

**Meeting:** Council

**Date:** 16<sup>th</sup> July 2020

**Wards Affected:** All

**Report Title:** Schools' Capital Programme 2020/21

**Is the decision a key decision?** Yes

**When does the decision need to be implemented?** Work on the acquisition of the new school site would commence immediately following the decision. The projects in Appendix 1 would also start immediately to maximise the school summer holiday period.

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## 1. Proposal and Introduction

1.1. Children's Services are seeking approval to implement its Schools' Capital Programme using capital allocations received from the Department of Education (DfE). The projects proposed are set out in Appendix 1. The investment will ensure there are sufficient school places to meet demand and will provide much needed improvements across the school estate.

1.2. The total capital funding allocated to Torbay Schools is just over £9m:

- Basic Need Allocation 2021/22 £8.6m
- Schools Condition Allocation 2020/21 £417,886

The amount of funding available means that the Council can take this opportunity to make a significant improvement to the school estate during these challenging times. The projects outlined will have a significant impact on the teaching and learning environment for a large number of pupils across all sectors.

1.3 In addition to the projects outlined in Appendix 1, this report also seeks Council's approval to progress a compulsory purchase order ("CPO") to compulsorily acquire land for a new primary school in Paignton. The land subject to the proposed compulsory purchase order is land at Wilkins Drive, Paignton shown edged in red on the plan attached at Appendix 2 (the "Land").

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## 2. Reason for Proposal and associated financial commitments

2.1. The Children's Services Capital Programme prioritises investment in Torbay Schools to ensure the LA can fulfil its statutory duty to provide all children and young people in Torbay access to high quality education provision.

- 2.2. The funding from the DfE is allocated to the Council specifically for investment in schools and if not utilised for that purpose would be at risk of claw back by the Department.
- 2.3. The Schools' Capital Programme has been developed in accordance with the funding allocations awarded, this means the Council will not need to commit any of its own resources towards the implementation of the projects specifically identified in Appendix 1 or the acquisition of the new school site.
- 2.4. To ensure there are sufficient primary school places in Paignton, Officers are supporting an application to the DfE for a second free school. Following initial conditional approval for the school by the DfE, there have been delays in progress because the site originally proposed for the school is subject to a planning appeal and there are significant risks in terms of timescale and deliverability. As a result, Officers have identified an alternative site for the new primary school and are trying to acquire the site through negotiations. This has not yet been agreed and may require a compulsory purchase in order to secure the site.

### **3. The Council's Powers of Compulsory Acquisition**

- 3.1 The Council has approached the land owners of the main site and the southern land with a view to acquiring the Land by private treaty. The Council will continue to approach the land owners of the main site and the southern land (coloured blue on the plan) following members resolution to proceed with CPO(s). However, it may be that negotiations are unsuccessful and if this is the case the Council would use its powers of compulsory purchase to acquire the Land. Consequently this report seeks authorisation for the Council to make any Compulsory Purchase Order(s) which would allow the acquisition of the Land and any other land required for the new school site by the Council. Following the making of the CPO, confirmation would be sought from the Secretary of State who will seek representations on whether the CPO should be confirmed and may hold an inquiry before making its decision. The Secretary of State's consideration will include considering whether there is a compelling case in the public interest for acquisition of the land and that the policy and legal tests for obtaining a CPO have been met.
- 3.2 The Council has compulsory purchase powers within the Education Act 1996 to acquire land for educational purposes. These are considered to be the most appropriate powers in this case and are considered in this report.
- 3.3 Government Guidance on Compulsory purchase process and the Crichel Down Rules is also relevant and advises that, when making a CPO under section 530 of the Education Act 1996, the Council should have regard to any statutory requirements from the Department for Education. Again, these are dealt with in the body of this report.
- 3.4 Provision of a new primary school will ensure that the Council can continue to meet its statutory duty to provide all children and young people in Torbay access to high quality education. Without being able to utilise compulsory purchase powers this may not be possible.
- 3.5 The site is currently allocated for employment uses but pre-application discussions have been undertaken with the Council's Strategic Planning Department which have indicated that support would be given for the proposed use of the site as a primary school. Officers are in discussions with the DfE and the Local Planning Authority

regarding the submission of an outline planning application.

3.6 Funding for acquisition of the Land for the primary school is proposed to be met using the Basic Need Grant 2021/22. This includes any costs incurred in respect of making and implementing a CPO(s). The costs of construction of the school will be funded by DfE up to a level which is considered sufficient by DfE to construct a 2 form entry primary school with nursery. Once the Land is acquired it will be transferred to DfE at nil value.

3.7 Compensation will be payable to any landowner or rights holder whose interests are compulsorily acquired. Compensation will be assessed on the basis of the Compensation Code which essentially applies an open market valuation but which disregards any increase or decrease resulting solely from the Council's scheme underlying the CPO(s). The Council has received internal valuation advice on the likely value of the Land if acquired by compulsory purchase and will continue to do so as part of any compulsory or voluntary acquisition. The Council have the funds available to meet any compensation claims.

#### **4. Recommendation(s) / Proposed Decision**

4.1 That the Council agrees the list of projects and funding allocations as set out in Appendix 1.

4.2.1 That delegated authority be given to the Chief Executive to continue negotiations with the landowner(s) and any other person with an interest to acquire by agreement the Land and any other land, interests or rights subsequently identified as being required in consultation with the Cabinet Member for Children's Services and Section 151 Officer on any Heads of Terms.

4.2.2 That, having taken into account previous negotiations to acquire the Land, the making of any CPO(s) pursuant to the Education Act 1996, or any other appropriate power, for the Land and any other land, interests or rights subsequently required to deliver the primary school. The Chief Executive be given delegated authority to give effect to this decision, including;

- (i) the taking of all necessary steps required to secure the making of the CPO(s) and for the subsequent confirmation and implementation of the CPO(s) including the publication and service of all notices, statement of reasons and presentation of the Council's case at public inquiry, if necessary, to secure confirmation of the CPO(s) by the Secretary of State;
- (ii) to carry out any surveys on the Land or any other land required and enter as may be required in order to deliver the proposed development by CPO(s) which the Council is authorised to carry out either by consent of the relevant landowner or under section 172 to 179 of the Housing and Planning Act 2016;
- (iii) to enter into agreement(s) with any person or body to secure the withdrawal of objections to the CPO(s) and/or to negotiate and agree terms for the acquisition by agreement of any land, interests or rights as may be required for the new primary school; and

- (iv) to pay all necessary compensation either as agreed or as determined by the Upper Tribunal (Lands Chamber) in relation to the acquisition of land and other interests or for the overriding or acquisition of rights.

4.2.3 That Council delegate to the Chief Finance Officer the approval of the expenditure of monies from the Children's Services Capital Programme Basic Need Funding required to cover the acquisition of the Land and any land, interests or rights as may be required for the scheme, either by agreement or by CPO.

4.2.4 That once the Land, and any other land required, has been acquired either by negotiation or via a CPO(s) Council approve the disposal of the land required for the new primary school to the Department of Education at Nil Value as the required contribution to the development of a two form of entry primary school. The DfE will in turn provide the capital to build the school through the Free School Programme. The land would be leased from the DfE to the Academy Trust running the new free school.

## Appendices

Appendix 1: Schools' Capital Programme 2020/21

Appendix 2: Plan showing land at Wilkins Drive (the Land)

Appendix 3: Plan showing proposed primary school layout on land at Wilkins Drive

## Background Documents

School Place Planning Statements available on Torbay Council website:

<https://www.torbay.gov.uk/schools-and-learning/information-for-schools/capital-planning/>

## Report Clearance

<b>Report clearance:</b>	<b>This report has been reviewed and approved by:</b>	<b>Date:</b>
Chief Executive	Steve Parrock	
Monitoring Officer	Anne-Marie Bond	
Chief Finance Officer	Martin Phillips	
Relevant Director/Assistant Director	Rachael Williams	

## Section 1: Background Information

### 1. What is the proposal / issue?

The first part of the proposal is for Officers to use the Capital Allocations received by the LA to be spent in accordance with Children's Services Capital Programme.

The total capital funding awarded is just over £9m and includes:

- Basic Need Allocation £8.6m
- Repairs & Maintenance Funding £417,886

The second part of the proposal is the acquisition of a site for a new primary school in Paignton. Torbay has seen an increase in primary aged pupils over the last 8 years, particularly in Paignton. This has resulted in several school expansions and two bids to the DfE for funding to open new primary schools in the town through the free schools programme. The first free school has been fully approved and is in development with the expected opening in September 2021.

The second free school application (Windmill Academy) has received conditional approval dependent on future housing growth in the area. If there is continued development over the next 3 to 5 years then approval would be granted for the second free school and the DfE would provide capital to build the free school. The contribution required from the Council to secure this inward investment is the land needed for the school. This is a standard requirement for LAs that have new schools funded through the free schools programme.

As part of its strategic planning for new school places in Paignton, Officers have sought Section 106 contributions from developers and have been trying to secure a school site for several years. The proposed development at Inglewood, Paignton has a school site identified as part of a developers contribution and this site was named in the second free school application. However, this development has not been approved despite the planning application being submitted some time ago. Officers have, therefore, approached the DfE asking for them to consider an alternative site for the free school. The DfE have confirmed that they will consider an alternative site for the school and have visited the Wilkins Drive site which is the alternative site being proposed. The Council had previously received a report on this site and agreed it was appropriate for a primary school, however at that time the DfE considered this site to be in the wrong part of Paignton for the St Michael's Free School. An alternative site for St Michael's has now been secured at the old Tower House School site.

Over the last 5 years, the Council and the DfE's own consultants, LocatEd, have invested significant time and resource in trying to identify a possible site for a new school in Paignton. Over 20 different sites have been considered and rejected due to issues and concerns with either size, access, drainage, planning restrictions, location, etc. There are no easy, quick win alternative sites of sufficient size that could be acquired within the necessary timeframe in the Paignton area. [The DfE have indicated that if a site is not identified within the next 12 months and secured within a two year period then it is possible that the approval for the second free school will be withdrawn with no guarantee that Torbay would be successful in securing approval from future free school waves.

The site at Wilkins Drive has been identified as the most appropriate site. It is anticipated that it can also be delivered in the required timescales.

Although primary numbers in Torbay are stabilising, there is still a need for a new primary school in the Western part of Paignton to meet the demand arising from recently completed, on site and approved housing developments. Since 2012, 650 homes have been built on the Western Corridor of Paignton. Another 500 houses are currently under construction and another 170 are expected to be given planning approval within the next 2 months. There is no primary school within this new community.

In addition, there are a further 900 houses proposed for the Western corridor that do not yet have planning approval. All of these developments are in the Western corridor separated from the rest of Paignton by the Brixham Road and Totnes Road. These are main roads that act as a distinct boundary/barrier for parents. There are no primary schools within the Western corridor where all of these housing developments are happening. This equates to nearly 2100 new dwellings (mainly 2/3 bedroom houses) without a primary school to serve them.

For this reason alone there is a strategic need for a primary school to serve this new community. If you add in the number of houses completed/being built/still to be built, it is critical that a new primary school is delivered within this location.

In planning terms, the Wilkins Drive site is proposed for development as part of the "Future Growth Area" (Local Plan Policies SS2.4 and SDP3.4). It has planning permission for employment use as part of a wider mixed use scheme (P/2014/0983). Although a school is not a class B1 employment use, it would provide significant jobs and would be regarded as a suitable use for the site.

Planning permission has not yet been secured for the school but Torbay Council's Strategic Planning Department supports the need for a new primary school in the area of Wilkins Drive as it would provide important infrastructure for numerous large developments that have either already been approved and built or are proposed within the Local Plan in the medium to long term. With regard to this particular site at Wilkins Drive, pre-application officer advice from the Council as Local Planning Authority is that the land off Wilkins Drive, adjacent to the "Aldi" Local Centre, remains the most suitable site for a primary school serving the new development on the West of Paignton. Most importantly, the site is very close to the community it would serve and there are opportunities to encourage walking and cycling/scootering to school as well as shared trips with the local centre. There are planning and transport policies that support this position. Notably National Planning Policy Framework paragraph 94 states that 'it is important that a sufficient choice of school places is available to meet the needs of existing and new communities. Local planning authorities should take a proactive, positive and collaborative approach to meeting this requirement, and to development that will widen choice in education. They should: a) give great weight to the need to create, expand or alter schools through the preparation of plans and decisions on applications; and b) work with schools promoters, delivery partners and statutory bodies to identify and resolve key planning issues before applications are submitted".

The Torbay Local Plan (A landscape for success 2012 to 2030) also supports this position, notably that a school would support employment through policies SS1, SS4 and SS5 refer. Also Policy SS11.4 would "promote social inclusion, and seek to

eliminate exclusion based on education'. Plan Policy SC3 "Education, Skills and Local Labour", states that "The Local Plan will support the improvement and provision of new educational facilities to meet identified needs in Torbay. This includes both the expansion of existing schools to meet identified short to medium term needs, and construction of new schools to address longer term requirements associated with the delivery of new homes". Further Policy SC5 considers Child Poverty and seeks to reduce child poverty, including through SC5.5 supporting investment in existing schools and contribution to improved equality of access to high quality education provision for all, including early years provision.

To ensure that the site at Wilkins Drive is of sufficient size and is suitable for the new primary school, Officers have commissioned some high level feasibility drawings to show how the school would fit on to the site. This plan is attached as Appendix 3. Although the site at 3.5 acres is slightly smaller than the DfE recommended area for a school of this size (3.9 acres), this is not an unusual scenario as a large proportion of primary schools in Paignton are located on sites smaller than the recommended area. There are design solutions to enable a 2FE primary school to be delivered on this site. The Plan at Appendix 3 indicates that the site could comfortably accommodate the size of buildings required and provision of a multi-use games area would increase the usability of the outdoor space.

Officers are in discussions with the DfE and the local planning department regarding the submission of an outline planning application

**2. What is the current situation?**

As shown above, the Council's capital funding consists of Basic Need funding and the Schools' Condition Allocation. These grants come from central government and are allocated for the following purposes:

**Basic Need 2021/22** – This funding is awarded on a needs basis following the submission of data by the LA on its current and projected pupil numbers. The DfE compares this data to the available capacity and where there is a shortfall provides funding to address this. Following last year's data submission, the DfE recognised that Torbay is short of capacity, mainly in the secondary sector, and awarded an allocation of £8.6m. This funding is specifically for providing school places and for addressing the shortfall shown by the data.

**Schools Condition Allocation 2020/21** – This is capital investment awarded by central government for repairs and maintenance works. Investment is prioritised to ensure that every child has a good quality school place in buildings which are safe, fit for purpose and well maintained.

A paper outlining Schools' Capital Programme, how it has been developed, the projects identified and how they are to be funded from the available resources is attached as **Appendix 1**.

The key factor in identifying these priorities has been the LA's statutory duty to provide sufficient, high quality school places for all the children and young people in Torbay. As a result three of the highest priority projects for the LA relate to the provision of additional school places.

In 2018, Members approved the expansion of Paignton Academy to address the secondary shortfall in Paignton. This expansion is underway and is the first call on

funding in the Schools' Capital Programme. Please see Appendix 1 for a full description of the funding requirements for this scheme.

The second priority is for the LA to address the shortfall in secondary capacity in Torquay. Officers have brokered an agreement with St Cuthbert Manx to admit 60 pupils above their planned admission number (PAN) of 195 in September 2021. This is in return for capital investment to provide additional and improved facilities. Further detail is included in Appendix 1.

The third priority is the expansion of Mayfield Special School. This is the only special school in Torbay for children and young people with severe and profound learning difficulties. Demand for this type of provision is rising and the school is already oversubscribed with numbers expected to increase for the next two academy years. The proposal is to future proof the school and expand its capacity so that it can meet current demand and further demand expected from 2021.

In addition to these three major schemes there are various other funding allocations required to support schemes that have incurred additional costs as a result of the COVID 19 pandemic. Further details are included in Appendix 1.

The cost of the projects outlined in Appendix 1 is less than the Basic Need 2021/22 allocation.

The table below shows a summary of the funding allocations required to implement the Schools Capital Programme 2020/21.

The remaining funds will be used to secure the acquisition of the Land for the new primary school and any additional projects that would be based on Children's Services priorities for providing school places and maintaining the school estate. Officers are asking that the allocation of the remaining funding is agreed in consultation with the Chief Executive, Lead Member for Children's Services and the Head of Finance using delegated powers.

Basic Need 2021/22 Allocation = £8,609,731

Project (in priority order)	Amount	Description
<b>Paignton Academy Expansion Maths Block</b>	£960,000	Reimbursement of borrowing against future allocations agreed to fund project.
<b>Paignton Academy Expansion Classroom Adaptations</b>	£35,000	Additional work required to mitigate against delays caused by COVID 19
<b>Paignton Academy Expansion Contractual Costs</b>	£50,000	Additional contractual costs as a result of COVID 19 delays
<b>Brunel Academy Vocational Block</b>	£50,000	Additional contractual costs as a result of COVID 19 delays
<b>Burton Academy Extension</b>	£25,000	Additional contractual costs as a result of COVID 19 delays



<b>St Cuthbert Mayne Expansion</b>	£3,600,000	New project to provide additional secondary school places in Torquay
<b>Mayfield Special School Expansion</b>	£1,500,000	New project to provide additional special school places
<b>Sixth Day Provision – Temporary Solution</b>	£250,000	A temporary solution is required as a result of growing numbers at Mayfield and the delays at Burton resulting in a delay to the availability of the Polsham Centre.
<b>SUB-TOTAL</b>	<b>£6,470,000</b>	

### 3. What options have been considered?

If the Council does not implement the recommendations then the implications for maintaining the status quo would be as follows:

- The Council would not be able to fulfil its statutory obligation to provide sufficient school places
- The Council would not be able to effectively manage demand and could face unknown costs arising from legal challenge, increased transport costs or out of area placements
- The inherent risks arising from not maintaining the school estate – school closures or harm to those attending
- The funding would be clawed back by the DfE if not spent on providing school places or maintaining school buildings
- Mayfield is the only PMLD special school in Torbay; if it has insufficient capacity then pupils will need to be placed out of area which is disruptive to those individuals and costly for the LA.

In respect of the CPO the Council has considered the following alternative options to compulsorily acquiring the Order Land:

(a) *Do nothing*

While this option means that the Council incurs no cost and no financial liabilities it will also mean that the Council is unable to meet its statutory duties without the Council taking action.

(b) *Negotiations for voluntary acquisition*

Some negotiations have occurred with the owners of the main school site but these have not progressed because that owner could not deliver the southern land (coloured blue on the plan), which is in a separate ownership. The Council has not, to date, entered into direct negotiations with the owner of the southern land (Cavanna Homes) but intends to do so following members resolution to proceed with CPO.

	<p>(c) <i>Not exercising the CPO</i></p> <p>The option of not exercising the CPO if it is confirmed is also being considered. If agreement is reached with the landowners such that all the necessary rights to deliver the school are secured before it is necessary to exercise the CPO then the decision can be taken not to exercise it. Progression of the CPO in parallel with negotiation provides the option to use powers should they be required, the Council retains the ability not to implement any part of a CPO. The situation where a CPO is obtained but not needed as agreement is ultimately reached is considered a positive outcome in the compulsory purchase guidance.</p>
4.	<p><b>How does this proposal support the ambitions, principles and delivery of the Corporate Plan?</b></p> <p>The proposal supports the Council's ambitions to create a prosperous and healthy Torbay. An identified Targeted Action of the plan is for the Council to protect all children and ensure they are given the best possible start in life. Ensuring that there are sufficient, high quality school places in the area is crucial to improving the outcomes of young people and giving them this best start in life.</p>
5.	<p><b>How does this proposal contribute towards the Council's responsibilities as corporate parents?</b></p> <p>Whilst the Council's responsibilities as corporate parents is already safeguarded through the admissions policy and the prioritisation of children looked after in the admissions process; this proposal will ensure that there sufficient places on offer and that schools continue to provide high quality and safe learning environments.</p>
6.	<p><b>How does this proposal tackle deprivation?</b></p> <p>This proposal tackles deprivation and inequality by ensuring every child has a place in a local school giving them the best possible opportunity to achieve and succeed.</p> <p>In addition it is well recognised that educational attainment can play a significant part in improving the opportunities available to and the aspirations of an individual.</p>
7.	<p><b>How does this proposal tackle inequalities?</b></p> <p>This proposal tackles inequality by ensuring that every child has the opportunity to access a high quality school place within their local area.</p>
8.	<p><b>How does the proposal impact on people with learning disabilities?</b></p> <p>Part of the proposed Capital Programme is to ensure Mayfield Special School has sufficient accommodation to meet the needs of its current roll and future numbers based on data from the SEN Team. This is the only special school in Torbay offering places for children with severe and profound learning difficulties. The school is rated good by Ofsted and is already oversubscribed. To increase the provision will directly benefit pupils with learning difficulties.</p>
9.	<p><b>Who will be affected by this proposal and who do you need to consult with?</b></p>

	<p>Parents, children and young people in Torbay who will benefit from the provision of sufficient, high quality school places in the area and capital investment in the school estate to create safe and conducive learning environments.</p> <p>Other key stakeholders affected are School Staff and Governors/Trustees, the Department of Education and the Regional Schools Commissioner. Officers have also consulted with the relevant Diocesan Authorities and neighbouring LAs.</p> <p>Those with an interest in any land to be acquired to provide a new primary school will be consulted as part of the CPO process.</p>
<b>10.</b>	<p><b>How will you propose to consult?</b></p> <ul style="list-style-type: none"> <li>• Meetings and ongoing dialogue with the key stakeholders identified above and those with an interest in any land needed for a new primary school</li> <li>• School to carry out their own consultation with parents, students and staff</li> <li>• Planning consultation, as and when appropriate</li> <li>• CPO consultation requirements including contact with stakeholders, publication of notices etc.</li> </ul>

<p><b>Section 2: Implications and Impact Assessment</b></p>	
<b>11.</b>	<p><b>What are the financial and legal implications?</b></p> <p>The DfE has recognised the pressures facing the LA on school places and has awarded the Council £8.6m to address the projected shortfall.</p> <p>This funding is specifically allocated to enable the LA to fulfil its statutory obligation to provide sufficient high quality school places for children in the local area; failure to do so would be in breach of that duty and the allocations may have to be repaid or future allocations would be reduced as a result.</p> <p>This £8.6m is sufficient to cover the schemes outlined in the Schools' Capital Programme. Therefore there is no call on Council resources.</p> <p>The proposed projects would potentially lead to revenue savings for the Council by reducing expensive out of area special school placements and any possible additional transport costs if pupils are placed out of area.</p> <p>The DfE's Schools' Condition Allocation is allocated to address priority repair works at maintained schools.</p> <p>The LA as a responsible body, corporate parent and service provider, has a duty to protect the wellbeing and health &amp; safety of the pupils, staff and others attending school sites and consequently has a duty to ensure the buildings are maintained to a reasonable condition.</p> <p>There are also potentially revenue savings for the schools through the replacement or repair of elements which are life expired or are inefficient. Any recouped</p>

resources can then be used by the school for investment in other priorities such as learning resources.

In respect of the CPO(s) funding for acquisition of the Land for the primary school is set out above. This includes any costs incurred in respect of making and implementing a CPO(s). The costs of construction of the school will be covered by DfE which is considered sufficient by DfE to construct a 2 form entry primary school with nursery. Once the Land is acquired the land required for the primary school will be transferred to DfE at nil value.

The proposal would authorise the making of a Compulsory Purchase Order which seeks to authorise the acquisition of property against the wishes of the owners. Following the making of the order, confirmation would be sought from the Secretary of State who will seek representations on whether the order should be confirmed and may hold an inquiry before making their decision. The Secretary of State's consideration will include considering whether the Council has established that all of the legal tests for obtaining an Order have been met.

Section 530 of the Education Act 1996 enables the Secretary of State to authorise the Council to compulsorily purchase any land (whether within or outside their area) which is required for the purposes of any school or institution which is, or is to be, maintained by them or which they have power to assist, or is otherwise required for the purposes of their functions under this Act or is required for the purposes of an Academy (whether established or to be established). This, coupled with the general powers of acquisition under the compulsory purchase legislation including the Acquisition of Land Act 1981, are the most appropriate powers in this case.

Government Guidance on Compulsory purchase process and the Crichel Down Rules is also relevant and advises that, when making a CPO under section 530 of the Education Act 1996, the Council have had regard to any requirements from the DfE and is not aware of any other impediments to the delivery of the school on the Land.

If the Order is confirmed and the Council decides to exercise the powers granted then compensation will be payable to any landowner or right holder whose rights are compulsorily acquired. Compensation will be assessed as the value of land to the owner, and any increase or decrease in value attributable solely to the development of the Order Land for the scheme underlying the CPO must be discounted.

The compensation liabilities will be borne by the Council.

**12. What are the risks?**

- If the Council is unable to provide sufficient school places then it would be in breach its statutory school place planning duty and could also incur unnecessary additional expense through transport costs and out of area placements.
- If the school estate is not managed effectively then there is a risk of injury or harm to an individual with the LA being liable.
- If condition issues are not addressed in a timely manner it could result in an escalation of the issue with possibly increasing costs.

	<ul style="list-style-type: none"> <li>• If condition issues are not addressed they could potentially force the full or partial closure of a school.</li> <li>• CPO risks <ul style="list-style-type: none"> <li>➤ A key risk is the failure to acquire the Land in a timely manner, which would jeopardise the funding available to deliver the new primary school. This risk will be mitigated through progressing the compulsory acquisition.</li> <li>➤ It is likely that the CPO(s) will be made in advance of planning permission being obtained for the new primary school. Paragraph 15 of the CPO Guidance states that the acquiring authority will need to demonstrate that there are “no obvious reasons why it might be withheld”. It will be mitigated by the Council putting forward a compelling case for the CPO in advance of obtaining planning permission, and by demonstrating that, when applied for, there is no reason why planning permission for the primary school will not be granted. It can be noted in this regard that the view of Council’s planning department has been sought and the preliminary views received is that there is no in-principle reason why planning permission would not be granted.</li> <li>➤ The preparation of a CPO(s) and related documents is a technical and complex area, carrying a risk of challenge. However, the Council has retained experienced and expert external legal advice on this and will continue to do so.</li> <li>➤ In considering whether to make the CPO(s) the Human Rights Act 1998 applies. The relevant rights that have been considered and are set out below.</li> <li>➤ There is a risk that owners and occupiers will seek sums in excess of the estimates for the costs of land acquisition.</li> </ul> </li> </ul>
<p><b>13.</b></p>	<p><b>Public Services Value (Social Value) Act 2012</b></p> <p>All works procured in connection with the new accommodation will be procured in line with the Public services Value Act 2012.</p>
<p><b>14.</b></p>	<p><b>What evidence / data / research have you gathered in relation to this proposal?</b></p> <ul style="list-style-type: none"> <li>• Latest Admissions data, Special Educational Needs data, housing completion data and the most recent projections have been used to identify what capacity is needed in the area over the next 5 years and to identify where the shortfalls are expected.</li> <li>• Condition reports commissioned by Children’s Services have been used to identify and prioritise projects to be funded by the Schools Condition Allocation.</li> <li>• Officers have used DfE guidance and recommendations for school buildings when developing proposals to create optimum learning environments.</li> </ul> <p><b>Human Right Considerations</b></p> <p>The Human Rights Act 1998 (“HRA 1998”) incorporated into domestic law the European Convention on Human Rights (the “Convention”). Under the HRA 1998, it</p>

is unlawful for a public body such as the Council to act in contravention of the Convention.

In resolving to make a CPO(s) of the Land, the Council has considered the rights of the owners of the Land, in particular:

- (a) Article 1 of the First Protocol, which provides that every person is entitled to peaceful enjoyment of their possessions, and that no one should be deprived of his possession except in the public interest and subject to the law; and
- (b) Article 6 of the First Protocol which protects the right to a fair hearing by a tribunal in the determination of civil rights and obligations.
- (c) Article 14 of the First Protocol which provides for the rights in the Convention to be enjoyed without discrimination on any ground such as sex, race, colour, language, religion political or other opinion, national or social origin, association with a national minority, property, birth or other status.

The Council must be conscious of the need to strike a balance between the rights of the individual and the interests of the public.

It is considered that there is a compelling case in the public interest for the acquisition of the Land which outweighs the Convention rights and that the use of compulsory purchase is proportionate. This conclusion is based on the significant benefits generated by the scheme, which include but are not limited to the following:

- The Council would not be able to fulfil its statutory obligation to provide sufficient school places
- The Council would not be able to effectively manage demand and could face unknown costs arising from legal challenge, increased transport costs or out of area placements
- The Council would not be able to provide all children and young people in Torbay access to high quality education.

In this case it should be noted that the land which the Council is intending to acquire is currently unoccupied and, therefore, acquisition would not result in displacement of any occupier from the land nor relocation of any existing use being necessary.

#### **EQUALITY ACT 2010 AND PUBLIC SECTOR EQUALITY DUTY**

The Equality Act 2010 requires the promotion of understanding of the importance of equality and diversity, and the encouragement of good practice in relation thereto. In the promotion of the CPO(s), the Council has been mindful of the need to properly discharge its obligations under the provisions of this legislation. An assessment under the Equality Act 2010 has been carried out in connection with the proposed CPO(s) and is attached below.

**15. What are key findings from the consultation you have carried out?**

Not applicable.

<b>16.</b>	<b>Amendments to Proposal / Mitigating Actions</b>  Not applicable.
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## Equality Impacts

17.	Identify the potential positive and negative impacts on specific groups			
		<b>Positive Impact</b>	<b>Negative Impact &amp; Mitigating Actions</b>	<b>Neutral Impact</b>
	Older or younger people	Sufficient school capacity to meet local demand. School places provided within a reasonable distance from home location will have a positive impact on the local children who will not have to travel longer distances to school. Optimum learning environment in line with DfE recommendations. Safe learning environments.		
	People with caring Responsibilities	Sufficient school capacity to meet local demand. School places provided within a reasonable distance from home location will have a positive impact on the local children who will not have to travel longer distances to school. Optimum learning environment in line with DfE recommendations. Safe learning environments.		
	People with a disability	New provision will be DDA compliant &, wherever possible, look to address existing issues on the site. Increased specialist provision in the area.		



	Women or men		No differential impact
	People who are black or from a minority ethnic background (BME) <i>(Please note Gypsies / Roma are within this community)</i>		No differential impact
	Religion or belief (including lack of belief)		No differential impact
	People who are lesbian, gay or bisexual		No differential impact
	People who are transgendered		No differential impact
	People who are in a marriage or civil partnership		No differential impact
	Women who are pregnant / on maternity leave		No differential impact
	Socio-economic impacts (Including impact on child poverty issues and deprivation)	Ensuring all children have the best possible opportunity to thrive and succeed. Ensuring best outcomes for all children.	
	Public Health impacts (How will your proposal impact on the general health of the population of Torbay)		No differential impact
<b>16</b>	<b>Cumulative Impacts – Council wide</b>	Insufficient school places to meet demand will mean the Council would be in breach of its statutory duty and will not be meeting its Corporate Priority to give every child the best possible start in life. Out of area placements and increased transport costs will place more pressure on Council's budgets.	
<b>17</b>	<b>Cumulative Impacts – Other public services</b>	None	