

**Delivering the Torbay Local Plan 2012-30,
a landscape for Success.**

**Planning Obligations and Affordable
Housing Supplementary Planning
Document**

Amended Consultation Draft

November 2016

Delivering the Local Plan: Planning Obligations and Affordable Housing Supplementary Planning Document

Contents

1) INTRODUCTION AND OVERALL APPROACH

Who pays Planning Obligations: s106 and CIL

Restrictions on s106 Obligations

A Note on Thresholds for affordable housing and tariff style contributions

The Torbay Local Plan 2012-30 A landscape for success

Prioritisation of Developer Obligations

- Site Deliverability Matters
- Affordable Housing and critical socio-economic infrastructure
- Broader Infrastructure from Larger developments

2. **SITE DELIVERABILITY MATTERS**

Site Access and direct safety works (Local Plan Policy TA2)

Flooding (Local Plan Policies ER1, ER2)

Flooding, Drainage and Sewerage (Local Plan Policies ER1, ER2, W5)

Biodiversity (Local Plan Policies SS8 and NC1)

- ~~Development Impacts on Biodiversity~~
- ~~Greater Horseshoe Bat~~
- ~~Cirl Bunting~~
- ~~Recreational impacts on the Berry Head to Sharkham Point component of the South Hams SAC~~
- ~~Protected Sites – locally important sites for biodiversity and geodiversity~~
- ~~Off Site Habitat Compensation (biodiversity offsetting)~~

Design and active design.

3. AFFORDABLE HOUSING, EMPLOYMENT AND HEALTH

Affordable Housing

Local Plan Policy H2

Tenure Mix

Social Rent

Affordable rent

Intermediate.

Shared ownership/shared equity

Starter Homes

Self and Custom Build Housing.

Onsite provision

Calculating Commuted sums based on cost of provision.

Calculation of Viability and Deferred Assessment of Viability

Design and Layout

Registered Providers

Another Note on Thresholds and Starter Homes

Employment

Loss of Employment

Assessing the Cost of Employment

Healthy Communities and Healthcare

Healthy Communities and Health Impact Assessments

Development which creates a specific Health/Social Service need e.g. Care Homes, Sheltered Housing.

Development where there is a need for a Surgery/Local Health Facilities

4. SUSTAINABLE DEVELOPMENT INFRASTRUCTURE

Transport Infrastructure: Sustainable Transport

Transport Infrastructure Major Road Network and Sustainable Transport

Education

Numbers of School Age Children per dwelling

Open Space, Sports and Recreation

On site provision of open space

Off site provision

Public Realm improvements.

Lifelong learning

Waste Management Facilities

Provision of Bin and boxes for new dwellings.

Increasing capacity of waste collection services from larger developments

Developments that are unable to provide bin and box collection.

Difficult to Monitor Uses and Town Centre Management

5. IMPLEMENTATION

Types of s106 Obligations

Section 106 Agreements

Mitigation

Mitigation for Existing Uses

Mitigation where there is an Identifiable Social Good (e.g. provides jobs or regeneration benefits).

Mitigation for Job Creation.

Affordable Housing

Viability

Content of Viability Assessments

Where Development is Unviable

Re-negotiating the Terms of the Section 106 Agreement

6). SUMMARY

Figures and Tables

- 1.1 S106 Priorities
- 1.2 S106 Pyramid of Themes and Prioritisation Figure
- 1.3 Justification for seeking Planning Obligations in the Adopted Torbay Local Plan 2012-
- 2.1 Greater horseshoe bat strategic measures
- 3.1 Torbay House Prices June 2016
- 3.2 Assumed cost of providing affordable housing/commuted sums
- 3.3 Affordable housing commuted sum calculator
- 3.4 Assessment of the cost of providing jobs
- 3.5 Estimated employment/floorspace ratios

- 3.6 Assumed cost of care and length of occupation of accommodation
- 3.7 Healthcare contribution for accommodation for people in need of care
- 4.1 TRICS Assessment of trips generated by development in Torbay in the Torbay Local Plan 2017-2022.
- 4.2 S106 Sustainable transport obligations sought from larger developments
- 4.3 Capital cost of providing school places
- 4.4 Education costs sought from open market dwellings
- 4.5 Open space requirements per person
- 4.6 Cost of open space provision per person
- 4.7 Cost of open space per dwelling
- 4.8 Public realm improvements
- 4.9 Calculation of lifelong learning cost per person
- 4.10 Calculation of lifelong learning cost per dwelling
- 4.11 Waste management contributions
- 4.12 Monitoring contributions
- 6.1 Summary of contributions sought.

1) INTRODUCTION AND OVERALL APPROACH

1.1 Planning Obligations are an important way of providing the environmental, physical and social infrastructure needed by development. They are also one of the main ways in which affordable housing is provided.

1.2 This is a draft document setting out the Council's approach to planning obligations. It provides additional detail to deliver the Adopted Torbay Local Plan 2012-30 as set out in Policy SS7 and paragraph 4.3.25-37 of the Plan. It is important to note that the purpose of this document is to help deliver sustainable development, not to stifle desirable schemes.

1.3 The SPD was the subject of public consultation between Monday 19th September and Monday 31st October 2016, and reported to Council on 8th December 2016.

1.4 Contributions will usually be sought through S106, but sometimes other types of agreement may be more appropriate. In particular S278 Highway Agreements may be a better way of securing works to highways.

1.5 Planning Obligations should be considered in conjunction with Community Infrastructure Levy (CIL). The CIL Draft Charging Schedule can be read at www.torbay.gov.uk (see below).

1.6 The SPD is relevant to both residential and commercial developments. Planning contributions are sought to mitigate the impact of development. It is often easier to set out the impacts arising from residential development as a formula. However where commercial or other development impacts upon matters such as highways, biodiversity, flooding, town centre management etc, planning obligations will be sought to mitigate their impact. However obligations will not be sought where there is no reasonable link between the development and contribution. For example commercial development is unlikely to make education contributions.

1.7 Where formulas are set out for sustainable development contributions, it is emphasised that these are a starting point to seek to quantify the impact of development. S106 Obligations will not be sought as a "roof tax" but must relate to specific projects that development gives rise to a need for (as per regulation 122 of the CIL Regulations 2010 (as amended)). Where s106 contributions are sought for infrastructure items, no more than 5 obligations will be pooled towards that infrastructure item. The pooling limit does not apply to section 278 Highways agreements.

Who pays Planning Obligations: S106 and CIL

1.8 Obligations may be sought on planning applications as well as matters requiring Prior approval, subject to the tests of lawfulness and other restrictions (see below).

1.9 The Council's approach is to seek CIL on smaller developments, **and larger developments which are not within Future Growth Areas** broadly speaking 10 dwellings or fewer (5 or fewer in the AONB). "Tariff style" s106 contributions may **not** be sought from such sites. The CIL Charging Schedule may be found at www.torbay.gov.uk

1.10 Where CIL is sought on smaller sites, the only s106 contributions sought will be specific Site Deliverability matters. In a very limited number of cases, affordable housing

may also be sought on CIL liable developments (i.e. greenfield sites of 11-15 dwellings or 6-15 in the AONB, in accordance with Policy H2).

1.11 Larger residential developments, ~~above the threshold for affordable housing~~ **in Future Growth Areas** will be the subject of negotiation with developers to ensure that an appropriate s106 Agreement provides the infrastructure necessary to make development acceptable in planning terms, including the provision of wider community infrastructure.

1.12 It is acknowledged that there may need to be an element of cross subsidy for certain infrastructure, but this approach is considered by the Council to be the fairest and simplest to as many people as possible.

Restrictions on s106 Obligations

1.13 S106 Obligations are subject to restrictions set out below. The Council will adhere to these when seeking planning obligations.

1.14 All s106 obligations must meet the CIL Regulations Tests of Lawfulness (set out in regulation 122 of the CIL Regulations 2010 and NPPF paragraph 204). They must be

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

1.15 Because of the impact that affordable housing and other infrastructure requirements have on development viability for larger sites, the Council seeks to address infrastructure issues arising from such sites through s106 obligations rather than CIL.

1.16 Where a s106 obligation is for an item of infrastructure capable of being funded through CIL, the Council will not pool more than 5 s106 obligations towards that piece of infrastructure. This does not apply to non-infrastructure items such as **training, monitoring, and habitat management**.

A Note on Thresholds for Affordable Housing and Tariff Style Contributions.

1.17 Since the publication of the Local plan, the Court of Appeal has upheld the Government's right to set thresholds for affordable housing and tariff style contributions through written ministerial statement and changes to the Planning Practice Guidance. Whilst this does not replace the Local Plan, the Council considers that the PPG and Written Ministerial Statement are material considerations that temper the interpretation of the Local Plan.

1.18 Accordingly affordable housing and "tariff style" contributions will only be sought on sites of 11+ dwellings or 6+ in the AONB.

1.19 The term "tariff style" contribution is used but not defined by the Planning Practice Guidance. The Council take it to refer to contributions that arise for infrastructure which development generates a need for (and are thus necessary to make a development acceptable in planning terms) but are not directly necessary to make a development safe, legal or function in direct physical terms.

1.20 It is noted that the situation is evolving and a number of Inspectors have supported lower thresholds (at Elmsbridge and Cambridge). The Council will keep emerging practice and legislation under review with regard to permissible thresholds.

1.21 The Government has suggested that a threshold of 10 dwellings should apply for starter homes (see below).

The Torbay Local Plan 2012-30 A landscape for success

1.22 The new Torbay Local Plan 2012-30 A landscape for success, was adopted on 10th December 2015. This document, along with neighbourhood plans when adopted, forms the development plan. Planning applications should be determined in accordance with the development plan unless material considerations indicate otherwise (see NPPF paragraph 2). The Local Plan provides the framework for development in Torbay as well as the basis for seeking planning obligations.

1.23 Policies for seeking obligations are set out in the Adopted Local Plan 2012-30 (see Figure 2 below). This SPD provides guidance on the implementation of these obligations and sets out how the impact of development can be assessed.

1.24 All of the policies in the Local Plan have been assessed for their impact on viability¹. However there may be instances where planning obligations and/or CIL could undermine development viability. The Local Plan undertakes to negotiate with developers to ensure that sustainable development schemes can be built. This SDP sets out the Council's approach to assessing and negotiating viability (see Part 5). Note that the scope to negotiate "site acceptability" requirements is much more limited than of affordable housing or wider "sustainable development" style contributions.

1.25 Planning Conditions will be used wherever possible (rather than S106 Obligations).

Prioritisation of Developer Obligations

1.26 Policy SS7 "Infrastructure, phasing and delivery of development" sets out the Local Plan's overall strategy for seeking planning obligations. It indicates that contributions will be prioritised, to ensure that the most critical infrastructure is delivered. The Council prioritises s106 Obligations as follows:

- **Site Deliverability Matters** – essential site specific matters to mitigate the impact of development e.g. access and necessary road improvements, flooding, drainage/sewer capacity, direct biodiversity, landscaping. Planning conditions will be used wherever possible. Site Deliverability matters apply to all development.
- **Affordable Housing and critical socio-economic infrastructure** (including employment provision and health care on developments giving rise to additional care needs). Larger sites of 11+ dwellings/ 6+ in the AONB. All applications with a n employment or health impact
- **Wider sustainable development style** Will be used to secure broader

¹ Torbay Whole Plan Viability Assessment, Peter Brett Associates, 2014

contributions (e.g. waste management, education, open space/ recreation, wider environmental/green infrastructure, town centre management etc.). This applies to developments where CIL is not sought (i.e. larger residential developments in **Future Growth Areas**) and all commercial developments that have an impact which needs to be mitigated. These matters are still required to make development acceptable in planning terms, but not necessarily essential to render the development physically safe or legal. These are sometimes called “tariff style” contributions, although the council considers that this term can be misleading.

infrastructure from larger developments in Future Growth Areas (rather than CIL).

Whilst the SPD sets out figures based on an assessment of likely impacts, sustainable development obligations will not be sought on a “roof tax” basis but must relate to specific items that meet the CIL Tests of Lawfulness, (see “restrictions on s106 Obligations above)

Mitigation of specific impacts e.g. monitoring or town centre impacts, principally arising from larger development.

1.27 These are represented as diagrammatically as concentric rings or a pyramid of priorities (the nearer the base representing the higher priority) in Figures 1 and 2.

1.28 In the context of this document “larger developments **in Future Growth Areas**” refers to residential developments in Future Growth Areas where a zero rate of CIL is sought, but where the Council seeks to address the infrastructure needs arising from development through S106 Obligations.

~~Other types of developments which have a combined floor space of more than 1,000 sq. m (gross internal area) will be considered as larger developments, although S106 obligations will be sought from smaller commercial developments where there is a need to mitigate their impact on infrastructure etc.~~

Figure 1.1 S106 Priority

Community Infrastructure Levy (CIL)

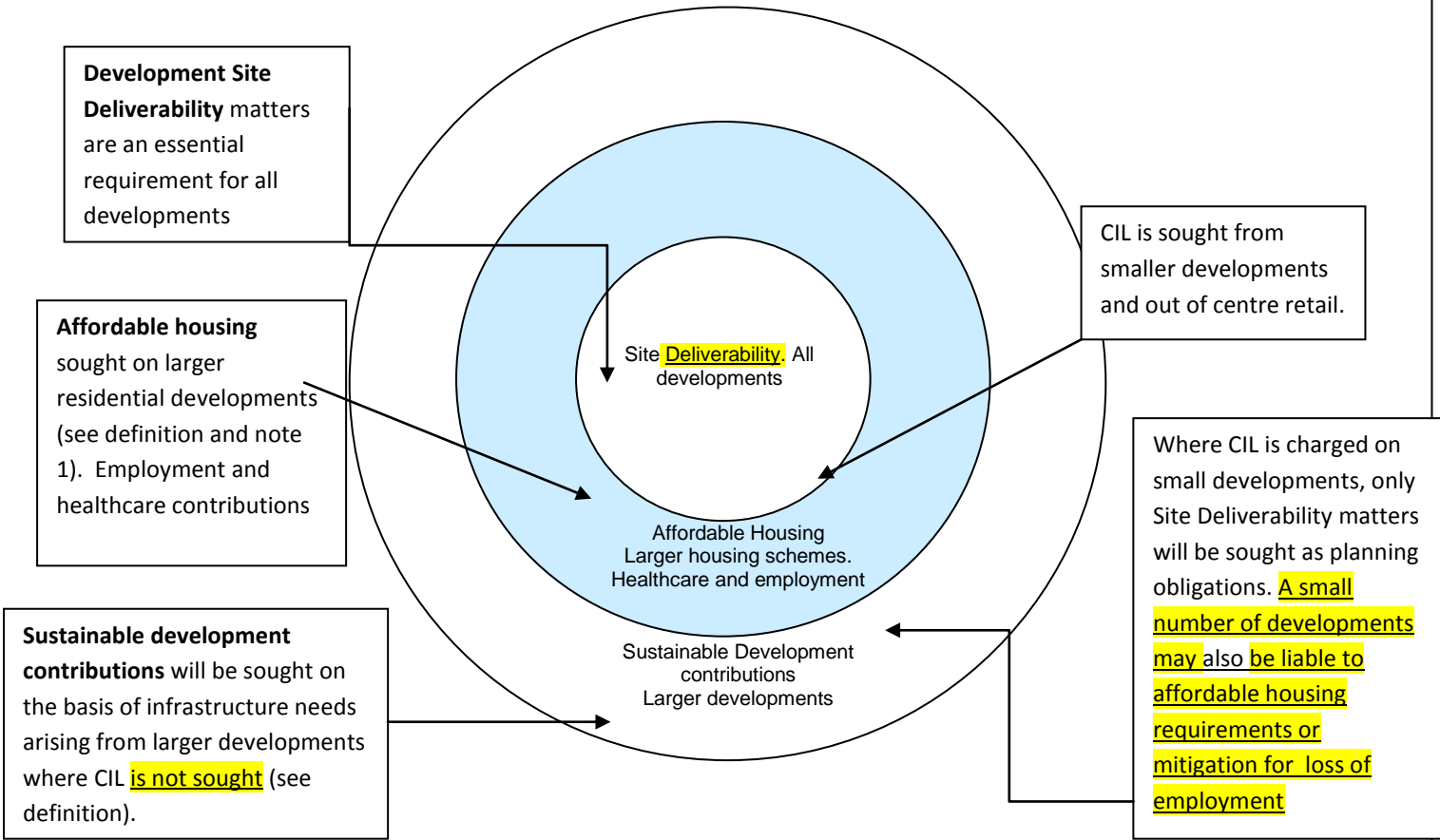


Figure. 1 Proposed Structure of Planning Obligations and Affordable Housing Supplementary Planning Document. and relationship to CIL

Figure 1.2: S106 Themes and prioritisation

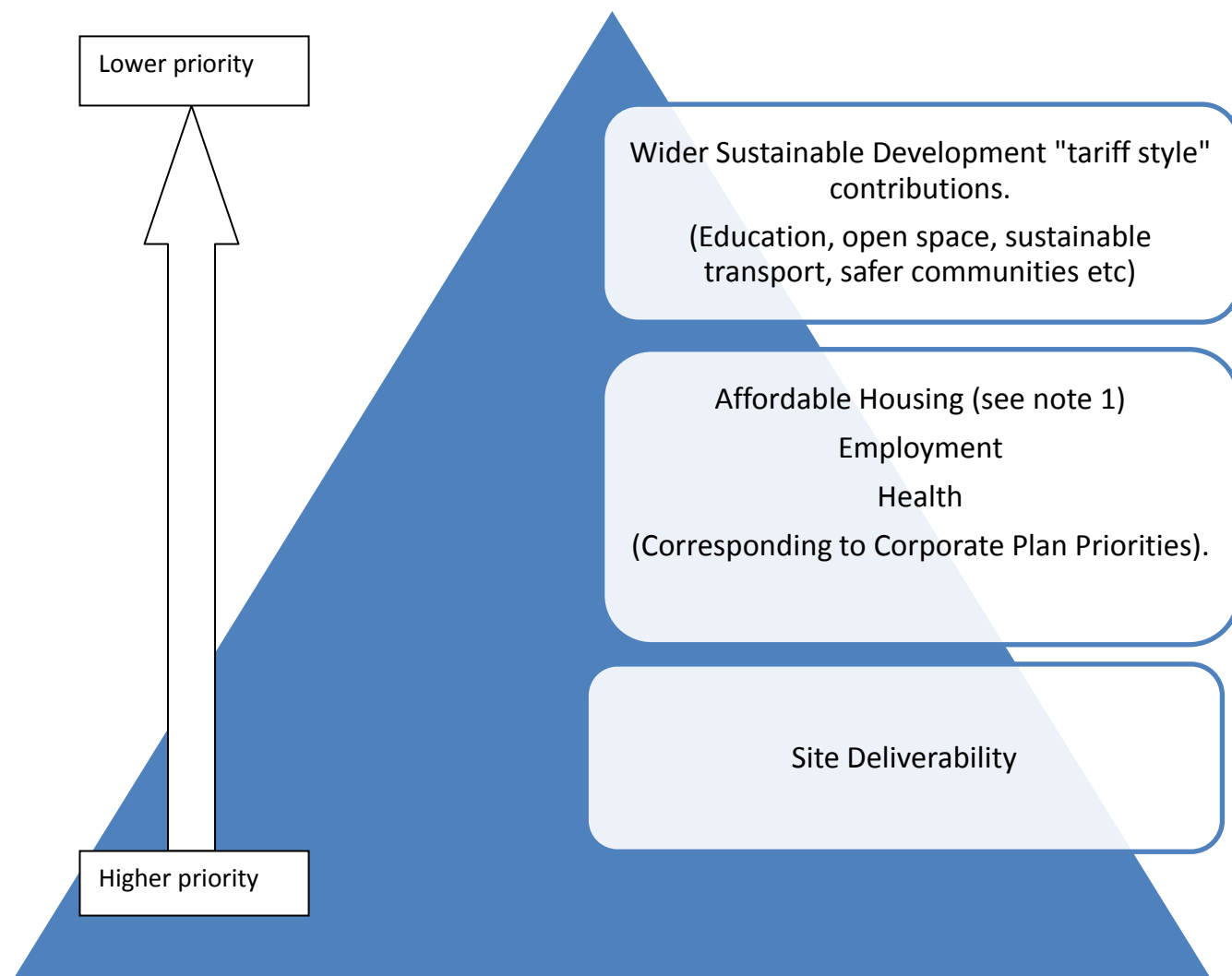


Figure2

Note 1 Affordable Housing. Affordable housing is defined in the National planning Policy Framework. The Council will have regard to a general duty to promote starter homes but this will not take precedence over Policy H2 unless required to do so by Regulations or other legislation.

Note 2. Policy H2 and Policy SS11 of the Local Plan indicates that the Council may agree reduced affordable housing provision where this would secure significant benefits to disadvantaged areas, including enhancement of the local natural or built environment. These would need to be so central to the delivery of the site as to render it a "site deliverability" matter.

Figure 1.3: Justification for Seeking Developer Obligations in the Adopted Torbay Local Plan 2012-30.

Item	Local Plan Policies/ Reference	Applicable to
Site Deliverability (highest priority)		
Apply to all developments (residential and non-residential). Will be addressed through site design/condition where possible. Limited scope to negotiate.		
Development Access	TA2 SS6	All development where there is an impact on access. Will be through S278 Agreements where possible.
Drainage and sewerage	ER1, ER2, 6.5.2.18 C3, 6.3.1,20 SDP2 Paignton town centre SDP3 Paignton North and Western Area.	All development including domestic extensions and prior approval. S 2-3. Particularly development within coastal location or flood risk zone
Flooding	ER1, ER2, 6.5.2.18 C3, 6.3.20 SDP2 Paignton town centre SDP3 Paignton North and Western Area DE1,DE2, DE5 W5	All development within coastal location or flood risk zones 2-3 and 1 where there are other flooding risks (wave action etc.).
Waste water	W5 6.5.3.23 and 6.5.3.24 Buckland WWTW 6.5.3.27	All developments (including Prior Approval) see Drainage above.
Marine habitats Water quality	NC1, 6.3.2.7 ER2 ,6.5.2.18	All development where there is an impact marine habitats
Greater horseshoe bat mitigation	SS1, SS2, SS8, NC1, 4.1.20, 4.1.21, SDP1, SDP3, SDB1, C1	All development where there is an impact on greater horseshoe bat foraging area/flightpaths
(Recreational Pressure on Berry Head)	(SS8, SDB1, NC1 TO1 6.3.2.3 to 6.3.2.5)	Residential and tourism development within the Brixham Peninsula area. It is proposed that this will be a CIL item and therefore S106 Obligations will not be sought towards mitigation of recreation impacts on Berry Head.
Cirl buntings	SS8, NC1, 6.3.2.12, SDT3, SDP3, SDB3	All development where there is an impact on habitat used by breeding or wintering cirl buntings or their habitats
Biodiversity-other	SS8, SS9 NC1	All development where there is an impact on habitats.
Design	6.1.2.19-20 DE1, DE2, DE3	All development – usually through design/conditions
Affordable Housing, employment and health		
Applies to residential developments above threshold. Proportions of affordable housing have been kept low to safeguard viability. Some scope to negotiate tenure on the basis of viability, subject to an overall development package being in the public interest.		
Regard will need to be had to the provision of starter homes as an element of affordable housing provision		

in Policy H2.

Employment provision is essential to delivery of Local Plan Strategy. Some scope to negotiate on the basis of viability, subject to an overall development package being in the public interest.

Additional healthcare/social services impacts arising from development that give rise to healthcare impact (e.g. sheltered housing, extra care units and care homes).

Some scope to negotiate on the basis of viability, subject to an overall development package being in the public interest.

Note that the requirement in the Housing and Planning Act 2016 to provide starter homes will affect the delivery of general needs affordable housing.

Affordable housing- general	Policy H2, 6.4.16 to , 6.4.1.18 H3. 6.4.1.19-27.	Sites over the threshold
Empty homes/ regeneration	4.5.18, 4.5.32 use of affordable housing contributions to bring empty homes back into use.	Sites where affordable housing is sought as a commuted payment.
Self build housing	H4, 6.4.1.19-27 (especially 6.4.1.24)	Self build homes (whether built as exception site or as a % of affordable homes.
Employment (and early delivery). Employment – contributions towards loss of employment	SS4, SS5, 4.2.19 4.2.27, 4.2.29 6.1.2.15	Commercial development and development entailing the loss or gain of jobs.
Live /Work units	4.2.31	Live work units, either through condition or S106 Obligation.
Healthcare and broader healthy communities	SS11.4 H6, 6.4.1.49 SC1	Development likely to give rise to healthcare impact (sheltered housing, extra care and care units). Health Impact Assessments on developments likely to impact on health Sites of 50+ dwellings should provide 5% of dwellings to Accessible and Adaptable standard.

Sustainable development infrastructure from larger developments. See definition above (Third priority).

Applies to larger residential developments in Future Growth Areas **where the CIL Charging Schedule indicates that s106/s278 obligations will be sought to fund infrastructure rather than CIL above threshold for affordable housing** and commercial developments where there is a particular impact which needs to be mitigated (e.g. sustainable transport, town centre management).

Whilst not essential for safety or direct operation of the development, such infrastructure is necessary to make development sustainable and therefore acceptable in Planning terms. **Regard will be had to the CIL Regulations Tests of Lawfulness and contributions will be linked to specific projects/items.**

There is some scope to negotiate on the basis of viability.

Regard will also be had to the threshold for “tariff style” contributions set out in the Written Ministerial Statement of 29/11/2014 and set out in the PPG. This is: Residential developments of 11+ dwellings (or 1000 sq. m)/ 6+ in the AONB. **However most such developments will be CIL liable and sustainable development contributions S106 Obligations will not be sought from developments that pay CIL**

The threshold for “tariff style” contributions also covers commercial developments of less than 1000 sq m

Infrastructure, phasing and delivery of development.	SS7, SS11	Residential developments of 11+ dwellings (or 1000 sq. m)/ 6+ in the AONB. Brownfield sites of 15+ dwellings. Commercial development where there is a need created for infrastructure.
Transport Infrastructure	SS6 4.3.10 (Western Corridor) 4.3.16 (A385 Totnes Road)	Residential developments of 11+ dwellings (or 1000 sq. m)/ 15+ dwellings on Brownfield sites. Commercial development where there is an impact on transport infrastructure The South Devon Highway is a CIL item.
Greenspace-Open space, sport and recreation	SS9, SC2	Residential developments of 11+ dwellings (or 1000 sq. m)/ 15+ dwellings on brownfield sites.
Education	SS11 SC3 6.4.3.15, SC5 (Child Poverty and equality of access)	Development of 11+ dwellings/ 15+ on brownfield sites.
Sustainable food production	SC4	Residential developments of 30+ dwellings
Sports and Leisure	SC2 DE1 Active design	Residential developments of 11+ dwellings/ Brownfield sites of 15+ dwellings (or 1000 sq. m). Active design principles apply to all developments as far as practical (usually through planning permission).
Town centre management	TC1 TC5 Evening and night time economy 6.1.1.23	Commercial development which has an impact on town centre management.
Monitoring	6.12.10 6.4.1.34	Development which give rise to specific monitoring/ management requirements (e.g. holiday occupancy, HMOs, biodiversity)
Waste management facilities	W1, 6.5.3.6 W2.5	On-site design for all developments, and sustainable development contribution from larger sites or where recycling cannot be achieved.
Implementation		
Applies to all development. It is intended that most small scale proposals will not require S106 Obligations.		
	Part 7: 7.4, 7.4.8 et seq, especially 7.4.11 6.4.1.12-18 viability testing	

2). SITE **DELIVERABILITY** MATTERS

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2.1 These relate to works that must be carried out directly to the site to render development workable in physical terms, safety or meeting legal requirements. It includes matters such as access, landscaping, protected species, drainage and flooding.

2.2 Many matters can be addressed through the use of conditions rather than requiring a legal agreement. Conditions will be used where possible. However conditions will not be used to defer considerations that are central to an application's acceptability, such as drainage, flood risk and biodiversity.

2.3 Because site impacts are unique to each development it is not practical to set standard formulae. Policies SS2 and the Strategic Development (SD) Policies of the Local Plan set out key infrastructure matters in proposed Future Growth Areas.

2.4 Development Site Deliverability matters will need to be addressed before other obligations can be sought, and there is limited scope to negotiate on them.

2.5 This section is not intended to imply that all development is capable of mitigation. Although the Council will endeavour to overcome obstacles to granting permission, some proposals will be unacceptable due to their environmental or other impact.

Site Access and direct safety works (Local Plan Policy TA2)

2.6 There is an expectation that developers will pay for access to a development site and/or additional works necessary for safety or operational purposes (e.g. traffic lights, pedestrian crossings, cycle ways, footpaths etc.). **The impact of the development upon junction and road capacity in the immediate vicinity of the site (allowing for a reasonable period of traffic growth, usually five years) will also be considered as a site deliverability matter.**

2.7 However impacts on the wider transport network not directly related to junctions etc in the immediate vicinity of the site will be considered as sustainable development contributions.

2.8 Highway works are currently generally provided through s278 of the 1980 Highways Act.

2.9 The Council will require site access and associated works to be carried out by the developer under s278 in most instances. S278 Agreements are not subject to pooling limitations. They are subject to restrictions on "double dipping" so highway infrastructure that is funded through CIL (i.e. the South Devon Link Road) cannot be the subject to new s106 or s278 Agreements.

2.10 Matters such as internal road layout, parking, provision of cycling facilities etc will usually be dealt with through conditions as part of the development management process (see Policies SS6, TA1 to TA3).

2.11 Roads etc will need to be provided to an adoptable standard. They should provide necessary access to later phases of development by providing highway land to the edge of sites in order to prevent the creation of ransom strips. Details of the Council's highways standards are set out in the Highway Design Guide and Practice Guidance.

Flooding (Local Plan Policies ER1, ER2, NPPF paragraphs 103-104, and footnote 20)

2.12 The NPPF and Policy ER1 "Flood risk" require development to be located in areas with lowest risk of flooding on the basis of sequential and exceptions tests.

2.13 Where (on the basis of the above Policy Framework) development is deemed acceptable subject to flood resilience measures identified in the Flood Risk Assessment; the council will require flood resilience measures to be provided. Policy ER1 (etc.) requires a focus upon sustainable urban drainage and water sensitive urban design. However resilience measures such as water resistant doors, raised floor levels and high level electrical wiring will also be encouraged.

2.14 Such matters will usually be dealt with through planning conditions rather than obligations. However details of flood protection measures will be required when proposals are submitted.

Flooding, Drainage and Sewerage (Local Plan Policies ER1, ER2, W5)

2.15 Drainage is closely related to the issues of flooding and sewer capacity.

2.16 Torbay has been declared a Critical Drainage Area by the Environment Agency (see Policy 6.5.2.13 of the Local Plan). In addition Natural England have raised concern about the impact of combined sewer overflows affecting the candidate Special Area of Conservation (SAC) in Torbay. The Council's evidence² indicates that the impact of "urban creep" and climate change pose a significant risk to Torbay's sewer capacity.

2.17 Policies ER2 and W5 sets out a test to ensure that no additional surface water is discharged into shared sewers. Planning proposals, including prior notifications should ensure that all development (including brownfield sites) mimic greenfield run-off rate (or better).

2.18 The use of Sustainable (urban) Drainage Systems (SuDS) and Water Sensitive Urban Design (WSUDs) to achieve this is strongly encouraged.

2.19 Details of such measures will be required before permission is granted as part of a proposal's Flood Risk Assessment, and implemented prior to the development taking place.

2.20 As with flooding, matters to do with drainage will normally be dealt with through planning condition and the use of sustainable drainage/ water sensitive urban design will be promoted where possible.

2.21 Planning Obligations for off site mitigation will only be accepted as a last resort, and if a suitable project that does not fall foul of pooling restrictions and is implementable can be identified. If this cannot be achieved, proposals will need to be refused.

² Assessment of Sewer Capacity In Torbay, AECOM/SWW 2014

2.22 Developers will require a licence from SWW to connect to foul sewers. Where additional sewerage is required the Council, in liaison with South West Water, will seek to ensure that sufficient capacity is provided to meet the requirements of the whole Future Growth Area. This may mean that earlier phase developers overpay for drainage/flooding measures and provide proportionately less for less critical infrastructure, which will be met by later phases of development.

Biodiversity

2.23 In relation to biodiversity the National Planning Policy Framework (NPPF) requires development to minimise impacts on biodiversity and provide net gains where possible (paragraph 109 and 117-118)

2.24 Section 40 of the Natural Environment and Rural Communities Act 2006 places a duty on all public authorities to have regard, in the exercise of their functions, to the purpose of conserving biodiversity. They should identify ways to integrate biodiversity in developing policies, strategies, in managing land and buildings and developing infrastructure (roads/flood defences) etc.

2.25 In accordance with the NPPF, the Local Plan Policy NC1 indicates that there should be no net loss of biodiversity through development and the aim will be to secure net gain.

2.26 The approach set out in the following paragraphs is designed to have benefits for developers, local communities and habitats and species.

Development Impacts on Biodiversity

2.27 Some development sites will undoubtedly impact on biodiversity. The mitigation hierarchy of avoid, mitigate, compensate, enhance should always be followed.

2.28 Where impacts cannot be avoided, mitigated or compensated for on the development site, or on other land owned by the applicant, contributions for off-site mitigation or compensation will be sought.

2.29 It should be noted that this approach is not a replacement for the protection of those habitats and species covered by legislation. Furthermore, the approach will not be appropriate in all cases e.g. where there will be loss or deterioration of irreplaceable habitats. **Development** likely to affect habitats and/or species associated with an international site will be subject to assessment under the Habitats Regulations and will not be permitted unless **any likely significant effects can be fully mitigated** **any adverse effects upon integrity can be ruled out**

2.30 The following deals with specific biodiversity related issues of importance to Torbay:

- Greater horseshoe bats (*Rhinolophus ferrumequinum*) **associated with the Berry Head to Sharkham Point component of the South Hams SAC**
- Cirl buntings (*Emberiza cirlus*)
- Recreational impacts on the Berry Head to Sharkham Point component of the South Hams SAC (Calcareous grassland and other habitats)

~~Locally important protected sites for biodiversity or geodiversity~~ Protected Sites – locally important sites for biodiversity and geodiversity. Mitigation of biodiversity impacts via contributions for off-site habitat enhancement (biodiversity offsetting). Off Site Habitat Compensation (biodiversity offsetting) Greater Horseshoe Bats (*Rhinolophus ferrumequinum*) associated with the Berry Head to Sharkham Point component of the South Hams SAC

2.31 The greater horseshoe bat (GHB) is a rare species in the UK with a significant proportion of the population found in South Devon although it can be found almost anywhere in Torbay. Most records refer to animals at traditional roost sites, commuting along strategic flyways or foraging in sustenance zones. 2.32 Natural England has produced the South Hams SAC Greater Horseshoe Bat Consultation Zone Planning Guidance (June 2010). The guidance identifies sustenance (foraging) zones around each of the component roosts of the SAC, as well as the strategic flyways which are most likely to link the SAC roosts. The guidance provides details on the current protection for Greater Horseshoe Bats in Annex A.

2.33 Those developments located in a greater horseshoe bat strategic flyway or sustenance zone will need to follow the above Natural England guidance. Such developments are likely to need a Habitats Regulations Screening Assessment, and potentially a full Appropriate Assessment, to determine whether there are any Likely Significant Effects on the SAC.

2.34 Impacts on greater horseshoe bats will need to be mitigated for on the development site, or on other land owned by the applicant. This can normally be achieved through the maintenance of dark corridors and habitat management measures that ensure that there are no detrimental impacts on the ability of the species to navigate and feed, and that there are no adverse impacts on the favourable conservation status of the species.

2.35 Within the context of 'in-combination' impacts, ensuring the greater horseshoe bat population's resilience and the precautionary principle regard to enhancement for, and improving the resilience of the population of, greater horseshoe bats in Torbay, a number of strategic measures have been identified in conjunction with Natural England as detailed in the table below.

~~Contributions towards these measures will be taken via CIL for CIL chargeable development. Other mechanisms to mitigate impact, such as direct provision or s106 obligations will need to be provided by development that has not paid CIL. Such works, or management programmes, will be different from CIL funded infrastructure.~~

2.36 Contributions for these measures will be charged through s106 from the developments in the strategic growth areas as, based on their locations, these developments are the ones likely to impact on the greater horseshoe bat population and habitat. The need for contributions or other measures to mitigate the impact from any non-CIL chargeable other developments or developments within Future Growth Areas will be determined on a case by case basis. This will be identified through the Habitats Regulations process.

~~It should be noted that the list of strategic measures is likely to evolve over time and early discussions with regard to potential mitigation and enhancement for greater horseshoe bats~~

are welcomed. Table 2.1 below shows the list of strategic mitigation measures. Based on monitoring the greater horseshoe bat population and their habitat, these measures may be amended in the future.

Table 2.1 Greater Horseshoe Bat Strategic measures (note that contributions will be sought on a case by case basis based on impact)

Strategic measure	Cost (at 2016 rates)
New maternity roost provision at Berry Head (Priority project 1)	£80,000
Existing building enhancements to create new roost locations, potentially at: Sharkham Point, Berry Head, Woodhuish Farm (Priority project 2)	£40,000
Improvements to foraging habitat within the sustenance zone Land purchase and/or habitat enhancement of existing sites	To be determined on a case by case basis
New survey roosts and On-going monitoring of the Greater Horseshoe Bat population	To be determined on a case by case basis

Note that contributions will be sought on a case by case basis based on impact.

Cirl Buntings

2.37 The cirl bunting is a rare species in the UK, with a very restricted range. Most of its population is in South Devon, and a survey in 2009 showed that just over 8% of the UK population was in Torbay. The cirl bunting is a UK species of principal importance under Section 41 of the Natural Environment and Rural Communities (NERC) Act 2006. These species were identified as requiring action under the UK Biodiversity Action Plan and remain conservation priorities under the UK Post-2010 Biodiversity Framework. The cirl bunting is also protected under Schedule 1 of the Wildlife and Countryside Act 1981 (as amended), and is a red listed bird of conservation concern.

2.38 In areas where there are historic records of cirl buntings breeding territories, or where suitable habitat is present on a development site, the developer and Torbay Council will either need to accept presence of cirl buntings and agree on the level of presence or undertake specific Cirl Buntings surveys, in accordance with the Wildlife and Development Guidance Note: Cirl Bunting (Devon County Council, Teignbridge District Council and RSPB, draft June 2016 currently being finalised) latest RSPB guidelines, to determine the level of presence.

2.39 Where loss of summer breeding or winter cirl bunting habitat is unavoidable, compensatory habitat must be provided. This is unlikely to be achieved on the development site but may be able to be achieved This may be able to be achieved on the development site, or on other land owned by the applicant within Torbay. , although it is acknowledged that the creation and on-going management of suitable arable habitat within a development might be difficult to achieve.

2.40 Where suitable mitigation or compensation cannot be provided on site, contributions towards off-site compensation will be sought. Grampian conditions may be used to secure compensation prior to commencement of works.

2.41 Torbay Council is working with the RSPB and the Torbay Coast and Countryside Trust (TCCT) to identify potential off-site compensation sites for cirl buntings in Torbay.

2.42 Based on this work, compensatory habitat provision for an additional six pairs of cirl buntings at Cockington has been identified, potential compensation sites at Cockington and Maidencombe have been identified. A payment in the region of £87,313 ~~£87,500~~ (at 2015 ~~2016~~-costs) per pair of cirl buntings will be required for compensation for those site which are owned by Torbay Council and managed by TCCT. The offsite compensation payment will cover a 25-year management agreement covers TCCT management and monitoring costs for 25 years. TCCT has every intention to continue to manage the land in accordance with the agreed Scheme of Management until the expiry of its current lease in 2060. A similar Scheme of Management is being developed for TCCT managed land at Maidencombe.

2.43 Further details can be found within the Wildlife and Development Guidance Note: Cirl Bunting (Devon County Council, Teignbridge District Council and RSPB, draft June 2016 with a commitment from TCCT to provide on-going management to the end of their current lease agreement on the land (2060). Habitat management will be in line with the cirl buntings habitat requirements set out in the RSPB's Draft Wildlife and Development Guidance Note: Cirl Buntings (June 2016) and will include monitoring to establish success.

Recreational impacts on the Berry Head to Sharkham Point component of the South Hams SAC

2.44 As detailed in Policy NC1 of the Torbay Local Plan, developments comprising new housing or new holiday accommodation within 5km drive distance of the SAC (broadly equivalent to the Brixham SDB1 policy area) will be required to make a financial contribution towards mitigating the impact of additional recreational pressure on the calcareous grassland at the Berry Head to Sharkham Point component of the South Hams SAC.

2.45 The Council has published the management of recreation impacts on the limestone grassland between Berry Head and Sharkham Point on its Regulation 123 List of matters it intends to fund through CIL. On this basis Contributions for this matter will be taken via CIL.

Protected Sites - locally important sites for biodiversity and geodiversity

2.46 The Torbay Local Plan identifies locally important sites for biodiversity and geodiversity; these include County Wildlife Sites, Other Sites of Wildlife Interest, Unconfirmed Wildlife Sites and Regionally Important Geological Sites. In addition policies NC1 and C4 seek to protect veteran trees and woodland. Developments within 500m of these Protected Sites locally important sites are likely to impact upon and/or benefit from them. Accordingly, there may be a need for these developments to contribute towards enhanced management of these sites. Contributions will be modest and the need for, and level of, contributions will be determined on a case by case basis.

Off Site Habitat Compensation (biodiversity offsetting)

2.47 Where impacts on local habitats cannot be avoided, mitigated or compensated for on the development site, or on other land owned by the applicant, contributions for off-site habitat compensation will be sought.

2.48 For small developments that involve the loss of local habitat, a contribution of £25 per sq m will be sought (Calculated on the basis of ~~95p~~ £1 per sq. m habitat loss will be applied per year for 20 years). For example loss of 100 sq. m of habitat would result in a contribution of £2,000 (£1 x 20 years x 100 sq. m).

2.49 For larger developments contributions will be determined on a case by case basis.

2.50 Contributions will be used to provide off site habitat enhancements in accordance with management plans. There are a number of locally important sites across Torbay which have the potential to provide off site compensation through enhanced habitat management. These include County Wildlife Sites, Other Sites of Wildlife Interest and Unconfirmed Wildlife Sites, (see Appendix D of the Local Plan). In addition there may be potential for off-site compensation on other land, including land owned by Torbay Council and managed by the Council or TCCT.

~~Where contributions are sought for off site recreation, they will be treated as “sustainable development contributions” and will not be sought from developments that have paid CIL. Where an application involves the loss of greenspace and/or biodiversity, S106 contributions will be sought to offset their impact as a Site Deliverability matter. The Council do not consider this to be a “tariff style” contribution.~~

2.51 Consideration will be given to other biodiversity obligations or on-site provision to avoid “double counting”, i.e. financial contributions will only be sought to compensate for a net loss of biodiversity. This planning contribution mitigates a site specific impact and is therefore a site deliverability matter. Where used for greenspace management it is not infrastructure subject to pooling. It will not be used to duplicate matters that are CIL funded (i.e. the limestone grassland at Berry Head).

Design and active design

2.52 Policy DE1 of the Local Plan sets out a requirement for development to be well designed and contain a checklist of considerations relating to development’s function, visual appeal and quality of open space. Particular attention is drawn to designing out opportunities for crime, anti-social behaviour etc., and liaison with the Police Architectural Liaison Officer on major developments. The Policy also requires the provision of layouts and design which encourage active lifestyles and promote walking, cycling and public transport. Policy DE2 encourages the use of Building for Life Criteria.

2.53 Policy DE3 Development amenity sets out a requirement for good layout of dwellings including guidance on space standards, amenity space, road layout, parking, bin and storage areas. It sets out a guideline requirement for houses to have 55 sq. m of outside amenity/garden space and flats to have 10 sq. m per unit.

2.54 Policy SC1 Healthy Bay requires applicants to have regard to promoting healthy living. Developments of 30 or more dwellings, and smaller scale developments where there is an impact on health will be required to undertake a screening for a Health Impact Assessment.

2.55 Such matters are central to the development management process and it is expected that in most instances they will be addressed through conditions and the negotiation of layouts etc. ~~In instances where the promotion of healthy lifestyles etc. cannot be accommodated on-site (but are not essential to the safe or legal operation of a site), contributions will be sought as an equal priority to affordable housing and employment.~~

2.56 Policy SS10 Conservation and the historic environment requires development to contribute towards the character and local distinctiveness of the area. There will be instances where public realm improvements are central to the success of development, particularly in town centre and waterfront areas. In such instances public realm improvements may be prioritised.

2.57 Policy SS11 sets out a range of measures to regenerate community investment areas, including protecting and enhancement of the built environment or creating better accessibility and connections serving the local community. Helping to promote healthy lifestyles for example through promoting walking and cycling will also be given a high priority in these areas.

2.58 Whilst broader public realm improvements are treated as a sustainable development contribution (see Section 4 below), there will be instances where public realm/physical regeneration is considered critical to the success of an application to the extent that it will be considered to be a site deliverability matter, and prioritised accordingly. In many instances this can be achieved through conditions and good design of development and its environs. There may however be instances where s106 obligations are justified for offsite works in close proximity to the site.

3. Affordable Housing Employment and Health

3. AFFORDABLE HOUSING EMPLOYMENT AND HEALTH

3.1 This section sets out guidance on the implementation of the Council's affordable housing, employment and health policies. These will be given the next highest priority in negotiating S106 obligations after direct Site **deliverability** matters have been taken into account. Note however that active design and related matters such as on-site green **open** space provision will often be dealt with through planning condition as part of Site Deliverability matters

Affordable Housing

3.2 Policy H2 of the Adopted Local Plan 2012-30 sets out the Council's affordable housing requirements. **Policy SC5 "Child poverty" also promotes affordable housing and other measures to help reduce child poverty.**

3.3 Policy H2 remains the Council's adopted Local Plan Policy. However the Government has won a Court of Appeal right to set a minimum threshold of 11 dwellings through written ministerial statement dated 28 November 2014. It subsequently amended the Planning Practice Guidance on 21 May 2016 to reflect these minimum thresholds. The WMS, PPG and ~~clearly stated Government intention~~ **intend** to restrict affordable housing thresholds are material considerations and **it is recommended that affordable housing contributions are not sought from dwellings of 1-10 dwellings or 1-5 dwellings in the AONB.**

~~Chapter 1 of the Housing and Planning Act 2016 creates a general duty upon Local planning authorities to promote starter homes. This will be implemented through Regulations. A technical consultation dated March 2016 indicates a preferred option of 20% of dwellings on sites of 10 or more units (or 0.5 ha) should be provided as starter homes, in addition to other affordable housing requirements (pp12-13). However until and unless Regulations come into force, it is recommended that Policy H2 remains the basis for seeking affordable housing. Starter homes may be sought as an element of intermediate affordable housing.~~

~~There is likely to be an exemption where the requirement would render sites unviable, but the consultation appears to indicate that other types of affordable housing should be dropped before starter homes (see P14)~~

3.4 The de facto implementation of Policy H2 is set out below

Policy H2

Affordable housing

The provision of affordable housing will be sought on greenfield sites of **3 11** dwellings or more, **unless they are within the AONB or are rural exceptions sites, when a 6 dwelling threshold will apply.** Affordable housing will be sought on ~~and~~ brownfield sites of 15 dwellings or more, to meet the housing needs of local people. Affordable housing will be sought on the following sliding scale, up to thirty percent (30%) of dwellings on qualifying sites:

Net new dwellings/ assessed site	Affordable housing target	Usual method of delivery
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capacity		
Development of Brownfield Sites		
3-14 dwellings	Zero	N/A
6-10 dwellings	Zero	N/A
11-14 dwellings	Zero	N/A
15-19 dwellings	15%	Delivered through on site provision. Commuted payments will only be accepted where this would achieve more effective provision of affordable housing, or bring significant regeneration benefits.
20+ dwellings	20%	Delivered on site. Commuted sums will only be accepted where this would achieve more effective provision of affordable housing or bring significant regeneration benefits.
Development of Greenfield Sites		
3-5 dwellings	40%	Usually through commuted payment Zero unless there is a change to the Planning Practice Guidance/Written Ministerial Statement.
6 -10 dwellings	15% in AONB	Usually through commuted payment: Zero unless there is a change to the PPG/WMS. If the site is within the AONB or a rural exceptions sites, then 15% through commuted payment. This will be payable on completion of units within the development
11--14 dwellings	20%	Delivered through on site provision. Commuted payments will only be accepted where this would achieve more effective provision of affordable housing, or bring significant regeneration benefits.
15-29 dwellings	25%	On site. Commuted sums will only be accepted in exceptional circumstances, where this would achieve more effective provision of affordable housing or bring significant regeneration benefits.
30+ dwellings	30%	On site. 25% affordable housing and 5% self build plots in accordance with Policy H3. Alternatively 30% affordable housing will be accepted where Self Build Plots are not practicable.

A site's overall capacity to accommodate dwellings will be taken into account when calculating affordable housing requirement, and artificial sub-division or underdevelopment of sites will be resisted.

Provision of affordable housing, or contributions on smaller sites, will be sought on the basis of one third social rented housing, one third affordable rent and one third shared ownership housing. An element of self-built plots will be sought on larger greenfield sites, in accordance with Policy H3.

A higher level of shared ownership/key worker housing may be agreed where this would aid economic prosperity, regeneration or promote the creation of mixed communities.

Proposals that exceed the minimum affordable housing requirements will be supported subject to other policies in the Plan, including the need to create mixed and balanced communities and meet local needs.

Where developers wish to reduce significantly the level of affordable housing provision, an independent assessment of viability will be required, with the developer underwriting the cost of the viability assessment.

The Council may agree to a reduced scale of affordable housing provision on sites where early delivery is possible.

Where a contribution is agreed in lieu of on-site provision, it should reflect the cost of providing on-site affordable housing.

In order to secure additional investment in disadvantaged areas of Torbay, the Council may agree to a reduction, or zero provision, of affordable homes on sites in those areas. Development of such sites will be expected to provide significant benefits to the creation of more sustainable, balanced communities as assessed against the criteria in Policy SS10.

3.5 The explanation to Policy H2 (Paragraphs 6.4.1.6-18) provides additional guidance on tenure natural design and implementation. It sets out the Council's approach to delivering affordable housing as part of mixed and balanced communities. Paragraph 6.4.1.2 indicates that sites should not be artificially subdivided or phased to avoid liability for affordable housing. This should apply both to new sites and the subdivision/redevelopments of existing buildings. Regard will be had to space standards set out in the explanation to Policy DE3 of the Local Plan.

3.6 Dwelling types should be provided in agreement with the TDA's Head of Asset manager and Housing and registered providers' needs. For example there may be a preference for 5 person 3 bedroom homes.

Tenure Mix

3.7 The Council seeks up to 30% affordable housing on the basis of the following:

1/3 Social Rent. This should be managed by a Registered Provider (e.g. a Housing Association) or alternative organisation approved by the Council. Social rented housing is homes let on assured or secure tenancies (as defined in section 80 of the Housing and Regeneration Act 2008), for which guideline target rents are determined through the national rent regime. It may also be owned by other persons and provided under equivalent rental arrangements to the above, as agreed with the local authority or with the Homes and Communities Agency.

1/3 Affordable rent Affordable rented housing is let by local authorities or private registered providers of social housing or alternative organisation approved by the Council to households who are eligible for social rented housing. Affordable Rent is subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges, where applicable).

1/3 Intermediate. This is an umbrella term for homes for sale or rent at a discount below market rates but above social and affordable rented products. It includes (but is not limited to) shared ownership, discounted market sale and starter homes:

Shared ownership/ Shared Equity Homes for sale and rent provided at a cost above social rent, but below market levels subject to the criteria in the Affordable Housing definition

above. These can include shared equity (shared ownership and equity loans), other low cost homes for sale and intermediate rent, including rent-to-buy type products. ~~but not affordable rented housing.~~ Note that the NPPF (2012) definition of affordable housing currently requires affordable homes to be affordable in perpetuity or for the subsidy to be recycled into other affordable housing in order for it to be considered affordable housing.

Starter Homes.

3.8 Chapter 1 of the Housing and Planning Bill (2015) introduces a duty on local authorities to promote the supply of starter homes when carrying out their planning functions.

Starter homes are defined as a new dwelling available for purchase by a qualifying first time buyer, to be sold at a discount of 20% below market value subject to a price cap of £250,000. This will be implemented through Regulations.

3.9 A technical consultation dated March 2016 indicates a preferred option of 20% of dwellings on sites of 10 or more units (or 0.5 ha) should be provided as starter homes, in addition to other affordable housing requirements (pp12-13). However until and unless Regulations come into force, it is recommended that Policy H2 remains the basis for seeking affordable housing. Starter homes may be sought as an element of intermediate affordable housing. Qualifying person is currently a person under 40, although Regulations may introduce other criteria such as local connection.

3.10 PPG 55-005 indicates that starter homes should be subject to a s106 agreement requiring them to be offered to first time buyers for a discount of at least 20% below market value and with restrictions that they cannot be resold or let at their open market value for 5 years following the initial sale.

3.11 There is likely to be an exemption where the requirement would render sites unviable, but the consultation appears to indicate that other types of affordable housing should be dropped before starter homes).

3.12 Regulations may impose additional requirements on the provision of starter homes. However until these come into force, starter homes will be considered as an element of intermediate housing. There are likely to be instances where the provision of starter homes may be more achievable on site than other types of affordable housing for example as part of a block of flats.

3.13 Note that small homes that sell or rent at the lower end of the housing market simply by virtue of their small size will not be considered as affordable housing.

Self and Custom Build Housing.

3.14 In addition Policy H3 of the Local Plan promotes self or custom build housing on exception sites and on sites of 30+ dwellings. However general affordable housing will be accepted in lieu of self build plots if this would facilitate the successful delivery of development, or be necessary for site management or safety reasons.

3.15 Self-build and custom houses are defined as dwellings built by individuals or associations or persons working for them; but exclude the building of a house on a plot acquired from a house builder who builds the house wholly or mainly to plans or specifications decided by the house builder.

3.16 In all cases, self-build plots should be provided in accordance with the Council's allocation policy for self build housing.

3.17 Where they are provided as part of larger housing sites, developers will be expected to provide serviced plots for sale to qualifying households within the Council's allocation policy for self-build housing. Note that Policy H3 requires self build plots to be completed within three years of commencement. A condition or s106 Obligation will require occupants to have a strong local connection or employment in Torbay for five years from the date of commencement.

3.18 Policy H3 requires self-build plots built in the countryside as rural exceptions to be provided as affordable housing. Accordingly on rural exception self-build plots, there will be a requirement for affordable self build plots to be offered at a discount of at least 20% below the open market value of such a plot, to someone living or working in Torbay in housing need.

3.19 If the plot does not sell after 12 months of being marketed, it will cascade out to general needs affordable housing. A condition or s106 Obligation will be required to retain the dwelling as affordable housing in perpetuity. There will be a requirement that subsequent sale or occupation is at a discount of 20% below current market prices, and sale and occupation is to persons with strong local connections as indicated in the Council's allocations policy for self-build housing.

3.20 Note that affordable self build housing on rural exception sites must meet the acceptability criteria in Policy H3 and C1. In general they will need to adjoin a settlement and be acceptable in terms of landscape and environmental impacts.

3.21 As noted above, self build plots may be replaced with general needs affordable housing if there is evidence that this would achieve a more successful or speedy implementation of development, or if there is evidence of higher need for general needs affordable homes. In addition paragraph 6.4.1.13 of the Local Plan indicates that there is a general expectation that self build housing will be reduced prior to other forms of affordable housing.

Onsite provision or Commuted Sum?

3.22 Policy H2 assumes that affordable housing will be on-site. ~~In particular the provision of starter homes (see above) may be a more effective means of on-site provision where other tenures of affordable housing are difficult.~~ Where on-site delivery is not practical the second option will be the provision of alternative service sites or land. Financial contributions in lieu of onsite provision will only be accepted as a last option, and in exceptional circumstances.

3.23 However Policy H2 makes provision for financial contributions from smaller sites in exceptional circumstances. These will be calculated on the basis of the assumed subsidy needed to deliver the equivalent affordable housing through the open market, including administrative etc costs.

Calculating the assumed Subsidy Commuted Sums based on cost of provision.

3.24 The Council will assess the cost of providing affordable housing, taking account the value that such housing has in terms of how much occupants would pay for it and rental streams. The value will be below the full open market value. The values of affordable

housing as a proportion of market value Torbay Whole Plan Viability Testing (PBA 2014, and updated January 2016). These are set out below, along with the tenure split. Local Plan specified a tenure split as set out below:

- 1/3 Social rent at an assumed discount of 60% below open market rates
- 1/3 affordable rent at an assumed discount of 50% below open market rates
- 1/3 Intermediate housing including shared ownership and starter homes at an assumed minimum discount of 35% below the open market rate (which includes service charges).

3.25 This equals out as an average affordable dwelling being worth 48% the value of an open market dwelling (based on $(0.6 + 0.5 + 0.35) \div 3 = 0.4833$). In other words there is an average private subsidy assumed of 52% of the value of an affordable dwelling.

3.26 In assessing the cost of providing off site affordable housing, the Council has considered and gross development values.

House price data

3.27 Table 3.1 below sets out average new and second hand house prices at June 2016, based on Land Registry data. There was an increase of around 6% since June 2015. In most instances, the new price is more relevant to assessing the cost of providing affordable housing and therefore the commuted sum needed. However in the case of flats, the new price may reflect the luxury end of the market, whilst the second hand price incorporates the bottom of the market. On this basis a figure in between the two has been taken as the cost of providing a decent flat.

3.1a Torbay House Prices , June 2016 (Land Registry)

	New prices June 2016	New and second hand prices June 2016
Detached	£295,878	£303,857
Semi detached	£210,219	£205,602
Terrace	£185,654	£159,641
Flats	£292,990	£125,425
All properties	£252,500	£184,453

3.28 On the basis of house price data an average house is likely to cost around £190,000 and a flat around £135,000.

Gross development Values in Viability Studies

3.29 Torbay has three recent viability studies (Beter Brett and Associates 2014,2016 and Burrows Hutchinson (August) 2016. There are all available at www.torbay.gov.uk/CIL. The most recent assessments (PBA 2016 and Burrows Hutchinson, August 2016) were that average gross development values in Torbay were £2,700 per sq m for flats and £2,400 for houses, or 2,500 per sq m overall.

3.30 These translate to roughly £135,000 for a 50 sq m flat and £223,200 for a 93 sq m 3 bed, 5 person house. However a slightly lower figure for houses has been taken in recognition of house prices noted above.

3.31 Table 3.2 below sets out the Council's assumed cost of providing affordable housing. These will be used when calculating the cost of affordable housing and off-site contributions, where agreed. They include an allowance for administrative expenses and bringing second hand homes up to an acceptable standard.

Table 3.1b sets out the assumed cost of providing affordable dwellings including a 10% additional cost

Affordable housing type	Assessed cost of dwelling	Value of assumed subsidy at 52% of market value	Cost of provision with 20%-10% administrative costs (rounded down to nearest £1000)
Smaller dwellings 1-2 person	135,000	£70,200	£77,000
Medium sized housed	£190,000	£98,800	£108,000

Assumed size: As per national minimum space standards, Table 23 p196 of the Adopted Local Plan.

3.32 Where commuted sums are accepted, they should match the value of on-site provision as calculated above (and updated for inflation). A requirement calculator is set out in table 3.3 below, (which opens as an Excel spreadsheet). It is noted that commuted sums may be for fractions of dwellings as well as whole dwellings. This should not be taken to imply that off-site contributions will be acceptable.

Table 3.3 Affordable Housing Commuted Sum Calculator (per dwelling or part of)

Dwelling range	Number of dwellings	Proportion	No of affordable d	Contribution per affordable
Greenfield sites: 3+ bedroom dwellings.				
6 to 10 in AONB	6	0.15	0.90	108,000
11 to 14	11	0.2	2.20	108,000
15 to 29	15	0.25	3.75	108,000
30+	30	0.3	9.00	108,000
Greenfield sites: 1-2 bedroom dwellings.				
Dwelling range	Number of dwellings	Proportion	No of affordable d	Contribution per dwelling
6 to 10 in AONB	6	0.15	0.90	77,000
11 to 14	11	0.2	2.20	77,000
15 to 29	15	0.25	3.75	77,000
30+	30	0.3	9.00	77,000

Calculation of Viability and Deferred Assessment of Viability

3.33 Policy H2 recognises that the provision of affordable housing is a matter for negotiation. Where on-site provision is being made there may be scope to vary tenure to meet sustainable community or Government policy objectives. **Policy SS11 of the Local Plan is relevant to Community Investment Areas.**

3.34 It will, however be noted that paragraph 6.4.1.16 of the Local Plan indicates that proposals will be resisted where the reduction in affordable housing or other community benefits would be reduced to the extent that development is rendered unsustainable.

3.35 Where affordable housing or other s106 requirements are argued to render development unviable, the Council will require an open book viability assessment from the applicant. Where, on the basis of the viability assessment, it is agreed that affordable housing would render development unviable then the Council will negotiate an agreed level of provision e.g. increase amount of intermediate housing or a reduction in provision. In all cases where a reduction in the percentage of affordable housing is agreed, the Council will require a deferred contribution arrangement to be in place. Procedures for carry out viability assessments and deferred contributions are set out in part 5 “Implementation”.

Design and Layout

3.36 Affordable housing should not be distinguishable from open market housing by design. Where possible it should be pepper potted in ~~small~~ **more than one** clusters throughout a development **(i.e. not all in one place)**. **As a guideline, clusters of 10-12 affordable homes are appropriate on sites of up to 100 dwellings; and 20-24 on sites of 100 dwellings or more.**

3.37 Where provided together, different tenures of affordable homes should be provided, and the design of homes should not be noticeably different from the market housing.

Registered Providers

3.38 The Council’s preferred method of delivery of affordable housing is through partner Registered Providers (RPs) or alternative body approved by the Council. Early discussion with the Council and Torbay Development Agency is encouraged to discuss affordable housing delivery.

Affordable Housing and other Planning Obligations

3.39 Where affordable home are provided on-site and managed by a registered provider or subject to local occupancy conditions, the Council will not seek “sustainable development” contributions from these affordable units.

Another Note on Thresholds and Starter Homes

3.40 This SPD has been written on the basis of the High Court’s upholding of the Written Ministerial Statement and subsequent update to the PPG. Policy H2 of the Local Plan remains the relevant development plan policy; however the PPG and WMS are significant material considerations. Should thresholds change, for example as a result of updated guidance or regulations; then the approach taken in the SPD may be modified.

3.41 The SPD has had regard to Local Authorities' general duty to provide starter homes (introduced in the Housing and Planning Act 2016). However this approach may need to be amended should the Government issue further regulations on Starter Homes.

Employment

3.42 Policies SS1, SS4 and SS5 of the Local Plan place a high emphasis on economic growth.

3.43 Average GVA per head of population in Torbay in 2013 was £14,225 compared to £23,755 in the UK and £21,163 in the South West. GVA is the lowest in the South West (Cornwall and Isles of Scilly=£15,403). This makes Torbay the 13th lowest NUTS3 (County and Unitary) area in the UK (about 140 areas).

3.44 Policy SS5 and the Strategic Development (SD) policies of the Local Plan seek to achieve a mix of employment uses on major developments and identify a number of sites for mixed use development. These also set out indicative targets for employment, and indicate that the delivery of employment should be achieved through land equalisation, direct provision of serviced sites and or/developer contributions (paragraph 4.2.27). Where live-work units are provided as part of employment provision, their use will be controlled through condition or S106 Obligations controlling occupancy.

3.45 Where sites are identified for mixed use development in the Local Plan, the early provision of employment space will be given a high priority in determining obligations sought on site, as indicated in Policy SS2(ii) of the Local Plan.

3.46 Where on-site provision is not practical, the Council may agree developer contributions to help enable the provision of employment elsewhere.

3.47 The Council will seek local labour agreements from all developments as set out in Policy SC3 of the Local Plan. This will be incorporated into s106 Obligations where appropriate to do so. Whilst the use of local labour is relevant to all schemes, it will be particularly relevant to self build housing and other forms of development where a degree of exception to usual planning policies has been made.

Loss of Employment

3.48 Where a development proposal results in the loss of jobs (for example change of use away from hotels, offices etc.), a commuted sum will be required to help create similar employment elsewhere in Torbay, as set out in Policy SS5.

3.49 The principle of seeking loss of employment contributions is considered to be important given Torbay's high level of employment related deprivation. The Local Plan promotes a level of housing which is higher than the home grown level of household growth. It is therefore important to creating sustainable communities which are not dependent upon commuting or high numbers of economically inactive persons, that good quality jobs are provided to accompany housing growth.

3.50 Accordingly, loss of employment contributions will be given the highest priority after Site Deliverability and affordable housing matters. However consideration will be given to

the overall impact of development and mitigation may be allowed where schemes achieve significant regeneration or similar benefits.

3.51 Such contributions will be ring-fenced for investment in regeneration projects and unlocking employment development. A range of projects is set out in the Torbay Economic

3.52 Strategy 2013-18, as well as Masterplans for the regeneration of town centres. They will be used to help provide enabling infrastructure such as site servicing or decontamination costs for regeneration and employment generating schemes.

3.53 Where the contributions are used for infrastructure measures (e.g. site servicing), no more than 5 obligations will be pooled for a specific project. However smaller contributions will be targeted at non-infrastructure matters such as training.

3.54 Note that contributions do not imply that a change of use away from employment use is acceptable in terms of planning merit. Such applications will be assessed on the basis of Policies in Adopted Torbay Local Plan, particularly **SS5 Employment Space**.

Assessing the Cost of Employment

3.55 The Torbay Economic Strategy 2013-18 contains a detailed Action Plan which identifies projects needed to secure economic development. These relate closely to the Employment Land review (PBA 2013) which sets out key employment development areas. The cost of projects identified in the Strategy is around £290m. These will realistically take at least the Local Plan period to implement. This works out at around £4,778 per economically active person in Torbay (60,700). (When un-costed projects are taken into account the likely cost is nearer £500m, which equates to about £8,000 per economically active employee).

3.56 The 2008 Planning Contributions and Affordable Housing SPD assessed, based on work carried out by the Torbay Development Agency that the cost to the public sector in unlocking employment development was 15-20% of the cost of the job. The most recent available data on average annual wages (full and part time) is set out below. Allowing for 50% on-costs (pensions, NI etc.), is set out in Table 3.4.

Table 3.4. Assessment of the Cost of Providing Jobs

	Median annual earnings	Cost to employer with on costs (x1.5)	Contribution at 20% +hypothetical public sector cost of creating a replacement job.
Full time	£21,940	£32,910	£6,580
Part time	£ 7,830	£11,745	£2,350
All jobs	£16,680	£25,020	£5,004

Annual Survey of Hours and Earnings 2014

3.57 The TDA have assessed that the average cost of creating a higher value job³ in Torbay is in the region of £19,000-£22,000 (excluding abnormal costs), whereas nationally a range of £8,000-50,000 has been calculated depending on the project. The Heart of the

³ E.g. A jobs within the B1 Use Class of business/light industry. However the Local Plan considers as range of types of employment and not just jobs within the Class B employment use classes.

South West Local Enterprise Partnership and other grant schemes assume a cost of £6,000-10,000 is a reasonable rule of thumb.

3.58 Accordingly, applications which result in the loss of employment will be asked to pay a loss of employment contribution to mitigate the economic impact, on the basis of:

- £ 8,000 per full time equivalent(FTE) job lost
- £ 4,000 per part time job lost

3.59 The number of jobs lost will be based on evidence supplied by the applicant (Question 20 on the planning application form) and the Employment Densities Guide (3rd Edition 2015 or subsequent, see Table 3.5), which estimates FTE jobs by floor area. On this basis the loss of employment contribution will be calculated on the basis of:

3.60 Number of jobs lost x £8,000 per full time equivalent.

Table 3.5 Estimated Employee/Floorspace Ratios (Employment Densities Guide 3rd Edition)

Use Class	Sub-Category	Sub-Sector	Density (sqm)	Notes
B1a Offices	General Office	Corporate	13	NIA
		Professional Services	12	NIA
		Public Sector	12	NIA
		TMT	11	NIA
		Finance & Insurance	10	NIA
	Call Centres		8	NIA
B1b	R&D Space		40-60	NIA lower densities will be achieved in units with higher provision of shared or communal spaces
B1c	Light Industrial		47	NIA
B2	Industrial & Manufacturing		36	GIA
B8	Storage & Distribution	National Distribution Centre	95	GEA
		Regional Distribution Centre	77	GEA
		'Final Mile' Distribution Centre	70	GEA
Mixed B Class	Small Business Workspace	Incubator	30-60	B1a, B1b – the density will relate to balance between spaces, as the share of B1a increases so too will employment densities.
		Maker Spaces	15-40	B1c, B2, B8 - Difference between 'planned space' density and utilisation due to membership model
		Studio	20-40	B1c, B8
		Co-Working	10-15	B1a - Difference between 'planned space' density and utilisation due to membership model
		Managed Workspace	12-47	B1a, b, c
B8 / Sui Generis	Data Centres	Wholesale	200-950	
		Wholesale Dark Site	440-1,400	
		Co-location Facility	180-540	
A1	Retail	High Street	15-20	NIA
		Foodstore	15-20	NIA
		Retail Warehouse	90	NIA
A2	Finance & Professional Services		16	NIA
A3	Restaurants & Cafes		15-20	NIA
C1	Hotels	Limited Service / Budget	1 per 5 beds	FTE per bed
		Mid-scale	1 per 3 beds	FTE per bed
		Upscale	1 per 2 beds	FTE per bed
		Luxury	1 per 1 bed	FTE per bed
D2	Fitness Centres	Budget	100	GIA
		Mid Market	65	GIA – both types tend to generate between 40-50 jobs per gym
		Family		
	Cinema		200	GIA
	Visitor & Cultural Attractions		30-300	The diversity of the cultural attraction sector means a very wide range exists
Amusement & Entertainment Centres		70	Potential range of 20-100sqm	

Healthy Communities and Healthcare

3.61 Policy SC1 of the Local Plan requires development to contribute to improving the health and wellbeing of the community. Torbay has health problems strongly related to its demographic structure and deprivation (see paragraph 6.4.3.1).

3.62 All development should seek to promote active design as a Site Deliverability matter (see above).

3.63 Policy SC1 Healthy Bay requires developments of 30 dwellings or more, or developments where there are particular health impacts to carry out a screening for a Health Impact Assessment. Health Impact Assessment and its screening should be proportional to the size and type of development and identify the most effective measures that can be used to improve health and wellbeing. For smaller developments health impacts can be addressed through Design and Access Statements. These will usually be the promotion of active lifestyles through open space provision, cycling facilities (including secure covered storage).

3.64 Policy SC4 Sustainable food production requires that developments of 30+ dwellings should include provision of sustainable food production.

3.65 Regard will need to be had to the provision of open space and multi-functional green infrastructure for all developments. Where possible these facilities will be sought on-site. Where they are maintained by the Council, ~~at least 10 years~~ **up to 25 years** maintenance shall be provided through s106 or other financial arrangement. If ongoing maintenance is not funded, details of alternative maintenance arrangements (and funding) should be provided as a condition of granting planning permission.

Healthy Communities and Health Impact Assessments

3.66 The Local Plan seeks to help close the gap between the most and least disadvantaged neighbourhoods, as set out in Policy SS11 Sustainable Communities. Policy SS5 seeks to reduce child poverty by a range of measures including provision of affordable housing, education and urban design improvements.

3.67 Policy SC1 Healthy Bay requires development of 30+ dwellings or 1000 sq. m to undertake screening of a Health Impact Assessment. Policy SC4 seeks developments of 30 or more developments to consider providing sustainable food production.

3.68 Open space and recreation provision are dealt with in the sustainable communities section. However these will be instances where a higher priority is given to matters such as education, public realm, and open space provision in order to achieve healthy Bay objectives.

Development which creates a specific Health/Social Service need e.g. Care Homes, Sheltered Housing.

3.69 Torbay has a significantly older population than the national average, due in part to in-migration of older people. The most recent (2014 based SNPP) population data estimate that there are about 35,000 people aged 65+ in Torbay, comprised of 25,000 people aged

65-79 and 10,000 people aged 80+. The number is projected to rise to 45,000 by 2030 comprising 29,000 65-80 year olds and 16,100 80+ year olds.

3.70 Torbay's ~~pattern of demographics is strongly one of~~ **population growth** is driven by net domestic migration by older people into Torbay and outward migration of young people. This places a likely demand upon health care services from some new developments. **The population would decline but for migration trends.**

3.71 From October 2015, Torbay's adult community health and social care, integrated with Torbay Hospital Services to form a single Integrated Care Organisation.

3.72 The Joint Commissioning Team and South Devon Clinical Commissioning Group publishes Market Position Statements for Adult Social Care and Support and Children's Services in Torbay, the most recent being for 2016+ ⁴ This document indicates that demand for adult social care workforce time is growing twice as fast as population growth, at about +1.3% per year compared to 0.6% population growth. It is estimated that the cost of treating the over 85s is likely to increase to about £8.5 million per year in 2020, up from £7.3 million in 2012⁵.

3.73 The 2015/16 base budget for adult social care was £39.3 million compared to gross spending of £48.7 million, with £9.4 million paid for by clients. A strong policy objective of the Torbay NHS Healthcare Trust is to help people live independently in their own homes for as long as possible. Promoting good health is a key Corporate Plan objective.

3.74 In line with the Living Well@Home strategy, about £9.1 million of spending is domiciliary care. This includes a range of care facilities including community nursing, living at home re-enablement, provision of assistive technologies, meals services, night sitting, and respite care is provided by the NHS Healthcare Trust and Council, who comprise an Integrated care Organisation.

3.75 The £9.1 million cost of domiciliary care averages out at about £260 per person aged 65+

3.76 Local government and the NHS are facing unprecedented financial challenges with reduced funding from central government in the face of increasing demand for services. Torbay Council set the 2014/15 budget in February 2014, this included a savings programme totalling £22m to be found over 2 years (2014/15 and 2015/16), which will inevitably result in resources being stretched and services reduced.

3.77 It is recognised that an ageing population, and other clients in need of adult social care, will generate a need for specialist accommodation such as sheltered housing, supported housing and extra care units. **Such accommodation can help people live independently for longer.**

3.78 Policy H6 of the Local Plan deals with accommodation for people in need of care. There is a move away from the use of care homes (use Class C2), but there are likely to be

⁴ <http://www.torbay.gov.uk/torbaymps2016.pdf>

⁵ Torbay JSNA 2012/13

instances where applications are granted, particularly where they provide an improved level of care or specialist facilities to deal with issues such as dementia.

3.79 Accordingly Policy H6 indicates that the Council will seek financial contributions to meet the likely healthcare and social service costs arising from care facilities and sheltered accommodation, unless the applicant is able to show that this contribution would not be appropriate.

3.80 Where development leads to a specific requirement for additional healthcare/social care facilities, s106 obligations will be sought to address these impacts in terms on the Integrated Care organisation. This will be based on the cost of helping people to live in their own homes for as long as possible for sheltered, supported and extra care units. In the case of care homes (use Class C2) the contribution will be based on the additional public cost of care to the Integrated Care Organisation.

3.81 The Contribution will be based upon the likely additional cost to Torbay's integrated care organisation budget arising from such applications. It will not be sought from developments that can show that they will not impose costs upon this, for example where on-site care and facilities are provided as part of an overall development package, or where occupancy is restricted to persons already living in Torbay.

3.82 A baseline contribution of £1,300 per unit of sheltered/supported/extra care accommodation (i.e. uses within Use Class C3) and £2,220 from care homes (uses within Class C2) will be sought.

3.83 This is calculated using the baseline care cost of £260 per person and adjusting it based on likelihood of residents being inwards migrants, likely level and length of care required.

3.84 It is assumed that sheltered housing with minimal care facilities will attract a higher level of inwards migration than accommodation for the less active; with care homes attracting the lowest level of inwards migration. It is assumed that the yearly cost of care increases but the likely length of care decreases in supported housing, extra care housing and care homes. The assumptions are set out in table 3.6 below and the calculation of contributions shown in Table 3.7.

3.85 The assessed cost of care homes is based on figures from the Clinical Commissioning Group of an average cost of £2,500 per year of which 59% is borne by the public purse. An average stay of 3 years is assumed.

Table 3.6 Assumed cost of care and length of occupation of accommodation.

Accommodation type	Multiplier based on care need. (Applied to £360)	Average period of care (years)
Sheltered housing	5 x £360	10
Supported Housing /Assisted living	5 x £360	5
Extra Care units	10 x £360	5
Care Homes (Class C2)	£25,000 x 59% borne by public purse.	3

Table 3.7 Healthcare Contribution for Accommodation for people in need of care.

(A). Accommodation type	(B). Cost provision for 1 years (£260 x multiplier based on likely need)	(C) Likely cost for 5 years care ((B) x 10 years for sheltered housing and 5 for supported and extra care.	(D) Likelihood of inwards migration from outside Torbay	(E) Contribution per unit (room in the case of Class C2) ((C)/(E))
Class C3 units				
Sheltered housing	£260 (x1)	£2,600	50%	£1,300
Supported housing	£1,300(x5)	£6,500	20%	£1,300
Extra care units	£2600 (x10)	13,000	10%	£1,300
Care Homes and uses within Class C2				
	Cost per place and Average cost to CCG	Likely cost for 3 years	Likelihood of person migrating from outside Torbay	Contribution per room
Care home within Class C2	£25,000 of which average cost to CCG of £14,750 (59%)	£44,250	5%	£2,220

3.86 ~~Where developers are able to show that they will be providing facilities which will obviate the need for additional adult social care, these figures may be reduced.~~ Contributions will not be sought from affordable units or where developments are restricted to occupancy from existing residents of Torbay. The provision of affordable housing will usually be prioritised over social care contributions for affordable housing liable developments (broadly Class C3 units), where viability considerations would prevent obligation for both.

Development where there is a need for a Surgery/Local Centre etc.

3.87 The Joint Commissioning Team and health Care trust will keep the need for medical facilities under review as part of the Masterplanning of Future Growth Areas. Where development results in the need for a surgery or other health facility, the Council will seek its provision as part of the s106 Agreement, which should include a delivery timeframe, and fall back option. Where possible, the provision of residential accommodation will be supported particularly where this would aid delivery of healthcare facilities.

4. Sustainable Development Infrastructure

4. SUSTAINABLE DEVELOPMENT INFRASTRUCTURE

4.1 Sustainable development contributions are sought to render development acceptable in planning terms. However they are less urgently essential to health, safety or legal obligations than Site Deliverability matters.

4.2 Sustainable development contributions are will not be usually sought from development that pays CIL (QV) or sites below the Government's threshold for "tariff style" contributions, which currently is 11 or more dwellings or 6 within the AONB.

4.3 On this basis "sustainable development" obligations will be sought from larger developments in Future Growth Areas where the Council has chosen to negotiate s106 Obligations to address the infrastructure requirements needed to serve the development, rather than levy CIL

The following sections sets out figures based on assessments of the likely impact of development. However this should not be construed as a "tariff based approach" per-se

Each application will need to be assessed in terms of what contributions are necessary to render development sustainable, meet the test of lawfulness. are lawful and justified in terms of being:

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

4.4 In order for contributions to be sought, the relevant service areas/organisations will need to identify specific projects, which meet these tests, they seek a S106 (etc) agreement for. Unless this is done, an obligation is unable to be sought.

Where contributions relate to infrastructure, no more than 5 s106 Obligations will be pooled towards that item of infrastructure, so long as this is a legal requirement under the CIL Regulations or elsewhere. Should these pooling restrictions be relaxed, the Council may pool obligations, subject to other tests of lawfulness.

4.5 Because sustainable development obligations arise principally from larger developments, onsite provision of many of the items identified will take place; for example sustainable transport measures beyond direct access requirements, provision of open space and multiuse games areas. These can often be secured through condition. The provision of "in kind" facilities or land will be counted against financial contributions sought, although in some instances the Council will seek obligations for maintenance.

4.6 This section includes the following matters.

- Transport Infrastructure - Major Road Network and Sustainable Transport
- Education
- Greenspace Sports and recreation
- Lifelong learning
- Public realm
- Waste management
- Difficult to monitor uses including town centre management.

Transport Infrastructure - Major Road Network and Sustainable Transport

Background and Justification

4.7 The implementation of sustainable transport measures is regarded by Government as essential to reducing traffic congestion, improving air quality and addressing climate change.

4.8 Note that physical works to create safe access for vehicles and pedestrians are sought as Site Deliverability matters. These will usually be delivered through planning condition, negotiation of site layouts or S278 Agreements.

4.9 This section deals with wider sustainable transport matters these are necessary to make development acceptable in terms of mitigating its effect, but go beyond the provision of access to the site and its immediate links to the transport network.

4.10 Chapter 4 of the NPPF sets out Government's policy on transportation. It requires that development which generates significant amount of traffic should be supported by a Transport Statement or Assessment which considers the opportunities for sustainable transport, provision of safe and suitable access, and whether improvements can be made to limit the impacts of development.

4.11 The **Torbay Local Transport Plan 2016-2021** (LTP) contains a range of measures aimed at improving accessibility, air quality, road safety and quality of life and reducing congestion and the impact of transport. The draft Torbay Delivery Plan (January 2016) identifies a range of projects needed to deliver the Local Plan, which cost a total of £5.315 million. The LTP does not include improvements to the A385/Totnes Road which are likely to be required before 2020 if early implementation of development at Collaton St Mary is to be feasible. These are estimated to cost in the region of up to £1m **(although this figure is likely to change in response to detailed site assessments)**.

4.12 The above figure does not include the £20 million funding requirement for the South Devon Highway, which is being sought through CIL.

4.13 Local authorities are required to support essential community facilities such as transport services and maintain infrastructure stemming directly from development. This puts a considerable long term additional pressure on the Council's ability to provide high service quality and support. "Whole life costing" assesses the true social, environmental and economic cost of any development throughout its useful life. Unless this is met by developer contributions, it has to be borne by the taxpayer.

4.14 Much of Torbay's transport infrastructure operates at or over capacity and delivering growth is only likely to be achievable if accompanied by measures to ensure that it does not rely heavily on car borne transport. Failure to meet these objectives would create additional congestion and have negative health impacts e.g. from poor air quality.

4.15 Policy TA3 of the Local Plan promotes the provision of cycle parking and electrical points within developments, which will usually be secured through negotiation of layouts or through planning conditions. **Large developments will usually be required to provide travel plans to promote alternatives to single occupancy car use.** ~~It covers matters such as bus contributions which are necessary to mitigating the impact of development upon the wider road network, but are not required to physically access the site (such matters being site deliverability matters and are dealt with above).~~ Where possible, these measures will be sought through S278 Agreements, although there will be instances where s106 Obligations will need to be used.

Sustainable Transport Obligations

4.16 Developments in Torbay (where the Council has opted not to charge CIL) will be assessed to identify whether they generate net additional trips and should therefore contribute towards sustainable transport.

~~Contributions will be used for a range of sustainable transport measures identified in the Local Plan and Local Transport Plan or are closely related to the development (either by location or the nature of development).~~

4.17 Sustainable transport contributions will be sought on the basis of a calculation of the additional impact that development has upon the transport network, **or other costs to the authority such as bus passes in the case of specialist developments.** ~~This includes cumulative impacts.~~

4.18 The figures set out below will be taken as a starting point. Additional obligations may be sought where developments have a greater impact upon traffic generation or create a particular need for ongoing revenue support for equipment and running costs, for example as could arise from out of town retail proposals.

Assessing the cost of Additional Trips

4.19 The Council has used Trip Rate Information Computer System (TRICS version 7.3.2) to calculate the number of journeys generated by development. Table 4.1 sets out the likely additional trip rate associated with development over the period to 2017-22 (i.e. the next five years at time of writing) based on development likely to arise in the next five years based on the Local Plan's Strategic Delivery Policies.

Table 4.1 TRICS (7.3.2) Assessment of trips generated by Development in the Torbay Local Plan 2017-22

Development type	Number/floorspace	Trip rate per unit or 100 sq. m	No of trips per day
Dwelling houses	2,750	5.1	14,025
Business (B1, B2, B8)	40,000 sq. m	7.6	3,040
Other employment uses	45,000 sq. m	7.6	3,420
Retail (assume in-town centre)	25,000 sq. m	44	11,000
Tourism, leisure	20,000 sq. m	9.5	1,900
Other (education, healthcare etc.)	20,000sq m	17.5	3,500
			36,885

4.20 Based on this it is assessed that the 36,885 additional trips per day will be generated in Torbay by development between 2017-22. Based on the cost of delivering the Local Transport Plan and other Future Growth area highway infrastructure this would equate to £171 per trip generated.

4.21 Planning Obligations will be sought from development based on the above **net** trip generation

Table 4.2 S106 Sustainable Transport Obligations sought from larger development

Development type	Assumed trip rate per unit or 100 sq. m	Contributions Impact per unit per unit or 100	Notes

		sq. m (trip rate x £171)	
Apartments 1-3 bedrooms	4	£690	Obligations will be sought to address sustainable transport/highways network works that are necessary to make development acceptable and subject to pooling limits where infrastructure.
Houses 1-3 bedrooms	5	£860	
Larger dwellings (houses and apartments of 4 or more bedrooms)	6.5	£1,110	
B Class employment and other employment uses	7.6	£1,300	Mitigation will usually be provided for job creation/ regeneration.
Retail – Town Centre (including, Preston and St Marychurch District Centre and Local Centres in built up area)	44	£7,530	Mitigation will usually be provided for in- town centre regeneration and built environment improvements.
Retail –out of town centre (including the Willows and West of Paignton)	120	£20,520	
Tourism, leisure	9.5	£1,620	Mitigation will usually be provided for job creation/ regeneration.
Other (education, healthcare etc.)	17.5	£3,000	S106 Obligations are not sought from publically funded schemes

4.22 These figures will be used as a starting point and will be adjusted for the level of highways and sustainable transport works provided by the developer (as a development Site Deliverability matter or through negotiated direct provision). Regard will also be had to the cost of providing other mitigations to transport such as measures incorporated in Travel Plans etc.

4.23 Contributions will only be sought where specific projects are identified which meet the tests of lawfulness, and pooling restrictions where they are for infrastructure. On this basis the above costs can only be a starting point.

4.24 In calculating obligations identifying projects, priority will be given to improving road safety, capacity and accessibility, including availability of public transport within walking distance (about 400 metres) of the proposed development. In addition, local air quality (particularly the proximity of **Air Quality Action Zones**) will be taken into account.

Education

4.25 Torbay Council has a statutory duty under the Education Act 1996 (as amended) to provide sufficient school places to enable every child between the ages of 4-16 to access a school place. Policies SS10 “Sustainable communities”, SC3 “Education skills and local labour” and SC5 “Child poverty” all identify the need to provide education facilities to serve development.

4.26 The TDA’s Schools and Capital Planning Manager has indicated that there is a need for both primary and secondary places throughout Torbay. This includes:

- The need for a new 420 place primary school serving Torquay, at an estimated cost of £5.66 m
- The need for a new secondary school serving Torquay, or expansion of existing schools. This is likely to be a 600 space school at a cost of around £10.44m
- The need for two primary schools serving Paignton, at a cost of £11.32m (based on 420 space schools).
- The need for an extension to secondary school or an additional school serving Paignton at a cost of around £10.44m
- The need for an additional primary school serving Brixham, at a cost of £2.85m
- Expansion of South Devon College under approved Local Development Order.

4.27 The total cost of this is about £40.71 million. Whilst it is not expected that S106 Obligations could cover the entire requirement, it is reasonable for developers to contribute to the additional requirement for school places generated by development.

4.28 The Education Funding Agency sets cash flow multipliers, which are the capital cost of providing an additional school place. They are indexed linked to inflation (on the BCIS public sector cost index). At April 2016, they stood at:

- Primary place £12,398.
- Secondary place £18,954.
- ~~Further education place (16-18) £20,575.~~

4.29 These are the average of the cost of new build and extensions. Whilst a different figure is given for both, they are not significantly different and Torbay requires a mix of new build and extensions to provide new school places). On this basis it is considered appropriate to use an average figure.

4.30 Based on 11 years of school of which 6 in Primary and 5 in secondary this equates to an average cost per school place of £15,833 (i.e. 6/11 of £12,398 plus 5/11 of £18,954)

Numbers of School Age Children per dwelling

4.31 To establish the impact of existing and new development proposals on education facilities it is necessary to identify the likely number of pupils that will be generated by individual developments.

4.32 Devon County Council (2016) have established (Based on research carried out in 1999, 2009 and 2015) that, on average, each family dwelling (i.e. dwellings with 2 bedrooms or more) generates approximately:

- 0.25 primary aged pupils (ages 5 to 11),
- 0.15 secondary aged pupils (ages 12 to 16)
- 0.06 further education (ages 17 to 18).
- This equates to 0.406 school spaces per dwelling in total.

4.33 The figure in Torbay is assessed to be similar to the rest of Devon at about 0.4 school aged children per dwelling, based on assessment of children arising from development in the West of Paignton in 2014-16.

4.34 Multiplying the cost per school place by likelihood of there being a school age child living in a house provides an average capital cost per dwelling of providing a school place. The baseline cost is £6,333 as set out in table 4.3. This is the capital cost of providing an additional school place (i.e. it does not include revenue costs, IT, transport, special education needs, or Further Education).

Table 4.3 Capital cost of Providing School places.

(A) School Age	(C) Capital cost per school place	(D) Number of children per dwelling	(E) Cost per 2+ bedroom dwelling
Primary	12,398	0.25	£3,100
Secondary	18,954	0.15	£2,843
Total		0.4	£6,333

4.35 It is assumed that no education requirement arises from specialist accommodation for the elderly or from one bedroom dwellings. Accordingly no education contribution is sought from these types of dwelling.

4.36 Whilst it is hypothetically more likely that there are more children in larger homes, evidence from the TDA's Schools and Capital Planning Manager suggests that smaller houses, often purchased under help to buy, are equally likely to contain school aged children. Accordingly a relatively minor weighting has been applied for larger dwellings.

4.37 The contribution sought from dwellings is set out in table 4.4

Table 4.4 Education Contributions Sought from Open Market Dwellings.

	Adjustment (multiplier) to overall average of 0.4 children per dwelling	Contribution per dwelling £6,333 x adjustment
Specialist accommodation for the elderly	Zero	0
1 bedroom dwellings	Zero	0
2 bedroom apartments	0.5	£3,170
2 bedroom houses	0.75	£4,750
3 bedroom dwellings	1	£6,330
4 bedroom dwellings	1.25	£7,920
5+ bedroom dwellings	1.5	£9,500

4.38 As set out above, education contributions will only be sought from sites where the Council has opted to use s106 Obligations rather than CIL to fund the infrastructure needed by a development. Obligations will be spent on specific projects that provide for the need that developments generate for school places. No more than five obligations will be pooled for infrastructure.

4.39 Where sites are provided on site, as is proposed in several Future Growth Areas, it is likely to be preferable to seek a contribution in kind in terms of provision of land.

4.40 The Council will endeavour to use S106 education contributions to provide school places or other educational improvements close to the development. However, because catchment areas may be Bay wide, and providing school places in one location can have a knock on effect of freeing up places closer to a development , this may not always be possible.

Greenspace ~~Open Space~~, Sports and Recreation

4.41 Active design principles apply to all developments as far as practical, and will be sought as site-acceptability matters usually through conditions. Local Plan policies DE1, DE2 and DE3 set out the design and amenity standards for new development. A minimum of 55 sq m of amenity space is sought for new houses.

4.42 This section applies to larger developments where the Council has opted to use S106 rather than CIL to address the infrastructure needs arising from development. Where new development generates a need for open space, or exacerbates an existing deficiency, new provision will be required. The provision may be by way of on-site facilities or an off-site financial contribution to ensure that proper provision is maintained within the vicinity of the development (for example by improving maintenance, management and equipment at existing facilities).

4.43 Policy SC2 “Sport leisure and recreation” of the Adopted Torbay Local Plan sets a framework for planning for new recreation developments and proposes a number of recreation facilities. Policy SS9 “Green Infrastructure” of the Adopted Local Plan is also relevant as is the Countryside, coast and greenspace chapter, particularly the undeveloped coast within Policy C2, and Policy C5 Urban landscape protection areas, where these have public access. Neighbourhood Plans are likely to identify Local Green Spaces, most of which will have public access.

It is recognised that the public realm in town centres etc also provides recreation and makes an additional contribution to the historic and built environment value of the built environment (see Policies SS10, SS11 and DE1).

4.44 The Council's **Greenspace Strategy** is an adopted Supplementary Planning Document (July 2007). (An in-house refresh of standards and costs has been carried out as part of the preparation of this SPD). The standards set out in it will be refreshed as an evidence base document) that sets out the requirement for the provision and management of open space for recreation. The Greenspace Strategy contains local The council's current standards for greenspace open space as set out in table 4.5.

4.5 Open Space Requirements Per Person (* added since 2007 Strategy)

Type of open space	Hectares per thousand population	Square metres per person
Playing pitches	1.2	12
<u>Other Outdoor Sport and Recreation Facilities (e.g. Multi Use Games Areas, outdoor fitness equipment etc)</u>	0.2	2
Equipped <u>play</u> facilities for children and young people	0.2	2
<u>Greenspace Open space (including but not limited to parks and gardens, amenity space, natural and semi-natural spaces and beaches and promenades)</u>	2.5	25
Allotments/sustainable food	4 <u>0.22</u>	-40 <u>2.2</u>

production*		
Public realm/open space in town centres	N/A	N/A

In general the Greenspace Strategy found an ample provision of green space (community parks, Town parks, coastal areas, country parks etc) but identified funding shortfalls with management. This management and enhancement shortfall has become more acute since the Greenspace Strategy was adopted.

4.45 Note on allotments: The National Society of Allotment and Leisure Gardeners (NSALG) recommends that the minimum provision should be 20 standard plots (300 sq.Yd/250 sq. m) per 1,000 households. This equates to: 5,000 sq. m (20 plots of 250 sq. m) per thousand households or 5 sq. m per household. Based on a household size of around 2.25 persons this equates to 2.2 sq. m per person.

4.46 The cost of open space provision per person and per dwelling, as per the Greenspace Strategy and Planning Contributions and Affordable Housing SPD 2008, adjusted for inflation is set out in Tables 4.6 and 4.7 respectively.

4.6 Cost of Open Space Provision per Person

Type of open space	Sq m per person	Cost of provision per metre	Cost per person
Playing pitches	12	£15	£180
Other Outdoor Sport and Recreation Facilities (e.g. Multi Use Games Areas (MUGAs), outdoor fitness equipment etc)	2	£62.50 £250	£125 £500
Equipped play facilities for young people	2	£250	£500
Open space (including but not limited to parks and gardens, amenity space, natural and semi-natural spaces and beaches and promenades) Greenspace	25	£10	£250
Allotments/sustainable food production	2.2	£30	£66
Public realm/open space in town centres		£700,000 estimated cost	Around £80 per dwelling
Cost of open space per person			£1,121

Source Greenspace Strategy updated by Residents and Visitors Services to reflect current costs and standards, 2016. Adjusted for inflation based on Bank of England Inflation Calculator (CPI) at 1.25%

4.7 Cost of Open Space Per Dwelling

Estimated Persons Per Dwelling	Cost Per Person	Cost per dwelling
1 bedroom-1.4 persons	£490 <u>£496</u> (excludes children's	£690

	play facilities and MUGAs etc)	
2 bedroom – 1.9 persons	£740 £871 (half children's play area contribution)	£1410 £1,655
3 bedroom – 2.6 persons	£990 £1,121 (full play park contribution)	£2,580 £2,915
4 bedrooms -3 persons	£990 £1,121 (full play park contribution)	£2,970 £3,363

4.47 The provision of open space will be assessed on its merits having regard to the Local Plan and Greenspace Strategy Policy Framework.

4.48 The consideration of whether open space provision should be on or off site will depend on:

- **The size of development ;**
- **The extent, location, capacity and condition of existing open space; and**
- **The likely demand that the development will generate.**

~~Regard will be had to the location, capacity and condition of existing open space, as well as the likely demand on it that development generates.~~

4.49 Tables 4.5 to 4.6 above give a cost per person and dwelling of providing green open space. However it is recognised that provision will often be in kind through the provision of play parks etc. on site. **Sustainable development obligations are only sought from developments where the Council has opted to negotiate requirements through s106 Obligations rather than CIL. Most large developments will be expected to provide public open space as part of their layouts.** Where developers make on-site provision, the cost of this will count against any financial contribution (with the exception of maintenance payments noted below).

4.50 Sustainable development Obligations are not sought from sites of less than 11 dwellings in accordance with the written Ministerial statement of 28 November 2014, nor are they sought from developments where CIL is sought. However the Council will keep the need for open space and the status of the WMS etc under review.

4.51 The Council will normally seek on or off site provision in accordance with Table 4.8 below. However, it is acknowledged that there may be local circumstances where it is considered appropriate to switch from on site to off site provision (or vice versa, or a combination of both).

4.52 Open space provision will be taken as a whole and over provision of one type may be counted against other types of greenspace. Open space provision (whether offsite or onsite) should match the type of space likely to be used by residents, so for example elderly persons developments will not require childrens' play facilities.

4.53 Provision will be a matter for negotiations with developers and should pre-application discussions are urged to achieve successful development.

Table 4.8 Guideline thresholds for on-site provision and off-site financial contribution

Type of open space	Approximate scale of development				Comments
	Major development				
	1-10 dwellings*	11 – 49 dwellings	50 – 199 dwellings	200+ dwellings	
Playing pitches	Off site	Off site	Off site	Off site	There may be occasional instances where on-site playing pitches are considered suitable. This is likely to be on sites of over 500 dwellings
Other Outdoor Sport and Recreation Facilities (e.g. Multi Use Games Areas, outdoor fitness equipment etc)	Off site	Off site	On site / Off site	On site	
Equipped play facilities for young people: Local Areas for Play (LAPs) aimed at very young children (also known as doorstep play areas) Locally Equipped Areas for Play (LEAPs) aimed at children who can go out and play independently (also known as community play areas) Neighbourhood Equipped Areas for Play (NEAPs) aimed at older children (also known as destination play areas)	Off site	On site/Off site	On site	On site	For sites of between 11 and 49 dwellings a split of on site provision of a LAP and off site contribution to a LEAP, or sole off-site contribution to a LEAP will be considered. Sites over 50 dwellings will normally need to provide both a LAP and LEAP. It is noted that one quality play space catering for a range of age groups is preferred to two separate play spaces. Sites over 500 dwellings will also need to provide a NEAP.
Open space (including but not limited to parks and gardens, country parks amenity space,	On site/ Off site	On site	On site	On site	For sites between 11 and 49 dwellings there may be instances where an off-site contribution to improvements to

natural and semi-natural spaces and beaches and promenades)					nearby open space, including access improvements from the development site, may be sought in lieu of on site provision.
Allotments/sustainable food production	Off site	On site / Off site	On site/Off site	On site	Torbay Local Plan Policy SC4 sets out that developments of over 30 dwellings should include provision for sustainable food production, including allotments, proportionate to the scale of the development. Off-site contributions towards provision of new allotment sites or improvements / extensions of existing sites may be sought in lieu of on site provision.

*The Written Ministerial Statement of 28/11/2014 indicates that "Tariff style" obligations may not be sought from sites of less than 11 dwellings. Sustainable Communities obligations are not sought from developments where CIL is sought.

4.54 Where no new open space is provided to serve new dwellings (above the threshold identified above), the Council may seek contributions to ensure that proper provision is maintained, on specific open space an appropriate distance from the development. Local play parks and informal space should ideally be within easy walking distance (300m) of the development. However it is reasonable to expect people to travel further for facilities such as sports pitches, beaches.

4.55 Specific items necessary to making the development acceptable in planning terms will be identified. Where these are for infrastructure, no more than 5 Obligations will be pooled. However they may be used for non infrastructure matters (for example by improving maintenance, management and equipment at existing facilities) where these would meet the tests of lawfulness. These contributions are likely to relate to projects identified in the Greenspace Strategy Action Plan, or in Neighbourhood Plans.

4.56 Where public open space or equipment is provided through a s106 (or other means) by a developer, it should in all cases make financial provision for 10 years maintenance. It is considered by the council that maintenance is essential and therefore these payments should be prioritised. Alternatively, maintenance may be transferred to a management company, so long as financial provision is made for long term maintenance, and dispute resolution.

4.57 All play space and equipment should be completed to an adoptable standard (currently European Standard EN1776 (Play Areas) and EN1777 (Hard Surfaces)) and agreed by the Head of Community Services.

4.58 Where on site facilities are provided, the Council will use a s106 agreement (or other similar means) to secure the following:

- Definition of the extent and type of provision (including a plan). Specific quality standards for all open spaces, including play spaces (LAPs, LEAPs and NEAPs), will be set out in the forthcoming update of the Greenspace Strategy.
- Design, initial establishment, implementation and completion measures.
- Future maintenance specification and funding arrangements.
- Future ownership and management arrangements.
- Rights of public access and use in perpetuity.

Any off site contributions and payment of commuted sums for Council adoption of open spaces and equipment will also be secured by s106 agreement (or other similar means). Agreements will clearly set out the rights and responsibilities of each party.

Lifelong learning

4.59 The Council, as a unitary authority, has a responsibility to provide a range of lifelong learning services to adults, including adult community learning centres, museums and libraries. Libraries are an important element in reducing social inclusion and reducing the inequality gap in Torbay. They host a range of services including acting as a contact for the Council via the Connections Service.

4.60 The cost of running libraries in Torbay is £1,053,000 per year before revenue and £977,000 per year net of revenue (Torbay Budget 2016/17). This equals about equates to £7.30 per person per year.

4.61 Torbay's museums and cultural attractions also provide education and lifelong learning as well as contributing to tourism and therefore employment in the area. Torre Abbey is managed directly by the Council, whilst grant support is given to Torquay and Brixham museums. Management agreements exist for Babbacombe and Princes theatres. Palace Theatre in Paignton is directly managed and also operates the Council's youth theatre, known as the Acting Factory.

4.62 The total expenditure from museums and theatres is £678,000 which is £216,000 after revenue.

4.63 Contributions will be sought from sites of 15+ dwellings in Future Growth Areas (i.e. that do not pay CIL in Torbay) towards lifelong learning. Note that specific projects or items of spending will be identified. Where these are infrastructure they will not breach 5 s106 Obligation pooling limits **(unless these are relaxed)**.

4.64 The calculation of cost of lifelong learning per person and per dwelling is set out in tables 4.9 and 4.10 below.

4.9 Calculation of Life Long Learning Cost per person			
	Net cost of service (after revenue). Source Torbay Council Budget 2016/17	Cost per person (based on 134,000 population) and average persons per dwelling	Cost per person & per dwelling per 10 years
Libraries	£977,000	£7.30	£73 per person
Museums and theatres	£216,000	£1.60	£16 per person
Cost per person		£8.90 per year	£89 per person

4.10 Calculation of Life Long Learning Cost per dwelling		
Number of dwellings	Persons per household	Cost per dwelling (
1 bedroom	1.4	£125
2 bedroom	1.9	£170
3 bedroom	2.6	£232

4+ bedroom	3	£267
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Public Realm improvements

4.65 Improvements to public realm, including urban spaces and the fabric of buildings etc that face on to them, are critical elements of regeneration and improve quality of life for residents and visitors alike, and reducing deprivation in town centre areas. Policies SS10, “Conservation and the historic environment”, SS11 “Sustainable Communities”, and DE1 “Design” all support public realm improvements. In addition, the Council adopted masterplans for the regeneration of Torquay and Paignton town centres in June 2015, which set out public realm improvements. The Heritage Strategy (2011) promotes conservation led regeneration and improvement of the built environment.

4.66 It is estimated that around £700,000 works are required to enhance public areas within town centres associated within town centres, (*Kay Elliot, forthcoming*).

4.67 The Masterplans will unlock significant commercial and residential development. Whilst figures are highly tentative the Local Plan town centre policies (SDT2, SDP2, SDB2) and Masterplans indicate a in the region of:

- Torquay 30,000 sq m commercial development and 600 dwellings
- Paignton 35,000 sq m commercial development and 520 dwellings
- Brixham 2,500 sq m commercial development and 65 dwellings.

4.68 On the basis of the above, ~~open space contributions will be targeted on sought~~ **the achievement of** public realm improvements for developments in the masterplan areas. This applies **to residential** and non residential developments which directly impact upon the need for public realm improvements. In ~~many~~ **most** instances urban design improvements such as the removal of clutter or poor quality later additions can be achieved by good design. Additional costs of providing these be taken into account in the negotiation of s106 or s278 Agreements (see paragraph 4.4.37 of the Local Plan). **There may be instances where a s106 Obligation is justified to provide offsite public realm improvements.** In instance where there is a particularly close relationship with development and public realm improvements, they may be prioritised over other contributions.

Waste Management Facilities

Policy W1 Waste Hierarchy and Paragraph 6.5.3.6 require that all development minimise the generation of waste and encouraging recycling rates.

The waste and recycling collection service, operated by Tor 2 is running at 98% capacity, so new development will generate a need for new waste recycling early in the Plan period. On average, each household generates 500kg of waste per year, of which 42% (210 kg) is recycled. Based on 2.1 people per household, this equates to about 240kg per year per person of which about 100 kg is recycled and 140kg needs to land filled or incinerated.

The recycling rate falls to about 22% for shared dwellings where the Council's bin and box recycling system does not operate, which equates to about 190kg of non recycled waste per person.

On average it cost the Council £100 per tonne to landfill or incinerate waste: around £14 per person per year (based on 0.140 tonne x £100). Where bin and box systems do not operate, the figure rises to £19 per year (0.019 tonne x£100).

It is therefore important to increase recycling rates for financial as well as environmental reasons.

Provision of Bin and boxes for new dwellings.

All development should make provision for adequate storage of waste and recycling bins and boxes on site, within easy reach of kerbside collection points. Guidance on refuse and recycling requirements is produced by Tor2, and developers or residents will need to obtain bins and boxes from Tor2.

It is estimated that the additional per dwelling cost of providing new dwellings with a bin and boxes, and provision of recycling information etc. is around £85 per dwelling. Larger developments (over around 200 dwellings) will need to incorporate on site facilities for the recycling of glass, paper, clothes etc. This can often be achieved through conditions.

The Council/Tor2 will seek the cost of bin and boxes from all new residential developments using municipal waste collections, as a separate process from the planning system. ~~If applicants chose not to provide this through S106/Unilateral obligations, residents of the dwellings will need to buy compatible bins and boxes directly from Tor2 before waste collection can commence.~~

Increasing capacity of waste collection services from larger developments

As noted, Torbay's waste collection service is running at near capacity. Where the Council has opted to use s106 obligations rather than CIL to help fund infrastructure, it will seek contributions towards the additional cost of waste management generated by the development.

~~Contributions will be sought from larger developments towards the cost of additional waste management facilities. On the basis of the assessed average cost per dwelling of providing additional vehicles etc., a cost of £97 per dwelling will be sought from sites of 15 or more dwellings.~~

Because it is recognised that Council Tax will provide a proportion of this, it is proposed to seek s106 Obligations to contribute based on the cost of vehicles rather than revenue costs such as fuel and wages (although in practice moneys may be used for a range of waste management matters). The Council's Environmental Services have indicated that the cost per vehicle (with a 10 year life) would be:

- 2 refuse collection vehicles at £182,000 per vehicle
- 4 recycling stillage vehicles at £82,000 per vehicle
- i.e. a total of £764,000 by 2030.

This equates to £764,000 or £85 per dwelling (based on 8,900 dwellings in the Local Plan).

Cost of Additional RCVs and Recycling Teams arising from development

On the basis of a refuse collection vehicle and team being able to service around 4,500 properties in a fortnightly cycle (500 properties x 9.5 effective working days cycle); this would equate to the need for two additional collection teams over the Plan period.

Recycling boxes are currently collected weekly, and assuming the service rates above, would equate to a need for four additional vehicles and teams over the period to 2030.

The Council's environmental Services have indicated that the cost per vehicle would be:

Refuse Collection Vehicle

Vehicle £182,500

Wages £ 51,100

Fuel £13,000

TOTAL £246,600

Recycling Stillage Vehicle

Vehicle £82,500

Wages £34,600

Fuel £ 7,500

TOTAL £124,600

This equates to a total cost of around £1million. Because it is recognised that Council Tax will provide a proportion of this, it is proposed to seek s106 Obligations to contribute based on the cost of vehicles (although in practice moneys may be used for a range of waste management matters). This equates to £863,400 or £97 per dwelling (based on 8,900 dwellings in the Local Plan).

Where developments are unable to provide the Council’s normal waste recycling bin and boxes, an additional charge will be sought to cover the additional cost to the Council **arising from reduced recycling rates. This will be based on a cost of £50 per person (representing 10 years of £5 being the additional cost of landfill etc as calculated above).** This is unlikely to apply to developments that have paid CIL.

Table 4.7 below sets out waste contributions sought from residential development.

Table 4.7 Waste Management Contributions

	Cost of Bin and Recycling Boxes, and recycling information	Contribution to additional waste and recycling services
Sites of 1-10 dwellings, where normal bin and box recycling system can operate	“Tariff style contributions are not sought from smaller sites. However developers have the option of purchasing bins and boxes from Tor2 at the planning stage. If they chose not to then they will be billed directly by the Council/Tor2	-
Sites of 11+ Dwellings where normal bin and box recycling system can operate.	£75 Developers have the option of purchasing bins and boxes from Tor2 at the planning stage. If they chose not to then they will be billed directly by the Council/Tor2	£97 £85
Developments where there is a reduced capacity to recycle e.g. due lack of recycling facilities	A waste audit will be required to indicate how municipal waste will be managed. Otherwise a contribution will be sought based on the additional cost to the Council Tor of dealing with the waste arising from the development, and reduced recycling rates. .	£97 £85+£50 per person/room

Difficult to Monitor Uses and Town Centre Management

The Local Plan indicates that s106 Obligations will be sought to monitor development that gives rise to specific monitoring requirements such as holiday occupancy conditions, non-Registered Providers of affordable housing (excluding starter homes), town centre management use, holiday occupancy, ecological mitigation and HMOs.

Officer time costs on average £72 per hour, or £245 per half day. Table 4.8 below sets out the types of development that require **specific** monitoring and the cost to the council over 5 years. Note that this is not a definitive list and contributions will be sought proportionately to the requirement to monitor.

Policy TC5 “Evening and Night-time economy” indicates that contributions will be sought towards town centre management, maintenance and policing

Note that Monitoring and management contributions are not usually sought for infrastructure items and therefore not subject to pooling restrictions.

Table 4.12 Monitoring Contributions

Use	Monitoring requirement	Cost of Monitoring/ Contribution	Notes
Holiday occupancy conditions	Low	£360	Based on annual visit being required <u>Based on 1 day per annum data assessment or visit.</u>
Non-RP Affordable Housing (excluding starter homes)	Low	£360	Based on annual visit being required <u>Based on 1 day per annum data assessment or visit.</u>
Ecological Mitigation Works	Low	£360	Based on annual visit being required <u>Based on 1 day per annum data assessment or visit.</u>
Houses in Multiple Occupancy	Medium <u>to high</u>	£1440	<u>Based on 4 days per annum data assessment or visits.</u> May be reduced where on-site management is provided.
Amusement Arcades, betting shops.	Medium to High	£2,880	Will be applied proportionately to monitoring requirement.
Night time economy uses, alcohol related uses	High	£2,880 per 100 sq. m	Will be applied proportionately to monitoring requirement

5. IMPLEMENTATION

Policy SS7 of the adopted Torbay Local Plan 2012-30 undertakes to prioritise developer Obligations according to:

- The tests of Lawfulness
- Prioritisation of critical infrastructure
- Evidence of viability
- Wider development impact
- Torbay Community Plan themes
- Availability of other funding, including ring fenced government funding and CIL.

As noted above, Planning Conditions will be used wherever possible rather than S106 Obligations.

Note that “sustainable development contributions” are not sought from developments that pay CIL, and “tariff style” obligations are not sought from residential developments of less than 11 dwellings or commercial development of less than 100 sq m. Whilst site deliverability matters still apply, but can often be addressed through conditions. On this basis it is expected that many small developments will not need s106 agreements.

Types of s106 obligations

With small-scale developments which only require the payment of commuted sums, and where the developer has been notified that the Council is minded to grant planning permission, it may be simpler for the developers to pay the sums through a unilateral undertaking. A unilateral undertaking is a legal document made pursuant to s.106 of the Town & Country Planning Act 1990 under which, in this case, the developer agrees to pay contributions in respect of necessary measures to make the development acceptable in planning terms. If a unilateral undertaking is considered by the Council to be appropriate, a template document will be provided for the developer to complete, sign and return.

A unilateral undertaking can only be entered into by the owner of the land to be developed. An applicant who does not own the land to which the application relates will need to ask the owner to enter in to the undertaking. Where payment is made in advance of granting permission a 10% discount to the commuted sums will be applied and the Council will not impose a charge for its legal costs.

Section 106 Agreements

Where the Council decides to grant planning permission subject to the completion of a S106 Agreement (or S278 Agreement in the case of works to the highway), matters covered in the s.106 agreement will include (as appropriate):

- Timing of payments and phasing of development
- Nature of obligation and (where a financial contribution) how it will be spent.
- In the case of affordable housing:
 - The number of affordable units
 - The type and size of the properties
 - Arrangements for ensuring that the housing remains affordable in perpetuity
 - Local occupancy condition, where appropriate

- How the affordable element will be achieved e.g. through the construction of units, transfer of land, or financial or other off-site contribution
- Any cascade arrangements including the length of time in which to secure funding for rented housing, before which the tenure mix can be re-negotiated and time that units need to be marketed for.
- A mortgagee in possession clause
- Where appropriate a clause for financial re-assessment and payment of deferred contributions

Developers will be expected to pay the Council's legal costs of drafting **or review of** S106 Agreements at the current rate of £150 per hour; this rate may be increased in line with inflation and level of complexity of the issues involved.

Mitigation

S106 Obligations are intended to address the net additional impact of development upon the built and natural environment and wider society. On this basis, contributions may be mitigated where development gives rise to particular social, economic or environmental benefits.

Mitigation for Existing Uses The Planning Contributions and Affordable Housing SPD is intended to meet the community (etc.) impact of additional development. Therefore the existing use should be taken into account and contributions sought on the **net additional impact**. Note that this requires applicants to be specific about existing uses and provide details of floorspace.

Mitigation for existing uses cannot remove the need for contributions towards matters that are necessary to the safe operation of the site or meeting legal requirements (i.e. Site Deliverability matters).

Mitigation where there is an Identifiable Social Good (e.g. provides jobs or regeneration benefits). Where development results in an identifiable social good, for example significant regeneration, built or natural environment or provision of jobs, the authority will take a flexible approach to planning contributions in order to ensure that the social benefits of development are realised.

Mitigation for Job Creation. Economic Prosperity is a high priority for the Council. Therefore it is particularly important that planning obligations do not impede job creation. On this basis mitigation from "tariff style" contributions will be given for jobs created by development proposals, using the methodology set out in Part above as a starting point.

Affordable Housing "Sustainable development" contributions will not be sought for social rented from affordable housing (which for simplicity should include affordable rent), and a 50% discount applied to intermediate housing and starter homes. **where full nomination rights are given to Torbay Council, or occupancy is restricted in perpetuity to people already living or working in Torbay.**

Note that this relates to affordable housing within the definition in the NPPF (and starter homes). It does not apply to small "low cost" open market units sold without a discount. In addition, "development site acceptability" matters have to be addressed on affordable housing developments, to make the site safe and workable in physical terms.

Where intermediate housing provides additional sustainability benefits such as exceeding minimum Building Regulations standards on energy efficiency or accessibility, then the Council will consider relaxing the requirement for sustainable development contributions.

Viability – Content of Viability Assessments

The Local Plan acknowledges that s106 Obligations may be negotiated between the Council and developer. Where it is claimed that planning obligations would render development unviable, the Council will require the developer to ~~carry out a viability assessment at the developer's expense.~~ **cover the cost of an independent viability assessment by a suitably qualified professional appointed by the Council. They will work with both parties but will be accountable to the Council.**

The Council may also require the developer to pay for a critical review of the viability assessment and a re-appraisal of the proposed development if it deems it necessary. The developer is to pay for the cost of this critical review and re-appraisal.

Calculation of viability will usually be based on residual land value (i.e. a calculation that the value of land after development costs, policy requirements and contributions remains sufficient for a willing developer to bring forward development).

An open book accounting approach will be used to assess the viability of the development and should include itemised details of: However the Council will have regard to financial confidentiality in publishing these.

- **Acquisitions costs, land and Stamp Duty Land Tax etc.**
- **Planning, legal and professional fees, marketing costs.**
- **Demolition and** other abnormal costs;
- **Construction costs at price per sq. m floor area detailing what is included and on what basis; and what evidence has been used to arrive at the build cost. These should include preliminaries, external works and contingencies**
- **Build programme**
- **Allowances for any other contribution or costs associated with the development including planning obligations contributions due;**
- **Any other contractual arrangement such as uplift or claw-back provisions;**
- Details of any finance agreements;
- **Gross development value, eg. sales values with evidence and, for larger schemes, cashflows showing the timing for the sales**

- Details of any ground rents, affordable housing values (evidenced by offers from RPs), commercial values including rents and yields.
- Anticipated developer profit clearly expressed in terms of % of GDV. The Council will allow 20% of GDV on market housing and 6% on affordable units to represent a reasonable level of profit.

The Council will have regard to financial confidentiality in publishing this information. It may be required to publish such data, but will redact figures and details that would harm financial confidentiality.

A basic development appraisal template is available on the Councils website setting out the information required. Developers may use their own templates but these must include the exact details to ensure that a clear and consistent approach to viability appraisal is maintained for all sites. Viability assessments should be proportional to the scale and nature of the application.

The open-book accounting approach will expect land values to reflect market conditions, alternative land use value and local and national planning policy requirements at the time the viability appraisal is carried out. The price paid by the developer for the land will not normally be a factor in determining the viability of a site, if they have paid above the assessed open market rate.

Where Development is Unviable

Where a developer demonstrates to the satisfaction of the Council that a proposed scheme is not currently viable with a policy-complaint level of developer contributions **and** the Council consider that there is scope to agree an acceptable development, the Council will agree to reduce S106 and other obligations in order to render development viable, subject to a recalculation of viability as set out below.

Contributions will be reduced in line with the order of priorities set out in Policy SS7 and this SPD (i.e. broader sustainability contributions will generally be relaxed before affordable housing/employment and health contributions). There is no scope to relax Site Deliverability requirements, although these will generally be addressed through conditions rather than developer contributions.

Where reduced S106 Obligations are agreed, the S106 Agreement will include a clause to secure a further Viability Appraisal/s (at the developer's expense) to be carried out at the end of the development, or at the completion of each phase of larger developments to assess the precise profit based on actual development costs and sales figures.

Any further viability appraisal will only apply to units that have not reached practical completion by an agreed time to be agreed in the initial S106 Agreement. This will usually be:

- Three years from the grant of planning permission for sites of up to ~~400~~ 50 dwellings;
- Four years from the grant of planning permission for sites of between 51-90 dwellings
- Five years for developments of 90 dwellings or more.

Very large sites (e.g. over 200 dwellings or mixed use developments will be negotiated on an individual basis).

If actual profit exceeds 20% Gross Development Value (GDV) the developer will be required to pay an additional contribution equivalent to 50% of the profit above 20% GDV. Where a reduced level of affordable housing has been provided, the Council will seek increased provision of affordable housing in the later phases of development, subject to sustainable communities and other relevant considerations.

A ceiling on the contributions/affordable housing provision will be imposed to ensure the developer does not contribute more than the amount of contribution that was applicable at the time of submission of the latest relevant application.

Re-negotiating the Terms of the Section 106 Agreement

The Council has discretion to renegotiate s106 Agreements, but is under no obligation to do so. There is no right of appeal against a refusal to renegotiate s106 Obligations that are less than five years old. On this basis the Council will only renegotiate s106 Obligations where this would provide net benefits to the community, environment etc.

Where the developer seeks to re-negotiate previously agreed s106 Obligations the Council will require an open-book viability appraisal to be carried out at the developer's expense.

The assessment must take the form of the viability appraisal template or other form agreed in writing between the developer and the Council providing that the land values, development costs, development values and finance costs all reflect current market conditions.

The findings of the viability appraisal will remain valid for a maximum period of 12 months from the date an amended Agreement is agreed; or, where phasing has been agreed in excess of 12 months, a new viability appraisal will be required for each phase.

Where viability appraisal satisfactorily demonstrates that the development is not currently viable when taking into account the full obligations and contributions required, the Council will agree to re-negotiate s106 Obligations in the order of priority identified above in this SPD. However, contributions cannot be relaxed to the extent that development would not be in accordance with certain regulatory requirements (such as in the Habitats Directive) or not in the public interest.

Developers will be expected to pay the Council's legal costs of drafting a deed to vary the original s106 at the current rate of £150 per hour (with a minimum fee of £500); this rate may be increased in line with inflation and level of complexity of the issues involved. The Council may charge developers for additional costs it encounters associated with monitoring s106 clause triggers etc.

Monitoring and Spending S106 Obligations

The Council will collect s106 for projects and programmes necessary to make the development to which they relate acceptable in planning terms. It will monitor the collection and spending of development contributions and will where practicable spend them within five years of the contribution being paid. Up to five percent of the cost of s106 obligations (not representing an additional charge to the developer) may be retained for administering and monitoring them.

6. Summary

The tables below are intended as a summary of contributions that may be sought from development. Although figures are presented for some items, these are intended to be an assessment of the likely impact of the development rather than a “tariff” per se, and will not be sought as a tariff.

The SPD will need to be updated in line with inflation and evidence of need for different items off infrastructure. The Council will also need to have regard to the evolving nature of government and legal guidance and legislation on S106 and CIL, particularly the Planning Practice Guidance and Ministerial Statements on levying affordable housing and “tariff style” contributions on small sites, as well as particularly relating to affordable housing thresholds, and s106 pooling limits. Should pooling limits be relaxed, they will not be applied.

S106 may also apply to commercial developments, which must be determined on a case by case basis.

6.1 Summary of Contributions Sought

Residential Developments of 1-11 dwellings (1-5 in the AONB)		
	Requirement	Notes
Site Deliverabilitys		Applies to all sites
Direct access/safety	Direct provision or as costed by Highways Department	S278 Agreement where possible.
Flooding, drainage and Sewerage	Direct provision, SuDS, requisition from South West Water	Note that Torbay is a Critical Drainage Area
Biodiversity	Mitigation of biodiversity, <u>including woodland, impacts and compensation for losses.</u> Through condition or s106 Obligation	Note that <u>indirect recreational</u> impact on South Hams SAC is a CIL item so developments that pay CIL will not be charged S106 contributions towards this
Design and Active Design	Through design/conditions	
Built environment improvements and public realm	Through design/conditions.	
Affordable Housing Employment and Health		
Affordable Housing	Greenfield Sites of 6-11 dwellings in the AONB required to pay commuted sum based on 15% provision see table 3.2	Regulations may introduce a requirement for starter homes. The Council will keep the minimum permissible threshold for greenfield sites under review.
Healthcare	£1,300 per dwelling £2,220 per care home room	S106 Contributions sought where there is a specific <u>additional</u>

		<p>healthcare requirement arising from development e.g. sheltered accommodation. Will not be sought where developments show that they provide additional care and facilities which will not result in additional cost to the integrated care organisation.</p> <p>Active design is a Site Deliverability matter (see above).</p>
Employment	£8,000 per FTE job lost.	<p>Only applies to where application entails the loss of employment.</p> <p>The Council will seek to negotiate local labour arrangements with developers.</p>
Sustainable Development	Not normally sought on sites of 10 or fewer dwellings unless application gives rise to a specific need.	The Council will keep the ability to seek “tariff style” contributions under review. Will not be sought from developments where CIL is levied.
Waste management	£50 per person for developments where bin and box recycling system cannot operate.	Option to pay £85 per dwelling at the planning stage. Otherwise bins and boxes will need to be purchased from the Council/Tor2
Monitoring Contributions		Where development results in specific additional monitoring needs.
Community Infrastructure Levy	Charged on new floorspace	See CIL Charging Schedule

(6.1) Residential Developments of 11+ dwellings (6+ in the AONB)

	Requirement	Notes
Site Deliverabilitys		Applies to all sites
Direct access/safety	Direct provision or as costed by Highways Department	S278 Agreement where possible.
Flooding, drainage and Sewerage	Direct provision, SuDS, requisition from South West Water	Note that Torbay is a Critical Drainage Area

Biodiversity	Mitigation of biodiversity impacts and compensation for losses, including woodland. Through condition or s106 Obligation.	Note that recreational impact on South Hams SAC is a CIL item Note that indirect impact on South Hams SAC is a CIL item, so developments that pay CIL will not be charged S106 contributions towards this.
Design and Active Design	Through design/conditions.	
Built environment improvements and public realm	Through design/conditions.	
Affordable Housing Employment and Health		
Affordable Housing	Onsite provision for Greenfield sites: 11-14= 20% 15-29= 25% 30+ = 30% or 25% plus 5% self build plots Brownfield 15-19= 15% 20+ = 20%	
Healthcare	£1,300 per dwelling £2,220 per care home room	S106 Contributions sought where there is a specific healthcare requirement arising from development e.g. sheltered accommodation. Will not be sought where developments show that they provide additional care and facilities which will not result in additional cost to the integrated care organisation. Active design is a Site Deliverability matter (see above).
Employment	£8,000 per FTE job lost.	Only applies to where the application entails the loss of employment The Council will seek to negotiate local

		<u>labour arrangements with developers.</u>
Sustainable Development	Applies only to developments that do not pay CIL (i.e. sites of 15+ dwellings within Future Growth Areas).	
Sustainable transport	Apartments 1-3 bedrooms £690 Houses 1-3 bedrooms £860 Larger dwellings £1,110	<u>Will need to relate to specific identified projects which are necessary to making development acceptable in planning terms (etc).</u>
Education	1 bedroom dwellings and specialist accommodation= zero 2 bedroom apartments £3,170 2 bedroom houses £4,750 3 bedroom dwellings £6,330 4 bedroom dwellings £7,920 5+ bedroom dwellings £9,500	<u>Will need to relate to specific identified education which are necessary to making development acceptable in planning terms (etc).</u>
Lifelong learning	1 bedroom dwellings £125 2 bedroom dwellings £170 3 bedroom dwellings £232 4 bedroom dwellings £267	<u>Will need to relate to specific identified education which are necessary to making development acceptable in planning terms (etc).</u>
Open space, sports and recreation	1 bedroom dwellings £690 2 bedroom dwellings £1,410 3 bedroom dwellings £2,580 4+ bedroom dwellings £2,970	<u>Will usually be achieved by onsite provision on larger developments (subject to maintenance agreements).</u>
Waste management	£85 (ins and boxes) plus £97-per dwelling <u>Plus £50 per person/room for developments using municipal waste which cannot provide standard bin and recycling boxes scheme.</u>	<u>Applies to larger developments where a need for additional waste management facilities is identified. Will need to relate to specific identified education which are necessary to making development acceptable in planning terms (etc).</u> <i>plus developments where the Council's bin and box recycling system is difficult to achieve.</i>
Monitoring and management	Costs based on officer time at £72/hour (at 2016 values)	Only proposals that give rise to particular monitoring issues.

<p>Community Infrastructure Levy</p>		<p>Applies to dwellings, based on new floorspace. CIL is sought on new dwellings apart from sites of 15+ units in Future Growth Areas. For such sites, planning obligations will be used.</p> <p>Where CIL is sought, “tariff style” S106 Obligations will not be sought. S106</p>
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