

**Meeting:** Cabinet **Date:** 13 December 2022

**Wards affected:** All

**Report Title:** Planning Contributions and Affordable Housing Supplementary Planning Document

**When does the decision need to be implemented?** December 2022

**Cabinet Member Contact Details:** Councillor Mike Morey, Cabinet Member for Infrastructure, Environment and Culture, [mike.morey@torbay.gov.uk](mailto:mike.morey@torbay.gov.uk)

**Director/Divisional Director Contact Details:** David Edmondson, Divisional Director for Planning, Housing and Climate Emergency, [david.edmondson@torbay.gov.uk](mailto:david.edmondson@torbay.gov.uk)

## 1. Purpose of Report

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- 1.1 To seek Cabinet's approval of an updated Planning Contributions and Affordable Housing Supplementary Planning Document ("the SPD"). This updated version of the SPD will replace the existing version which was adopted in 2017.
- 1.2 The SPD sets out how Section 106 planning obligations are to be used in Torbay to meet the infrastructure needs created by developments, including providing affordable housing. The SPD provides guidance on (amongst other things) the kinds of planning obligations sought, the circumstances in which they are to be sought, how financial contributions are calculated, and the relevant Local Plan and Neighbourhood Plan policies which provide the basis for seeking planning obligations. Supplementary Planning Documents do not make new planning policy. Rather, they provide more detailed advice or guidance on the implementation of existing policies in the Local Plan and Neighbourhood Plans. Changes to planning policies need to be made through the ongoing Torbay Local Plan Update.
- 1.3 The main purpose of this update is to ensure that planning obligations adequately cover the costs of infrastructure at 2022 prices (which rose by 25.6% between 2017 and May 2022).

## 2. Reason for Proposal and its benefits

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### 2.1 We want Torbay and its residents to thrive.

We want Torbay to be a place where we have turned the tide on poverty and tackled inequalities; where our children and older people will have high aspirations and where there are quality jobs, good pay and affordable housing for our residents.

We want Torbay to be the premier resort in the UK, with a vibrant arts and cultural offer for our residents and visitors to enjoy; where our built and natural environment is celebrated and where we play our part in addressing the climate change emergency.

### 2.2 Key to this is ensuring that the infrastructure needs created by new developments are met, that affordable housing is delivered to help address the housing crisis, and that any adverse impacts of developments are appropriately mitigated. The SPD provides guidance to this effect, and this update of the SPD will ensure that planning obligations are based on financial costings that are accurate and up-to-date, taking into account the inflation that has occurred since the previous version of the document was adopted in 2017.

### 2.3 Since the 2017 SPD was adopted, various changes to Government planning policy have occurred. The updated SPD therefore provides clarity in instances where changes to Government planning policy have impacted on local planning. Noteworthy changes include:

- **Removal of Pooling Restrictions:** Whereas previously local authorities were only permitted to pool up to 5 obligations towards the same item of infrastructure, this restriction has been removed. This provides greater flexibility for the spending of planning contributions. The 2021 NPPF also allows greater flexibility in seeking contributions from non-major developments.
- **National Planning Policy Framework (NPPF) 2021:** This increases the emphasis on affordable homes for sale. The main need in Torbay is for homes for rent, and the SPD has sought to maintain this stance as far as possible within the requirements of the NPPF. The NPPF also confirms that affordable housing may only be sought from major developments (10 or more dwellings) apart from the AONB where a lower threshold may apply.
- **Use Classes Order:** There have been significant changes to Use Classes including the formation of Class E which brings various commercial uses into the same Use Class. New permitted development rights have also been introduced including the permission to change use from Class E to residential, subject to prior approval.

### 2.4 The updated SPD also incorporates additional guidance on the use of planning obligations to address the following matters:

- Mitigating ecological impacts on coastal and marine habitats and species.
- Education contributions towards Early Years, Special Educational Needs and Disabilities (SEND) and Post 16. This is in addition to existing education contributions towards Primary and Secondary. (Education contributions will only be sought where a shortfall is identified.)
- Increasing loss of employment contributions to reflect more recent evidence on the cost of providing employment elsewhere.

- Increased emphasis on the use of planning obligations to secure local labour agreements.
  - Increased emphasis and more detailed guidance on existing policies relating to climate change and low carbon development.
  - Guidance on mitigating ecological impacts on coastal and marine habitats and species.
  - Monitoring contributions to ensure the effective implementation of ecological mitigation and travel plans.
  - A 5% administration and monitoring charge levied in addition to the total planning contributions sought (rather than 5% being top sliced from the contribution).
- 2.5 The updated SPD also incorporates changes to remove snags and to make the SPD simpler, easier to use, and to improve implementation.
- 2.6 The updated SPD has been informed by public consultation carried out between 22<sup>nd</sup> August and 3<sup>rd</sup> October 2022, detailed engagement with internal partners within Torbay Council and SWISCo earlier in the year. A previous period of public consultation took place during 2019, but the SPD update was postponed at that time due to uncertainty around Covid. A discussion of consultation responses received and how they have been resolved is provided in the 'supporting information' section of this report, and a full summary is provided at Appendix 2.
- 2.7 The reasons for the decision are:
- To ensure that new development in Torbay contributes fairly towards the provision of infrastructure and other matters that development creates a need for.
  - To provide affordable housing.
  - To update guidance on tackling climate change, reducing poverty and improving education outcomes.
  - To update guidance on key ecological sites in Torbay.

### 3. Recommendation(s) / Proposed Decision

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1. That the Planning Contributions and Affordable Housing Supplementary Planning Document as set out in Appendix 1 be approved by Cabinet for adoption. Planning applications received after 1 January 2023 will be assessed in terms of this updated SPD.
2. That the Divisional Director for Planning, Housing and Climate Emergency be authorised to make minor editorial amendments to the Planning Contributions and Affordable Housing Supplementary Planning Document in consultation with the Cabinet Member for Infrastructure, Environment and Culture.
3. That the Divisional Director for Planning, Housing and Climate Emergency be authorised to update the planning contributions sought in line with inflation on an annual basis in consultation with the Cabinet Member for Infrastructure, Environment and Culture.

4. That the Divisional Director for Planning, Housing and Climate Emergency in consultation with the Cabinet Member for Infrastructure, Environment and Culture be authorised to update the 'CIL Accompanying Policies' document to maintain consistency with the Planning Contributions and Affordable Housing Supplementary Planning Document.
5. That the Local Development Scheme be updated to reflect the adoption of the Planning Contributions and Affordable Housing Supplementary Planning Document as set out in Appendix 1.

## **Appendices**

Appendix 1: Planning Contributions and Affordable Housing SPD 2022

Appendix 2: Summary of Representations

## **Background Documents**

Adopted Torbay Local Plan 2012-2030, with particular attention to Policies SS7 and H2:

<https://www.torbay.gov.uk/local-plan/>

Adopted Torquay Neighbourhood Plan: <https://www.torbay.gov.uk/torquay-np/>

Adopted Paignton Neighbourhood Plan: <https://www.torbay.gov.uk/paignton-np/>

Adopted Brixham Peninsula Neighbourhood Plan: <https://www.torbay.gov.uk/brixham-np/>

Community Infrastructure Levy Regulations 2010 (as amended):

<https://www.legislation.gov.uk/ukdsi/2010/9780111492390/contents>

Torbay Housing and Economic Needs Assessment 2022: <https://www.torbay.gov.uk/local-plan-update> (link at bottom of webpage under 'background papers')

National Planning Policy Framework: <https://www.gov.uk/guidance/national-planning-policy-framework>

The Town and Country Planning (Local Planning) (England) Regulations 2012, with particular attention to Part 5 (Supplementary planning documents):

<https://www.legislation.gov.uk/uksi/2012/767/part/5/made>

## 1. Introduction

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- 1.1 The Planning Contributions and Affordable Housing SPD provides guidance on how s106 planning obligations will be used in Torbay to deliver affordable housing and to meet the infrastructure needs arising due to development. The purpose of a supplementary planning document is to provide more detailed advice or guidance on policies in the development plan (which comprises the Adopted Torbay Local Plan 2012-2030 and the Neighbourhood Plans). SPDs cannot make new policy, alter existing policies, or place additional requirements on developers that are not already provided for within existing policies. Changes to policy would need to be carried out through the ongoing Local Plan Update.
- 1.2 The principal reason for updating the SPD is to bring the costings in the document up to 2022 prices. According to the Retail Prices Index, prices have increased by 25.60% from February 2017 to May 2022. It is therefore necessary to increase planning contributions to 2022 prices, and to provide certainty in the SPD that planning contributions will be reviewed and increased with inflation on an annual basis to ensure that the planning contributions sought remain sufficient to cover the infrastructure costs arising from development.
- 1.3 There have also been several recent changes to national planning policy and guidance since February 2017 which have an impact on the SPD, including:
- The Community Infrastructure Levy Regulations 2010 and PPG have been revised to remove pooling restrictions. This gives greater flexibility to ensure that planning contributions are spent effectively. These changes have been incorporated into the updated SPD.
  - The NPPF (2021), paragraph 64, has reiterated a longstanding requirement that affordable housing may only be sought for major developments (10 dwellings or more or sites of 0.5 ha or more), other than in designated rural areas (in Torbay this is the AONB). This impacts on the Local Plan Policy H2 affordable housing threshold for greenfield sites which was previously set at 3 or more dwellings. The updated SPD therefore adjusts this threshold to 10 or more dwellings other than for sites in the AONB where the threshold remains at 3 or more dwellings. This formalises existing development management practice and recognises that attempts to seek affordable housing on non-major sites outside of the AONB would not be supported at appeal.
  - Paragraph 65 of the NPPF (2021) includes a requirement that 10 per cent of the homes delivered in major developments should be for affordable home ownership (subject to certain exclusions). This has no impact on the affordable housing tenure mix sought for major developments of 30 dwellings or more on greenfield sites, but has the potential to

impact on the tenure mix for all brownfield sites and for greenfield sites of fewer than 30 dwellings. The delivery of affordable homes for rent is a priority for the Council both in terms of the Housing Strategy and the Community and Corporate Plan. The updated SPD states that the tenure mix in Policy H2 of the Local Plan (one third social rent, one third affordable rent, one third affordable home ownership) remains the starting point for negotiations but acknowledges that Paragraph 65 of the NPPF is a material consideration for planning decisions. Paragraph 65 states that this requirement is disapplied in instances where it would “exceed the level of affordable housing required in the area”, or where it would “significantly prejudice the ability to meet the identified affordable housing needs of specific groups”.

#### 1.4 The updated SPD also implements the following changes:

- Education contributions towards Early Years, Special Educational Needs and Disabilities (SEND) and Post 16. This is in addition to existing education contributions towards Primary and Secondary. (Education contributions will only be sought where a shortfall is identified.)
- Increasing commuted sums for affordable housing to better reflect current market prices. (Note that the expectation is that affordable housing will be provided on site, with commuted sums only agreed in exceptional circumstances.)
- Increasing loss of employment contributions to reflect more recent evidence on the cost of providing employment elsewhere.
- Increased emphasis on the use of planning obligations to secure local labour agreements.
- Increased emphasis and more detailed guidance on existing policies relating to climate change and low carbon development.
- Guidance on mitigating ecological impacts on coastal and marine habitats and species.
- Contributions from new homes and tourism development within the Brixham Peninsula area towards mitigating recreational impacts on the Berry Head calcareous grassland. (This formalises what has been happening in practice for several years).
- Monitoring contributions to ensure the effective implementation of ecological mitigation and travel plans.
- Increased emphasis on planning obligations relating to town centre management, night-time economy, and monitoring contributions. These are only sought where there is a specific adverse impact to mitigate.
- Increased emphasis on public realm improvements. These are only sought when there is a strong relationship between the proposed use and the public realm.
- A 5% administration and monitoring charge levied in addition to the total planning contributions sought (rather than 5% being top sliced from the contribution).

#### 1.5 The updated SPD incorporates changes to remove snags and to make the SPD simpler, easier to use, and to improve implementation. This includes seeking contributions for

residential development based on dwelling floorspace rather than number of bedrooms (which is necessary because the number of bedrooms in a dwelling is not subject to planning control). Minor changes to the implementation of s106 Agreements, as recommended by the Council's Legal Services team, have also been incorporated.

## 2. Options under consideration

- 2.1 This report proposes that the updated SPD be approved for adoption. The alternative option would be to not update the SPD and to continue using the adopted 2017 version of the SPD. This would result in planning contributions being sought at 2017 prices rather than at 2022 prices. Uncertainty would remain from the (2017) SPD being inconsistent with new national planning policy and guidance. The 2017 SPD also restricts the pooling of no more than 5 obligations towards the same item of infrastructure, when this restriction is no longer required by planning legislation. This is therefore not considered a feasible option.
- 2.2 We are aware that these are difficult times to be increasing demands on developers. The SPD Update was not introduced in 2020 due to Covid, so is now well overdue. We have sought only to increase contributions in a way that is reasonable and proportionate taking into account inflation to May 2022 as well as relevant evidence, and have sought to avoid imposing a 'real terms' increase which could impact on development viability. To illustrate this, comparative data is briefly set out below.
- 2.3 While planning contributions vary from case to case depending on the specific needs and impacts arising from the development, the table below sets out typical approximate planning contributions sought for a medium sized house (approximately 80 sq m) delivered as part of a major development within the Future Growth Area, with costs in terms of the 2017 SPD and the updated SPD:

Infrastructure	2017 SPD	Updated SPD	Increase
Sustainable transport	£860	£1,290	50%
Education	£6,333	Up to £15,572	145.9%
Open space	£2,915	£3,726	27.8%
Lifelong learning	£232	£292	25.9%
Waste	£170	£162	(4.7%)
Admin and monitoring charge	5% top-sliced	5% as an additional charge = £1,052	
<b>TOTAL</b>	<b>£10,510</b>	<b>£22,094</b>	<b>100.2%</b>

- 2.4 The overall increase from approximately £10,500 to £22,000 is therefore largely as a result of the introduction of education contributions for Early Years, Post 16 and SEND, alongside existing contributions for Primary and Secondary. It is important to note however that these contributions have been calculated in accordance with the latest DfE guidance, and that contributions will only be sought for the category of education in which a shortfall is evidenced. In most instances, education contributions will not be charged across all categories, and therefore the total education contribution will be less than the £15,572 stated above.
- 2.5 The table below provides an approximation of the planning contributions sought for a 3 bedroom house in Torbay in terms of the updated SPD compared to those sought in Plymouth<sup>1</sup> (for sites outside of the city centre) in terms of the Plymouth and South West Devon Joint Local Plan SPD and Developer Contributions Evidence Base, April 2022.

<b>Infrastructure</b>	<b>Updated SPD</b>	<b>Plymouth</b>
Transport	£1,290	£5,684
Education	£15,572	£18,438
Open space	£3,726	£4,911.85
Lifelong learning	£292	N/A
Waste	£162	N/A
Healthcare	Only sought for developments which generate a specific healthcare need	£673
CIL	N/A	£3,556.80
Admin and monitoring charge	£1,052	Approx. £2,670
<b>TOTAL</b>	<b>£22,094</b>	<b>£35,933.65</b>

- 2.6 Based on a review of Teignbridge District Council's Infrastructure Funding Statement 2020/21, it is estimated that a development of medium sized houses (approximately 80 sq m) in Teignbridge would be required to pay in the region of £18,000 per dwelling in lower value areas and up to £32,000 per dwelling in higher value areas.

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<sup>1</sup> Plymouth was chosen as a comparator due to the availability of a recently adopted SPD and evidence base that clearly sets out how planning contributions are calculated and sought.



- 2.7 Given the broad alignment with Torbay's neighbouring authorities, we therefore consider the level of increase in planning contributions from the 2017 SPD to the updated SPD to be reasonable and proportionate. While planning contributions in Torbay are at the lower end of the range when compared to neighbouring authorities, this reflects the lower level of development viability in much of Torbay.
- 2.8 Torbay places greater weight on S106 obligations from major developments, whereas our neighbours tend to have more comprehensive CIL regimes. This overall strategy needs to be reassessed in the context of the Local Plan and the government's proposed reform of developer contributions. However, in the interim, S106 Obligations are negotiable with developers in a way that CIL is not.
- 2.9 As discussed in the section above, paragraphs 64-65 of the NPPF (2021) include requirements that impact on the affordable housing threshold and tenure mix sought in terms of Policy H2 of the Local Plan. Theoretically a local authority might decide to deviate from the NPPF, however the NPPF has significant status within the planning system and a planning inspector would give the requirements of the NPPF great weight when considering an appeal. The updated SPD seeks to protect and promote the delivery of affordable housing (particularly affordable homes for rent) as far as possible, and only amends local affordable housing policy as far as is necessary to align with national planning policy.
- 2.10 In both the 2019 and 2022 consultations, the Torbay and South Devon NHS Foundation Trust and the Devon and Cornwall Police have made representations seeking planning contributions towards their service areas as part of all new residential development. A 'tariff style' contribution towards healthcare and/or policing sought for all new dwellings would go beyond Local Plan policy and would clearly have an impact on development viability as well as infrastructure prioritisation within the Local Plan. The NHS has identified significant problems, particularly in primary care provision, but a broader decision on using S106 obligations towards this needs to be made through the Local Plan update.
- 2.11 The updated SPD provides for healthcare contributions to be sought for unplanned major developments on unallocated sites where a shortfall in health service provision is evidenced, and provides for contributions for specified development types which generate a specific healthcare need. This is in line with policies in the Adopted Local Plan.
- 2.12 Regarding policing, the updated SPD also places greater emphasis on seeking planning contributions for specific developments that generate a need for town centre management and monitoring of uses that could generate community conflict (as required by Policy TC4), and draws attention to existing policies on designing out crime. Planning obligations beyond the above would go beyond the scope of the existing Local Plan policy framework and would need to be made through the ongoing Local Plan Update.

### 3. Financial Opportunities and Implications

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- 3.1 There is a need for the SPD to accurately reflect the cost of providing infrastructure etc. at 2022 prices. Continuing to seek planning contributions at 2017 prices would have an adverse impact on Council funds and could adversely impact on the quality of infrastructure provided in Torbay.
- 3.2 We have sought to avoid introducing real terms increase in planning obligations, other than where justified by updated government guidance (e.g. on Education) or where clear new evidence is available (e.g. on the cost of employment provision). A more thorough review of planning obligations will form part of the ongoing Local Plan Update, and be supported by updated viability evidence.

### 4. Legal Implications

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- 4.1 The purpose of s106 planning obligations is to make otherwise unacceptable development acceptable in planning terms. Planning obligations should only be used where planning conditions cannot be used, and subject to the tests of lawfulness in Regulation 122 of the CIL Regulations 2010 (as amended):
  - a) Necessary to make the development acceptable in planning terms;
  - b) Directly related to the development; and
  - c) Fairly and reasonably related in scale and kind to the development.
- 4.2 The NPPF is not legislation but is a material consideration for planning decisions. As a statement of Government policy, it carries significant weight in planning decision-making. The SPD therefore needs to conform to the NPPF as closely as possible.
- 4.3 The Government has significantly changed the Use Classes Order in 2020 including through the introduction of Class E (which brings a wide range of commercial uses into a single use class), and has introduced permitted development rights, subject to prior approval, for changes of use from Class E to residential. The implications of this for local planning policy are potentially very great and need to be assessed through the Local Plan Update. However the updated SPD has sought to provide some guidance and clarity on these changes.
- 4.4 Case law often affects the interpretation of planning policy. In particular, the SPD has been updated to reflect recent judgements including the Rectory Homes versus the Secretary of State HCLG and South Oxfordshire District Council [2020] EWHC2098 (Admin) which clarified affordable housing liability on Class C2 care accommodation.
- 4.5 The Council's Legal Services team has been consulted as part of the engagement with internal partners, and their recommendations related to the requirements for s106 Legal Agreements have been incorporated into the updated SPD to improve implementation.

## 5. Engagement and Consultation

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- 5.1 The updated SPD was the subject of a six week period of public consultation from 22<sup>nd</sup> August to 3<sup>rd</sup> October 2022. There was an earlier consultation in 2019.
- 5.2 The consultation was publicised through notifications on the Torbay Council website, the One Torbay newsletter, posts on Torbay Council social media channels, the Spatial Planning Newsflash, and emails sent to those on our consultation database (which includes statutory consultees, neighbourhood forums, community groups and organisations, as well as developers, planning agents and members of the public who have signed up to be on the database or who have previously responded to planning policy consultations). A hardcopy of the consultation was made available at the Town Hall, and Torbay libraries were notified and provided with a digital copy.
- 5.3 The consultation webpage was visited 442 times by 348 people. The draft SPD was downloaded 102 times. 24 The consultation resulted in 24 responses to the online survey and 15 written representations.
- 5.4 A full summary of all consultation responses received and how the matters raised were responded to is provided at Appendix 2.

### **Summary of online survey:**

- 5.5 Of the 24 respondents, 5 were representing organisations (2 developers, 2 community groups, and 1 statutory consultee) and 19 were members of the general public.
- 5.6 Compared to the Torbay population, older people were over-represented amongst respondents (39% of respondents were aged 65+ compared to 26.7% for the Census 2021 population) and young people were under-represented (4.3% of respondents were aged 0-24 compared to 24.3% for the Census 2021 population). In terms of housing status, owner-occupiers were over-represented (81.8% of respondents compared to 66.8% for the Census 2011 population) and private renters were under-represented (4.5% of respondents compared to 23.2% for the Census 2011 population).
- 5.7 Survey respondents' highest priorities for infrastructure investment in Torbay were (in order) affordable housing, police, healthcare, public open space, walking and cycling infrastructure, employment and education. (It is worth noting that the availability of other funding sources is relevant when considering the funding of infrastructure through planning contributions.)
- 5.8 On the question of whether the updated SPD accurately reflects the costs of infrastructure at 2022 prices, 26.1% indicated "yes", 8.7% indicated "no", and 65.2% indicated "I do not know". This reflects the complexities involved in calculating planning contributions. Both of the developers who responded to the survey indicated yes.

- 5.9 There was broad support for planning contributions being reviewed and adjusted for inflation on an annual basis (78.3% yes), and for the 5% admin and monitoring charge being charged over and above the total planning contributions being sought (rather than being top-sliced) (87% yes), including from the developers who responded to the survey.
- 5.10 On the technical questions regarding the figures that the updated SPD uses for average household sizes and pupil yields from new residential developments, the majority either indicated support for the figures used or answered “I don’t know”. A small minority of respondents felt that the figures underestimated household sizes but did not provide evidence in support of this view.
- 5.11 The survey asked a number of questions about First Homes, setting out that the updated SPD opts not to incorporate First Homes into Torbay’s affordable housing requirements due to concerns about the knock-on effects on the delivery of affordable homes for rent.
- Views were split on whether First Homes should or should not be incorporated into policy. 47.8% supported the updated SPDs approach, 39.1% did not, and 13% did not know.
  - On the level of discount that should be required if First Homes were to be adopted, 56.5% opted for a 30% discount, 17.4% opted for a 40% discount, and 13% opted for a 50% discount. Some respondents felt that it would be more equitable to offer a lower discount to a greater number of households than to offer a high discount to a small number of households.
  - There was strong support (86.4%) for including local eligibility criteria if First Homes were to be adopted.
- 5.12 The survey included a number of more open-ended questions in which the following issues were raised:
- Support for improvements to energy efficiency and low carbon development.
  - Concerns about the quality and size of newbuild homes. (This matter is addressed by Policies DE3 and SS11 of the Local Plan; changes to policy would need to be made through the ongoing Local Plan Update.)
  - The need for new housing to better meet the needs of local people; resistance to second homes. (The updated SPD reiterates requirements for affordable housing to meet local housing needs through Devon Home Choice. A ‘primary occupancy’ requirement for general needs housing would be a significant policy change that would need to be made through the ongoing Local Plan Update. For information, this matter is raised as part of the current Local Plan consultation.)
  - Support for contributions towards open space (including allotments).

- The need for contributions towards the provision of community facilities and meeting spaces. (This has been integrated into the section on Lifelong Learning.)
- Comments regarding affordable housing tenures. Some emphasising the need for ‘social rent’ and raising concern with the affordability of ‘affordable rent’, and some emphasising the need for affordable home ownership. (Affordable housing tenure mix is set by Policy H2 of the Local Plan and changes to affordable housing policy would need to be through the ongoing Local Plan Update.)

### **Written representations:**

- 5.13 The Torbay and South Devon NHS Foundation Trust and the Devon and Cornwall Police
- 5.14 Natural England recommended including additional information regarding how planning contributions towards mitigating recreational impacts on the Berry Head grassland are calculated and what they are to be spent on. This has been incorporated into the updated SPD.
- 5.15 Historic England recommended more emphasis on how planning obligations can be used to protect and enhance historic assets. This has been incorporated into the updated SPD.
- 5.16 Some of the developers that responded have questioned when the planning contributions sought were last subject to viability assessment and have raised concern if the updated SPD were to push all developments into an open book viability assessment. The 2017 SPD was informed by viability assessments carried out in 2014 and 2016. The updated SPD seeks to increase planning contributions reasonably and proportionately to 2022 prices and seeks to avoid a ‘real terms’ increase in the overall planning contributions sought.
- 5.17 Developers have raised concern about whether the updated SPD is imposing new energy performance standards beyond building regulations, which would have a material impact on development viability. The updated SPD emphasises existing policy requirements, including the requirement for Energy Statements to be submitted as part of all major planning applications, and provides more detailed advice on strategies that can be considered as part of Energy Statements. Imposing requirements for a quantified uplift in energy performance would amount to a new policy requirement that would need to be made through the ongoing Local Plan Update.
- 5.18 Some developers and Registered Providers have raised concern with the requirement that affordable housing be retained in perpetuity. It should be noted that the updated SPD requires affordable housing to be retained in perpetuity, or the equivalent level of discount recycled into other affordable housing. This requirement is considered to be necessary in light of the severe need for affordable housing in Torbay.
- 5.19 The updated SPD has been drafted with input from internal departments throughout the process, and specifically through a period of internal consultation in May-June 2022. This

included engagement with the Torbay Strategic Housing Board in which concerns were raised regarding the potential adverse impacts of incorporating First Homes into policy.

- 5.20 A draft update of the SPD was the subject of public consultation in late 2019 but was not proceeded with due to the onset of the Pandemic, which made it an inappropriate time to adopt a document dealing with planning contributions. However, the representations received from the 2019/20 consultation (which are included in the summary in Appendix 2) have been considered as part of the updating of the SPD.
- 5.21 It is recognised that there are areas where the SPD could be updated further, however an SPD cannot be used to make new planning policy or to impose new requirements that are not supported within existing policy. Planning obligations need to align with the existing Local Plan framework, and a more extensive review of policies and associated planning obligations will take place as part of the Local Plan Update.

## 6. Purchasing or Hiring of Goods and/or Services

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- 6.1 No direct impact.
- 6.2 S106 obligations could cover other matters such as waste disposal or maintenance contracts as well as the work of TorVista Homes and other Registered Providers.
- 6.3 The updated SPD has sought to limit planning obligations to those sought under the existing Local Plan framework. A more comprehensive review of planning obligations would have required a viability assessment which would have required that an external specialist consultant be appointed to provide this service. This would be more appropriately carried out as part of the Local Plan update.

## 7. Tackling Climate Change

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- 7.1 The updated SPD seeks to emphasise and encourage more robust use of the existing policy framework pertaining to climate change, energy efficiency and low carbon development through more detailed guidance. This includes, amongst other things, the requirement that major applications include an Energy Statement setting out how the criteria in Policies SS14 and ES1 of the Local Plan have been met as part of the planning and design of the proposed development. However, more major changes to these policies can only be undertaken through the ongoing Local Plan Update.
- 7.2 The Council's Climate Emergency Officer has been consulted as part of the engagement with internal partners, and the officer's feedback and recommendations have been incorporated into the SPD or into the Local Plan Update as appropriate. The updated SPD adds additional guidance on design matters to reduce the impact of development on climate change and to build in resilience.

## 8. Associated Risks

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- 8.1 If the planning contributions sought in terms of the SPD are not updated to 2022 prices, then the planning contributions paid by developers will be insufficient to adequately cover the costs associated with meeting the infrastructure needs arising from development. This would have a negative impact on Council funds and potentially on the quality of infrastructure delivered in the Bay.
- 8.2 We are aware that there is a cost of living crisis and that development has been affected by the broader economic climate. We delayed updating the SPD in 2020 due to the onset of the Covid Pandemic, however if we do not update the SPD now then the planning contributions received will amount to a reduction in real terms compared to the cost of providing infrastructure which is increasing. We are recommending that the update is to May 2022 prices rather than November 2022 due to the recent price volatility.
- 8.2 Given the limitations with respect to development viability in the current context, it is important to ensure that s106 planning obligations are not so burdensome that they render development unviable. The updated SPD therefore seeks to ensure that planning contributions are accurate and reflect 2022 prices, while keeping planning contributions reasonable and proportionate so as not to stifle desirable development.
- 8.3 Given the wide-ranging infrastructure needs that the SPD needs to address, and the need to meet technical requirements, SPDs of this nature inevitably have some level of complexity. There is a need for s106 planning obligations to be well-evidenced, but also for the SPD to be accessible and usable. There is a risk that, if the updated SPD were to become overly detailed or comprehensive, the document would become excessively complex and the timeframe for the adoption of the SPD (which primarily seeks to update costs to 2022 prices) would be delayed. The updated SPD comprises a 'light touch' update of the 2017 version of the SPD, and substantive changes to policy need to be made through the Local Plan Update.

## 9. Equality Impacts - Identify the potential positive and negative impacts on specific groups

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	Positive Impact	Negative Impact & Mitigating Actions	Neutral Impact
Older or younger people	<ul style="list-style-type: none"><li>Increased planning contributions to meet the infrastructure needs of all age groups.</li></ul>		

	<ul style="list-style-type: none"> <li>Increased planning contributions towards the cost of providing additional school places for young people.</li> <li>Improvements in the provision of public open space has the potential to particularly benefit children.</li> </ul>		
People with caring Responsibilities	Increased planning contributions to meet the infrastructure needs of people with caring responsibilities.		
People with a disability	<ul style="list-style-type: none"> <li>Increased planning contributions to meet the infrastructure needs of people with disabilities.</li> <li>Improvements to the funding of school places for young people with SEND.</li> </ul>		
Women or men	<ul style="list-style-type: none"> <li>Increased planning contributions to meet the infrastructure needs of women and men.</li> <li>Evidence suggests that in the absence of dedicated active travel infrastructure, more men are likely to cycle than women. Improvements to the funding of active travel infrastructure could therefore help address this imbalance through delivering better quality infrastructure that fosters greater security and confidence.</li> </ul>		
People who are black or from a minority ethnic	Increased commuted sums for affordable		



background (BME) (Please note Gypsies / Roma are within this community)	housing. Evidence suggests that people from a minority ethnic background may have a higher likelihood of needing affordable housing.		
Religion or belief (including lack of belief)			There is no differential impact.
People who are lesbian, gay or bisexual			There is no differential impact.
People who are transgendered			There is no differential impact.
People who are in a marriage or civil partnership			There is no differential impact.
Women who are pregnant / on maternity leave			There is no differential impact.
Socio-economic impacts (Including impact on child poverty issues and deprivation)	<ul style="list-style-type: none"> <li>Increased commuted sums for affordable housing will have a positive impact on deprivation.</li> <li>Improvements to the provision of public open space and green infrastructure.</li> <li>Increased emphasis on the promotion of local labour agreements.</li> </ul>		The requirement in Paragraph 65 of the NPPF for 10% of homes in major developments to be delivered as affordable home ownership improves the delivery of affordable housing for sale, but to the detriment of affordable housing for rent.
Public Health impacts (How will your proposal impact on the general health of the population of Torbay)	Increased planning contributions to mitigate the impact of developments which create a health/social care need.		

## 10. Cumulative Council Impact

### 10.1 No direct impact.

## 11. Cumulative Community Impacts

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- 11.1 S106 planning obligations help provide community infrastructure including the pooling of moneys towards jointly needed infrastructure.
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## Appendix 1: Planning Contributions and Affordable Housing SPD

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## Appendix 2: Summary of Representations

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