

## Appendix 2

Torbay Local Plan 2012-30. Draft Planning Contributions and Affordable Housing Supplementary Planning Document.

# **Consultation Statement and schedule of representations received on the Draft SPD with Recommended response by Torbay Council.**

Torbay Council, November 2016

## Introduction

This paper summarises representation made to the Planning Contributions and Affordable Housing Supplementary Planning Document. This was the subject of public consultation between 19<sup>th</sup> September 2016 and 31<sup>st</sup> October 2016. There were 15 responses to the consultation broken down as follows:

- 4 letters from national bodies (NB) and environmental charities. These were generally supportive but request minor amendments.
- 2 Objections from Neighbourhood Forums (Community Bodies CB), generally requesting amendments.
- 2 representations from affordable housing (Social Enterprise /Registered Providers SE) representatives.
- 4 Objections and 1 support from general housebuilders (Developers-Residential DR) or their planning agents.
- 2 Objections from specialist retirement sector housing providers (Developers Retirement Sector)

In response to representations and discussions within the Council and its partner organisations (Torbay Development Agency and Torbay Coast and Countryside Trust), it is recommended that several amendments are made to the Draft SPD. These are not considered fundamental to the SDP but clarify its scope and intent. In addition to responding to representations made, additional work has also taken place on formulas set out in the draft SPD to seek to ensure that they are a fair approximation of the effect of development upon wider environmental, economy or community infrastructure. These are tempered by the main issue raised by the development industry, that all S106 Obligations must meet the Tests of Lawfulness and limits to pooling of infrastructure, and cannot be sought as a “tariff style” contribution.

Notwithstanding that some objections are pitched as fundamental objections, it is considered that the vast majority of objections can be dealt with through amendment to the SPD.

In summary the main issues arising are considered to be:

- 1) Relationship between Community Infrastructure Levy (CIL) and S106.
- 2) The SPD must conform to the CIL Regulations limitations on s106 Obligations, and objections that some elements of the SPD do not accord with this.
- 3) Affordable housing thresholds are set by Policy H2 of the Local Plan, not the SPD. The stance on affordable housing should be strengthened.
- 4) Various environmental bodies have asked for minor amendments on biodiversity matters.
- 5) Concern about the impact of healthcare contributions and need to prioritise between these and affordable housing.

A detailed response to specific representations is set out in the table below. However, in summary, it is recommended that the Council respond to the issues raised as follows:

- 1) Relationship between CIL and S106**

This is set out at page 6 and in the table on page 8 of the SPD. It is noted that the CIL Examination is currently underway, with a Hearing having taken place on 9<sup>th</sup> November 2016.

However it is recommended that the SPD may be adopted prior to the outcome of CIL being known (subject to the amendments recommended below, and it being noted that adjustments may be required in relation to CIL as set out below). The SPD provides guidance to the Adopted Local Plan and does not set policy in its own right. It is possible that the SPD may need amendment to ensure that it works smoothly with the SPD as outlined below.

All developments must meet site deliverability requirements (called “site acceptability matters” in the consultation draft SPD, and the former SPD). The SPD is clear that planning conditions and direct provision will be used wherever possible.

It is noted that there must not be blurring of what is a site deliverability matter- i.e. directly required to ensure that development is safe or meets legal requirements, and wider sustainable development contributions i.e. matters that are still necessary to make development acceptable in planning terms but are not essential to the safe or lawful carrying out of the development.

**The Council’s preferred position on a “narrow” CIL and S106.** The Council is proposing a “narrow” approach CIL whereby larger developments in Future Growth Areas will not pay CIL. The Council will seek to fund sustainable development infrastructure serving strategic developments through s106 Obligations, rather than CIL. It is noted that some developers have argued that all developments of a strategic scale (broadly over 30 dwellings) should be dealt with through S106 rather than CIL, and the Council has indicated that it would not object to this approach if the Examiner recommended it.

It is not proposed to seek “sustainable development contributions” from smaller developments for which CIL is levied, or sites of fewer than 11 dwellings (6 in the AONB). Such sites would only be liable for “site deliverability” matters and in a small number of cases affordable housing, loss of employment mitigation or healthcare.

A small number of developments will be greenfield sites of 3+ dwellings outside of Future Growth Areas or brownfield sites with new floorspace of 15+ dwellings. These are potentially liable for CIL and affordable housing.

**Impact of a “wider” CIL.** Paignton and Brixham Neighbourhood Forums and some house builders expressed a preference for CIL to be applied more widely across all sites. The Council has advised that this is not the most effective way of delivering strategic sites, but the decision now lies with the CIL Examiner.

Should the Examiner recommend that a wider approach to CIL be taken and applied to all sites (in line with Neighbourhood Forums’ and some housebuilders’ representations); then the “Sustainable Development” section of the SPD will need to be reduced and the CIL Regulation 123 list expanded.

## 2) The SPD must conform to the CIL Regulations limitations on s106 Obligations.

This appears to be the main concern raised by the development industry. The Draft SPD is clear at pages 7 and page 39 that the CIL Regulations 122 and 123 Tests of Lawfulness should be applied. However, given the concern raised by the development industry it is recommended that this point should be reiterated. On this basis financial contributions will only be sought where a specific project is identified that meets the Tests of Lawfulness. Where the matter is infrastructure, the Council will need to ensure that no more than 5 Obligations are pooled towards it.

As a matter of Development Management operation, this will require recipient departments to identify specific deliverable projects at the application stage. This has resource implications for the Council.

The SPD sets out a significant level of background evidence seeking to assess the cost of mitigating the wider impacts of development. This is considered to be a legitimate exercise in terms of assessing the impact of development. The SPD clearly indicates that mitigation will be provided where development provides an identifiable social benefit or where seeking s106 Obligations would jeopardize viability. The draft SPD also allows for in-kind provision where appropriate, particularly on larger sites. On this basis it is considered legitimate and an aid to certainty to set out the likely financial sum that may be sought, subject to the reiteration of the Tests of Lawfulness noted above.

It is noted that some objections from the development industry seek to exclude some areas from s106 Obligations, such as waste management. However Policy W2 (and W1) of the Local Plan indicates that waste management contributions may be sought from developments that generate significant waste.

The SPD is a fairly long document at 56 pages. To increase legibility it is recommended that much of the background text is placed in text boxes. This will help emphasise that they should not be treated as a “roof tax”.

**3) Affordable housing thresholds are set by Policy H2 of the Local Plan, not the SPD. The stance on affordable housing should be strengthened.**

Appendix 1 to the Council Report considers the legal position relating to affordable housing thresholds in detail. The Planning Practice Guidance and Written Ministerial Statement are material considerations. However Policy H2 of the Local Plan is the adopted policy and there is a high need for affordable housing in Torbay. On this basis it is recommended by Officers that the SPD is amended to reflect this with a caveat that the WMS and PPG advise a higher threshold.

**Note that the mayor has recommended that the SPD should retain a de facto threshold of 11 dwellings in the light of the Written Ministerial Statement and PPG advice.**

This is likely to affect only a small number of sites, and the viability of such sites to pay CIL may be an issue. However, the Council has indicated that it will consider such viability matters through independent viability assessments. It is noted that the Council’s high level Viability Assessment (PBA 2016) indicates that sites of 4+ units can viably accommodate CIL and affordable housing.

A number of relatively minor amendments to the text on affordable housing are also recommended regarding cluster sizes, the need for suitable family homes and to clarify that on-site provision is the preferred option.

**4) Various environmental bodies have asked for minor amendments on biodiversity matters.**

A number of relatively minor amendments are recommended in response to comments by Natural England, RSPB and the Woodland Trust. These have been the subject of discussion with Torbay Coast and Countryside Trust. The major change of approach is to set out that recreation impacts on Berry head, Brixham will be a CIL matter, whilst developments need to mitigate biodiversity impacts through on-site measures or s106 Obligations.

**5) Concern about the impact of healthcare contributions and need to prioritise between these and affordable housing.**

The Local Plan and SPD indicate that healthcare contributions are sought where a development generates the need for additional healthcare/integrated social care (Policy SC1 and Policy H6). Torbay's demography is clearly driven by inwards migration of older persons, and the SPD seeks to assess the degree to which residents of specialist housing are likely to be inwards migrants. No clear evidence to counter the SPD's assumptions has been submitted.

It is recognised that there are blurred lines between Use Class C2 and C3 accommodation. Some specialist housing may provide care and fall within Class C2 but helps people live independently (and within the "household" population). On this basis it is recommended that the SPD sets out that the S106 Obligations are only sought to mitigate additional impacts arising from development on the Integrated Social Care budget. On this basis the provision of additional facilities and care provided by the accommodation is likely to count as "mitigation" against S106 obligations.

It is agreed that the SPD should prioritise between affordable housing and healthcare contributions. However it is recommended that affordable housing should usually take the higher priority, since meeting housing needs is a central part of the planning system.

**Schedule of representations received on the Draft Planning Contributions and Affordable Housing Supplementary Planning Document consultation September to 31 October 2016**

Ref:	Name	Organisation	General Comments	Details	Torbay Council Response
<b>National Bodies</b>					
NB1	Martyn Dunn	<i>South West Water</i>	Support	Support the document's approach to flooding, drainage and sewerage.	<b>Support noted.</b> The SPD promotes sustainable drainage measures where they are possible.
NB2	Kathryn Davies	<i>Natural England</i>	No objection.	No objection. Advise that SEA/EIA unlikely to be required for the SPD	<p>Advice that SEA in unlikely to be required is noted. This has been confirmed by the Council's own SA Officer.</p> <p>Note that negotiations have been underway with Natural England (Corine Dyke), RSPB, and Torbay Coast and Countryside Trust over the wording of the SPD and avoiding unlawful overlap between s106 and CIL matters.</p> <p>It has been agreed with these organisations to seek to mitigate the biodiversity aspects of planning applications. CIL will be used to address the impacts of recreation upon limestone grassland at Berry Head.</p> <p><b>Agree:</b> Amend the SPD section on Biodiversity (pages 17-20 to reflect this approach).</p>
NB3	Helene Jessop	<i>RSPB</i>	Suggested amendments	<ul style="list-style-type: none"> <li>• Support no net loss of biodiversity</li> <li>• Support full compensation of circl bunting habitat loss</li> <li>• Support monitoring and management as a CIL or s106 item.</li> <li>• Textural Change</li> </ul>	<p>Policy NC1 and SS8 relate.</p> <p><b>Agree:</b> Clarify text regarding GHBs</p>

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				<ul style="list-style-type: none"> <li>• GHBs more likely to be found in unlit areas and less likely in urban areas Re-draft to clarify.</li> <li>• Identify suitable habitat for areas of enhancement if possible.</li> </ul>	
NB4	Justin Milward	Woodland Trust	Suggested amendments	<p>General observations requesting that role of woodland should be strengthened in s106 negotiations. Should not just relate to designated sites.</p> <p>Refer to Natural England and Forestry commission standing advice on ancient woodland and veteran trees.</p> <p>Refer to role of woodland in flood protection and alleviation.</p>	<p><b>Issues noted.</b> The SPD cannot change Local Plan policy, but agree that the SPD should mention the role of trees in biodiversity and flood alleviation. (Policy NC1 and C4 includes consideration of ancient woodlands and veteran Trees).</p> <p>The SPD is not intended only to relate to designates sites. Amend to require proportionate mitigation of non-designated sites.</p> <p>Add text to include trees and woodlands in the biodiversity and landscape aspects of Table 6.1</p>
<b>Neighbourhood Planning/ Community Bodies</b>					
CB1	Leon Butler	Torquay Neighbourhood Forum	Objections	<p>Object that the SPD makes provision to reduce affordable housing where development would not be viable. Policy H7 of the emerging Torquay neighbourhood Plan states that viability will not be taken into account.</p>	<p>Paragraph 205 of the NPPF indicates that planning obligations should take market conditions into account and policies should be sufficiently flexible to prevent planned developments being stalled. Policy H2 of the Local Plan indicates that affordable housing will be negotiated where it could render development unviable.</p> <p>Policy H7 of the Neighbourhood Plan is likely to require amending before it can be “made” (adopted) as it is not in conformity with the Strategic Local Plan Policy H2. However if it does come into force it will carry more weight than the SPD.</p>

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					<p>In response to the general comment it is proposed to strengthen the wording to require onsite provision of affordable housing (as agreed with the TDA's Housing and Planning Manager) and Policy SS2.1 - Future Growth Areas which expects delivery of a mix and range of housing types within the FGA. The SPD also indicates that the price paid for land will not normally be a material consideration.</p> <p><b>Minor amendments to strengthen the requirement for onsite provision of affordable housing.</b></p>
CB2	David Watts	Paignton Neighbourhood Forum	Objections	<p>1) S106 SPD should not be adopted until outcome of CIL examination is known as the two matters are closely connected.</p> <p>2) Rename "site acceptability" contributions "site deliverability" All obligations are necessary for sites to be acceptable – but the "inner circle" matters are necessary for site deliverability.</p> <p>3) Thresholds for affordable housing should be as per Policy H2 of the Local Plan i.e 3 dwellings for greenfield sites. The Court of Appeal ruling on the Written Ministerial Statement of 28/11/14 does not override local circumstances and need for</p>	<p>1) <b>Partly agree.</b> The SPD and CIL are connected but it is not considered necessary to wait for the outcome of the CIL Examination before proceeding with the SPD. However the SPD may need to be amended if the CIL Examiners Report recommends Modifications to CIL.</p> <p>Should the Examiner require CIL to be levied on sites within Future Growth Areas, this may reduce the scope for "sustainable development" contributions and the Reg123 List will need to be expanded. However there will still need to be guidance on s106/s278 Agreements.</p> <p><b>Chapter 4 (Sustainable Development Contributions) will need to be considered in the light of the CIL Examination in Relation to FGAs</b></p> <p>2) <b>Agree.</b> Rename site acceptability contributions "site deliverability" contributions.</p> <p>3) <b>Mayoral Recommendation:</b> Mayoral recommendation to</p>



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				<p>affordable housing.</p> <p>4) Development impacts on biodiversity should refer to mitigation and not compensation. Remove reference to Grampian conditions (p20) and ensure that off site mitigation is secured through deliverable binding agreement.</p> <p>5) Loss of Employment contributions should reflect the full cost of a job in Torbay- i.e £19,000 rather than £8,000 per FTE. The importance of creating jobs sits at the heart of the Local Plan's growth strategy.</p> <p>6) Object to seeking health care contributions from development in the Care sector. There is a miss match between the SPD and the CCG strategy of stimulating the private care market. Reduce or remove the requirement in table 3.6</p> <p>7) Request site of Kay Elliot report on public realm improvements.</p> <p>8) Viability assessments may need to be published</p> <p>9) The summary of contributions is</p>	<p>retain the Draft SPD threshold of 11 dwellings (6 in the AONB).</p> <p><b>Officer recommendation:</b> Remove "de facto" changes to Policy H2 in the Local Plan to adhere to the 3 dwelling threshold for greenfield sites. This approach has been agreed with the TDA.</p> <p>4) <b>In part agree.</b> Mitigation is a preferable option to compensation, and is a requirement in the case of Habitats Regulations matters. However compensation is acceptable in some cases not relating to HRA issues. (Policies SS8 and NC1 refer) Agree that off-site requirements must be deliverable and may often require a legal agreement, particularly where additional monitoring burdens arise . However there may be instances where a condition will suffice. Review SPD text to ensure that it correctly reflects legal framework and –for safety's sake- remove the term "Grampian style conditions"</p> <p>5) Whilst the sentiments of Paignton Neighbourhood Forum's arguments on the importance of employment are supported; the SPD puts forward a range of methods to assess the cost of creating new jobs. The £8,000 figure relates to both the Local Enterprise Partnerships figure and the per capita cost of funding the Torbay economic Strategy. The figure is about twice the figure in the 2008 SPD. A higher figure (i.e. £19,000 per FTE) would have a greater impact on viability. It is also noted that this figure will be used to provide mitigation for job creating developments against "sustainable development" obligations. On the basis of the above, it is recommended that on balance the figure of £8,000 per FTE job should be used.</p>

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				<p>useful. It should make clear that the SPD also relates to commercial development.</p>	<p>6) <b>Health Care Contribution; Disagree for reasons set out below:</b> See also Representations by Pegasus below. The SPD has been agreed with the South Devon Clinical Commissioning Group/ Integrated Social Care provider, via the Council’s Planning and Public Health officer. The CCG seeks to encourage people to live independently at home for as long as possible. There is a need to provide better facilities in some care homes, but there is not a general need to provide more care homes per se. The strategy is to keep people out of the pure class C2 care home sector, and to live in their own homes for as long as possible. On this basis, there is no conflict between Policy H6 of the Local Plan and the SPD and the PCT’s approach.</p> <p>On the one hand the provision of specialist accommodation for the elderly can provide a valuable form of accommodation that helps people retain a degree of independence. They can also help people “downsize” to free up other housing stock.</p> <p>On the other hand, Torbay’s population growth is driven by domestic inwards migration of older people, which places a strain on overstretched Integrated Care Budgets (as set out in the SPD).</p> <p>It is noted that the cost relates to <i>additional</i> burdens placed by new development upon Torbay’s integrated care provision. On this basis the SPD seeks to assess the proportion of residents are likely to be moving into the area, rather than being local moves.</p> <p><b>It is also recommended that the SPD be amended to provide mitigation against health care contributions where</b></p>

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					<p>developments can demonstrate that there will be no additional burden on the Integrated Care budget because sufficient care will be provided in house or where the C2/C3 proposals have a local occupancy condition. This should be clarified in the supporting text. (See also response to Pegasus below).</p> <p>7) <b>Noted.</b> The report will be published by the TDA when complete. The £700k figure in the draft SPD is based on an early draft and is likely to be a significant under estimate. Add text to clarify where Public Realm may be given more weight</p> <p>8) <b>Noted.</b> Whilst the Council note that viability assessments may need to be published, it considers that it is reasonable to respect commercial confidentiality, e.g. by redacting sensitive information. Amend SPD to indicate that open book accounting with appropriate redaction will be expected.</p> <p>9) <b>Agree.</b> Add text to make it clear that the SPD applies to commercial developments as well as residential. It is, however, not so easy to suggest "tariff style" figures for commercial development.</p>
<b>Social Enterprise / Registered Providers etc</b>					
SE1	Elaine Elstone	Tetlow King for South West Housing Associations and Registered	Objections	<p>1) Where affordable housing is required through planning obligations and the council has full nomination rights, it is not appropriate to seek additional contributions.</p> <p>2) Note that 'Starter Homes' are separate from intermediate</p>	<p>1) <b>Noted.</b> Recommend that "sustainable development" contributions should not be sought from affordable housing, where the Council has nomination rights, or if occupation is otherwise restricted to existing Torbay residents.</p> <p>This will put s106 obligations on a par with the approach that would be taken should the Council seek CIL on these sites.</p>

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Ref:	Name	Organisation	General Comments	Details	Torbay Council Response
		Providers (SW HARP)		<p>affordable housing.</p> <p>3) Object to raising the threshold for affordable housing. The 3 dwelling threshold in Policy H2 should be retained.</p>	<p>2) <b>Agree.</b> Await further information from the Starter Homes Regulations and change to the NPPF. However starter homes are not affordable housing as currently defined in the NPPF, as they have no mechanism for recycling the subsidy into providing further affordable housing.</p> <p>3) <b>Mayoral Recommendation:</b> Mayoral recommendation to retain the Draft SPD threshold of 11 dwellings (6 in the AONB).</p> <p><b>Officer recommendation:</b> Remove “de facto” changes to Policy H2 in the Local Plan to adhere to the 3 dwelling threshold for greenfield sites. This approach has been agreed with the TDA.</p>
SE2	Meghan Rossiter	Tetlow King for Rent Plus	General comment	Rent Plus model should be considered as affordable housing and should be referenced by the SPD.	<b>Partly agree.</b> It is considered appropriate to mention “affordable rent to buy” products in the SPD. However such a tenure would <i>currently</i> only qualify as affordable housing if a mechanism exists for the subsidy below market rate is recycled for alternative affordable housing provision, as per the NPPF definition.
<b>Developers- Residential</b>					
DR1	Ed Brown	<i>Cavanna Homes</i>	Objections/ amendments requested	<p>1) Page 7. The council cannot require a developer to pay fees towards the administering and monitoring of s106 Obligations. Oxfordshire case has been quoted.</p> <p>2) Reg122 tests are statutory and cannot be departed from.</p> <p>3) P30. The SPD should provide guidance on pepper potting. Suggest clusters of 12 affordable</p>	<p>1) <b>Partly Agree.</b> The Council is unable to charge a blanket administration fee. However it is able to charge for additional costs incurred with collection and monitoring of Obligations.</p> <p>2) <b>Agree.</b> The need to adhere to Reg 122 of the CIL Regulations is a major issue raised by the development industry. Amend SPD accordingly.</p> <p>3) <b>Agree.</b> Add guidance on pepper potting. Advice from the Housing Manager TDA indicates that there should be more than one cluster. On smaller sites of up to 100 dwellings</p>

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				<p>homes on sites of up to 100 dwellings and 24 affordable homes on larger schemes.</p> <p>4) Legal costs of drafting SPDs. Amend to say “reviewing” rather than drafting.</p> <p>5) P 53. Where reduced Obligations have been agreed following assessment of viability, longer build-out times should be allowed before requiring a reassessment of viability. Suggest 3 years for sites of up to 50 dwellings, and 6 years for developments of 50-150 dwellings.</p> <p>6) Viability assessments should remain valid for 12 months following grant of permission, not the date of the assessment.</p>	<p>clusters of 10-12 dwellings are appropriate: on larger sites clusters of about 20-24 dwellings are appropriate.</p> <p>4) <b>Agree.</b> Amend to read “drafting or reviewing”</p> <p>5) <b>Partly agree.</b> Based on TDA advice, there is some scope to allow for longer build out times before requiring re-assessment of viability. Cavanna Homes suggest allowing 12 months from permission to allow for reserved matters, discharge of conditions, contracts etc. TDA advise that developers require 6 months from the start time on site to the sale of the first house, with a completion/sales rate of 3 dwellings per month thereafter. Thus from date of planning consent: 50 dwellings would take 34 months (18 months to first completion and 16 months to complete 50 dwellings (at 3 per month). 100 dwellings would take 51 months (18 months to first completion plus 33 months).</p> <p>It is prudent to provide sufficient time to allow sites to be built out. However viability can change significantly over 5 years and there is a need to incentivise the completion of development. In addition, affordable housing can often be delivered more speedily than market housing where registered Provider can provide funding up front.</p> <p><b>Amend timescales for renegotiation in line with assessed build out times above.</b></p> <p>6) <b>Agree.</b> This section relates to where developers have sought to renegotiate S106 Obligations. The context of renegotiating s106 Obligations it would be reasonable to grant 12 months’ extension from the date of revised obligation being agreed.</p>

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Ref:	Name	Organisation	General Comments	Details	Torbay Council Response
DR2	Dan Trundle	Origin3 for Taylor Wimpey	Objection	<p>Support flexibility on self build housing.</p> <p>S106 tariff style contributions must be specific to sites and identify specific infrastructure for which no more than 5 Obligations have been pooled.</p>	<p>Support for the flexible wording on self build affordable housing is noted.</p> <p><b>Agree that CIL Regulations Tests must be met.</b> See comments from other house builders below. The Council confirms that s106 Obligations will adhere to the CIL Reg122 tests of lawfulness.</p> <p>On this basis Obligations will be required to identify specific projects and to ensure that no more than 5 obligations have been pooled for a specific item of infrastructure.</p>
DR3	Mike Harris	Stride Treglown for Abacus/Deeley Freed		<p>Support general approach in SPD, including emphasis on on-site design to deal before resorting to a financial contribution.</p> <p>Support approach of using s106 for large sites.</p> <p>Support the SPD offering viability testing. Critical to ensure that sites are deliverable and that viability is based on realistic assumptions.</p>	<p><b>Support noted.</b> See general amendments suggested in response to house builders' comments re the tests of lawfulness.</p> <p>Issue that viability assumptions should be realistic is noted. Strengthen undertaking to ensure that CIL Regulation122 tests are met when seeking obligations. This means that specific projects will need to be identified, which have not already received 5 obligations.</p>
DR4	Eliot Jones	Boyer Planning for Bloor Homes		<p>1) S106 requirements must accord with Tests of Lawfulness.</p> <p>Contributions should relate to specific items of infrastructure and no more than 5 items should be pooled.</p>	<p><b>1) Noted.</b> See comments by other planning agents/housebuilders. Clarify that S106 items will be used for identified projects that are directly related to development and no more than five obligations will be pooled for a specific infrastructure item.</p> <p><b>As per comments by Paignton Neighbourhood Forum</b></p>

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				<p>The definition of “site acceptability” and “sustainable development” contributions should be clarified.</p> <p>Tariff style contributions need to relate to specific infrastructure requirements. E.g sustainable transport cannot simply rely on TRICS based approach.</p> <p>2) Address what is meant by “cumulative impacts” at p40</p> <p>3) Greenspace etc contributions are based on 2007</p> <p>4) Greenspace is potentially a CIL chargeable item and clarity is needed that developers will not be charged twice for S106 items.</p> <p>5) Object to waste management contributions. Clarify what matters can be dealt with through Council’s revenue and what needs to be raised through S106. Approach will breach pooling restrictions.</p>	<p><b>amend description of ‘site acceptability’ matters to ‘site deliverability’</b></p> <p>2) Transport impacts are by definition cumulative, and specific mention of them at p40 adds little to the meaning of the section. However it is considered reasonable to seek obligations to address additional impacts on the road network arising from development.</p> <p><b>3) Noted. Provide a proportionate in-house review of the Greenspace standards and amend s106 charge as above.</b></p> <p>4) This relates to item 1 above i.e. ensuring that Tests of Lawfulness are adhered to. It is not clear whether Boyer’s comments indicate that they would prefer an expanded CIL approach, and they have not made this argument in relation to CIL. Housebuilders have previously preferred a S106 route.</p> <p><b>5) Clarify scope of waste management contributions. They should only relate to capital costs and will need to respect pooling limits.</b> Policy W2 indicates that waste management contributions may be sought from developments that generate significant waste. Policy W1 requires all developments to make provision for appropriate waste storage, recycling, (treatment and removal).</p> <p>Where developers pay for bins/boxes, no more than five obligations will be pooled. The Council will seek to require</p>

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					provision of appropriate bins and boxes prior to occupation via planning condition. However, Tor2 will need to ensure that developers pay the cost of providing bins/boxes.
DR5	David Seaton	PCL Planning (for Cavanna Homes, Taylor Wimpey and Waddeton Park Ltd)	Objection	<ol style="list-style-type: none"> <li>1) There appears to be double dipping of s106 and CIL on Berry Head.</li> <li>2) Maintenance of greenspace must not be separated from the capital cost of providing it and is therefore an infrastructure item. Legal judgement is attached.</li> <li>3) Object to "unlawful approach". Appears to have written from the perspective of a 'nil impact' nirvana' rather than balancing priorities.</li> <li>4) In the context of general objection above, object to loss of employment contributions as "the loss of employment space is either acceptable in planning terms or it is not". Figures in the SPD are "not proportionate to anything quantifiable".</li> <li>5) Object to sustainable transport contributions. There is double counting between site access matters and sustainable development matters.</li> <li>6) Object to waste management contributions- the provision of bins is not a reasonable planning demand. New waste management</li> </ol>	<p>1) <b>Noted.</b> This is because of the evolution of CIL and s106 documents. Clarify scope of both to ensure no double dipping. It is proposed to use CIL to address recreational impacts on limestone grassland at Berry Head to Sharkham Point, Brixham, so s106 contributions cannot be used for this infrastructure.</p> <p>2) <b>Noted.</b> This issue is important as it affects the extent to which non-infrastructure items may be pooled. Reg 123 of the 2010 CIL regulations restrict pooling for funding or provision of infrastructure, finding being defined as the <i>provision</i> of that infrastructure by means of funding.</p> <p>3) <b>Disagree.</b> As noted above, it is recommended that the SPD's commitments to the Test of Lawfulness is clarified. However, strongly disagree that the SPD promotes "a nil impact nirvana". It is a well established principle that developer obligations can be used to mitigate the effects of development to ensure that it is acceptable in planning terms. The SPD provide clear mitigations for the beneficial impacts of development.</p> <p>4) <b>Disagree.</b> The Local Plan's level of growth is above the natural rate of population growth because it seeks to encourage economic growth. However Torbay suffers severe economic deprivation and the loss of employment could result in unsustainable development. It is therefore considered lawful under CIL Regulation 122 to seek loss of</p>



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				<p>facilities is not simply related to new development .</p> <p>7) SPD will place unnecessary financial burdens on development and risks bringing the planning system into disrepute.</p> <p>8) Pooling restrictions prevent more than 5 obligations being pooled for infrastructure.</p> <p>9) Oxfordshire Case makes clear that councils should only levy charges in exceptional circumstances.</p>	<p>employment contributions. The SPD provide a range of methodologies to assess the economic cost of creating a replacement job. The SPD also provides the scope to assess viability to ensure that s106 Obligations do not render development unacceptable.</p> <p><b>5) See above.</b> The council will need to specify projects that are the subject of obligations, and avoid conflating site deliverability matters with broader sustainable development matters.</p> <p>6) <b>Disagree.</b> The SPD relates to the impacts of additional development and not existing need for waste management. Development without suitable, proportionate waste facilities could be refused under Policy W1 and W2 and the National Waste Planning Policy. It is unlikely the Council would refuse an application <b>solely</b> for lack of contributions towards bins. However this does not mean that the development does not generate a cost to the Council that needs to be met and this will need to be weighed with other material considerations.</p> <p>7) <b>Disagree.</b> The SPD clearly considers the impact on developer contributions upon viability.</p> <p>8) <b>Noted.</b> See above.</p> <p>9) See response to Cavanna Home above.</p>
<b>Developers- Retirement Sector</b>					
RS1	Bill Richardson	Blue Cedar Homes	General comments/ Objection	<p>1) It is difficult to achieve on site affordable housing in retirement developments due to service charges, management regimes and additional facilities needed to support retirement developments.</p> <p>2) Object to seeking extra health and</p>	<p>1) <b>Noted.</b> However elderly persons housing is liable for affordable housing where it falls within use class C3. The SPD does allow for the provision of land or as a last resort financial contributions.</p> <p>2) <b>Issue noted</b> (see also Pegasus below and Paignton Neighbourhood Forum). <b>Amend the SPD that healthcare contributions should only be sought to address additional</b></p>

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				<p>social care payments from developers of adaptable housing for the elderly as these provide a need within the community and help people to live independently.</p> <p>3) Elderly persons accommodation should not pay s106 contributions to matters such as education and children's play areas as residents will not use these facilities.</p>	<p><b>cost arising from specialist development.</b> i.e. from inward migration, and discounting the onsite provision of care/communal facilities that may otherwise need to be met by the public purse.</p> <p>3) <b>Agree.</b> The SPD does not seek such items.</p>
RS2	Louise Fenner	Pegasus for Gallagher Ltd and English Care Village Partnerships.	Objection	<p>1) The definition of housing for older people as being within Use Class C3 is overly simplistic (6.4.1.47)</p> <p>2) Specialist retirement schemes have high costs including the cost of providing communal areas.</p> <p>3) Object to imposition of a tariff on specialist housing for the elderly. More evidence should be provided on the quantum of elderly persons inwards migration.</p> <p>4) Clarify where health care contributions should sit in terms of the hierarchy of priority in the SPD. Notwithstanding comments at (3) suggest that the health and social care charge should take a higher priority than affordable housing.</p>	<p>1) <b>Noted.</b> It is often a matter of degree whether housing for the elderly falls within use Class C2 or C3. The Council has offered a definition of Extra care Housing in the context of the CIL.</p> <p>2) <b>Noted.</b> Extra care housing is zero rated for CIL and much of the cost may be recouped through service charges (which is part of the Sector's argument why onsite provision of affordable housing is not viable). As per response to Blue cedar Homes and Paignton neighbourhood Forum, the SPD should clarify that only matters leading to additional demands on the integrated care budget will be charged health care s106 Obligations. The provision of onsite facilities and flexible care packages that reduce demands on the public purse will be treated in mitigation when considering healthcare contributions.</p> <p>3) <b>Noted.</b> See above. The SPD needs to make clear those contributions should only relate to additional cost arising from specialist development. i.e. from inward migration and provide a discount where the onsite provision of care/communal facilities that may otherwise need to be</p>

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					<p>met by the public purse.</p> <p>However, Torbay is characterised by significant inwards migration of older people, a proportion of whom will go into specialist accommodation. <b>Provide additional statistics on this in the SPD.</b></p> <p>4) <b>Agree</b> that a priority needs to be assigned. However it is considered that affordable housing should take a higher priority, as meeting housing needs is fundamental to the planning system.</p>