

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

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