

## Supporting Information and Impact Assessment

Service / Policy:	Supplementary Planning Document
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### Section 1: Background Information

<b>1.</b>	<p><b>What is the proposal / issue?</b></p> <p>It is proposed to adopt the Planning Contributions and Affordable Housing Supplementary Planning Document (SPD). The draft document has been the subject of consultation between 19 September and 31 October and a number of modifications are proposed in response to issues raised. These modifications are not considered to be major.</p> <p>When adopted, the SPD will provide detailed advice on seeking s106 Planning Obligations. It will seek to ensure that development contributes to the infrastructure etc that the development generates a need for.</p> <p>The SPD cannot make policy but fleshes out policies in the Adopted Torbay Local Plan 2012-30.</p>
<b>2.</b>	<p><b>What is the current situation?</b></p> <p><b>Adopted Torbay Local Plan Policies and existing SPD.</b></p> <p>The Torbay Local Plan 2012-30 was adopted on 10 December 2015. It contains a number of policies that seek Planning Obligations and affordable housing. A full list of these policies is set out in the SPD.</p> <p>The Council Minute which adopted the Local Plan retained the Planning and Contributions SPD pending its review or replacement.</p> <p>The current SPD was adopted in 2008 and updated in 2011 (Update 3). Whilst the broad approach taken remains appropriate, there has been significant legislative change to planning since 2008. In particular the CIL Regulations place legal restrictions on the use of s106 Obligations.</p> <p>There is a pressing need to review the SPD to ensure that it reflects current circumstances, legislation and Corporate Priorities.</p>
<b>3.</b>	<p><b>What options have been considered?</b></p> <p>Relying on the current (2008) SPD is not an option because it is out of date</p>

and does not reflect current legislation or Corporate priorities.

Relying just on the Policies in the Local Plan would result in uncertainty and be likely to result in fewer s106 obligations being negotiated successfully.

The Council has considered moving to a CIL only approach where a minimum use is made of S106 Obligations. This is likely to create uncertainties about funding for infrastructure serving strategic developments.

4.

**How does this proposal support the ambitions, principles and delivery of the Corporate Plan 2015-19?**

The SPD has been drafted to prioritise the Council's Corporate goals of a Prosperous and Healthy Torbay. This is summarised in the nested table below.

<b>How S106 Obligations Deliver Corporate Plan Ambitions of a health and Prosperous Torbay</b>	
<b>Corporate Plan Action</b>	<b>How reflected in S106</b>
Protecting all children and giving them the best start in life	Affordable housing, education contributions
Working towards a more prosperous Torbay	Affordable housing, employment contributions to mitigate loss of employment. The SPD includes mechanisms to ensure that s106 obligations do not harm development viability.
Promoting healthy lifestyles across Torbay	Open space contributions, sustainable transport. Some site acceptability matters. Note that separate SPD is also being prepared on Health.
Ensuring Torbay remains an attractive and safe place to live and visit	Site acceptability matters e.g. biodiversity. Employment contributions. The SPD also promotes public realm improvements.
Protecting and supporting vulnerable adults	Health contributions where applications give rise to particular health issues e.g. Sheltered housing or care homes. The SPD aids the provision of affordable housing.

The s106 SPD places a high priority on affordable housing, health and employment. Urban regeneration of the least prosperous areas is also promoted.

S106 contributions help to meet infrastructure and other costs arising from development, which would otherwise need to be funded from the Council's budget.

The SPD promotes healthy lifestyles in terms of the provision of open space, community facilities and decent affordable housing.

	<p>Amendments to the consultation draft SPD are recommended to strengthen the delivery of affordable housing. These include adhering to the lower threshold for affordable on greenfield sites of 3 dwellings, inclusion of additional text encouraging the provision of affordable houses suitable for children.</p> <p>The SPD also seeks contributions towards education and lifelong learning.</p>
<p><b>5.</b></p>	<p><b>Who will be affected by this proposal and who do you need to consult with?</b></p> <p>S106 Obligations will affect the development industry, as well as the recipients of s106 funding. Departments within the Council and the Torbay Development Agency (TDA) who receive s106 funding will need to identify specific projects and ensure that no more than 5 Obligations are pooled where they are used for infrastructure.</p> <p>Internal officer consultation has taken place in late 2015 and throughout 2016. The draft document was approved by the Mayor at a meeting of the Policy Development and Decision Group as the basis for consultation, on 14 September 2016.</p> <p>The Draft SPD was the subject of public consultation between 19 September and 31 October 2016. Stakeholders who had asked to be consulted on planning documents received a specific notification. A wider newsflash was sent out to all planning agents. The draft documents are posted on the Council's consultations webpage and at <a href="http://www.torbay.gov.uk/CIL">www.torbay.gov.uk/CIL</a> and advertised in the Herald Express.</p> <p>Note that the preparation of SPDs are governed by Part 5 of the Town and Country Planning (Local Planning) (England) Regulations 2012. Section 11 and 13 of the Regulations set out public participation arrangements for SPDs.</p>
<p><b>6.</b></p>	<p><b>How will you propose to consult?</b></p> <p>The SPD has been the subject of consultation as outlined in section 5 above.</p>

## Section 2: Implications and Impact Assessment

### 7. What are the financial and legal implications?

Section 106 obligations collect money for a range of services including affordable housing, education, open space, etc.

S106 Obligations are governed by Regulation, especially reg 122 of the Community Infrastructure Levy Regulations 2010 (as amended). These require s106 obligations to CIL Regulations 2010 and NPPF paragraph 204). They must be

- Necessary to make the development acceptable in planning terms.
- Directly related to the development.
- Fairly and reasonably related in scale and kind to the development.

Where S106 Obligations are collected for infrastructure that could be funded through CIL, no more than five obligations may be pooled for a single item of infrastructure. It is possible that pooling restrictions may be relaxed in the future. This would greatly help the Council in its use of s106 obligations.

Pooling restrictions do not apply where s278 Highways agreements are used to secure highways works or where the s106 Obligation is not infrastructure (e.g. for land management).

Where s106 Obligations are not spent within time (usually 5 years) or on the item they were collected for, there is a danger that the Council will be required to pay the money back.

#### **Thresholds for Affordable Housing**

The (former) Government had a long stated intention of limiting the use of “tariff style” S106 Obligations and affordable housing for smaller housing sites. This is set out in a Written Ministerial Statement of 28 November 2014 and in the Planning Practice Guide. The right of Ministers to set a threshold has recently been upheld by the Court of Appeal. Since the Court of Appeal Ruling, two Inspectors have ruled that (lower) affordable housing requirements in Local Plans should be applied (in Elmbridge, Surrey and Cambridgeshire).

On this basis, the Local Plan remains the starting point for the determination of planning applications; however, the Written Ministerial Statement is also a material consideration.

The weight attached to the Local Plan versus the Written Ministerial Statement/PPG was the subject of representations on the SPD. Policy H2 of the Local Plan sets a threshold of 3 dwellings for greenfield sites (and 15 dwellings for brownfield sites). The Local plan is up to date and reflects significant local need for affordable housing in Torbay.

On this basis it is recommended by Officers that the draft SPD is amended to adhere to the threshold for affordable housing set out in Policy H2 (i.e. 3 dwellings for greenfield sites). Reference will also be made to the Written Ministerial statement as

a material consideration.

However, the Mayor considers that greater weight should be given to the WMS and that a threshold of 11 dwellings should apply.

It is recommended that a threshold of 11+ dwellings (6 in the AONB), or commercial developments of 1000 sq m or less, is adhered to for “tariff style” contributions that are set out in the “Sustainable development” section of the SPD.

### **General Duty on Starter Homes**

The Planning and Housing Act 2016 introduces a duty for LPAs to have regard to the delivery of starter homes. Further Regulations are expected to be published in 2016, and the Government has consulted upon a requirement of 20% of sites above 10 dwellings to be delivered as starter homes. There is scope to negotiate starter homes on the basis of viability, but it is likely that regulations will give starter homes priority over other affordable housing tenures. This could have profound implications for the provision of affordable housing. On this basis the SPD takes the approach that the SPD treats the provision of starter homes as a general duty, but does not require the provision of starter homes in place of more conventional types of affordable housing.

### **The relationship between s106 and CIL**

**Community Infrastructure Levy (CIL).** The CIL Examination is currently open, with a Hearing session taking place on 9 November 2016. When CIL is in place it will largely replace “sustainable development” contributions for sites upon which CIL is sought.

It is proposed that CIL will apply to most residential development outside of Future Growth Areas (as designated in Policy SS2 of the Adopted Local Plan). However all sites will need to have regard to site acceptability matters and affordable housing.

For larger developments within the Future Growth Areas, it is proposed to set a zero rate of CIL and seek S106 Obligations to cover infrastructure. It is anticipated that the overall infrastructure cost of delivering these sites is likely to exceed the amount of money that CIL would have raised. In addition S106 Obligations are more flexible in terms of allowing for the up-front provision of infrastructure.

The development industry has argued that s106 obligations should be used for all strategic sites and this matter will be considered by the CIL Examination.

The use of S106 Obligations is not intended to provide a perverse incentive to greenfield developments in Future Growth areas. Where such developments seek to negotiate a reduced rate of planning obligations, an independent assessment of viability will be sought. The amount of CIL that would have been paid if it was levied will be taken into account in such negotiations, although it is stressed that s106 Obligations must not be used to tax developer profit per se.

The relationship to S106 Obligations and CIL for residential development is set out in the nested table below. This reflects the situation submitted for Examination and may need to change as a result of the Independent Examiner’s recommendations.

<b>The relationship between S106 Obligations and CIL.</b>			
<b>CIL Charging Zone</b>	<b>Site size (£ per sq m)</b>		
	<b>1-3 dwellings</b>	<b>4-14 dwellings (Note that regulations may introduce a 10 dwelling threshold for starter homes).</b>	<b>15+ Dwellings</b>
<b>1. Built up areas within top 20% deprivation (Community Investment Areas+)*</b>	Zero rate of CIL S106 to address site acceptability matters only.	£30 per sq m CIL S106 to address site acceptability matters only.	£30 per sq m CIL S106 to address site acceptability matters and affordable housing (subject to Policy SS11) Sustainable Communities).
<b>2. Elsewhere in the built up area**</b>	£30 per sq m CIL S106 to address site acceptability matters only.	£70 per sq m CIL S106 to address site acceptability matters and Affordable housing sought from greenfield sites of 3 dwellings	£70 per sq m CIL S106 to address site acceptability matters and affordable housing.
<b>3. Outside the built up area**</b>	£70 per sq m CIL  S106 to address site acceptability matters only.	£70 per sq m CIL  S106 to address site acceptability matters and affordable housing sought from greenfield sites of 3 dwellings.	£140 per sq m CIL  S106 to address site acceptability matters and affordable housing.
<b>4. Future Growth Area</b>	£70 per sq m CIL S106 to address site acceptability matters only.	£70 per sq m CIL S106 to address site acceptability matters and affordable housing sought from greenfield sites of 3 dwellings	Zero- S106 to address site acceptability matters, affordable housing.

**8. What are the risks?**

S106 requests are unlawful if they do not meet the tests identified in Section 7 above.

If the Council is unable to demonstrate that s106 obligations will be used for a specific project which has not previously received more than 5 Obligations, then s106 Obligations cannot be collected.

Where s106 Obligations are not spent within time (usually 5 years) or on the item they were collected for, there is a danger that the Council will be required to pay the money back.

There is a need to ensure that Council departments are properly resourced to identify, deliver and monitor s106 projects.

9.	<p><b>Public Services Value (Social Value) Act 2012</b></p> <p>No impact</p>
10.	<p><b>What evidence / data / research have you gathered in relation to this proposal?</b></p> <p>A wide amount of evidence informed the Adopted Torbay Local Plan. It includes but is not limited to demographic projections, Exeter and Torbay Housing Market Assessment (2007 refreshed 2011), Torbay Housing Requirements Report, 2013,</p> <p>The main SPD indicates a range of evidence that has been used to indicate where development impacts upon the need for infrastructure, and the sources used.</p>
11.	<p><b>What are key findings from the consultation you have carried out?</b></p> <p>See schedule of representations received at Appendix 2</p> <p>A number of amendments have been made to the SPD to address representations received and other issues arising. These do not affect the overall approach taken in the SPD.</p> <p><b>Affordable Housing</b> Several comments and Member concerns were raised about the status given to affordable housing.</p> <p><b>Tests of Lawfulness.</b> Planning Obligations must adhere to CIL Regulation tests of lawfulness and must not set roof tax style contributions.</p>
12.	<p><b>Amendments to Proposal / Mitigating Actions</b></p> <p>See 11 above. On the basis of representations and discussions with colleagues, a number of minor amendments have been made to the SPD to address some concerns raised.</p> <p>The SPD has been amended to strengthen the Tests of Lawfulness set out in Regulations 122 and 123 of the CIL Regs. This emphasises that S106 Obligations cannot be sought on a roof tax basis, but must be necessary to making the development in planning terms.</p> <p>In particular the relationship between affordable housing and other matters (including urban realm matters) has been amended. The officer recommendation is that the text should be revised to reduce the threshold for affordable housing on greenfield sites to 3 dwellings.</p> <p>The text on affordable housing has also been strengthened in discussion with the TDA.</p> <p>A number of minor changes have also been made to biodiversity in response to representations from Natural England and the RSPB.</p> <p>These changes are not considered to substantially change the SPD.</p>

## Equality Impacts

13	Identify the potential positive and negative impacts on specific groups			
	Positive Impact	Negative Impact & Mitigating Actions	Neutral Impact	
Older or younger people	<p>The SPD promotes the provision of affordable housing, which will support a range of people with housing needs, including children and older people</p> <p>The SPD seeks education contributions as well as lifelong learning contributions.</p>			
People with caring Responsibilities	Where development generates a likely need for additional care facilities, a s106 contribution may be sought for the provision of social care through the Integrated Social Care Organisation. This would apply to applications for care homes, sheltered housing etc that are likely to encourage inwards migration of older people.			
People with a disability	An element of affordable housing provision should be capable of adaptation for older people (see Policy H6 of the Local Plan).			
Women or men			No direct impact. S1106 Obligations should benefit both genders.	
People who are black or from a minority ethnic background (BME) <i>(Please note Gypsies / Roma are within this community)</i>			No direct impact.	



Religion or belief (including lack of belief)	S106 Obligations can be used to secure or improve community facilities if need for these is generated by development. These can provide meeting facilities etc for faith and non-faith groups.		
People who are lesbian, gay or bisexual			No direct impact other than the provision of community facilities (i.e. minor positive)
People who are transgendered			No direct impact other than the provision of community facilities (i.e. minor positive)
People who are in a marriage or civil partnership			No direct impact other than the provision of community facilities (i.e. minor positive)
Women who are pregnant / on maternity leave	The SPD promotes healthy lifestyles and may in some circumstances support the provision of health facilities etc as part of major developments.		
Socio-economic impacts (Including impact on child poverty issues and deprivation)	Major positive impact. The SPD promotes the provision of affordable housing and has been amended to encourage an increased level of child friendly affordable homes (3 bed 5 person dwellings). The SPD provides a framework to seek contributions to mitigate the loss of employment and for the promotion of job crating schemes, and use of local labour and urban regeneration.		
Public Health	The SPD makes public		

	impacts (How will your proposal impact on the general health of the population of Torbay)	health a site deliverability matter in terms of promoting opportunities for active lifestyles.		
<b>14</b>	<b>Cumulative Impacts – Council wide</b> (proposed changes elsewhere which might worsen the impacts identified above)	No. The SPD seeks contributions that can help support Council spending on infrastructure etc. S106 Obligations may not be used to overcome existing defects or shortages; however existing communities will benefit from infrastructure provided. Moreover, in the absence of s106 Obligations the cost of providing such items would be entirely borne by the public purse.		
<b>15</b>	<b>Cumulative Impacts – Other public services</b> (proposed changes elsewhere which might worsen the impacts identified above)	No		