and it is exceptionally useful for a developer to have schemes registered, perhaps without every last piece of information delivered, as this puts the scheme into the public consciousness, which is obviously very useful, and also provides us with a small amount of flexibility in order to deliver on the particular information requirements of the LA in question."*

4. We are committing resources to the masterplanning of allocated sites that have stalled. Part of that process involves community engagement and other survey work to reduce the risks for future developers. This helps move sites forward and reduces the hurdles for major planning applications.

5. The Council supports increased community engagement in major development proposals. We have, when required, worked with applicants to set up community forums. This helps communities understand and realistically influence development proposals.

In conclusion, Torbay's major planning application service is performing well. Our service is valued by our customers and investors, engages with local communities and delivers growth and investment in Torbay. Whilst we fully support the notion of a Planning Guarantee, the current proposals upon which LPAs will be measured will be the antithesis of a driver for growth. They will provide a perverse incentive, much maligned under the previous Government, that is a target driven culture based on speed and not quality and delivery. This will result in far more applications being refused, because issues could not be resolved within 13 weeks, and will lead to frustration and delay in the development sector.

We turn now to the questions set out in the consultation document.

Q1 We believe that the measures of performance should be more intelligent and based on both quantitative and qualitative criteria. The either / or option being put forward is a one size fits



all approach, not conducive to the partnership working arrangements that we have with developers or achieving the high quality outcomes required by the NPPF. The proposed measures are likely to be skewed where they are based on major applications only, because many authorities only deal with a few of these per year. This would therefore skew both the time and appeal statistics and, as such, we recommend the measure used should be proportionate to the number of major applications dealt with.

Instead of the proposed measures, we consider a range of qualitative and quantitative criteria need to be used to assess performance over an initial three year period, reduced to a two year period after the first year of implementation. Torbay Council suggests that, for the first year of implementation, a Council's performance for the previous two years (April 2011 – 2013) is assessed and a Council is given 12 months to improve its performance, if appropriate. If a Council is still considered poorly performing after 12 months (April 2014), then it should be designated as such. After the first year of implementation performance should be assessed on an annual basis (looking back 12 months), with any Local Authority being given 12 months to improve its performance, by investing in its planning service, drawing on PAS resources etc.

Our suggested approach helps overcome a number of key issues:

- It is not a wholly retrospective measure, giving Local Authorities no opportunity to improve performance.
- The initial assessment period is, in effect, over three years helping to reduce the likelihood that blips in performance will be seen as permanent.
- It provides an opportunity for Local Authorities to make genuine improvements in service, over a 12 month period, by drawing on its own resources and the support of agencies such as PAS.
- It overcomes the problem of immediately removing funds (by removing the planning application fee), but not the workload, that could otherwise be used to support improvements in service provision.

As you will be aware, there is an extensive amount of benchmarking data that can be drawn on to inform performance criteria and Local Authorities' performance against those criteria. We would recommend the following set of criteria, as this would provide a more balanced measure of performance based on outcomes that are important to the development sector and local communities:

- **Pre-application service** – does the Local Planning Authority provide a pre-planning application advice service; to what extent is this used by major developers and what proportion of approvals / refusals for major development proposals engaged in meaningful

pre-application discussion. Recent changes to the General Development Procedure Order encourage the reporting of this activity on decision notices.

*Galliford Try has advised that Local Authorities “should improve the quality of the pre-application consultation that takes place. Developers are paying for a review service by the LA which should give a more definitive steer as to their preference for the type and look of the development. The developer should be given a great deal of confidence that the scheme, following further design work, would receive a recommendation for approval from the planning department.”*

- **Validation timeframes** and submission of appropriate information – how long does it take for planning applications to be validated.
- **Percentage of approvals** – the percentage of approvals is a good indication of performance and certainly one that is considered by investors as part of the decision on whether or not to move forward on a development proposal. This measure would also avoid the dangers of LPAs refusing applications, on negotiable technical issues, just to avoid over-running prescribed time limits.
- **Members and officer agreement** – The number of officer recommendations agreed by Members at Development Committee is a measure developers already use to assess the value of pre- and post- application discussions and, as such, to measure the degree of certainty of outcome.
- **Percentage of appeals against non-determination** – If developers are appealing against non-determination then they are clearly concerned that an LPA is not turning around the decision quickly enough or that they are unlikely to achieve an approval by the LPA. LPAs should have a very low % of appeals being heard on the basis of non-determination.
- **Implementation rates** - how many planning permissions turn into delivery on site in what timeframe? Whilst there is often little that Local Planning Authorities can do about this, it is a measure of a viable, marketable development proposal and could be used as a measure of land banking by major developers. Torbay Council is concerned the current system encourages some developers to hold back on delivery of new homes so further development sites can be secured on the basis that there is not a five year land supply (i.e. market delivery is misleading decisions based on the availability of a five year land supply).

Q2 We do not agree with the proposed purely retrospective measure, since it unjustly penalises authorities who have taken the deliberate approach to focus on quality and customer service as opposed to blindly meeting quantitative targets. Torbay’s more flexible approach was welcomed by developers and seen as a refreshing change from the back office, closed door approach that a target driven culture results in. The measure should start from April 2013 and it should be a combination of criteria, as set out in response to Q1, so as to avoid planning authorities being forced to take negative decisions that are anti-growth in order to meet targets.

Q3 We agree with the informal PPA proposal and will be using this from now on. However, if the overall proposals are to be applied retrospectively then Local Authorities must also be able to discount those proposals on which an informal PPA applied.

Q4 Yes. The current guidance on PPAs sets out quite a complex set of arrangements. The developers we work with have been clear that they do not wish to use PPAs to that degree of detail and complexity. A less onerous approach is welcomed. An informal agreement could be set out on a single side of A4, including milestones and general information.

Q5 Yes, but an authority that deals with very few major applications could be considerably disadvantaged. For example, if one of only two decision taken on major developments were overturned at appeal then that authority would be judged as poorly performing. As such this measure needs to be refined.

Q6 The PS2 quarterly returns provide a sound basis for assessing performance against the number of major decisions made on time. However, if further criteria were added – as we suggest is important (see response to Q1 above) – then other existing reporting mechanisms or new mechanisms would need to be used. We also agree that EIA applications, and those with a Planning Performance Agreement, should not be counted against a 13 week target.

Q7 No. The proposed measure of 30% or fewer major decisions made within 13 weeks unfairly and retrospectively penalises those local authorities, such as Torbay, who have actively sort to respond to the needs of investors and communities. In Torbay's case, investors and communities have welcomed the open, more transparent, quality of outcome approach we have adopted. On the contrary, investors, developers, agents and communities raised significant concerns about the 'quantity' based approach encouraged by the former Planning Delivery Grant arrangements. The quantity based proposals set out in the current consultation is seen as a very unwelcome return to Planning Delivery Grant arrangements. Consequently Torbay Council believes the proposals should be implemented as suggested above (see response to Q1). This is especially important during an economic downturn when more tailoured approaches are needed in order to secure viable, deliverable outcomes.

We believe that further explanation is required from the Government about why 30% is considered to be the appropriate threshold. Furthermore, there needs to be a more direct link between the 13 week threshold and appeal decisions, at least using both statistics to assess performance rather than just one (if there is no desire by Government to measure performance against a wider set of criteria). This would at least ensure there is some measure of quality assessment in the process, with a Local Authority being judged as poorly performing only if it failed to meet both criteria.

Q8 Again the measures should be more intelligent. There is a real risk of returning to a PDG approach, which led to a target culture not unlike the scenario NHS beds in corridors. Developers want a flexible and engaging planning service, but do not want the door closed on them at week 13, simply to meet targets, on a scheme that could otherwise have been successfully negotiated. There is potential to raise the 13 week / 30% threshold over time, but there should not be an arbitrary approach to defining such thresholds (as appears to be the case at present) and such a criteria must only be used in tandem with other smart criteria to assess whether a local authority is truly and habitually a poor performer.

Q9 The designations should not be made until the statistics have been verified and, as above, performance should be assessed across a range of 'smart' criteria, not solely on one criteria alone. In addition, the assessment should be forward looking as well as retrospective. This will in effect put a Local Authority on a warning that it could be designated as poorly performing unless it turns around its performance within a year.

Q10 We do not agree with the option to apply directly to the Secretary of State, this circumvents the local democratic process, is the antithesis of Localism and denies the Local Planning Authority the opportunity to secure a scheme, working in partnership with investors and the community, that get the best outcomes for its area.

Q11 Again, this will involve a significant amount of Local Authority time for little or no fee. In this era of austerity we have to reduce our non-fee earning work and increase our fee earning in order to recover incurred costs. This proposal will defeat that objective. At present we have restricted pre-application fees on the basis of securing planning applications through working hard to get developers to invest in Torbay. In addition, the proposal is counter-intuitive and counterproductive. It would penalise Local Authorities (by removing fee earning potential) at the very time they need to invest in improving their Planning Service.

Q12 Many Local Authorities are already exploring opportunities, such as sharing services, to reduce costs but maintain essential services. As suggested above, it is counter-intuitive to remove fee earning potential (from a poorly performing planning authority) at a time when it needs to invest most in improving its service. The support provided by PAS, and others, is temporary – by nature – and investment is needed to secure longer term improvements.

Q13 No. If an application is approved, or due to be approved, by the Planning Authority it is illogical to apply this measure.

Q14 We believe the notion of a refund of the fee to be very dangerous, this could once again generate very odd behaviour both on the part of the developer and the Authority. A Council will have effectively spent much of the application fee in dealing with the application to date. Consequently, there will not be money that can be refunded. It would also result in more refusals, in order to meet targets, which is entirely anti-growth. It is often the case that decisions, especially on proposals requiring S106 agreement, take longer than 6 months – not because the Local Authority is at fault, but because there are third party issues, for example, that the developer needs to resolve. But the security provided to a developer by an in principle decision (often made within 13 weeks) enables S106 issues to be successfully resolved. Consequently, if the proposal is likely to secure approval – as is the case in Torbay – there would be no need to recourse to PINS and no need for the application fee to be refunded.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David Thomas', written over a light blue horizontal line. The signature is stylized and cursive.

**David Thomas**

Deputy Mayor, Executive Lead for Spatial Planning, Housing, Waste and Energy