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Wednesday, 16 March 2011

Meeting of the Council

Dear Member

I am pleased to invite you to attend a meeting of Torbay Council which will be held in **Ballroom, Oldway Mansion, Torquay Road, Paignton, TQ3 2TE** on **Thursday, 24 March 2011** commencing at **5.30 pm**

The items to be discussed at this meeting are attached.

Yours sincerely,

Elizabeth Raikes
Chief Executive

(All members are summoned to attend the meeting of the Council in accordance with the requirements of the Local Government Act 1972 and Standing Orders A5.)

Our vision is for a cleaner, safer, prosperous Bay

For information relating to this meeting or to request a copy in another format or language please contact:

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(i)
THE MJ
2010
Achievement Awards
COMMENDED

Meeting of the Council Agenda

1. **To open the meeting with prayer.**

2. **Apologies for absence.**

3. **Minutes.**

To confirm as a correct record the minutes of the meeting of the Council held on 24 February 2011.

(1 - 14)

4. **Declarations of interests.**

(a) To receive declarations of personal interests in respect of items on this agenda.

For reference: Having declared their personal interest members and officers may remain in the meeting and speak (and, in the case of Members, vote on the matter in question). If the Member's interest only arises because they have been appointed to an outside body by the Council (or if the interest is as a member of another public body) then the interest need only be declared if the Member wishes to speak and/or vote on the matter. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

(b) To receive declarations of personal prejudicial interests in respect of items on this agenda.

For reference: A Member with a personal interest also has a prejudicial interest in that matter if a member of the public (with knowledge of the relevant facts) would reasonably regard the interest as so significant that it is likely to influence their judgement of the public interest. Where a Member has a personal prejudicial interest he/she must leave the meeting during consideration of the item. However, the Member may remain in the meeting to make representations, answer questions or give evidence if the public have a right to do so, but having done so the Member must then immediately leave the meeting, may not vote and must not improperly seek to influence the outcome of the matter. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

(Please note: If members and officers wish to seek advice on any potential interests they may have, they should contact Democratic Services or Legal Services prior to the meeting.)

5. **Communications.**

To receive any communications or announcements from the Chairman, the Mayor, the Overview and Scrutiny Co-ordinator or the Chief Executive.

6. **Members' questions.**

To answer any questions asked under Standing Order A13.

7. **Notice of motions.**

To consider the following motions, notice of which has been given in accordance with Standing Order A14 by the members indicated:

Elected Mayor System

That this Council urges the Secretary of State, Mr. Eric Pickles, to scrap the elected mayor system at the expiration of the next four year term and allow the people of Torbay to choose a more democratic and transparent form of local government.

Submitted by Councillors Oliver and Excell

Swim Torquay

Torbay Council notes with horror the threatened closure of 'Swim Torquay' in Plainmoor.

This Council feels that this situation is an example of financial mismanagement by the Conservative administration. Over the past few years an ongoing subsidy has been paid, but the opportunity to develop a long term solution to provide quality swimming pool facilities has been squandered.

This Council resolves to fund the pool for the 2011/12 financial year with a one off £15,000 (on top of the £5,000 already given) from the Comprehensive Spending Review Reserve. During the next 12 months the Council will work with interested parties on a strategy to provide a 21st century swimming facility for local residents and visitors alike.

This Council asks the Environment Commissioner to bring a report to the meeting of the Full Council on 30th June outlining what action has been taken.

Submitted by Councillors Darling and Stocks

- 8. Churston Golf Club Proposals - Notice of Call-in.** (15 - 18)
To consider Report OSB/4/11 setting out the recommendations of the Overview and Scrutiny Board regarding the call-in of the Mayor's decision on the Churston Golf Club Proposals; and any other call-in's referred to the Council for consideration.
- 9. Annual Strategic Agreement 2011/12 with Torbay NHS Care Trust.** (19 - 38)
To consider Report 76/2011 and the recommendations of the Mayor on the Annual Strategic Agreement with the Torbay NHS Care Trust for 2011/12.
- 10. Corporate Plan 2011+.** (To Follow)
To consider Report 77/2011 and the recommendations of the Mayor on the draft Corporate Plan for 2011+.
- 11. Planning Contributions and Affordable Housing Supplementary Planning Document: Threshold for Contributions.** (39 - 52)
To consider the recommendations of the Mayor set out in Record of Decision (set out in Report 78/2011) and Report 39/2011 on the above Supplementary Planning Document.

12. Composition and Constitution of the Cabinet and Record of Delegations of Executive Functions.

(53 - 58)

To receive details on the composition and constitution of the Mayor's Cabinet, together with the record of delegations of Executive functions (in accordance with Standing Orders A1.2 (viii) and (xiii) and C2 to C4) (as set out in Report 79/2011).



Minutes of the Meeting of the Council of Torbay

24 February 2011

-: Present :-

Chairman of the Council (Councillor Phillips) (In the Chair)

The Mayor of Torbay (Nick Bye)

Councillors Addis, Aiton, Amil, Baldrey, Bent, Butt, Carter (C), Charlwood, Darling, Doggett, Ellery, Excell, Faulkner (A), Faulkner (J), Hytche, Lewis, McPhail, Mills, Morey, Oliver, Parrott, Pentney, Richards, Scouler, Stocks, Stringer, Thomas (D), Thomas (J) and Tolchard

552. Opening.

The meeting was opened with a prayer.

553. Apologies.

Apologies for absence were received from Councillors Carroll, Carter (R), Hodge and Horne. Terry Manning was not present at the Council meeting as he was suspended from the Council from 14 February 2011 to 27 February 2011.

554. Minutes.

The Minutes of the meeting of the Council held on 2 February 2011 and the adjourned meeting of the Council held on 9 February 2011 were confirmed as a correct record and signed by the Chairman.

555. Declarations of Interest.

The Monitoring Officer advised members that there was no requirement to declare prejudicial interests when considering the capital and revenue budgets for setting the council tax and therefore members did not have to leave the room when such matters were being discussed.

The Monitoring Officer further advised that members were not required to declare a personal interest in respect of setting the budget unless a specific matter being debated significantly affected the member or a person associated with the member. The Members' Register of Interests was available for inspection at the meeting.

The following personal interests were declared:

Councillor	Minute Number	Nature of interest
Councillor Doggett	563	Corporate member of the Torbay Rail Line Users Group

Councillor	Minute Number	Nature of interest
Councillor Hytche	563	Corporate member of the Torbay Rail Line Users Group
Councillor McPhail	561	Sits on Committee of the Trustees at Torquay Museum

556. Communications.

The Mayor:

- (a) referred to the work of Children's Services and the Police on Operation Mansfield which had revealed a number of children living in Torbay being subject to child exploitation. He advised members that he, in joint consultation with the Chief Finance Officer, had approved an additional £120,000 to help respond to the demands of Operation Mansfield. The work had also demonstrated the improvements that had been made in information sharing across agencies and the Mayor expressed his thanks to all those officers involved;
- (b) advised members that the Government had published figures for teenage conception rates for 2009. Although the figures still remained high, the 2009 results indicated a reduction for Torbay and this reduction was twice the average of national and regional figures. He informed members that a new strategy had been implemented since 2009 and thanked the staff involved in this work; and
- (c) informed members of a conference he had attended at St James Palace for the Prince's Regeneration Trust, which was addressed by HRH the Prince of Wales.

557. Members' Questions.

Members received a paper detailing the questions, as set out at Appendix 1 to these Minutes, notice of which had been given in accordance with Standing Order A13.

A supplementary question was asked and answered by the Mayor (in the absence of Councillor Carroll) in respect of question 2.

558. Notice of Motion – EU Budget.

Members considered a motion in relation to European Union funding allocations, notice of which was given in accordance with Standing Order A14.

It was proposed by Councillor Oliver and seconded by Councillor McPhail:

the Council notes that while Torbay is facing a 14% reduction in its financial settlement the UK's contribution to the European Union is set to rise by 60% over two years.

The Council notes that, despite the opposition of some Conservative MPs, and Labour and Conservative MEPS, it is likely that the Government will agree to a further 2.9% increase in the overall EU budget.

This Council believes the EU should be treated the same as the other tiers of government and in these austere times should share responsibility, along with the central and local government, for public spending reductions. Sharing the burden would result in less severe cuts for local authorities, and give more assistance to councils to protect front line services.

This Council therefore urges Torbay's MPs not to support an increase in the EU budget.

In accordance with Standing Order A14.3(b), the Chief Executive advised that the motion would be dealt with by this meeting.

On being put to the vote, the motion was declared **carried**.

559. Notice of Motion – Budget Process.

Members considered a motion in relation to the revenue budget setting process for 2011/12, notice of which was given in accordance with Standing Order A14.

It was proposed by Councillor Carter (C) and seconded by Councillor Pentney:

this Council objects to lack of openness and transparency in the Council's budget process for the 2011/12 Revenue Budget.

It is recognised that the Council has only been able to work on estimated figures given the poor level of information emerging from the Department of Communities and Local Government. However, other authorities were able to provide much more detailed proposals earlier in the cycle against which comment could be made.

Torbay Council regrets the culture of spin in the Mayor's budget process, where budget estimates are consulted on, that include savage cuts which are unlikely to be implemented, and then in his final proposals the Mayor reinvests some money which obscures the cuts that have been made.

In other local authorities, much more open and transparent budget proposals are consulted on.

The Council also recognises that the current timetable only allows Councillors two full working days to table amendments and objections to the Mayor's budget proposals, which contrasts with the five days that the Mayor has to consider any amendments or objections from Councillors.

As such the Council requests that wherever possible the Mayor presents his budget proposals for full consideration in October which is achievable with the announcement of the Comprehensive Spending Review figures.

This Council further notes the lack of openness, transparency or scrutiny of any budget proposals from the Majority Group.

In accordance with Standing Order A14.3(b), the motion would be dealt with by this meeting.

On being put to the vote, the motion was declared **lost**.

560. Capital Plan Budget 2011/12 to 2014/15.

The Council considered the capital plan budget proposals of the Mayor, which he had put forward following his consideration of the proposed amendment that was made at the adjourned meeting of the Council held on 9 February 2011.

It was proposed by the Mayor and seconded by Councillor Bent:

that the Council be recommended:

- (i) to approve the Capital Plan for 2011/12 – 2014/15 set out in Report 10/2011;
- (ii) that any funding from the Community Infrastructure Levy be allocated to fund capital schemes on the basis of a Council wide scheme prioritisation;
- (iii) to approve the capital scheme for Torre Abbey (Phase Two) to be funded from a Heritage Lottery Fund grant with the balance of a maximum £2m, (based on current estimates), to be funded by the Council by means of prudential borrowing subject to any other external funds being raised for the scheme; and
- (iv) that the 2011/12 Prudential Indicators (including the Authorised Limit for external debt) set out in Appendix 2 to Report 10/2011, subject to approval of the Revenue Budget and Council Tax for 2011/12, be approved.

An amendment was proposed by Councillor Charlwood and seconded by Councillor Stringer:

that the Chief Finance Officer be requested to work with Council Officers to develop a scheme to start in April 2012 as part of the Capital Plan for a Community Fund of £250,000 a year. The Chief Finance Officer is tasked to identify options to fund this scheme. This fund should allow communities across Torbay to place bids for capital infrastructure projects either from the Council's budgeted sum or as part of any match funding for larger schemes within an agreed proportion of the budget available. Officers should ensure that the scheme is developed to be open and transparent.

In accordance with Standing Order A19.4 and at the request of Councillor Stringer, a recorded vote was taken on the amendment. The voting was taken by roll call as follows: **For:** Councillors Addis, Amil, Baldrey, Carter (C), Charlwood, Darling, Doggett, Ellery, Excell, Faulkner (A), Faulkner (J), Hytche, McPhail, Mills, Morey, Oliver, Parrott, Pentney, Richards, Stocks, Stringer, Thomas (D) and Thomas (J) (23); **Against:** The Mayor, Councillors Aiton, Bent, Butt and Tolchard (5); **Abstain:** Councillors Lewis, Phillips, Scouler, (3); and **Absent:** Councillors Carroll, Carter (R), Hodge and Horne (4). As more than two-thirds of Members present and voting had cast their vote in support of the amendment it was declared **carried**.

The substantive motion (the original motion with the addition of the amendment) was then before Members for consideration.

On being put to the vote, more than two-thirds of Members present and voting cast their vote in support of the substantive motion and therefore it was declared **carried**.

561. Revenue Budget 2011/12.

The Council considered the revenue budget proposals of the Mayor, which he had put forward following his consideration of the objections that were made at the adjourned meeting of the Council held on 9 February 2011.

It was proposed by the Mayor and seconded by Councillor Bent:

that the Council be recommended that:

- (i) the budget for 2011/12 (paragraph A1.42 to Report 13/2011) and the associated fees and charges, be approved;
- (ii) the final notified Dedicated Schools Grant be used in accordance with the nationally laid down Schools Financial Regulations (paragraph A1.36 to Report 13/2011) and that the Chief Finance Officer be authorised to make amendments as required when the final figures are confirmed;
- (iii) the Members' Allowances Scheme for 2010/2011 be implemented in 2011/2012 subject to the annual up-rating in accordance with the annual pay award (AP&C) and to any changes approved by Council as part of the 2011/12 budget setting (paragraph A1.37 and paragraph A1.41 to Report 13/2011);
- (iv) the Chief Finance Officer in consultation with the Mayor be authorised to approve expenditure from reserves and provisions in accordance with the terms of the respective reserve or provision;
- (v) in accordance with the requirement of the Local Government Act 2003, to consider and note the advice given by the Chief Finance Officer with respect to the robustness of the budget estimates and the adequacy of the Council's reserves (Paragraph A1.51 to A1.66 to Report 13/2011);
- (vi) the Chief Finance Officer, in consultation with the Mayor and appropriate Cabinet Member, be authorised to prepare a report on the financial issues in respect of 2012/13 and later years and issue any appropriate spending targets that may arise as a consequence;
- (vii) the Chief Finance Officer in consultation with the Mayor be authorised to make adjustments to and introduce new fees and charges within the budget during 2011/12 if it is within the best interest for the Council;
- (viii) the Chief Finance Officer, in consultation with the Mayor and appropriate officers, be authorised to determine the allocation and expenditure of any new grant monies that may be received during the year;
- (ix) the Chief Finance Officer be authorised to make adjustments to the budgets for any technical changes; and

- (x) the Chief Finance Officer prepare the appropriate documentation for the Council to permit the Council Tax setting at the meeting on 24 February 2011 and all other returns to be made by the appropriate date.

An amendment was proposed by Councillor Oliver and seconded by Councillor McPhail:

the budget for grants to Brixham and Torquay Museums be increased by £0.001m and £0.004m respectively over and above the Mayor's budget, and that £0.005m is allocated from the Comprehensive Spending Review Reserve to achieve this.

Prior to the vote being taken on the amendment, the Chief Executive and the Chief Finance Officer provided advice on the implications of the proposed amendments received in respect of the Mayor's revenue budget proposals. It was noted that, although the proposed amendments would not result in an illegal budget in 2012/13, the use of the Council's reserves to meet ongoing expenditure would not achieve a sustainable budget.

On being put to the vote, more than two-thirds of Members present and voting cast their vote in support of the amendment and therefore it was declared **carried**.

An amendment was proposed by Councillor Oliver and seconded by Councillor McPhail:

the budget for close circuit television cameras be increased by £0.1m over and above the Mayor's budget, and that £0.1m is allocated from the Comprehensive Spending Review Reserve to achieve this.

In accordance with Standing Order A19.4 and at the request of Councillor Oliver, a recorded vote was taken on the amendment. The voting was taken by roll call as follows: **For:** Councillors Addis, Amil, Ellery, Excell, Hytche, McPhail, Mills, Morey, Oliver, Parrott, Philips, Richards, Scouler, Thomas (D) and Thomas (J) (15); **Against:** The Mayor, Councillors Aiton, Bent, Butt, Lewis and Tolchard (6); **Abstain:** Councillors Baldrey, Carter (C), Charlwood, Darling, Doggett, Faulkner (A), Faulkner (J), Pentney, Stocks and Stringer (10); and **Absent:** Councillors Carroll, Carter (R), Hodge and Horne (4). As more than two-thirds of Members present and voting had cast their vote in support of the amendment it was declared **carried**.

An amendment was proposed by Councillor Oliver and seconded by Councillor McPhail:

the budget for street lighting be increased by £0.1m over and above the Mayor's budget, and that £0.1m is allocated from the Comprehensive Spending Review Reserve to achieve this.

In accordance with Standing Order A19.4 and at the request of Councillor Oliver, a recorded vote was taken on the amendment. The voting was taken by roll call as follows: **For:** Councillors Addis, Amil, Ellery, Excell, Hytche, McPhail, Mills, Morey, Oliver, Parrott, Philips, Richards, Scouler, Thomas (D) and Thomas (J) (15); **Against:** The Mayor, Councillors Aiton, Baldrey, Bent, Butt, Lewis and Tolchard (7); **Abstain:** Councillors Carter (C), Charlwood, Darling, Doggett, Faulkner (A), Faulkner (J), Pentney, Stocks and Stringer (9); and **Absent:** Councillors Carroll, Carter (R), Hodge

and Horne (4). As more than two-thirds of Members present and voting had cast their vote in support of the amendment it was declared **carried**.

The substantive motion (the original motion with the addition of the three amendments) was then before Members for consideration.

In accordance with Standing Order A19.4 and at the request of Councillor Faulkner (J), a recorded vote was taken on the substantive motion. The voting was taken by roll call as follows: **For:** Councillors Addis, Amil, Ellery, Excell, Hytche, McPhail, Mills, Morey, Oliver, Parrott, Philips, Richards, Scouler, Thomas (D) and Thomas (J) (15); **Against:** The Mayor, Councillors Aiton, Bent, Butt, Faulkner (J), Lewis, Stringer and Tolchard (8); **Abstain:** Councillors Baldrey, Carter (C), Charlwood, Darling, Doggett, Faulkner (A), Pentney and Stocks (8); and **Absent:** Councillors Carroll, Carter (R), Hodge and Horne (4). As less than two-thirds of Members present and voting had cast their vote in support of the substantive motion it was declared **lost**.

In light of no amendments being approved and in accordance with the Council's Standing Orders in relation to the Budget and Policy Framework, **the Chief Executive declared that the Mayor's budget proposals (as outlined in (i) to (x) above) would stand.**

(**Note:** During consideration of Minute 561, Councillor McPhail declared her personal interest.)

562. Council Tax for 2011/12.

The Council received Report 38/2011 in relation to the setting of the Council Tax for 2011/12.

It was proposed by the Mayor and seconded by Councillor Bent:

- (i) that, having considered the options for the revenue budget, the following amounts be now calculated by Torbay Council for the 2011/2012 year in accordance with Sections 32 to 36 of the Local Government Finance Act 1992, as amended by the Local Authorities (Alteration of Requisite Calculations) (England) Regulations 2003:
 - a) £125,388,585 as its BUDGET REQUIREMENT for the year being the aggregate of the amounts of expenditure which the Council estimates for the items set out in Section 32(2)(a) to (e) of the Act;

LESS the aggregate of the amounts of income which the Council estimates for items set out in Section 32(3)(a) to (c) of the Act and calculated by the Council in accordance with Section 32(4) of the Act;
 - b) £63,631,079 being the aggregate of the sums which the Council estimates will be payable for the year into its General Fund in respect of redistributed Non-Domestic Rates and Revenue Support Grant, together with any net effect of amounts to be transferred to its General Fund from its Collection Fund

pursuant to the Directions under Sections 97 and 98 of the Local Government Finance Act 1988. For 2011/12 this has been estimated as £1,209,000;

- c) £1,264.99 being the amount at (i)(a) above less the amount at (i)(b) above, all divided by the Tax Base of 48,820.60 calculated by the Council in accordance with Section 33(1) of the Act, as the Basic Amount of its Council Tax for the year;
- d) £186,450 being the aggregate amount of all special items referred to in Section 34(1) of the Act;
- e) £1,261.17 being the amount at (i)(c) above less the result given by dividing the amount at (i)(d) above by the Tax Base of 48,820.60 calculated by the Council in accordance with Section 34(2) of the Act as the basic amount of its council tax for the year for dwellings in those parts of its area to which no special item relates;
- f) £28.15 being the amount at (i)(d) above divided by the Tax Base of 6,623.86 calculated by the Council in accordance with Section 33(3) of the Act, as the Basic Amount of its own Council Tax for the year;

g) TORBAY COUNCIL REQUIREMENT

Valuation Band 'A'	£840.78	Valuation Band 'E'	£1,541.43
Valuation Band 'B'	£980.91	Valuation Band 'F'	£1,821.69
Valuation Band 'C'	£1,121.04	Valuation Band 'G'	£2,101.95
Valuation Band 'D'	£1,261.17	Valuation Band 'H'	£2,522.34

being the amounts given by multiplying the amount at (i)(e) above, by the proportions set down in the 1992 Act;

h) BRIXHAM TOWN COUNCIL

Valuation Band 'A'	£18.77	Valuation Band 'E'	£34.41
Valuation Band 'B'	£21.89	Valuation Band 'F'	£40.66
Valuation Band 'C'	£25.02	Valuation Band 'G'	£46.92
Valuation Band 'D'	£28.15	Valuation Band 'H'	£56.30

- (ii) that it be noted that for the year 2011/2012 the DEVON AND CORNWALL POLICE AUTHORITY has stated the following amounts in its precept issued to the Council, in accordance with Section 40 of the Local Government Finance Act 1992, and The Local Authorities (Alteration of Requisite Calculations) (England) Regulations 2003 for each of the categories of the dwellings shown below:-

Valuation Band 'A'	£104.40	Valuation Band 'E'	£191.40
Valuation Band 'B'	£121.80	Valuation Band 'F'	£226.20
Valuation Band 'C'	£139.20	Valuation Band 'G'	£261.00
Valuation Band 'D'	£156.60	Valuation Band 'H'	£313.20

- (iii) that it be noted that for the year 2011/2012 the DEVON AND SOMERSET FIRE AND RESCUE AUTHORITY has stated the following amounts in its precept issued to the Council, in accordance with Section 40 of the Local Government Finance Act 1992, and The Local Authorities (Alteration of Requisite Calculations) (England) Regulations 2003 for each of the categories of the dwellings shown below:-

Valuation Band 'A'	£47.85	Valuation Band 'E'	£87.72
Valuation Band 'B'	£55.82	Valuation Band 'F'	£103.67
Valuation Band 'C'	£63.80	Valuation Band 'G'	£119.62
Valuation Band 'D'	£71.77	Valuation Band 'H'	£143.54

- (iv) that, having calculated the aggregate in each case of the amounts at (i)(e), (ii) and (iii) above, the Council, in accordance with Section 30(2) of the Local Government Finance Act 1992, hereby sets the following amounts as the TOTAL AMOUNTS OF COUNCIL TAX for the year 2011/2012 for each of the categories of dwellings shown below excluding Brixham Town Council:-

DWELLINGS IN

Valuation Band 'A'	£993.03	Valuation Band 'E'	£1,820.55
Valuation Band 'B'	£1,158.53	Valuation Band 'F'	£2,151.56
Valuation Band 'C'	£1,324.04	Valuation Band 'G'	£2,482.57
Valuation Band 'D'	£1,489.54	Valuation Band 'H'	£2,979.08

- (v) that, having calculated the aggregate in each case of the amounts at (i)(e & f), (ii) and (iii) above, the Council, in accordance with Section 30(2) of the Local Government Finance Act 1992, hereby sets the following amounts as the TOTAL AMOUNTS OF COUNCIL TAX for the year 2011/2012 for each of the categories of dwellings shown below including Brixham Town Council:-

DWELLINGS IN

Valuation Band 'A'	£1,011.80	Valuation Band 'E'	£1,854.96
Valuation Band 'B'	£1,180.42	Valuation Band 'F'	£2,192.22
Valuation Band 'C'	£1,349.06	Valuation Band 'G'	£2,529.49
Valuation Band 'D'	£1,517.69	Valuation Band 'H'	£3,035.38

On being put to the vote, the motion was declared **carried**.

563. Third Local Transport Plan 2011-2026, Jointly with Devon County Council.

The Council considered Report 31/2011 and the recommendations of the Mayor on the third Local Transport Plan which had developed jointly with Devon County Council. The Plan aimed to achieve excellent transport connections for Torbay to Devon and the rest of the UK by 2026. It was noted that the Plan built on the common interests of both authorities including the significant transport links to the neighbouring districts of South Hams and Teignbridge, plus Exeter and Plymouth. Distinct policies and strategies for Torbay were reflected in the Plan and its associated Implementation Plan.

It was proposed by the Mayor and seconded by Councillor Butt:

- (i) that the Council be recommended to approve the Third Local Transport Plan – including the Asset Management Plan, Place Strategy and Implementation Plan for Torbay which is due to commence from April 2011 (it should be noted that this plan has also to pass the democratic process within Devon County Council during the next two months); and
- (ii) that the Environment Commissioner and the Cabinet Member responsible for Transport be authorised to make minor amendments to the Local Transport Plan in accordance with any further minor re-drafting, or minor alterations required by Devon County Council. If any major alterations are made by Devon County Council, the Local Transport Plan will be brought back to Cabinet and Council.

An amendment was proposed by Councillor Doggett and seconded by Councillor Darling:

that the Council be recommended to approve the Third Local Transport Plan – including the Asset Management Plan, Place Strategy and Implementation Plan for Torbay which is due to commence from April 2011, subject to the Environment Commissioner exploring the possibility of a Bus Partnership in Torbay and bringing back a report on this subject in June 2011. (It should be noted that this plan has also to pass the democratic process within Devon County Council during the next two months.)

On being put to the vote the amendment was declared **lost**.

The original motion was then put to the vote and declared **carried** (unanimous).

(**Note:** During consideration of Minute 563, Councillor Doggett declared his personal interest.)

564. Planning Contributions and Affordable Housing Supplementary Planning Document: Threshold for Contributions.

The Council considered Report 39/2011 on proposed amendments to the above document to remove the £5,000 minimum threshold for developer contributions. It was proposed by Councillor Butt and seconded by Councillor Bent:

- (i) that paragraph 6.5 of the Planning Contributions and Affordable Housing Update and Mitigation Paper 2010 be revised to read:

“Smaller developments must also contribute towards mitigating any adverse impacts they may have, individually and collectively, on Torbay. Consequently there is no minimum threshold for contributions. This approach also avoids creating perverse incentives, or unintended consequences (such as artificial division of planning units), which could result in no contributions towards mitigation of adverse impacts. Due to the cost of drafting and monitoring S106 Agreements, applicants for smaller schemes, specifically those where the contribution would be less than about £5,000 will be encouraged to pay the contribution before grant of permission in exchange for an agreement by the Council to return these sums in the event that development does not proceed. In seeking financial contributions from smaller schemes, regard will be had to the need for them to be reasonable

(as per Circular 5/2005), and the need to avoid imposing undue costs on businesses. In addition, regard will be had to whether the application is a standalone scheme or affects part of a larger planning unit (e.g. a block of holiday apartments).”;

- (ii) that the first sentence of Paragraph 4.19 of the Interim Guidance on Principal Holiday Accommodation Areas (March 2010) be deleted, as will any other reference to the £5,000 threshold;
- (iii) that the principle of charging smaller developments for a fair proportion of the infrastructure for which they create a need, be incorporated into the emerging Community Infrastructure Levy; and
- (iv) that all references to “overage” of “clawback” be changed to read “deferred contribution”.

An amendment was proposed by Councillor Thomas (D) and seconded by Councillor Scouler:

- (v) that the above changes are applied retrospectively to currently undetermined applications.

During the debate on the amendment, the Monitoring Officer provided legal advice in respect of the proposed amendment. He advised it was possible that the proposed amendment, if adopted, could lead to complaints to the Ombudsmen and, if any such complaint resulted in the Ombudsman finding in favour of the complainant, the Council could be criticised and required to pay compensation.

On being put to the vote the amendment was declared **carried**.

The substantive motion was then before Members for consideration.

On being put to the vote, the substantive motion was declared **carried**.

(**Note:** In accordance with Standing Order F4.8(iii) the amendment would be referred to the Mayor for consideration at a Cabinet meeting.)

565. Provisional Calendar of Meetings 2011/2012.

Members considered Report 40/2011 setting out the provisional calendar of meetings for the 2011/12 Municipal Year.

It was proposed by Councillor Excell and seconded by Councillor McPhail:

- (i) that the provisional calendar of meetings for 2011/2012, set out in Appendix 1 to Report 40/2011, be approved for final ratification at the Annual Council Meeting; and
- (ii) that meetings of the Appointments Committee, Civic Committee, Appeals Committee (Employment) and Appeals Committee (Student Awards and Discretionary Housing Payments) be held on an ad-hoc basis, to be determined by the Democratic Services Manager in consultation with the relevant Chairman.

On being put to the vote it was declared **carried**.

566. Chairman and Vice-Chairman Selection 2011/12.

In accordance with the Council's Standing Orders (A9.1), the Council was required to select, by elimination ballot, the Chairman/woman-Elect and Vice-Chairman/woman-Elect for the next Municipal Year 2011/12.

It was proposed by Councillor Pentney and seconded by Councillor Darling:

that no action be taken until the start of the 2011/12 Municipal Year.

On being put to the vote, the motion was declared **carried**.

Chairman

APPENDIX 1

to the Minutes of the Meeting of the Council of Torbay

held on 24 February 2011

Minute 557 – Questions

<p>Question (1) by Councillor Stringer to the Cabinet Member for Community Services</p>	<p>Last Summer a cherry tree was removed from the top of Happaway Road in Torquay to allow for the construction of a driveway.</p> <p>Local residents were assured that more than a single tree would be planted in its place from the following season.</p> <p>This now does not seem to be the case. Please can you reassure myself and local residents that the promised trees will now be planted?</p>
<p>Councillor Butt</p>	<p>The Council's Tree Department only intended to plant a replacement tree for the one removed as part of a paid service by the resident for the new drive access. As part of the annual tree planting programme available planting space was identified for more trees to be planted within the immediate area, however, the priority was to only replace trees that have been lost.</p> <p>The department still has intentions to plant more trees within the Happaway Road area as and when budgets are available, however this will not be in the current financial or planting year.</p>
<p>Question (2) by Councillor Pentney to the Cabinet Member for Regeneration, Finance and Governance</p>	<p>Are there any outstanding elements from the 106 agreement with Peter de Savaray as a result of the Cary Arms development?</p>
<p>The Mayor on behalf of Councillor Carroll</p>	<p>To date the development in and around the Cary Arms Hotel has not reached any of the trigger points and therefore no payments have yet been made.</p>

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**Report OSB/4/11 of the Overview and Scrutiny Board
to the meeting of the Council to be held on 24 March 2011**

Churston Golf Club proposals – Notice of Call-in

1. At its meeting on 17 February 2011, the Overview and Scrutiny Board considered Report 34/2011 which set out the details of a call-in by eight Members of the Council of the decision by the Mayor to, amongst other things, to grant a variation to the lease of Churston Golf Club.
2. The Call-in Promoter (Councillor Baldrey) set out the reasons for calling-in the decision and six of the Call-in Supporters also addressed the Board about their concerns regarding the decision.
3. The Board heard representations from representatives of RAGS (Residents Against Golf Club Sell-off), Churston, Galampton and Broadsands Community Partnership, and a member of the public who opposed the decision of the Mayor.
4. The Board heard representations from representatives of Churston Golf Club and Bloor Homes who supported the decision of the Mayor.
5. The Mayor responded to the points raised by the Call-in Promoter and Supporters, the Members of the Board, other Councillors present, and the representations from members of the public.
6. In accordance with the Constitution, the Overview and Scrutiny Board had three options open to it:
 - Take no further action
 - Refer the decision back to the Mayor
 - In exceptional circumstances, refer the matter to the Council
7. The Overview and Scrutiny Board resolved that the decision of the Mayor should be referred to the Council for consideration for the following reasons:

The Overview and Scrutiny Board recommends the Mayor consider making a decision based on the points outlined in Report 34/2011. The Overview and Scrutiny Board recommends all parties concerned are contacted to reach a compromise decision.
8. The 3 reasons for the call-in as outlined in report 34/2011 were:
 - 1) The Mayor was wrong to assert that if the Golf Club became bankrupt that the whole area would be built on.

- 2) There is a lack of evidence that a compromise solution has been considered.
 - 3) The Mayor is abdicating his responsibility by hiding behind the Planning Process.
9. In accordance with the Constitution, the options open to the Council are:
- **If the Council does not object to the decision**, no further action is necessary and the decision will be effective from the date of the Council meeting
 - **Provided the decision has been made in accordance with the Policy Framework and the Budget**, the Council has no power to amend the decision but may refer any decision to which it objects back to the decision maker together with the Council's views on that decision.



Appendix 1 to Report OSB/4/11

Minutes of the Overview and Scrutiny Board

17 February 2011

-: Present :-

Councillor Thomas (J) (Chairman)

Councillors Amil, Baldrey, Carter (C), Excell, McPhail, Parrott, Pentney, and Richards

(Also in attendance: Councillors Addis, Bent, Carter (R), Lewis, Mills, Morey, Oliver, Stringer, and Tolchard)

537. Apologies

Apologies for absence were received from Leon Butler and Alyson Sheldrake.

538. Committee Membership

It was reported that, in accordance with the wishes of the Conservative and Liberal Democrat Groups, the membership of the Board had been amended for this meeting by including Councillors Amil and Carter (C) instead of Councillors Manning and Darling respectively.

539. Call-in – Churston Golf Club Proposals

The Board considered Reports 34/2011, 35/2011, and 11/2011 in relation to Churston Golf Club proposals. The Board was advised of the details of a call-in by eight Members of the Council of the decision by the Mayor to grant a variation to the lease of Churston Golf Club.

The Call-in Promoter, Councillor Baldrey, set out the reasons for calling-in the decision and six of the Call-in Supporters also addressed the Board about their concerns regarding the decision. Councillors present spoke in favour and against the decision of the Mayor.

The Board heard representations from members of the public who were opposed to the decision of the Mayor and from members of the public who supported the Mayor's decision.

The Board considered the concerns raised against the Mayor's decision: including local community opposition to the project; that the proposal unduly favoured the Golf Club; that the Golf Club did not face imminent financial failure; public consultation had not occurred; the potential role of the Mayor in talks to achieve compromise; the cross-party nature of the call-in; the suggestion that the Golf Club would be built on if the variation in lease was not granted was erroneous; the proposed variation in lease would hinder a compromise solution; forthcoming proposals in the Localism Bill would be relevant to

such matters; due statutory process and the risk of judicial review; the Mayor's possible personal prejudicial interest in the matter; the effects of the proposals on the Churston/Brixham peninsula; the likelihood of affordable housing resulting from the development; the strength of restrictive user clauses within the lease granted to Churston Golf Club; and the value of the Mayor obtaining further legal advice on the lease.

The Board considered the issues raised in favour of the Mayor's decision: including the importance of the Golf Club to the Bay and the financial benefit to the Club of the Mayor's decision; the Mayor's decision as separate to planning issues; the importance of consulting the local community wider than Churston; the likely benefit to the Bay of enhanced golf facilities; the financial viability of proposed alternatives; the benefit to Council services of the Mayor's decision; the building on the golf course that would follow the financial failure of the Golf Club; and the need for housing within Torbay.

The Mayor responded to the points raised by the Call-in Promoter and Supporters, the Members of the Board, Councillors present, and the representations from members of the public: including that the benefits to the Council and to the Bay's residents of the decision he had made outweighed any disadvantages; the best way to preserve the land of Churston Golf Club was to grant the variation in lease; the variation to the lease could facilitate compromise solutions; the land the Golf Club held could be at risk of development if the Club failed and the Club could in the future apply to the Land Tribunal [Upper Tribunal (Lands Chamber)] to vary the restrictions on use; that the planning considerations such as highway access or the relocation of the Golf Club clubhouse were for the development management committee to determine after a planning application was made; the inappropriateness of specific compromise solutions proposed; the affordable housing contributed by the proposed development either on-site or off-site; the near-unanimous support of Cabinet colleagues for his decision; the likelihood that if the Golf Club failed financially then a developer would bid more for the lease than another golf club; the low response rate to the survey of Churston residents that had indicated opposition to the development; the representation he had received in favour of the development; the consequences of granting the lease to the Golf Club in 2003; Councillors' tendencies to compromise, defer, or debate decisions that needed to be taken; and the value of advice he had received from Council officers relative to that offered by Board members and other Councillors.

Resolved:

That the issue be referred to the Council for consideration for the following reasons:

The Overview and Scrutiny Board recommends the Mayor consider making a decision based on the points outlined in Report 34/2011. The Overview and Scrutiny Board recommends all parties concerned are contacted to reach a compromise decision.

(Note: In accordance with Standing Order A19.5, Councillor Parrott requested his vote against be recorded.)

Chairman



Report No: **76/2011** Public Agenda Item: **Yes**

Title: **Annual Strategic Agreement 2011/12 with Torbay NHS Care Trust**

Wards Affected: **All Wards in Torbay**

To: **Cabinet Council** On: **22 March 2011
24 March 2011**

Key Decision: **Yes – Ref X35/2010**

Change to Budget: **Yes** Change to Policy Framework: **Yes**

Contact Officer: **Anthony Farnsworth**
Telephone: **(01803) 210502**
E.mail: **Anthony.farnsworth@nhs.net**

1. What we are trying to achieve

- 1.1 To agree the areas of development and performance targets required of Torbay NHS Care Trust for 2011/12 as stipulated in the legally binding Partnership Agreement between the Council and Torbay NHS Care Trust.

2. Recommendation for decision

- 2.1 **That, subject to any views of the Overview and Scrutiny Board, the Council be recommended to approve the Annual Strategic Agreement for 2011/12 as set out in Appendix 1 to this report.**
- 2.2 **That the remaining risk related to the delivery of the required performance outlined and the ability to deliver a balanced budget, given the level of resources allocated for the delivery of Adult Social Care, be deemed acceptable.**

3. Key points and reasons for recommendations

- 3.1 The Annual Strategic Agreement (ASA) for each financial year is prepared by the Council and, subject to negotiation with the Trust, is agreed upon for implementation from the beginning of each financial year.
- 3.2 The ASA provides a 'commissioning framework' for the Council by, amongst other things, setting out the financial inputs for the year ahead (i.e. the revenue and capital budgets transferred from the Council to the Trust) and the key performance targets for the year ahead. It is important to note that the proposed budget (comprising both income and expenditure targets) to be transferred to the

Care Trust in 2010/11 is detailed in Report 20/2010.

- 3.3 The performance targets relate to the national performance indicators used by the Care Quality Commission to monitor and judge adult social care performance. It is important to note that the judgement of the performance of adult social care (star rating) is of the Council even though the Council has delegated responsibility for the delivery of adult social care. This is because the Council is accountable for the performance of these delegated statutory functions. Full details of the Care Quality Commission assessment process for 2011/12 are not known. It is expected that the Care Trust and the Council will comply with any variation to the assessment regime as it becomes known.
- 3.5 If the proposed performance targets are met in full by March 2012 the Care Trust will remain eligible for a judgement of performing well using the Care Quality Commission criteria that have existed until recently. However, other factors such as the results of any specific service inspections impact on the final performance judgement. Success also impacts on the Community Plan's priorities relating to 'stronger communities'.

For more detailed information on this proposal please refer to the supporting information attached.

**Anthony Farnsworth
Chief Executive of Torbay NHS Care Trust**

Supporting information to Report 76/2011

A1. Introduction and history

- A1.1 The Annual Strategic Agreement (ASA) is legally binding and is produced under the auspice of the Council's Partnership Agreement with the Care Trust. It is a requirement that the ASA be agreed before the start of a new financial year.

A2. Risk assessment of preferred option

A2.1 Outline of significant key risks

The proposed performance targets, if met, equate to at least a performing well performance using current Care Quality Commission criteria, and assuming all other performance levels being equal to those of 2010/11, as achieved in the 2010 assessment.

The proposed targets are judged to be achievable within the envelope of resources made available to the Trust by the council. To set them at a higher level increases the risk of them not being achieved and therefore the Council would be open to criticism from the Care Quality Commission. To set them lower would not enable us to ensure a continued trajectory of improved performance overall.

A3. Other Options

- A3.1 The proposed agreement is required by the legally binding Partnership Agreement between Council and Torbay NHS Care Trust. This is subject to improvement and future delivery options will be explored as part of the review of the partnership agreement detailed in Appendix 1.

A4. Summary of resource implications

- A4.1 Proposed performance targets are based on proposed revenue, grant and income targets laid out in Report 347/2011, which includes efficiency targets.

A5. What impact will there be on equalities, environmental sustainability and crime and disorder?

- A5.1 Achievement of the proposed ASA and its proposed targets will work towards reducing health and well-being inequalities, and promote access to services regardless of race, gender, disability, age, sexual orientation, religion or belief. Indeed, the ASA represents one of the most important vehicles by which the Council is seeking to create a more equal Bay. In addition, successful implementation of the ASA, which includes focus and targets around the community inclusion and safety of vulnerable adults will support the Council's efforts to reduce crime and disorder.
- A5.2 The key foci for 2011/12 are: greater service user involvement; additional resources for more deprived areas to reduce inequalities; adult safeguarding; personalisation (whereby people commission their own services and supports via direct payments or individual budgets); preventative services; reviewing and improving access to employment for vulnerable people; better integrated

community and services for older people and people with dementia; assisting people with mental health issues and those with substance misuse problems.

A6. Consultation and Customer Focus

A6.1 After a process of negotiation with the Care Trust, the draft ASA has been considered by Overview and Scrutiny.

A7. Are there any implications for other Business Units?

A7.1 The Business Unit responsible for monitoring the ASA has been fully involved in preparing these proposals; no adverse implications have been identified.

A7.2 It is important that the ASA is fully considered by Children's Services in order to deliver improved transition between children and adult services and joint management of cases where the adult social care needs of a parent have implications for their children.

A7.3 Finance Services in scrutinising spend and in developing proposals for the future funding of Adult Social Care.

Appendices

Appendix 1 – Annual Strategic Agreement 2011/12

Background Papers:

The following documents/files were used to compile this report:

None

**Annual Strategic Agreement between Torbay Council and Torbay
NHS Care Trust for the delivery of Adult Social Care 2011/12**

Contents

1. Introduction
2. Performance Outcomes
3. Spending Decisions and Key Decisions
4. Revenue Budget 2011/12
5. Chargeable Services – Rates 2011/12
6. Roles and responsibilities

Version 7 updated in line with Cabinet discussions and discussions at the Integrated Governance Committee held on 14th January 2011

1. Introduction

1.1 Overall strategy

The Care Trust will continue to pursue a strategic direction that is designed to maximise choice and independence for those requiring adult social care support and care. As far as possible, within FACS and the constraints of resources, the Care Trust will seek to promote active and healthy lifestyles. In particular the DASS will play a lead role in developing a refreshed Active Ageing Strategy and in contributing to its implementation.

1.2 Financial context

At a national level the funding arrangements for Adult Social Care (ASC) are under review. There is no immediate prospect of this review reporting in a timescale that would propose changes in 2011/12. Therefore the financial arrangements for 2011/12 are based on what is known at present.

The ability of the Care Trust to absorb financial risk from ASC spending has been reduced owing to the loss of NHS Commissioning responsibilities from the Care Trust with effect from April 2011. The Care Trust and the Council will work to secure the engagement and support of NHS Commissioners (in practice the support of Baywide GP Consortium) to any financial risk share arrangement applying in 2011/12.

1.3 NHS Reforms

The NHS White Paper and the NHS policy of Transforming Community Services have implications for the arrangements between the Care Trust and Torbay Council. The requirement for PCTs to separate out NHS Commissioning and Provider functions represents a significant change.

Formal agreements between the Council and the Care Trust about exactly how the arrangements will develop are yet to be made and will need to be reflected in the finalisation of this agreement. The working hypothesis at time of writing is that the range of functions delegated under the present Partnership Agreement will continue to be delegated. The Council has supported in principle the development of a South Devon provider unit as an interim position for up to 2 years while the Council, the Torbay Care Trust and other partners continue to work on a longer term solution.

1.4 Health and Wellbeing Board

The Care Trust will play a full and active role in supporting Torbay Council with the design and development of this Board. No detailed implications for delegated ASC functions have yet been seen.

1.5 Public Health

The Care Trust will play a full and active role in preparing for the changes heralded in the Public Health White Paper. The Trust and the Council will support the five

outcomes for public health specified in “healthy lives/healthy people” and work to support the new statutory duties including the JSNA which accrue to local government over the next 24 months. This includes exploring the role of the South Devon provider in locality working in the Bay.

1.6 CQC Assessment Regime

This agreement remains structured on the seven outcome areas of the former CSCI/CQC performance assessment regime. No detail is available on the performance/assessment regime that will be applied by CQC in 2011/12. This agreement will need to flex to accommodate the requirements of any new performance regime as it becomes known.

2. Development priorities and performance outcomes

To work in partnership to set and achieve a realistic trajectory for the delivery of the Transformation in Social Care, focussing on improving safeguarding, personalisation and preventive services.

To maintain a standard of performing well overall: focussing improvement on increasing choice and control; freedom from discrimination and harassment; and economic well-being.

2.1 Outcome 1: Improving Health and Emotional Wellbeing

To ensure that adult social care issues are included in the development of wider integrated care opportunities

To work in partnership to close the gap in health inequalities through the development of a neighbourhood management pathfinder and assist with its development in other deprived areas subject to successful evaluation of improved outcomes in the pathfinder area.

To play a full role in developing and implementing the ASC contribution to an Active Ageing Strategy.

Develop an integrated prevention strategy to safeguard vulnerable adults in partnership with the Crime Reduction Partnership.

Maintain current performing excellently CQC rating.

Performance Framework	Definition	2010/2011 Targets	2011/2012 Targets	Top 25% CIPFA Group 2008/9	Top 25% All England 2008/9	Comparator group average
NI 125	Achieving independence for older people through rehabilitation/ intermediate care	75%	78%	83.1%	85.0%	75%
NI 131	Delayed transfers of care	17.5	9	10% Reduction Proposed (Based on December 2010 Position)		
*New Indicator	Emergency readmission rate for over 65s within 28 days	Not reported in 2010/11	10% Reduction Proposed	New Indicator No comparison data available		

*New Indicator	Emergency bed days for over 75s with 2+ admissions to acute hospital	Not reported in 2010/11	5% Reduction Proposed	New Indicator No comparison data available
*New Indicator	Falls for over 65 patients living in a care home which result in a hospital admission	Not reported in 10/11	5% Reduction Proposed	Proposed Quality Measure Establish 10/11 baseline by mid April and produce trajectory.

2.2 Outcome 2: Improved quality of life

In line with CQC's recommendations the Trust should improve performance on the provision of telecare, telehealth and community equipment within agreed budgets.

Implement the Dementia Strategy for Torbay.

Review and re-commission the range of services that facilitate the delivery of home care, including Home Improvement Service, Joint Equipment Store, Handypersons schemes and the allocation of Disabled Facility Grant by October 2011.

Maintain current performing well rating.

Performance Framework	Definition	2010/2011 Targets	2011/2012 Targets	Top 25% CIPFA Group 2008/9	Top 25% All England 2008/9	Comparator group average
NI 136	People Supported to live independently through social services (all adults)	2701	Leave at 10/11 Outturn Estimate outturn	3601.5	3773.8	3,200
*New Indicator	Number of people supported through telecare & telehealth	Not reported in 10/11	1100	New Indicator No comparison data available (913 clients based on December 2010)		

2.3 Outcome 3: Making a positive contribution

To ensure a systematic approach to knowing and understanding service users & carers experiences and levels of satisfaction and to develop a collaborative approach

with the Council and other partners to engaging them in the commissioning and monitoring of services.

Develop self assessment mechanisms to ensure the delivery of more personalised services.

To foster the broad agenda symbolised by the Government's "Big Society" intentions. Specifically to direct activity towards self care and towards fostering voluntary and community activity.

Introduce an outcomes-based accountability approach to transforming social care to ensure the intended positive effects are realised. To do this via the mechanism of goal setting and review in personal care plans.

To adopt a client led approach to commissioning, reviewing and delivering services, building on the positive lead from Supporting People.

Maintain current performing well rating.

Performance Framework	Definition	2010/2011 Targets	2011/2012 Targets	Top 25% CIPFA Group 2008/9	Top 25% All England 2008/9	Comparator group average
*New Indicator	Develop indicator demonstrating effectiveness of carer support mechanisms	Not reported in 10/11	To be determined	New Indicator No comparison data available (Determine upon completion of evaluation of the Carer Demonstration Site Pilot In June 2011)		
* New Indicator Carer Numbers	Number of people on Carers' Register	Not reported in 10/11	10% increase	New Indicator No comparison data available (Set at 10/11 Outturn)		
Young Adult Carers	Number of young adult carers in contact with Care Trust	Not reported in 10/11	25	New Indicator No comparison data available		

2.4 Outcome 4: Increased choice and control

Review and recommission appropriate models of Information, Advice and Advocacy to support the preventative and independence agenda including further website development and the further development of information and advice consortia.

To successfully complete the review of Learning Disabilities Services and begin implementation of subsequently approved recommendations

To take forward, in partnership, the development of extra-care housing in Torbay with an associated wide range of enablement services. To extend the scope of care to a Virtual Extra Care model supported by community hubs offering care and support by piloting this approach in Shiphay.

Continue to improve partnership working with Children's Services to improve transitions from children's to adult services.
To ensure the development of a thriving third sector through better joint commissioning that adopts the principles outlined by the Office of the Third Sector.

Improve current rating of performing adequately to performing well through the effective mainstreaming of personalisation across Paignton, supported by more widespread use of assistive technology (including Telecare) and the development of social capital, incorporating the paragraph above.

Performance Framework	Definition	2010/2011 Targets	2011/2012 Targets	Top 25% CIPFA Group 2008/9	Top 25% All England 2008/9	Comparator group average
NI 130 – Note calculation methodology has changed, from numeric to percentage	Social Care clients receiving Self directed support per 100,000 population	30%	40%	6.3%	8.1%	5.2
NI 132	Timelines of social care assessment (all adults)	79	Suspend and recalibrate on reduced resources	83.4%	88.8%	79%
NI 133	Timelines of social care packages following assessment	90%	Suspend and recalibrate on reduced resources	93.4%	93.7%	90%
NI 135	Carers receiving needs assessment or review and a specific carer's service, or advice and information	38%	Suspend and recalibrate on reduced resources	28.2%	25.8%	24%
NI 145	Adults with learning disabilities in settled accommodation	39%	Set at 10/11 Outturn	96.5%	85.9%	75%

Performance Framework	Definition	2010/2011 Targets	2011/2012 Targets	Top 25% CIPFA Group 2008/9	Top 25% All England 2008/9	Comparator group average
NI 149 DPT Provision	Adults receiving secondary mental health services in settled accommodation	29%	30%	48.6%	41.9%	29%
*New Indicator – replaces PAF C72	No. of people aged 65 or over living in residential or nursing homes	602 (Dec 10 position)	570	New Indicator No comparison data available		
*New Indicator – replaces PAF C73	No. of LD and MH <65 people living in residential or nursing homes	188 (Dec 10 position)	180	New Indicator No comparison data available		
*New Indicator	Proportion of total over 65 spend on care home placements	61% (Figure to be confirmed by Finance)	58%	New Indicator Use of Resources suggests this should be approx. 40%		
PAF D39	People receiving a Statement of Needs (TCT +DPT)	DPT – 90% TCT – 93%	95	No longer part of National Indicator Set Only outdated comparison information available		
PAF D40	Clients receiving a Review	DPT – 85% TCT - 85%	85	No longer part of National Indicator Set Only outdated comparison information available		

2.5 Outcome 5: Freedom from discrimination or harassment

People independently funding their own residential care will receive discretionary care management support services only if they are in need of protection or other exceptional circumstances exist. This is to balance the need for independence and autonomy whilst offering protection to those who may require it. This is to be reviewed as part of the Transformation in Social Care.

Ensure that people from black and minority ethnic groups and other equality groups have appropriate access to assessment.

To develop and then apply a more direct source of customer feedback to provide meaningful data and assurance. This will, in all likelihood, lead to the development of more meaningful metrics in this area, e.g., with reference to fulfilment of personal care plans.

To increase the CQC judgement from performing adequately to performing well.

Performance Framework	Definition	2010/2011 Targets	2011/2012 Targets
PAF E47	Ethnicity of older people receiving assessments	1.25%	1.25%
PAF E48	Ethnicity of older people with services	1%	1%

2.6 Outcome 6: Economic Wellbeing

Torbay Council and Torbay Care Trust work together to ensure that people in Torbay have timely access to welfare and benefits advice and assistance, as part of a whole system review, options appraisal and re commissioning of information, advice and advocacy by September 2011.

Torbay Care Trust will work to maximise benefits income of its customers and to use this to support the costs of care required.

To work with the Council and other employers to improve access to employment for the disabled and other vulnerable groups by reviewing recruitment policies and procedures and agreeing mutual targets for supported work placements.

To work with the Council and other partners to foster the development of community and social enterprises and the use of apprentices. In particular to support opportunities for older people to remain active, retain economic independence, in care and support and for the intrinsic health benefits of this.

To increase the CQC judgement from performing adequately to performing well.

Performance framework	Definition	2010/2011 Targets	2011/2012 Targets	Top 25% CIPFA Group 2008/9	Top 25% All England 2008/9	Comparator Group Average
NI 146 ** Note shared target across all public agencies to improve	Adults with learning disabilities in employment PSA 16	3.40%	5	9.6%	9.3%	8.5%
NI 150 DPT Provision	Adults receiving secondary mental health services in employment	5	5	5.0%	5.9%	3.5%

2.7 Outcome 7: Maintaining personal dignity and respect

Seek ways to continue to raise the standards to meet the Dignity in Care agenda.

To ensure that the findings of the independent safeguarding review are incorporated into commissioning and operational practice and improve joint working with children's safeguarding.

The Care Trust will pursue its policy of not commissioning care services from poorly rated providers. NB: CRILL data collection is no longer required.

Performance data from Adult Safeguarding activity will appear in TCT Board reports and Council reports. The annual SAB report will be reported to both TCT Board and the Council. A dashboard of Safeguarding Performance Measures is to be approved by the SAB in January 2011 and will be attached to this agreement.

To restore the CQC judgement of performing well (improving from adequate in 09/10).

Performance framework	Definition	2010/2011 Targets	2011/2012 Targets
LAA	End of life care - access to appropriate care enabling people to be able to choose to die at home	22%	27%
*New Indicator – replaces PAF D37	Mixed sex accommodation	Not reported in 10/11	Baseline to be determined on 10/11 Outturn
*New Indicator	Proportion of safeguarding calls triaged in less than 48 hours	Oct to Dec 10 Performance is 57%	80%
*New Indicator	Proportion of safeguarding strategy meetings held with 5 working days	Oct to Dec 10 Performance is 71%	75%
*New Indicator	Proportion of safeguarding case conferences held with 20 working days of strategy meeting	Oct to Dec 10 Performance is 2%	70%
*New Indicator	Number of repeat safeguarding referrals in last 12 months	10/11 Baseline to be determined by April 11	10% reduction on 10/11 outturn
*New Indicator	Proportion of partially substantiated and substantiated referrals which occur in care homes	10/11 Baseline to be determined by April 11	5% reduction on 10/11 outturn

2.8 Outcome 8: Leadership

The parties work to raise the profile of Adult social care, its importance and contribution to the fabric of Torbay and work to ensure sustainability for plans and personalisation that will provide high quality services and choice for people. This should include the engagement of all elected members to promote understanding in the work of adult social care services and joint working initiatives as a result of the Care Trust arrangements.

To work with Torbay Council to explore further integrated working to improve outcomes and efficiency. To engage with the TSP and the development of the pathfinder Health and Wellbeing Board in the context of the emerging South Devon provider model.

The DASS will contribute to the corporate work of the Council and contribute to the changes mentioned in the introduction above.

2.9 Outcome 9: Commissioning and use of resources

To ensure a maximisation of benefits of joint commissioning and investigate ways in which this can be further consolidated.

The Care Trust will undertake robust monitoring of its contracts to ensure safe and effective service delivery, as appropriate. Links with Commissioning Strategy, and links with the regional commissioning consortia, Provider Development in Devon will be developed.

Deliver a balanced budget, whilst seeking to deliver the outcomes articulated in Putting People First – a shared vision and commitment to the transformation of Adult Social Care, pertaining to safeguarding, personalisation and preventative services and managing the current performance of the organisation in this challenging environment.

To use the Care Trust's commissioning leverage to manage and develop the local provider market to ensure a supply of high quality local services, which provide value for money. In particular to further develop alternatives to long term residential care, focussing on the development a commissioning strategy for housing, support and care, with practical support to providers to reconfigure the current market.

To seek further integration opportunities between the partners to the agreement to obtain seamless service delivery and maximise efficient use of combined resources

Work in partnership with Torbay Council to make the most effective use of capital assets to enable improved outcomes for service users.

To complete the changes following decisions on in-house residential and intermediate care services at St Edmunds and in-house day care services at St Edmunds and Fernham.

To finalise plans for the redevelopment of St Kilda's on the Brixham Hospital site which takes account of the mayoral pledge to the long-stay residents.

To accelerate the implementation of the Learning Disability strategy and to restore learning disability spending to budgeted levels.

To work in partnership to develop reablement schemes which optimise the health and well-being of Torbay's residents.

2.10 Financial Risk Share and efficiency

For 2011/12 the pooled budget arrangement contains three sections. The Care Trust will accept the financial risk on the NHS component and the joint operational component (ie directly managed) will fall to the NHS. On the more volatile and demand led commissioning of social care, the normal monthly financial monitoring will be supplemented by a quarterly review and re-profiling of commissioned spend to retain both financial control, performance and statutory responsibility.

Torbay Care Trust demonstrate the delivery of required efficiencies in a timely and robust manner in line with former indicator NI 179 equating to £1.9m efficiency savings.

Performance framework	Definition	2010/2011 Targets	2011/2012 Targets
NI 179	Value for money – total net value of gains that have impacted since the start of the financial year	4%	4% (£1.9m)

3 Decision making

- 3.1 This agreement reiterates section 22.3 of the Partnership Agreement, i.e. the Care Trust may not make decisions unilaterally if they meet the criteria of a 'key decision'.
- 3.2 Key decisions are made by Torbay Council in accordance with its constitution. In Schedule 8 of the Partnership Agreement, a key decision is defined as a decision in relation to the exercise of Council Functions which is likely to:
- result in incurring additional expenditure or making of savings which are more than £250,000
 - result in an existing service being reduced by more than 10% or may cease altogether
 - affect a service which is currently provided in-house which may be outsourced or vice versa
 - and other criteria stated within schedule 8 of Partnership Agreement.

When agreeing what constitutes a key decision, consideration should be given to the level of public interest in the decision. The higher the level of interest the more appropriate it is that the decision should be considered to be key.

4 Social Care Revenue Budget 2011/12

	2010/11	2011/2012
	£	£
Base budget	42,103	39,089
Transforming Social care Grant	877	0
Sub-Total	42,980	39,089
Central Govt Funding		2,322
TOTAL	42,980	41,411

- 4.1. For 11/12 there is an additional non-recurrent sum of money (recurrent for the CSR period but years 3 and 4 have yet to be confirmed) made available by Central Government for Adult Social Care of £2.3m which is built into the above baseline.

5 Charges for Services 2011/12

a) Non-residential Services:

	Rates 2009/10	Rates 2010/11	2011/2012
	£	£	£
Domiciliary care P/H	14.50	15	15.50
Day Care charge	24.00	28	28
Night Care rate (per night)			50
Maximum Rate (Day & Dom Care)	300.00		No Maximum
Transport	Nil		Nil
Community Meals	3.50	4	4.25

As part of the personalisation agenda the Care Trust like all other Local Authorities has to formulate and implement a policy on calculating an individual's contribution to their personal budget. This matter is currently under consideration by the Personalisation Board and a policy is in the process of being developed and will be implemented in 2011/12.

b) Residential Services:

The Residential and Nursing increases will not be known until the CRAG (Charging for Residential Accommodation Guide) Regulations are published in 2011.

Residential charges to be implemented each April as directed by the Department of Health CRAG (Charging for Residential Accommodation Guide).

Client contributions for both long and short stay placements are based on an individual financial assessment of capital and income.

There is no charge for services provided under Intermediate Care or Continuing Care.

The Care Trust will ensure that all clients in receipt of a chargeable service receive a full welfare benefit check from the FAB team and an individual financial assessment in accordance with Department of Health circular LAC(2001) 32.

6 **Roles and Responsibilities**

Torbay Council

- **Role of Torbay Council Chief Executive** – has delegated her authority to the Care Trust for the provision of Adult Social Services and will monitor performance of the DASS in line with the honorary contract. To hold the DASS to account.
- **Role of Adult Social Care Cabinet Member** - to provide political steer to the Trust and the Council in adult social care. To challenge/monitor and drive performance.
- **Role of Adults and Operations Commissioner** - Provide client function
- **Executive Head Finance** – to take a lead responsibility on behalf of the Council in relation to the delegated budget.

Torbay Care Trust

- **Role of Torbay Care Trust Chief Executive** – to fulfil the statutory role of the designated Director of Adult Social Services (DASS). When performing this role, the Chief Executive will be directly accountable to the Chief Executive of Torbay Council and contribute to the Commissioning Officers Group (COG) and report to Cabinet.
- **Role of Torbay Care Trust Chief Operating Officer** – to fulfil the role as the Trust's Nominated Director and to take lead responsibility for the provision of adult social services and to lead responsibility for the relationship with the Council and for managing performance.
- **Role of Deputy Director of Finance** – to take a lead responsibility on behalf of the Trust for managing the pooled budget.
- **Role of Company Secretary** – to lead on the self assessment process and performance management of adult social care with the Care Quality Commission.
- **Role of Head of Information** – to be responsible for the quality of all the performance data contained in this Annual Strategic Agreement and to be the lead for target setting within the Trust.

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Record of Decision

Proposed Amendments to Planning Contributions and Affordable Housing Supplementary Planning Document: Threshold for Contributions

Decision Taker

The Mayor at the Cabinet meeting held on 3 March 2011.

Decision

That the Council be recommended:

- (i) that paragraph 6.5 of the Planning Contributions and Affordable Housing Update and Mitigation Paper 2010 be revised to read:

“Smaller developments must also contribute towards mitigating any adverse impacts they may have, individually and collectively, on Torbay. Consequently there is no minimum threshold for contributions. This approach also avoids creating perverse incentives, or unintended consequences (such as artificial division of planning units), which could result in no contributions towards mitigation of adverse impacts. Due to the cost of drafting and monitoring S106 Agreements, applicants for smaller schemes, specifically those where the contribution would be less than about £5,000 will be encouraged to pay the contribution before grant of permission in exchange for an agreement by the Council to return these sums in the event that development does not proceed. In seeking financial contributions from smaller schemes, regard will be had to the need for them to be reasonable (as per Circular 5/2005), and the need to avoid imposing undue costs on businesses. In addition, regard will be had to whether the application is a standalone scheme or affects part of a larger planning unit (e.g. a block of holiday apartments)”;

- (ii) that the first sentence of Paragraph 4.19 of the Interim Guidance on Principal Holiday Accommodation Areas (March 2010) be deleted, as will any other reference to the £5,000 threshold;
- (iii) that the principle of charging smaller developments for a fair proportion of the infrastructure for which they create a need, be incorporated into the emerging Community Infrastructure Levy; and
- (iv) that all references to “overage” of “clawback” be changed to read “deferred contribution”.

Reason for Decision

To respond to the recommendation of Council.

Implementation

The recommendation will be considered at the Council meeting on 24 March 2011.

Information

Report 47/2011 set out the following amendment to the Planning Contributions and Affordable Housing Supplementary Planning Document: Threshold for Contributions, which were agreed at the Council meeting on 24 February 2011:

- “(i) that paragraph 6.5 of the Planning Contributions and Affordable Housing Update and Mitigation Paper 2010 be revised to read:

“Smaller developments must also contribute towards mitigating any adverse impacts they may have, individually and collectively, on Torbay. Consequently there is no minimum threshold for contributions. This approach also avoids creating perverse incentives, or unintended consequences (such as artificial division of planning units), which could result in no contributions towards mitigation of adverse impacts. Due to the cost of drafting and monitoring S106 Agreements, applicants for smaller schemes, specifically those where the contribution would be less than about £5,000 will be encouraged to pay the contribution before grant of permission in exchange for an agreement by the Council to return these sums in the event that development does not proceed. In seeking financial contributions from smaller schemes, regard will be had to the need for them to be reasonable (as per Circular 5/2005), and the need to avoid imposing undue costs on businesses. In addition, regard will be had to whether the application is a standalone scheme or affects part of a larger planning unit (e.g. a block of holiday apartments)”;
- (ii) that the first sentence of Paragraph 4.19 of the Interim Guidance on Principal Holiday Accommodation Areas (March 2010) be deleted, as will any other reference to the £5,000 threshold;
- (iii) that the principle of charging smaller developments for a fair proportion of the infrastructure for which they create a need, be incorporated into the emerging Community Infrastructure Levy; and
- (iv) that all references to “overage” of “clawback” be changed to read “deferred contribution”.

The following amendment to the proposal was agreed by the Council:

- (v) that the above changes are applied retrospectively to currently undetermined applications.”

In accordance with Standing Order F4.9 the Mayor considered the recommendation of the Council in (v) above.

The Cabinet noted the legal advice from the Monitoring Officer, that the proposed amendment, if adopted, could lead to complaints to the Ombudsmen and, if any such complaint resulted in the Ombudsman finding in favour of the complainant, the Council could be criticised and required to pay compensation.

The Mayor rejected the amendment in (v) above as he was concerned about how the proposal may affect the Council’s reputation and about the risk of complaints to the Ombudsman, but supported the original proposal set out in (i) to (iv) above.

Alternative options considered and rejected at the time of the decision

None

Is this a Key Decision? (Give reference number if applicable)

No

Does the call-in procedure apply? (If no, please give reason)

No, as the Council will make the final decision.

Declarations of interest (including details of any relevant dispensations issued by the Standards Committee)

None

Published

Monday, 7 March 2011

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Report No: **39/2011**

Public Agenda Item: **Yes**

Title: **Planning Contributions and Affordable Housing Supplementary Planning Document: Threshold for Contributions**

Wards Affected: **All**

To: **Council**

On: **24 February 2011**

Key Decision: **No**

Change to Budget: **No**

Change to Policy Framework: **No**

Contact Officer: **David Pickhaver**

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✉ E.mail: **david.pickhaver@torbay.gov.uk**

1. What we are trying to achieve and the impact on our customers

1.1 This report recommends removing the £5,000 minimum threshold for developer contributions. This is intended to ensure:

- Developments contribute fairly to the impact that they have on local infrastructure etc.
- Applicants for planning permission are treated fairly and consistently
- Legal requirements are met by referring to “deferred contribution” rather than “overage” and “clawback.”

2. Recommendations for decision

2.1 That paragraph 6.5 of the Planning Contributions and Affordable Housing Update and Mitigation Paper 2010 be revised to read:

Continued over/...

“Smaller developments must also contribute towards mitigating any adverse impacts they may have, individually and collectively, on Torbay. Consequently there is no minimum threshold for contributions. This approach also avoids creating perverse incentives, or unintended consequences (such as artificial division of planning units), which could result in no contributions towards mitigation of adverse impacts. Due to the cost of drafting and monitoring S106 Agreements, applicants for smaller schemes, specifically those where the contribution would be less than about £5,000 will be encouraged to pay the contribution before grant of permission in exchange for an agreement by the Council to return these sums in the event that development does not proceed. In seeking financial contributions from smaller schemes, regard will be had to the need for them to be reasonable (as per Circular 5/2005), and the need to avoid imposing undue costs on businesses. In addition, regard will be had to whether the application is a standalone scheme or affects part of a larger planning unit (e.g. a block of holiday apartments).”

- 2.2 That the first sentence of Paragraph 4.19 of the **Interim Guidance on Principal Holiday Accommodation Areas (March 2010)** be deleted, as will any other reference to the £5,000 threshold.
- 2.3 That the principle of charging smaller developments for a fair proportion of the infrastructure for which they create a need, be incorporated into the emerging Community Infrastructure Levy.
- 2.4 That all references to “overage” of “clawback” be changed to read “deferred contribution”.

3. Key points and reasons for recommendations

- 3.3 Planning Contributions (also called S106 Agreements and Planning Obligations) are a major way in which development contributes to the infrastructure and other community needs that it creates. S106 Obligations are therefore closely linked to Community Plan objectives.
- 1.2 The Planning Contributions and Affordable Housing Supplementary Planning Document was last updated in June 2010. This update was produced to soften the impacts of planning contributions / affordable housing policy during the market downturn and recovery. The update includes a provision whereby contributions will not be sought when they would be less than £5,000.
- 1.3 Several recent applications have revealed an unintended consequence of the revised guidance, namely an incentive to sub-divide planning units to avoid liability for contributions. A key example is where applications are sought to remove holiday occupancy conditions on individual apartments, rather than an entire block.
- 1.4 This report recommends closing the ‘loophole’, by removing the £5,000 threshold. It is estimated that, over the next three years, this could generate about £250,000 per annum.
- 1.5 It is recommended that this should be applied on applications submitted after the date of the Full Council meeting. The Council could, based on legal advice, seek contributions (below £5000) from applications that have not yet been determined, but were submitted before Full Council meeting. It is estimated this would generate

about £37,500 revenue. However, this could be seen as inconsistent and could result in criticism of the local planning authority from the Ombudsman.

- 1.6 S106 contributions are sought to mitigate the impact of development or pay for infrastructure needed as a result of it. The 2010 Update contains a clawback/overage arrangement where contributions are reduced due to viability problems. Legal advice is that this terminology could be interpreted as an (illegal) tax on developer profits, and should be changed to “deferred contribution”.

For more detailed information on this proposal please refer to the supporting information attached.

**Les Crump
Executive Head of Spatial Planning**

Supporting information to Report 39/2011

1. Introduction and history

- 1.1 The Council adopted **Planning Contributions and Affordable Housing Supplementary Planning Guidance** in February 2008. The Council adopted a **Planning Contributions and Affordable Housing Update and Mitigation Paper** on 24 June 2010 in order to soften the impacts of s106 requirements and to encourage landowners / developers to continue to invest in the Bay in difficult financial circumstances. Paragraph 6.5 states that contributions would not be sought where they would be less than £5,000. This “threshold” was introduced partly to ease the burden on small businesses and partly to avoid costs of administering S106 contributions exceeding the value of those contributions. Note that this threshold does not have the status of development plan policy, but is practice advice on implementing the Local Plan.
- 1.2 Since the Update and Mitigation Paper was adopted, there has been Member concern, prompted by a spate of planning applications, that it creates a ‘loophole’ where applications for single units, rather than the entire building, fall artificially below the £5,000 threshold. An example is where applications are sought to remove holiday occupancy conditions on individual apartments, rather than the entire block.
- 1.3 In addition, Legal Services have advised that it can be cost effective to collect contributions where they are less than £5,000. In particular, administrative costs for financial contributions can be significantly reduced if the sums are paid before permission is granted (with agreement by the Council to repay the money in the event that the development is not carried out).
- 1.4 It is important that s106 contributions do not create undue burdens on small business. However, other clauses in the Update and Mitigation Paper seek to lighten the impact on business, for example by providing mitigation where valuable jobs are created in the Bay.
- 1.5 Section 106 contributions are levied to mitigate the impact of development or pay for infrastructure etc for which development creates a need. They are not sought in order to tax developer profit or betterment of land value. In the case of smaller developments, there will be individual and cumulative impacts, for example regarding open space and education, for which a contribution can and should be sought. To avoid s106 agreements being seen as a tax on developer profits, it is recommended that the phrases “clawback” and “overage” be replaced by the term “deferred payment”.

2. Risk assessment of preferred option

2.1 Outline of significant key risks

- 2.1.1 There is a need to ensure that seeking contributions does not impose an undue burden on businesses etc. The 2010 Update and currently recommended revised wording seeks to avoid this.
- 2.1.2 If an inconsistent approach is taken on planning applications, there is a risk of

legal challenge or the ombudsman finding against the council. The currently proposed change is intended to ensure consistency.

2.2 Remaining risks

- 2.2.1 There is a risk that applying the change of approach on the £5,000 threshold retrospectively to applications already submitted could be seen as inconsistent and attract complaints. For this reason it is recommended that the change be applied to applications submitted after the date of Council.

3. Other Options

- 3.1 Retaining a £5,000 threshold is an option. However this would not close the loophole of sub-dividing sites, and smaller developments would not contribute towards their individual and cumulative impact. A rough assessment is that about 100 applications per year would fall into the category of requiring a contribution of up to £5,000. Assuming an average of £2,500 per application, this could generate about £ 250,000 per year (for a maximum of 3 years when the current system of S106 contributions will be superseded).
- 3.2 The change could be applied retrospectively: i.e. contributions could be sought from all undetermined applications. It is estimated that this would generate about £37,500 revenue. (This calculation is based on around 15 relevant applications currently in the system, assuming an average of around £2,500 per dwelling (15X£2,500= £37,500). Legal services have advised that applying the change retrospectively would be technically legal, but is likely to attract complaints, possibly to the Ombudsman.

4. Summary of resource implications

- 4.1 The application currently affects about 6 applications, so the current loss of money is less than £30,000. However, over time removing the threshold could increase significantly the amount of money raised through contributions.
- 4.2 By 2014, the council will need to have a Community Infrastructure Levy in place, as there will be very limited scope to “pool” contributions after this time. Removing the £5,000 threshold establishes a principle that smaller developments should contribute to offset their impact on infrastructure etc.

5. What impact will there be on equalities, environmental sustainability and crime and disorder?

- 5.1 Planning Contributions are an important way in which the social and environmental impacts of developments are mitigated. Seeking to maximise contributions therefore allows more to be spent for the benefit of society, for example on open spaces, sustainable transport etc.

6. Consultation and Customer Focus

- 6.1 The Planning Contributions and Affordable Housing SPD (Adopted 2008) was the subject of extensive consultation in 2007-8.

7. Are there any implications for other Business Units?

- 7.1 A number of other Business Units' services are recipients of s106 contributions (e.g. sustainable transport, public open space, education and lifelong learning and safer communities).

Appendices

Appendix 1: Local Development Framework Working Party Report LDF/BP/2011/01: Planning Contributions and Affordable Housing Supplementary Planning Document: Threshold for Contributions (12 January 2011).

Background Papers: The following documents/files were used to compile this report:

Local Development Framework Working Party Report LDF/BP/2011/01: Planning Contributions and Affordable Housing Supplementary Planning Document: Threshold for Contributions (12 January 2011).

Briefing Paper to the Local Development Framework Working Party - 12 January

LDF/BP/2011/01

Planning Contributions and Affordable Housing Supplementary Planning Document: Threshold for Contributions.

1. Introduction

- 1.1 The Planning Contributions and Affordable Housing Supplementary Planning Document was last updated in June 2010. This update was produced to soften the impacts of planning contributions / affordable housing policy during the market downturn and recovery. The Update includes a provision whereby contributions will not be sought when they would be less than £5,000.
- 1.2 However, several recent applications have revealed an unintended consequence of the revised guidance, namely an incentive to sub-divide planning units to avoid liability for contributions. A key example is where applications are sought to remove holiday occupancy conditions on individual apartments, rather than an entire block.
- 1.3 This paper recommends the means to close that 'loophole', by removing the £5,000 threshold, whilst maintaining the fundamental purpose of the SPD.

2. Recommendations:

- 2.1.1 That the LDF Working Party recommends to Council that paragraph 6.5 of the **Planning Contributions and Affordable Housing Update and Mitigation Paper 2010** be revised to read as follows:

“Smaller developments must contribute towards mitigating any adverse impacts they may have, individually and collectively, on Torbay. Consequently there is no minimum threshold for contributions. This approach also avoids creating perverse incentives, or unintended consequences (such as artificial division of planning units), which could result in no contributions towards mitigation of adverse impacts. Due to the cost of drafting and monitoring S106 Agreements, applicants for smaller schemes, specifically those where the contribution would be less than about £5,000, will be encouraged to pay the contribution before grant of permission in exchange for an agreement by the Council to return these sums in the event that development does not proceed. In seeking financial contributions from smaller schemes, regard will be had to the need for them to be reasonable (as per Circular 5/2005), and the need to avoid imposing undue costs on businesses. In addition, regard will be had to whether the application is a standalone scheme or affects part of a larger planning unit (e.g. a block of holiday apartments).”

- 2.2 The first sentence of Paragraph 4.19 of the **Interim Guidance on Principal Holiday Accommodation Areas (March 2010)** will be deleted, as will any other reference to the £5,000 threshold.
- 2.3 The principle of charging smaller developments for a fair proportion of the infrastructure for which they create a need for be incorporated into the emerging Community Infrastructure Levy (see below).

3.0 Discussion

- 3.1 The Council's policy on s106 planning obligations is set out in the Saved Adopted Torbay Local Plan 1995-2011, specifically Policies H5 and H6 on affordable housing, CF6 "Community Infrastructure Contributions" and CF7 "Education Contributions". The Local Plan has legal weight in determining planning applications. The Supplementary Planning Document carries less weight than the Local Plan, but is still a material consideration in determining planning applications.
- 3.2 The Council adopted **Planning Contributions and Affordable Housing Supplementary Planning Guidance** in February 2008. The Council then adopted a **Planning Contributions and Affordable Housing Update and Mitigation Paper** on 24 June 2010 in order to soften the impacts of s106 requirements and to encourage landowners / developers to continue to invest in the Bay in difficult financial circumstances. Paragraph 6.5 states that contributions would not be sought where they would be less than £5,000. This "threshold" was introduced partly to ease the burden on small businesses and partly to avoid costs of administering S106 contributions exceeding the value of those contributions. Note that this threshold does not have the status of development plan policy, but is practice advice on implementing the Local Plan.
- 3.3 Since the Update and Mitigation Paper was adopted, there has been Member concern, prompted by a spate of planning applications, that it creates a 'loophole' where applications for single units, rather than the entire planning unit, fall artificially below the £5,000 threshold. An example is where applications are sought to remove holiday occupancy conditions on individual apartments, rather than the entire block.
- 3.4 In addition, Legal Services have advised that it can be cost effective to collect contributions where they are less than £5,000. In particular, administrative costs for financial contributions can be significantly reduced if the sums are paid before permission is granted (with agreement by the Council to repay the money in the event that the development is not carried out).
- 3.5 It is important that s106 contributions do not create undue burdens on small business. However, other clauses in the Update and Mitigation Paper seek to lighten the impact on business, for example by providing mitigation where valuable jobs are created in the Bay. In addition, the proposed revised wording in 2.1 above notes the need to avoid undue costs on businesses.
- 3.6 Section 106 contributions are levied to mitigate the impact of development or pay for infrastructure etc for which development creates a need. They are not sought in order to tax an element of development profit or betterment of land value. In the case of smaller developments, there will be individual and cumulative impacts, for example regarding education, for which a contribution can and should be sought.
- 3.6 Because the Update and Mitigation Paper was approved by Council and has financial implications, it is recommended that the proposed revision to remove the £5,000 threshold be reported to full Council.

4.0 Looking Forward

- 4.1 The Coalition Government has confirmed that it will retain the Community Infrastructure Levy (CIL). After 2014 the scope to seek s106 contributions will be much more restricted. Contributions will not be able to be pooled for more than 5 developments, and will need to relate to site specific matters rather than wider infrastructure. Councils will be able to charge CIL on new developments, which will help pay for wider infrastructure. Infrastructure to be funded through CIL must be identified in a Charging Schedule, which will be developed in parallel with the Core Strategy.
- 4.2 Together with New Homes Bonus, CIL is expected to be a significant way in which physical, economic and community infrastructure is funded. For this reason it is important that the principle of charging smaller developments for their impact is established.

Name of Author: David Pickhaver david.pickhaver@torbay.gov.uk 01803 208814

Date: 5 January 2011

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Composition and Constitution of the Cabinet and Record of Delegations of Executive Functions

This Report is presented to the meeting of the Council on 24 March 2011 in accordance with Standing Orders A1.2 (viii) and (xiii) and C2 to C4 for inclusion in the Council's Scheme of Delegation (Schedule 6 to Part 3) of the Constitution of Torbay Council.

1. The names, addresses and wards of the people appointed to the Cabinet by the Mayor are set out below:

Name	Address	Electoral Ward
Councillor Neil Bent Deputy Mayor and Cabinet Member for Health and Wellbeing and Housing	18 Padacre Road Torquay TQ2 8PU	Wellswood
Councillor Dave Butt Cabinet Member for Community Services	8 Preston Down Road Preston Paignton TQ3 2RW	Preston
Councillor Louisa Aiton Cabinet Member for Community Safety and Community Engagement	94 Barewell Road Torquay TQ1 4PA	St Marychurch
Councillor Anna Tolchard Cabinet Member for Children's Services	Waterloo House 81 King Street Brixham TQ5 9TH	Churston with Galmpton

2. The Mayor is responsible for the discharge of all executive functions and no executive functions have been delegated to the Cabinet members (except in the absence of the Mayor described in 3. below). Cabinet members will have an advisory role in relation to the areas of responsibility set out below.

	Portfolio	Business Unit/Department	Main Customer Base
Mayor Nick Bye	Local Strategic Partnership, Tourism, Economic Regeneration and planning for the future, Finance, Governance and Member Development	Business Planning: <ul style="list-style-type: none"> • Local Strategic Partnership • Community Plan Residents & Visitor Services: <ul style="list-style-type: none"> • Tourism Spatial Planning: <ul style="list-style-type: none"> • Planning & Development including: Building Control & Conservation Services; and Strategic Planning 	<ul style="list-style-type: none"> • Partners • Residents • Business • Visitors • Investors • Internal • Employees • Members

Portfolio	Business Unit/Department	Main Customer Base
	<p>Torbay Development Agency:</p> <ul style="list-style-type: none"> • Business Support • Regeneration • Business Creation & Growth (including social enterprise/ apprenticeships) • Property • Facilities Management • Estates <p>Business Planning:</p> <ul style="list-style-type: none"> • Performance Management • Programme Office • Commissioning Support • Research & Consultation • Customer Access • Overview and Scrutiny <p>Governance:</p> <ul style="list-style-type: none"> • Risk Management • Democratic Services • Information Governance • Complaints • Corporate Health & Safety • Devon Audit Services – Internal Audit • Land Charges • Electoral Services • Emergency Planning • Births, Marriages & Deaths <p>Finance:</p> <ul style="list-style-type: none"> • Finance <p>Legal & Procurement:</p> <ul style="list-style-type: none"> • Legal Services • Procurement <p>Human Resources:</p> <ul style="list-style-type: none"> • Human Resources • Learning & Development • Payroll • Workforce Development <p>ICT:</p> <ul style="list-style-type: none"> • Network Support: Data & Telephony • Operations Support: Data Centre; IT Development; IT Training; IT Service Desk; and PC support 	

<p>Deputy Mayor and Cabinet Member for Health and Wellbeing and Housing – Councillor Neil Bent</p>	<p>Health and wellbeing and housing</p>	<p>Communities:</p> <ul style="list-style-type: none"> • Housing Partnership • Housing Standards • Housing Need & Option • Supporting People • Voluntary Sector Development • Torbay Care Trust • Public Health • Adult Services 	<ul style="list-style-type: none"> • Adult clients • Housing clients • Health clients
<p>Cabinet Member for Community Services – Councillor Dave Butt</p>	<p>Community services</p>	<p>Spatial Planning:</p> <ul style="list-style-type: none"> • Planning & Development including: Waste Policy; and Strategic Transportation <p>Residents & Visitor Services:</p> <ul style="list-style-type: none"> • Parking Operations, Administration and Enforcement • Corporate Security • CCTV • Urban Design • Highways Management • Drains & Structures • Culture • Museums • Libraries • Arts & Events • Leisure • Beaches • Parks & Open Spaces • Tree Services • Public Toilets <p>TOR2:</p> <ul style="list-style-type: none"> • Waste and recycling collections • Management of Household Waste and Recycling Centre (HWRC) and Waste Transfer Stations • Maintenance of Torbay’s highways, grounds, parks, car parks, buildings and the Council’s vehicle fleet, street and beach cleansing, out of hours call centre support 	<ul style="list-style-type: none"> • Business • Residents • Visitors

<p>Cabinet Member for Community Safety and Community Engagement – Councillor Louisa Aiton</p>	<p>Community safety and community engagement</p>	<p>Business Planning:</p> <ul style="list-style-type: none"> • Communications/Design <p>Communities:</p> <ul style="list-style-type: none"> • Community Partnerships <p>Community Safety:</p> <ul style="list-style-type: none"> • Environmental Health • Trading Standards • Health & Safety & Licensing • Cemeteries & Crematorium • Environmental Protection • Food Safety • Safer Communities <p>Customer Contact:</p> <ul style="list-style-type: none"> • Council Tax and Business Rates • Benefits • Corporate Debt • Income Collection • Print and Post • Customer Services <p>Spatial Planning:</p> <ul style="list-style-type: none"> • Planning & Development including: Sustainability; and Environmental Policy 	<ul style="list-style-type: none"> • Community • Business • Residents • Visitors
<p>Cabinet Member for Children's Services – Councillor Anna Tolchard</p>	<p>Children's Services</p>	<p>Learning & Standards:</p> <ul style="list-style-type: none"> • School Standards • School Services • Governor Support • Education other than at Schools • Pupil Referral Unit 14-19 • Broaden Opportunities • Children Looked After • Attainment • Admissions <p>Specialist Services:</p> <ul style="list-style-type: none"> • Safeguarding Unit • Permanency Planning • Adoption • Fostering • Disability Services • Residential Care • Special Educational Needs • Educational Psychologists & Special Teachers • Children in Need • Care to the Community • Young Carers • Family Group Conferences 	<ul style="list-style-type: none"> • Children and families

		<p>Early Intervention:</p> <ul style="list-style-type: none"> • Parenting Commissioner • Extended Services Children’s Centres • Early Years Foundation Stage • Play & Childcare • Independent Reviewing • Attendance • Family Support • Youth Offending Team • Youth Service • Connexions Liaison <p>Transformation (Children’s Services):</p> <ul style="list-style-type: none"> • Transformation • Performance • ICT • Workforce <p>Children’s Health</p>	
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3. (i) The Deputy Mayor will be responsible for the discharge of executive functions if the Mayor:
 - (a) is absent (e.g. on holiday) for a period of time or in cases of urgency where the Chief Executive is satisfied that the Mayor cannot be reasonably contacted;
 - (b) is incapacitated through illness; or
 - (c) has a person prejudicial interest in any matter requiring determination.

(ii) If the Mayor or the Deputy Mayor (Councillor Bent) are unable to act on a matter requiring a decision then the Chief Executive shall have the power to determine any matter requiring a decision.
4. No cabinet committees have been appointed at the present time.
5. No executive functions have been delegated to area committees, any other authority or any joint arrangements at the present time.
6. The Mayor has also (so far as lawful) delegated to officers the discharge of those functions that are referred to in Schedule 7 and are executive functions in the manner set out in that Schedule, in accordance with (and subject to) the Council’s Standing Orders in relation to the Cabinet.
7. So far as the Constitution requires officers to consult with “the relevant member”, the areas of responsibility of the Members of the Cabinet are as set out paragraph 2 above.

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