



Friday, 2 June 2017

## **DEVELOPMENT MANAGEMENT COMMITTEE**

A meeting of **Development Management Committee** will be held on

**Monday, 12 June 2017**

commencing at **2.00 pm**

The meeting will be held in the Meadfoot Room, Town Hall, Torquay

### **Members of the Committee**

Councillor Barnby  
Councillor Lewis (B)  
Councillor Darling (S)  
Councillor Kingscote  
Councillor Hill

Councillor Morey  
Councillor Stringer  
Councillor Tolchard  
Councillor Winfield

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**A prosperous and healthy Torbay**

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

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01803 207087**

Email: [governance.support@torbay.gov.uk](mailto:governance.support@torbay.gov.uk)

[www.torbay.gov.uk](http://www.torbay.gov.uk)

# DEVELOPMENT MANAGEMENT COMMITTEE AGENDA

1. **Election of Chairman**

To elect a Chairman/woman for the 2017/18 Municipal Year.

2. **Apologies for absence**

To receive apologies for absence, including notifications of any changes to the membership of the Committee.

3. **Appointment of Vice-Chairman**

To appoint a Vice-Chairman for the 2017/18 Municipal Year.

4. **Minutes**

To confirm as a correct record the Minutes of the meeting of this Committee held on 8 May 2017.

5. **Declarations of Interests**

- (a) To receive declarations of non pecuniary interests in respect of items on this agenda

**For reference:** Having declared their non pecuniary interest members may remain in the meeting and speak and, vote on the matter in question. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

- (b) To receive declarations of disclosable pecuniary interests in respect of items on this agenda

**For reference:** Where a Member has a disclosable pecuniary 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 Governance Support or Legal Services prior to the meeting.)

6. **Urgent Items**

To consider any other items that the Chairman decides are urgent.

7. **White Rock Primary School, Davies Avenue, Paignton - P/2017/0295**

Prefabricated modular nursery accommodation.

(Pages 4 - 11)

8. **Land West Of Brixham Road, Paignton - P/2016/0411** (Pages 12 - 26)  
Approval of reserved matters (access, appearance, landscaping, layout and scale) following outline approval reference P/2011/0197 in relation to the erection of a retail store (ground floor level) with student accommodation above (first and second floor level), associated parking and landscaping (plans and proposal/description revised 16 February 2017).
9. **Land Off Brixham Road (Long Road), Former Nortel Site, Paignton - P/2017/0123** (Pages 27 - 49)  
Variation of condition on planning application P/2014/0947 (Outline Application with all matters reserved except access, for demolition of the remaining buildings on the site and redevelopment for mixed use purposes comprising up to 255 Class C3 dwellings, up to 5,574sqm of B1 and /or B8 business and/or warehousing uses, up to 8,501sqm Class A1 (bulky goods) retail with up to 515sqm garden centre, and up to 139sqm of A3 cafe /restaurant uses, along with related site access, access roads and paths, parking, servicing, open space and landscaping) - Variation of Condition P1 (approved plans) to amend the access off Long Road.
10. **Land At Brixham Road, Yannons Farm (Areas C And D), Paignton - V/2017/0001** (Pages 50 - 53)  
Deed of Variation required to S106 to allow for nomination Agreement to be backdated - P/2015/0124/MPA.
11. **Public speaking**  
If you wish to speak on any applications shown on this agenda, please contact Governance Support on 207087 or email [governance.support@torbay.gov.uk](mailto:governance.support@torbay.gov.uk) before 11 am on the day of the meeting.
12. **Site visits**  
If Members consider that site visits are required on any of the applications they are requested to let Governance Support know by 5.00 p.m. on Wednesday, 7 June 2017. Site visits will then take place prior to the meeting of the Committee at a time to be notified.

**Note**

An audio recording of this meeting will normally be available at [www.torbay.gov.uk](http://www.torbay.gov.uk) within 48 hours.

# Agenda Item 7

**Application Number**

P/2017/0295

**Site Address**

White Rock Primary School  
Davies Avenue  
Paignton  
TQ4 7AW

**Case Officer**

Gary Crawford

**Ward**

Churston With Galmpton

**Description**

Prefabricated modular nursery accommodation.

**Executive Summary/Key Outcomes**

This application is for the erection of a prefabricated modular building to be used as nursery accommodation at White Rock Primary School, Davies Avenue, Paignton. The proposal is intended to improve on Early Years provision in the area, where there is a recognised need against current local and national trends.

National planning guidance in the National Planning Policy Framework (NPPF) encourages local planning authorities to work positively and collaboratively with schools to help to meet their needs in providing sufficient choice of school places and places great importance on this issue. Policy SC3 (Education, skills and local labour) of the Torbay Local Plan 2012-2030 supports provision of new educational facilities in Torbay.

The key planning issue with this proposal is the impact of traffic and parking from the proposal on local roads, which is already perceived as a problem by local residents. The application is recommended for approval, subject to suitably worded conditions regarding an additional parking space on site, an allocated cycle space, staff shower and changing facilities, and the submission of a revised Travel Plan.

**Recommendation**

Subject to the receipt of additional information relating to ecological habitat, conditional approval delegated to the Executive Head of Business Services in order that the detailed wording of the conditions can be finalised.

**Statutory Determination Period**

8 weeks, the determination date was 18th May 2017. Due to the number of objections received, the application is being reported to committee.

**Site Details**

The site is the existing White Rock Primary School which has its main access and entrance off Davies Avenue. There is wooded area to the south of the main school building, adjacent to the rear boundaries of the properties in Steed Close, which

has a Tree Preservation Order as a designated woodland. The area of the site where the modular building would be located consists of scrubland, hardstanding and woodland.

### **Detailed Proposals**

The application is for the erection of a prefabricated modular building to be used for Early Years nursery accommodation. The unit would be 16.7m in depth, 12.2m in width and 3.4m in height with a flat roof. The unit would feature a 4m deep canopy on its west elevation and a 1m deep canopy entrance on its east elevation. The proposed materials are white plastisol steel walls, steel doors, upvc windows and a timber framed canopy with polycarbonate roof covering. The modular building would also feature an enclosed play area to the west. It would be accessed via a separate footway from the main school grounds which would be bordered by a 2.4m high anti-climb fence on its northern side.

The proposed nursery would accommodate 26 full time equivalent (FTE) children and 4 members of staff. At present, White Rock Primary School has approximately 510 children on role with 20 full time teachers and 2 part time teaching staff alongside 3 full time and 44 part time ancillary staff. In the summer of 2016, a two phase expansion project (approved under planning application P/2014/0817) was completed which provided a seven classroom extension to the school to accommodate an additional 210 pupils. The expansion is to be undertaken over a 7 year period and the increase in the school role will be approximately 30 pupils per year. In addition to an increase in pupil numbers, the number of staff is expected to rise to approximately 80.

There are 23 car parking spaces on site for staff, including 1 disabled bay. In addition, there are 40 cycle spaces and 80 scooter spaces on site.

Part of the proposal involves the removal of a group of trees within the protected woodland to accommodate the building on the site. As these trees form part of a group of protected woodland, new planting is proposed to mitigate for the loss of trees.

### **Summary Of Consultation Responses**

Strategic Transport: The Strategic Transport Officer advises that the proposal should have at least one on-site parking space for staff and ensure easy access to the covered cycle parking provision and proposed changing facilities in the main complex. The Strategic Transport Officer also advises that a Travel Plan should be submitted which sets out how a 30 % modal shift can be achieved, as required by Policy TA2 (Development access) of the Torbay Local Plan 2012-2030.

Arboricultural Officer: No objection to the proposed application subject to strict adherence to the supporting tree report and its methodologies for protection and planting.

Drainage Engineer: No objections providing the surface water drainage is constructed in accordance with the submitted design and drawings.

Senior Environmental Health Officer: No comment.

### **Summary Of Representations**

Two letters of support and five representations of objection have been received. The issues raised by the objectors were:

- o Increase in traffic
- o Impact on parking in nearby roads
- o Impact on highway safety.

### **Relevant Planning History**

P/2015/0217 Footway/Cyclepath, lighting and associated works; Approved 27.05.2015

P/2015/0212 Demolition of existing two storey classroom block on northern school elevation, Construction of a replacement two storey classroom block and ancillary works; Approved 14.05.2015

P/2014/1200 Non material amendment to P/2014/0817 to alter the fenestration, rearrange ventilation ducts and reduce the size of the brise soleil; Approved 19.12.2014

P/2014/0817 Construction of a two storey classroom block and dining room extension, together with the provision of a combined cycle/pedestrian path; Approved 23.10.2014

P/2014/0774 Relocation of single storey temporary classroom building; Approved 17.09.2014

P/2013/0920 Replace an existing temporary classroom with a new temporary classroom and associated drainage; Approved 21.11.2013

P/2008/0089 New swimming pool kitchenette, plant room and external store for sports equipment on land adjoining existing open air swimming pool; Approved 25.02.2008

P/2005/2140 Changing room block; Approved 17.01.2006

P/2003/0338 Extension to include new classrooms toilet and changing facilities; Approved 10.04.2003

### **Key Issues/Material Considerations**

The key issues to consider in relation to this application are:

1. Principle of the development
2. Impact on Highways
3. Impact on trees
4. Design
5. Impact on Amenity
6. Drainage

### **1. Principle of the Development**

Policy SS11 (Sustainable communities) of the Torbay Local Plan 2012-2030 states that proposals that regenerate or lead to the improvement of social, economic or environment conditions in Torbay will be supported in principle. Policy SS11 details further that development proposals will be assessed against 13 criterion which includes promoting social inclusion, and seeking to eliminate exclusion based on access to housing, health, education, recreation or other facilities. Policy SC3 (Education, skills and local labour) of the Torbay Local Plan 2012-2030 specifies that the Local Plan will support the improvement of existing and provision of new educational facilities to meet identified needs in Torbay. Policy SC3 notes further that this includes the expansion of schools to meet identified short to medium-term needs. Policy SC5 (Child poverty) of the Torbay Local Plan 2012 states that new development will be assessed for its contribution towards reducing child poverty, proportionate to the scale and nature of the proposal. This includes the need to support investment in existing schools and make appropriate contributions, and improve equality of access to high quality education provision for all, including early-years education.

Furthermore, Paragraph 72 of the NPPF specifies:

"The Government attaches great importance to ensuring 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;

- o give great weight to the need to create, expand or alter schools; and
- o work with schools promoters to identify and resolve key planning issues before applications are submitted."

The proposed development would improve the provision of Early Years education in the area, where there is a recognised need against current local and national trends, by expanding an existing school. As such, it is deemed that the principle of the development would accord with Policies SS11, SC3 and SC5.

### **2. Impact on Highways**

The current application proposes a nursery facility for 26 full time equivalent (FTE) children and 4 members of staff. Appendix F (Car parking requirements) to Policy TA3 (Parking requirements) of the Torbay Local Plan 2012-2030 sets out that for

pre-school and nursery developments, 1 parking space per 4 staff members and 1 cycle space per 4 staff. As the proposal does not include any additional parking spaces on the site, it is considered necessary that a condition is included with any permission which states that prior to the occupation of the proposed nursery, a dedicated parking space on the existing school site for the new nursery teacher shall be provided. Given that there are 40 existing cycle spaces on site, it is considered reasonable that a condition is included with any permission which specifies that one cycle space is allocated for the nursery in order to comply with Policy TA3. One of the proposed measures in the submitted Travel Plan details that the school should provide showers and changing facilities for staff who may cycle further distances by 2021. In light of this proposed measure and in order to encourage staff across the school site to travel to work by bike, it is deemed necessary that a condition is included with any permission which states that prior to the occupation of the proposed nursery, the school shall provide a shower and changing facilities for the use of staff within the existing building.

The key issues raised by local residents objecting to the application are the impact of additional traffic on local roads, increased parking in local roads and the impact on highway safety. It is noted that waiting restrictions between the hours of 8am - 9am and 3pm - 4pm Monday - Friday have been introduced in both Davies Avenue and Steed Close to prevent inappropriate on-street parking.

Furthermore, the previously approved planning application P/2014/0817 included a condition which stated that a travel plan shall be implemented in full prior to the first use of the approved classroom extension and the travel plan shall be formally reviewed by the school annually by the school and Local Planning Authority to ensure that the development incorporates sustainable development principles. An updated Travel Plan has been submitted with the current application which details that the following sustainable transport progress has been made:

- o Combined cycle/pedestrian path across playing fields was constructed in July 2016.
- o Provision of bikeability training and scooter training for pupils.
- o Provision of additional covered secure scooter and cycle spaces - there is a total of 80 scooter spaces and 40 cycle spaces on site.
- o Implementation of a walking bus which is run by members of staff.
- o A group of pupils have been appointed Junior Road Safety Officers and patrol outside the school, with a trained adult, to advise and model good road safety practice to pupils and their families.

In terms of increased traffic and parking in the surrounding roads from parents dropping off their children at the proposed nursery, as the proposed nursery would be open from 7.30am - 6pm, it is likely that parents/guardians would drop off/pick up their children over a staggered period of time rather than during peak times (8am - 9am and 3pm - 4pm). It is considered that the highways impacts from the proposed nursery can be further mitigated by the implementation of a suitable

Travel Plan. It is deemed necessary that a condition is included with any permission which states that prior to the occupation of the proposed nursery, a revised Travel Plan shall be submitted to and improved in writing by the Local Planning Authority. The revised Travel Plan should include SMART targets (Specific, Measurable, Achievable, Realistic and Time-bound) and deliver a reduction in the number of staff and parents/guardians travelling to the nursery by 30%, over the first five years of the Travel Plan.

Therefore, given the existing waiting restrictions in Davies Avenue and Steed Close, and subject to suitably worded conditions regarding an additional parking space on site, an allocated cycle space, staff shower and changing facilities, and the submission of a revised Travel Plan, the proposal is considered to be acceptable with regards to its impact on the highway.

### **3. Impact on trees**

Part of the proposal involves the removal of a group of trees within the protected woodland to the south of the application site to accommodate the proposed modular building on the site. The submitted Arboricultural Impact Assessment has identified that the group of trees to be removed to facilitate the proposal are of low value and contain trees that are suppressed, poorly formed, structurally poor and collapsed. The trees to be removed are located on the northern edge of the protected woodland so there are no significant public views of the trees. As the trees to be removed form part of a group of protected woodland, new planting is proposed to mitigate the loss of trees. The Council's Arboricultural Officer has no objections to the proposal subject to strict adherence to the supporting tree report and its methodologies for protection and planting.

The application site is located within the greater horseshoe bat sustenance zone of the South Hams Special Area of Conservation (SAC). An Extended Phase 1 Habitat Survey which was submitted for application P/2014/0817 at White Rock Primary School identified that the tree lines on the site provided suitable foraging and commuting habitats for bats. The council has requested the submission of an update on the previous habitat survey with regards to the impact of the proposed development on bats. These details will be reported at Development Management Committee (DMC).

### **4. Design**

The proposed modular building would be situated in a relatively secluded position within the school site and would be located between an existing two storey building and an area of woodland. Whilst the design of the proposed building would be functional, given that the building is unlikely to be particularly visible within the public realm, the design of the building is deemed appropriate. Furthermore, the building would improve the provision of Early Years education in the area. As such, the design and layout of the building is considered to be acceptable and it would not have any significantly harmful impacts on the character and appearance of the surrounding area. Given the existing 2.4m high anti-climb fencing around the

perimeter of the site, the addition of further 2.4m high fencing adjacent to the new footway is deemed acceptable.

#### **5. Impact on Amenity**

Given the distance of the proposed modular building to the nearest residential properties (approximately 25 metres to the south east) and the existence of the woodland area in between, it is considered that there will be no material loss of amenity to the occupiers of these properties. For the same reason, it is not considered that the proposal would result in a loss of privacy to the occupiers of these properties.

#### **6. Drainage**

Detailed information has been submitted with regards to surface water drainage from the proposed development which is deemed to be acceptable by the Council's Drainage Engineer. As such, a condition will be included with any permission which states that the drainage should be constructed in accordance with the submitted drainage details.

#### **S106/CIL**

N/A

#### **Statement on Human Rights and Equalities Issues**

Human Rights Act - The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

Equalities Act - No issue

#### **Conclusions**

Subject to the imposition of conditions and the submission of further information relating to ecological habitat, the proposals accord with the provisions of the Local Plan and are recommended for approval.

#### **Condition(s)/Reason(s)**

01. The proposed works shall be undertaken in strict adherence to the supporting tree report and its methodologies for protection and planting.
02. The new tree planting shall accord with the submitted tree report and if any trees die, are removed or become seriously damaged or diseased within a period of 5 years from the completion of the development, they shall be

replaced with a tree of a similar size and species.

03. Prior to the occupation of the proposed nursery, a dedicated parking space on the existing school site for the new nursery teacher shall be provided.
04. Prior to the occupation of the proposed nursery, a dedicated cycle space within the existing cycle shelters on site shall be allocated for nursery staff only.
05. Prior to the occupation of the proposed nursery, the school shall provide a shower and changing facilities for the use of staff.
06. Prior to the occupation of the proposed nursery, a revised Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall be implemented in full and shall be formally reviewed by the school annually in liaison with the Local Planning Authority.
07. Surface water drainage shall be provided in accordance with the submitted drainage details.

**Relevant Policies**

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**Application Number**

P/2016/0411

**Site Address**

Land West Of Brixham Road  
Paignton  
TQ4 7RZ

**Case Officer**

Carly Perkins

**Ward**

Blatchcombe

**Description**

Approval of reserved matters (access, appearance, landscaping, layout and scale) following outline approval reference P/2011/0197 in relation to the erection of a retail store (ground floor level) with student accommodation above (first and second floor level), associated parking and landscaping (plans and proposal/description revised 16 February 2017)

**Executive Summary/Key Outcomes**

The application is a reserved matters application submitted pursuant to outline application reference P/2011/0197 which sought outline consent for 37,000 square metres of employment space, 350 new homes and a local centre. The application seeks approval for the appearance, layout, scale and landscaping for 1,652sqm (gross) food retail store, 50 bed student accommodation and associated parking, landscaping and access from White Rock Way and Waddeton Road.

The proposed building is three storeys to Brixham Road and three storeys stepping down to two storeys along White Rock Way. The proposed building is located along White Rock Way, between the eastern end of the building and Brixham Road is an area of public open space. To the north of the building are 116 parking spaces (8 of which are allocated for disabled people). Cycle parking is proposed to serve the retail and student accommodation use, the plans indicate that 10 cycle loops are proposed. Materials include vertical timber cladding, blue engineering brick, white rendered walls, aluminium framed windows and shopfronts, light brick with weathered appearance, PPC finished grey doors, grey metal cladding, slatted timber screens, brushed stainless steel bollards and cycle hoops, black metal railings and PPC dark grey canopy and cappings. Roads and car parking areas are proposed to be asphalt and the entrance area to the retail units is proposed to be concrete block. Landscaping is proposed throughout the site.

The provision of a retail store and student accommodation within the site has been established by the earlier outline permission for the wider White Rock site. This permission established the principle of development, and the continued provision of these uses in this location is supported by current Local Plan policies. Consequently the principle of these uses on this site remains acceptable.

The application site relates to the eastern bowl of the wider White Rock site which is largely grassed scrubland. The specific part of the wider White Rock site subject

of this application was previously occupied by a number of light industrial units, an office and Sure Start centre, the site has now been cleared. Part of the wider site is under construction under the approved reserved matters scheme P/2013/1229 with a number of dwelling houses complete and occupied.

The application site is noted as a committed and other deliverable development site under policy SPD3.5 of the Torbay Local Plan for both housing and employment uses. The application site is also identified as a Proposed Local Shopping Centre under policy TC2.3.19 of the Torbay Local Plan and is located to the west of the Brixham Road, part of the Torbay Major Road Network. The site is bounded by White Rock Way to the south and existing hotel and restaurant developments to the north.

The form and design of the building is considered acceptable subject to the inclusion of conditions. Whilst the submitted landscaping scheme requires revisions these can be secured by condition. Further clarification is required in terms of access for commercial vehicles, parking and cycle storage, officers believe these issues can be resolved, in compliance with national and local policy. Conditions are also required to ensure there is no adverse impact to residential amenity by reason of noise and odour.

### **Recommendation**

Conditional approval subject to clarification regarding access and parking/cycle provision and revised plans where necessary following such clarification. Final drafting of conditions to be delegated to the Executive Head of Business Services.

### **Statutory Determination Period**

13 weeks. An extension of time was agreed to allow further consideration of the application.

### **Site Details**

Outline consent was granted in April 2013 for approximately 37,000 square metres of employment space, 350 new homes and a local centre under reference P/2011/0197 and subsequent reserved matters application were approved under applications references P/2013/1009 for industrial buildings, P/2013/129 and P/2014/0071 for dwelling houses and P/2016/0188 for a sports pavilion and associated pitches. The application site relates to the eastern bowl of the wider White Rock site which is largely grassed scrubland. The specific part of the wider White Rock site subject of this application was previously occupied by a number of light industrial units, an office and Sure Start centre, the site has now been cleared. Part of the wider site is under construction under the approved reserved matters scheme P/203/1229 with a number of dwelling houses complete and occupied.

The application site is noted as a committed and other deliverable development site under policy SPD3.5 of the Torbay Local Plan for both housing and

employment uses. The application site is also identified as a Proposed Local Shopping Centre under policy TC2.3.19 of the Torbay Local Plan and is located to the west of the Brixham Road, part of the Torbay Major Road Network. The site is bounded by White Rock Way to the south and existing hotel and restaurant developments to the north. Beyond White Rock Way to the south of the site is existing residential development approved under reference P/2013/1229 and proposed residential development under reference P/2014/0071.

### **Detailed Proposals**

The application is a reserved matters application submitted pursuant to outline application reference P/2011/0197 which sought outline consent for 37,000 square metres of employment space, 350 new homes and a local centre. The application seeks approval for the appearance, layout, scale and landscaping for 1,652sqm (gross) food retail store, 50 bed student accommodation and associated parking, landscaping and access from White Rock Way and Waddeton Road.

The proposed building is three storeys to Brixham Road and three storeys stepping down to two storeys along White Rock Way. The proposed building is located along White Rock Way, between the eastern end of the building and Brixham Road is an area of public open space. To the north of the building are 116 parking spaces (8 of which are allocated for disabled people). Cycle parking is proposed to serve the retail and student accommodation use, the plans indicate that 10 cycle loops are proposed. Materials include vertical timber cladding, blue engineering brick, white rendered walls, aluminium framed windows and shopfronts, light brick with weathered appearance, PPC finished grey doors, grey metal cladding, slatted timber screens, brushed stainless steel bollards and cycle hoops, black metal railings and PPC dark grey canopy and cappings. Roads and car parking areas are proposed to be asphalt and the entrance area to the retail units is proposed to be concrete block. Landscaping is proposed throughout the site.

### **Summary of Consultation Responses**

South West Water: No objections.

Natural England: No objection in relation to statutory nature conservation sites. Reference to standing advice in relation to protected species.

Senior Environmental Health Officer: No objection but a condition is recommended to ensure there is no detriment to neighbouring residential amenity as a result of plant and equipment within the retail unit. Condition recommended in relation to noise and odour and deliveries being between 0700 and 2300 Monday to Friday.

Arboricultural Officer: The proposed development involves the removal of 14 trees and 1 hedgerow with replacement landscaping of 12 trees and 1 hedgerow, a net loss of 2 trees. The development should include a clear net gain in the number of trees present on site given the location of the site. The supporting soft landscaping plan contains insufficient detail of proposed planting specification and indicative

tree species and numbers are not considered compatible with integrating the scheme with the landscape character and species predominance of the neighbouring AONB and countryside.

Comments on the revised plans:

The continued absence of the updated tree survey prevents an understanding on the constraints posed by the mature hedgerow which comprises a mature linear tree group, aligning with a field boundary shown in early edition OS maps. This has potential to be negatively affected by the build if approved without supporting tree protection plans and method statements. The landscape plan requires greater detail of landscape management proposals such as tree pit design, watering, staking, replacement of losses, tree nursery stock type, and specification of soil etc. The 2 tree species selected are of limited size and of only local visual prominence with short useful life expectancies. This may be exacerbated by species being prone to diseases known to be present in the local tree populations both private and publically owned. The use of trees of larger final canopy sized trees planted as minimum 20-25cm semi mature standards for quicker effect and resistance to vandalism is strongly recommended. The scheme is suitable for approval on arboricultural merit however tree survey effort as described is necessary and revision to landscape detail which should be supported by a landscape management plan.

Environment Agency: The submission makes no reference to how surface water runoff will be managed. Further information relating to how the management of surface water runoff from this plot will dovetail into any previously agreed strategy as at outline stage.

Comments on revised details:

The site lies within Flood Zone 1 and therefore standing advice applies and the Lead Local Flood Authority should be consulted.

Green Infrastructure Coordinator: No ecological information has been submitted to support the application. Further information required.

Police Designing Out Crime Officer: Disappointing that there is no reference to designing out crime or crime prevention in the Design and Access Statement, therefore it is not possible to confirm how these issues have been considered. It is recommended that the store is constructed to achieve full Secured by Design compliance to ensure a consistent level of security throughout and opportunities for crime, the fear of crime, ASB and conflict are minimised.

Car parking areas appear to benefit from good natural surveillance from adjacent roads, paths and nearby dwellings but advise care is taken with planting to avoid impeding CCTV and creating short cuts. Vehicular access should be prevented to

car parking areas when store is closed or car parking areas should be broken up with planters and landscaping to deter speeding and anti-social driving. Bollards should be of a standard to prevent ram raiding. Design of features and smooth surfaces should deter skateboarding etc. Care should be taken with open access as this can attract loitering and ASB problems. CCTV should form part of an overall security plan. Blank elevations should be covered by CCTV. Shopping trolleys should be secure where store is closed. Lighting should be appropriately designed.

Comments on the revised scheme: No further comments on the retail store aspect of the proposal. Student accommodation can be vulnerable to criminal incidents. The main entrance door to the student accommodation should be designed to acceptable security standard with access control and visitor door entry system. The door should be self closing and locking. The shared access doors must be self locking and closing but with a thumb turn lock inside for emergencies. Bedrooms must have secure door and locking system. CCTV should be considered for communal areas. Features should be designed to prevent climbing. Bicycle storage should be secure. External areas should be designed to prevent nuisance to neighbouring properties. Parking areas should be separate for the retail and student accommodation uses. Recommend parking layout is revised.

Drainage Engineer: No objection providing a condition is imposed to require the applicant to submit a detailed surface water drainage design including drainage design and hydraulic modelling data for approval prior to the commencement of the development.

Senior Strategy and Project Officer: No objections to proposed access which reflects the access proposed at outline stage. There is a slight overprovision of parking spaces but this is within an acceptable range. Additional disabled spaces are required, consideration should also be given to parent and child spaces and the provision of electrical charging bays. Cycle parking should be provided for staff and shoppers. Cycle parking should be secure and covered and located on the forecourt.

Comments on revised scheme: Comments request clarification on the number of parking spaces and which uses they are allocated to. 1 space per 14sqm is required for the retail unit and electrical charging points, cycle parking and storage should be provided in accordance with Appendix F. Student accommodation will require 1 space per 5 bed spaces (10 spaces) with one additional space for any resident warden/staff. This should include a proportion of disabled parking and one covered cycle parking/storage per unit plus visitor capacity. Confirmation requested regarding whether the road is to remain private. Confirmation requested regarding how the southern access from White Rock Way will function and whether this will be limited to service uses only. Passing places are required to prevent cars needing to reverse on to White Rock Way

Comments on revised layout plan: The access point proposed is within 15m of another junction. The layout indicates that the access will not be able to provide a safe access for articulated lorries and deliveries, necessitating reversing at the junction with the proposed car park and over-running the pavement as currently indicated on the tracking diagram. The access road from White Rock Way will only be acceptable in restricted to commercial and service delivery vehicles only. This road would be adopted as Public Highway unless it is intended to serve a number of residential properties. If further residential development is proposed in the future further layout amendments will be required. The access ramp should not exceed the gradient set out in the Highways Design Guide. Conditions may be able to resolve these issues. Comments regarding the level of disabled/access spaces and parent with child spaces have been made. Additional and revised cycle storage is required. Electrical charging points do not meet the required standard. Clarification required regarding the allocation of spaces. A travel plan is required.

Waste Client Manager: Confirmation requested as to whether the development constitutes a domestic or charged collection.

Urban Design Consultant: Various concerns raised regarding the design of the scheme. Several revisions have been submitted to respond to these concerns. Below is a summary of the latest comments.

The scale, massing and general composition of the development is satisfactorily resolved and is a good response to its setting. The mixed use development has a strong presence at the 'gateway' to the new local centre and has characteristics and follows the design principles originally agreed at outline stage. The modest public space and tree planting at the corner of the site is a good response as an alternative to developing this part of the site with built form. The inclusion of the student accommodation will add the desired vitality and intensity of use that will help the local centre to be a safe and attractive 'hub' of the new neighbourhood.

The external appearance, materials and detailing are acceptable in principle. Large scale details and materials should be sought by condition. This should include the 'blind' windows at ground floor level on the southern elevation. Details of signage should be secured by a pre-commencement condition.

Full details of soft and hard landscaping design should be secured by condition. Tree pit detailing should be included in this condition.

### **Summary Of Representations**

6 public representations (4 objections, 2 support) have been received. Issues raised:

- o No need for another retail store
- o Student accommodation not appropriate for a residential area
- o Three storey building will look out of place in a residential area and will overlook houses opposite

- o The restaurant use has been omitted from the plans and needs to be included
- o Car park layout will encourage anti-social behaviour and crime
- o Retail store too big for area
- o Overdevelopment of retail in the area
- o Development would result in an increase in traffic
- o Impact on residential amenity
- o Support development as it will create jobs and remove an eyesore
- o Retail store will be convenient for those who do not have a car
- o Support the proposal and it will bring extra choice, more jobs and will bring extra money into the area.

### **Relevant Planning History**

P/2011/0197 Mixed Use Development of 39 Hectares of land at White Rock, Paignton to construct up to 350 dwellings, approximately 36,800m<sup>2</sup> gross employment floorspace, a local centre including food retail (up to 1652m<sup>2</sup> gross) with additional 392m<sup>2</sup>A1/A3 use and student accommodation, approximately 15 hectares of open space, sports pavilion and associated infrastructure and engineering works to provide access, drainage and landscaping (Outline Application) APPROVED 29.04.2013

P/2013/1009 Reserved matters application for P/2011/0197 including appearance, landscaping, layout and scale of 2 industrial units, enabling work for new road, demolition of unit 31, relocation of 10 parking spaces for unit 33-34 APPROVED 16.10.2013

P/2013/1229 Approval of reserved matters to P/2011/0197. Appearance, landscaping, layout and scale in relation to 310 dwellings and associated development APPROVED

P/2014/0071 Approval of appearance, landscaping, layout and scale in relation to 38 dwellings and associated development. Reserved Matters for P/2011/0197 APPROVED

P/2015/0918 Appearance, landscaping, layout and scale in relation to 310 dwellings and associated development (Variation of condition P1 of P/2013/1229 - MMA to units 37, 94 and 237 to allow wheelchair access) APPROVED

P/2015/1061 Approval of appearance, landscaping, layout and scale in relation to 38 dwellings and associated development. Reserved Matters for P/2011/0197 WITHDRAWN 18.05.2017

P/2015/1229 Approval of appearance, landscaping, layout and scale in relation to 217 dwellings and associated development - EIA NOT REQUIRED

P/2015/1126 Approval of appearance, landscaping, layout and scale in relation to

216 dwellings and associated development REFUSED 13.04.2016

P/2016/0094 Erection of 42 dwellings and associated infrastructure REFUSED 24.08.2016

P/2016/0188 Approval of appearance, landscaping, layout and scale in relation to a sports pavilion and associated development including a sports playing pitch, multi-use games area and car park APPROVED 11.04.2017

P/2016/0842 EIA Screening in relation to one industrial unit of 6,000 sqm floorspace - EIA NOT REQUIRED

P/2016/0880 6000sqm Industrial building (Use Class B2) parking, access and landscaping APPROVED 03.03.2017

### **Key Issues/Material Considerations**

The key issues to consider are the principle of development, appearance, impact on the landscape and biodiversity, landscaping, drainage, access, parking and residential amenity.

### **Principle:**

The site is identified within the Torbay Local Plan (SDP3.5) as a committed strategic mixed use employment/housing development that will provide 8.5ha of employment land, local centre, around 1,200 jobs and around 350 dwellings largely over the first half of the Plan period.

As this is a reserved matters application pursuant to an approved outline application, the previous planning history on this site remains a material consideration. Outline consent has been granted for the mixed use development of the site. This application was approved following extensive consultation. It was subject to Habitat Regulation Assessment and was accompanied by a detailed Environmental Statement. The principle of development in this location was established by this application and the general position of the proposal is in accordance with the indicative layout agreed at outline stage being within the Eastern Bowl which was highlighted for mixed use development and more specifically the local centre including food retail and student accommodation uses. The design and access statement submitted with outline application reference P/2011/0197 specifically stated that the local centre was to incorporate a local convenience food store, restaurants and/or small complimentary retail or services uses, offices above the ground floor level, residential apartments and student study bedrooms. A public open space was also to be incorporated with the local centre.

Policy TC1 of the Torbay Local Plan supports new or enhanced district, local and neighbourhood centres that complement town centre facilities, provide a range of goods and services that meet the day to day needs of local communities, including the provision of healthcare facilities, local skills training facilities, local employment

and local food outlets. Similarly Policy TC2 of the Torbay Local Plan supports retail development in local centres where it is appropriate to the role, function and scale of those centres. Supporting paragraph 6.1.1.8 states that local centres provide a range of small scale retail and other related services capable of meeting local needs, top-up shopping, and act as the focus for the local community such as post offices, newsagents, pharmacies and groceries. It notes that the provision of new local centres may be required to meet demand arising from major new residential developments, including White Rock. Policy TC3 of the Torbay Local Plan goes on to state that new retail development in local centres will be supported when the scale of the development is appropriate to the nature and size of the centre and will complement its role and character and it provides for and sustains a range of services and facilities which contribute to the long-term vitality and viability of the centre and the ability of people to meet their needs locally.

There are no policies within the Local Plan which relate directly to student accommodation. The student accommodation proposal would be sui generis use and would not strictly be considered as a house in multiple occupation however the tests of policy H4 would remain relevant to the proposals. Policy H4 of the Torbay Local Plan states that houses in multiple occupation will only be supported where the property is in easy reach of public transport and community facilities, can provide an acceptable standard of residential accommodation, the scale and nature would not harm residential amenity, the proposal would not lead to an over concentration of similar uses, the proposal would not adversely affect the character of the area, adequate storage facilities can be provided and there is supervision by a resident owner or manager, or an appropriate alternative level of supervision.

The scale and nature of the development reflects the principles agreed at outline stage. The proposals are located within a proposed local centre as designated by the Torbay Local Plan and its impact on the vitality of the town centre was considered at outline stage. The proposals are in close proximity to public transport opportunities and being within a proposed local centre will be close of community facilities such as retail, education and restaurant uses. The number of student bedrooms and its impacts on the local area would be a consideration at outline stage and the proposals reflect the agreed principles. Criteria relating to the quality of the residential environment and impact on residential amenity are considered further in later paragraphs. Consequently, the principle of the proposed development is acceptable following the principles of the outline consent and compliant with the Torbay Local Plan 2012-2030.

**Appearance, Scale and Layout:**

Paragraph 17 of the National Planning Policy Framework states that one of the core land-use planning principles that should underpin decision taking is to always seek to secure high quality design. In addition paragraph 64 states that "permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions". Consistent with these paragraphs, Policy DE1 states that

proposals will be assessed against their ability to meet design considerations such as whether they adopt high quality architectural detail with a distinctive and sensitive palette of materials, whether they protect local and longer distance views and the impact on the skyline especially from public vantage points, having regard to the location and prominence of the site and whether they positively enhance the built environment.

The design and access statement submitted with outline application reference P/2011/0197 stated that the Brixham Road corridor is poorly defined for much of its length and that previous developments have not addressed the importance of this corridor and have, for much of its length, avoided any positive frontage on to this route. The outline application aimed to create a positive principal frontage to the Brixham Road with a scale of development (3-4 storeys) that helps to define the corridor. The retail uses were located along this active frontage so that they are easily accessible from the surrounding area and therefore improve these facilities.

The reserved matters proposal reflects the principles set out at outline stage being located on the junction of Brixham Road and Whiterock Way. The building presents largely three storey frontages on to Brixham Road and Whiterock Way which are identified as principal frontages, the building presents active frontages on to these two principal roads. The material choices and architectural details help to break up the mass of the overall building. The material choices appear to be of good quality and this can be secured through the imposition of conditions requiring the submission of materials and large scale details for approval. In line with the comments from the Urban Design Consultant, these large scale details must include the 'blind windows' at ground floor level on the south elevation. The proposals are considered to comply with Policy DE1 of the Torbay Local Plan 2012-2030.

**Impact on the wider landscape and biodiversity:**

As part of the outline application, off-site landscape mitigation and enhancement works (Landscape and Ecological Management Plan secured by S106) includes significant belts of woodland planting on land to the south of the White Rock site. This planting will provide a strong landscape buffer between the development and undeveloped countryside to the south. The proposed development is separated from the wider countryside by the residential development approved under references P/2014/0071 and P/2013/1229. In light of the structural planting proposed to the south which will act to contain the site once established, the proposals are not considered to result in significantly greater impact in views from the AONB to the south or views from the South Hams.

In terms of on-site landscaping there are 21 trees proposed within the proposed layout. Policy C4 of the Torbay Local Plan states that proposals for new trees will be a specific requirement of proposals in Strategic Delivery Areas and Policy DE1 states that proposals will be assessed against their ability to meet certain design

considerations, with one identified as being the provision of high quality soft landscaping.

In line with comments from the Arboricultural Officer, the submitted landscaping scheme lacks detail and further information is required, particularly in terms of tree pit design, watering, staking, replacement of losses, tree nursery stock type and specification of soil etc. In addition it is considered the 2 tree species selected are limited in size, will only be of local visual prominence, suffer from short life expectancy and prone to disease. The Arboricultural Officer has recommended the use of larger canopy trees planted as 20-25cm semi mature standards as a minimum to ensure quicker establishment and visual effect together with being more resistant to vandalism. These details can be secured by condition.

The Arboricultural Officer has raised concern regarding the absence of an updated tree survey since the scheme approved at outline stage. At outline stage a tree retention and removal proposal was submitted with the application. A condition of outline consent also required that prior to the commencement of each phase of the development, a full tree protection plan and method statements detailing tree protection be submitted. This tree protection plan is required to detail how existing trees and hedges on site will be protected during the course of the development. This condition would continue to apply to the reserved matters proposals. Whilst additional information by way of an updated tree survey has been requested, as this matter relates to issues dealt with at outline stage it would not be reasonable to request this information during the course of this reserved matters application. Subject the imposition of a landscaping condition and for matters of clarity, a tree protection and method statement condition, the proposed landscaping is considered acceptable and consistent with local plan Policies DE1 and C4.

The proposed development site falls within a greater horseshoe bat sustenance zone associated with the SAC roost at Berry Head. Sustenance zones are key feeding and foraging areas for greater horseshoe bats associated with the South Hams SAC. The permanent loss of existing or potential habitat within the sustenance zone and in proximity to the Berry Head roost has the scope to adversely affect the favourable conservation status of the Berry Head maternity colony. It is recognised that the development needs to be screened in terms of the Habitat Regulations Assessment, which has to be carried out prior to the decision being issued. The comments from Natural England are however noted; Natural England have advised that the proposal is unlikely to affect any statutorily protected sites or landscapes.

Comments from the Council's Green Infrastructure Co-ordinator are noted. The Green Infrastructure Co-ordinator has recommended that habitat surveys be submitted to support the application. As this matter relates to issues dealt with at outline stage it would not be reasonable to request this information during the course of this reserved matters application as the proposals continue to be consistent with principles agreed at outline stage. It is therefore considered that

the proposal remains compliant with policies SS8 and NC1 of the Torbay Local Plan.

**Residential Amenity:**

The proposals are to be sited to the north of the approved residential development (P/2013/1229 and P/2014/0071). The position of the proposals in relation to the residential development reflects that shown within the indicative layout shown at outline stage. Paragraph 17 of the National Planning Policy Framework states that one of the core land-use planning principles that should underpin decision taking is to always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings. Policy DE3 of the Torbay Local Plan 2012-2030 states that developments should be designed to not unduly impact upon the amenity of neighbouring and surrounding uses, with one of the criteria for assessment being the impact of noise, nuisance, visual intrusion, overlooking and privacy, light and air pollution. The proposed building is positioned some distance from residential dwellings and is separated by White Rock Way. The proposals are not considered to result in any serious detriment to residential amenity by reason of loss of light, loss of privacy or by reason of being unduly dominant or overbearing due to the separating distances involved which are a minimum of approximately 22m.

In terms of noise, both the retail unit and student accommodation have the potential to impact upon residential amenity. In line with comments from the Environmental Health Officer, conditions are recommended requiring details of any proposed extraction and ventilation to serve the retail unit. As this is a reserved matters application and the principle of the development was accepted at outline stage it is not reasonable to request these details at this stage. The student accommodation has potential to impact upon residential amenity by reason of noise particularly through the inclusion of the first floor terrace areas if not managed correctly. Whilst not strictly a house in multiple occupation, policy H4 of the Local Plan remains a relevant consideration. Criteria 7 of this policy requires supervision by a resident owner or manager or an appropriate alternative level of supervision such as resident wardens. This is recommended to be included as a condition. This condition will include a requirement to submit a management plan detailing how the property will be managed including details of managing complaints and addressing issues should they arise.

**Drainage:**

Surface water drainage methods were agreed at outline application stage. However the Council's Drainage Engineer has confirmed that the proposals reflect those agreed at outline stage subject to the imposition of a condition requiring detailed design and hydraulic modelling to be submitted and approved by the Local Planning Authority prior to commencement of the development.

**Access and Parking:**

The amount of retail floor space and the number of student bedrooms reflects the

scale of development approved at outline stage. The access to the site largely reflects that agreed at outline stage with two points of access from Waddeton Road and White Rock Way. A new section of road is already in situ, enhancing Waddeton Road and including a roundabout with access in to the development site. The impact on traffic generation was considered as part of the outline application and the proposals continue to reflect the principles set out at outline stage and therefore do not require reconsideration as part of the reserved matters application. The Council's Strategy and Project Officer has requested confirmation regarding whether the road is to remain private and how the southern access from White Rock Way will function including whether this will be limited to service uses only. Further requests have been made requiring passing places on the access from White Rock Way, the submission of a swept path analysis and clarification regarding distances between the service roads.

In response to this request, the applicants have submitted a revised layout plan. Whilst this responds to some of the queries raised on highways grounds, some remain unanswered. Of particular concern is the position of the access point on to White Rock Way and safe access for articulated lorries and deliveries. The Officer has stated that this layout will only be acceptable if the access is restricted to 'Commercial/Service Delivery Vehicle Only' and not open to all traffic. Alternatively the road layout could be amended. This will be discussed further with the applicants and the Member's will be updated at the Committee meeting. Access restrictions on this access could be dealt with by a condition requiring details of how the access will be managed to ensure it is only used by commercial and service delivery vehicles.

The application shows parking for 104 cars, including 8 disabled parking spaces to serve the development. The Local Plan states that, within local centres, a minimum requirement will be negotiated taking into account the impact of the use and existing parking provision. There are no existing public parking spaces within the immediate vicinity, and on street parking locally is already under pressure within the nearby housing estates. The Council's Strategy and Project Officer has stated that within this context, the out of centre parking requirement is relevant. This would require a parking provision of 118 spaces for use by the retail unit. In addition the Officer has stated that 1 space per 5 student bedrooms plus 1 additional space for any resident warden should be provided. This would require a total of 129 parking spaces. This would suggest that the proposed scheme has a shortfall of 25 spaces. Whilst the comments from the Council's Strategy and Project Officer are noted, the location of the site within a designated local centre must be recognised and therefore there is scope for a reduction in parking provision below that stated within requirements for out of centre retail proposals. In light of the location of the site within a designated local centre, the current level of parking provision is considered appropriate subject to further information regarding the allocation of spaces.

Within the application site there are a total of 116 spaces. 90 of these spaces are

allocated to the retail use (6 of these for disabled persons) and 14 of these spaces are allocated to the student accommodation use (2 of which are for disabled persons and 2 of which are for staff). The 12 remaining spaces are to serve the EPIC Innovation Centre in a subsequent application. The plans however do not detail how the spaces will be distributed throughout the site or how they will be managed between the two uses. A condition is recommended requiring the submission of a plan which details the distribution of spaces and details of how these will be managed. The number of disabled spaces is below the recommended 10% noted within appendix F of the Torbay Local Plan. Parent with child spaces have not been included within the layout. The applicant has been asked to give this issue further consideration and the Members will be updated at the Committee meeting. A travel plan for the development is recommended by condition.

In terms of cycle provision, the proposed plans indicate that 10 cycle loops (5 for each of the two uses proposed) are proposed. This would be below the recommended standards as set out in appendix F of the Local Plan. Whilst student accommodation uses are not referred to specifically within the appendix F guidance, it would be appropriate to apply the guidelines attached to houses in multiple occupation. This would suggest that 50 cycle spaces are required. Cycle storage provision to serve the student accommodation will need to be secure and covered. Cycle storage to serve the retail park for both visitors and staff will also be required. Cycle loops are considered appropriate to serve visitors to the store however cycle storage for staff will be required to be secure and covered to ensure its use. As this level of cycle storage would need to be appropriately design into the scheme, revised plans are requested. Electrical charging points are required for 10% of parking spaces and these will be secured by condition. These points have been raised with the applicant and comments on these requirements are expected. The Members will be updated at the Committee meeting.

### **Conclusions**

The provision of a retail store and student accommodation within the site has been established by the earlier outline application for the wider Whiterock site. This application established the principle of development and the continued provision of these uses in this location continues to be supported by current Local Plan policies. Consequently the principle of these uses on this site remains acceptable. The form and design of the building is considered acceptable subject to the inclusion of conditions. Whilst the submitted landscaping scheme requires revisions these can be secured by condition. Whilst further clarification is required in terms of access of commercial vehicles, parking and cycle storage, officers believe these issues can be resolved, in compliance with national and local policy. Further information and revised plans are required in order to demonstrate that such issues can be successfully resolved. Conditions are also required to ensure there is no adverse impact to residential amenity by reason of noise and odour.

**Conditions:**

1. Landscaping
2. Details of plant
3. Parking provision
4. Cycle storage provision
5. Electrical charging
6. Waste storage provision
7. Materials
8. Large scale details
9. Provision of resident manager or similar
10. Management plan for student accommodation
11. Travel plan
12. Lighting
13. Drainage
14. Restricted access from White Rock Way commercial/service vehicles only
15. Submission of plan detailing allocation of parking spaces and how parking will be managed.

**Relevant Policies**

SDP1 - Paignton  
TC2 - Torbay retail hierarchy  
TC3 - Retail Development  
SDP3 - Paignton North and Western area  
DE1 - Design  
DE3 - Development Amenity  
ER1 - Flood Risk  
ER2 - Water Management  
TA1 - Transport and accessibility  
TA2 - Development access  
TA3 - Parking requirements  
SS8 - Natural Environment  
C4 - Trees, hedgerows and natural landscape  
NC1LFS - Biodiversity and Geodiversity\_  
H7 - Houses in multiple occupation (HMOs)  
SC3 - Education, skills and local labour

# Agenda Item 9

**Application Number**

P/2017/0123

**Site Address**

Land Off Brixham Road -Long Road  
Former Nortel Site  
Paignton

**Case Officer**

Mr Scott Jones

**Ward**

**Description**

Variation of condition on planning application P/2014/0947 (Outline Application with all matters reserved except access, for demolition of the remaining buildings on the site and redevelopment for mixed use purposes comprising up to 255 Class C3 dwellings, up to 5,574sqm of B1 and/or B8 business and/or warehousing uses, up to 8,501sqm Class A1 (bulky goods) retail with up to 515sqm garden centre, and up to 139sqm of A3 cafe /restaurant uses, along with related site access, access roads and paths, parking, servicing, open space and landscaping) - Variation of Condition P1 (approved plans) to amend the access off Long Road.

**Executive Summary/Key Outcomes**

This application is to change the condition relating to detailed access arrangements attached to approved outline consent granted under reference P/2014/0947 for mixed use (Business/Bulky Goods Retail and Residential) development on the old Nortel/Bookhams site adjacent to Long Road and Brixham Road, Paignton. The application was also originally submitted to vary Condition 32 (Sale of goods within specified categories) to permit the sale of convenience (food) goods within one unit of up to 1,486sqm, but this element of the application has been withdrawn by the applicant.

Permission P/2014/0947 granted outline consent for the demolition of buildings and mixed use development comprising up to 255 dwellings, up to 5,574sqm of business and/or warehouse uses, up to 8,501sqm of (bulky goods) retail with up to 515sqm garden centre and up to 139sqm of café/restaurant use, along with related infrastructure with detailed consent for the access, and all other matters reserved.

The application seeks to vary Condition P1 (Plans) to amend the detailed access arrangements off Long Road. The amendment seeks to relocate the central of the three Long Road access points, which in the indicative masterplan at outline stage was shown to provide access to the rear of the retail area and one side of the employment area. It is proposed to move the access westwards in the direction of South Devon College and thus closer to the westward-most access that was shown to serve the employment area and rear service area. In terms of highway safety the revised access point is acceptable if one of the access points is

restricted to use solely for commercial vehicles only, in order to reduce highway conflict caused by close proximity. In terms of design the illustrative masterplan submitted as part of the outline permission identified the provision of up to 5574sqm of business floor space in this area of the site. The reduced distance between the two access points reduces the land available to deliver the business uses and certainty that the amount of floor space can still be delivered is needed. Further information on this point has been requested, which includes certainty on the floor space to achieve the 515sqm of garden centre.

There are three representations raising objections. Two representations raise concern in terms of traffic impact and the robustness of the assessment, along with certain points that appear to relate to the wider outline consent. A further representation was received from the Paignton Neighbourhood Forum in respect of the retail impact of the proposal. As the application has now been amended this point is no longer relevant.

### **Recommendation**

Approval subject to:

- i. Submission of further detail which demonstrates to the satisfaction of the Executive Head - Business Services that the quantum of development approved at outline stage (to include the 5574sqm of business uses and 515sqm of garden centre) can be appropriately delivered within the revised access arrangement. In the absence of information that demonstrates that the quantum of business uses can be appropriately delivered the application to be refused as it fails to ensure that the distribution of uses granted at outline stage can be achieved.
- ii. Submission of revised access details that reduces the conflict between the two access points that sit in close proximity. One of the access points to be built to a commercial vehicle standard and limited to use by servicing vehicles only to the satisfaction of the Executive Head - Business Services.
- iii. Completion of a deed of variation to the original S106 legal agreement linking the amendment to the original agreement, to be completed within three months of the date of this meeting unless an extension of time has been agreed with the applicant. In the absence of the signed deed within an agreed time period the application is to be refused
- iv. Conditions attached to the parent permission P/2014/0947.

### **Decision Level/Statutory Determination Period**

The application is before Members as the proposal is an amendment to a major application. The Council's scheme of delegation requires all major planning applications to be determined by the Development Management Committee.

The determination date for this application is the 10th May 2017. The applicant has been requested to agree to an extension of time for the determination of this application.

## **Site Details**

The site comprises the former Nortel/Bookham site, now known as Devonshire Park, to the west of Brixham Road on the outskirts of Paignton. The site area is 9.76ha. The site is a former industrial site that primarily manufactured electronics and closed in 2006. Following demolition of most of the buildings in recent years, the site is largely derelict.

The site is bounded by housing, sports pitches and Western Business Park to the north, Brixham Road to the east, Long Road to the south and South Devon College to the west.

The site is located within the greater horseshoe bat sustenance zone associated with the South Hams SAC at Berry Head. The topography of the site rises by about 20 metres from south to north. It is within Flood Zone 1 and a Critical Drainage Area. Parts of the site particularly to the north have become overgrown. There are scattered lines of trees on and around the boundaries of the site. Parts of the site are likely to be contaminated from the historic uses. The parts with most risk are to the south and particularly to the west, with lower risk to the north.

## **Detailed Proposals**

The application seeks to vary Condition P1 (Plans) to amend the detailed access arrangements off Long Road. The outline consent approved four access points, one off Brixham Road to serve the residential use, and three off Long Road to serve the retail and employment uses. The amendment seeks to move the central of the three Long Road access points, which within the outline masterplan provided access to the rear of the retail area and also serve one side of the employment area. The proposal is to move this access westwards in the direction of the South Devon College and closer to the westward-most access that also served the employment area. The previous distance between these two access points was 72.5m, the amendment reduces this to 33m.

## **Summary Of Consultation Responses**

### **Strategy and Project Officer (regarding highway and transport matters):**

#### *Revised access:*

Relocating the industrial access closer to the access servicing the back of the retail units reduces the inter-visibility between the two accesses. The Highway Authority request that the access to the retail units is built as a commercial vehicle standard junction and limited to servicing vehicles. This should avoid confusion and conflict between the two junctions. The applicant will need to ensure that the HGV turning head is wide enough (in accordance with P33 of the Highways Design Guide) and that the bend at the rear of the business land allows sufficient manoeuvring space for service vehicles.

Further to the above relocating the road appears to reduce the land available for

employment. Plan 14290-007Rev F shows 0.9433ha. Achieving the Outline quantum of 5,574sq m would entail 55.74% site coverage, which is above the 35-40% generally assumed for employment layouts. It is necessary for the applicant to show that the site with the changed access is capable of delivering 5,574sqm of employment floorspace.

### **Summary Of Representations:**

There are three representations raising objections. Two representations raise concern in terms of traffic impact and the robustness of the assessment, along with certain points that appear to relate to the wider outline consent. A further representation was received from the Paignton Neighbourhood Forum in respect of the retail impact of the proposal. As the application has now been amended this point is no longer relevant.

### **Relevant Planning History:**

#### *P/2016/1372:*

Variation of condition P1, 34 and 35 of P/2014/0947 (Outline Application with all matters reserved except access) - to vary Condition (P1) - Approved Plans to omit reference to the Masterplan, Condition (34) to vary the minimum unit size restriction for 1 unit and Condition (35) to clarify the restriction of concessions. Resolved Approval by DMC - Pending formal decision.

#### *P/2014/0947:*

Outline Application with all matters reserved except access, for demolition of the remaining buildings on the site and redevelopment for mixed use purposes comprising up to 255 Class C3 dwellings, up to 5,574sqm of B1 and /or B8 business and/or warehousing uses, up to 8,501sqm Class A1 (bulky goods) retail with up to 515sqm garden centre, and up to 139sqm of A3 cafe /restaurant uses, along with related site access, access roads and paths, parking, servicing, open space and landscaping. Approved 22.03.2016 (Subject to a legal agreement and conditions).

### **Key issues/Material considerations:**

The key issues are:

1. The access amendment and impact upon: (a) the outline consent and (b) the highway network.

#### **1. Revised Access**

##### *1(a) Impact upon the outline consent*

The outline consent was granted with four detailed access points and all other matters were reserved. The proposal was accompanied by a Design and Access Statement and an indicative masterplan that demonstrated that the quantum of development proposed could be delivered within the site.

The outline permission granted three detailed access points off Long Road that collectively served the retail and employment elements of the outline permission. The proposal seeks to relocate the central access which, as indicated within the previously submitted indicative masterplan, was shown to serve the rear of the retail area (units) and also served the eastern flank of the employment area (units). As a point of note the employment area (units) were also shown to be served by the western-most access which served the western flank of the area (units) and also its rear. These two access points were 72.5m apart and the indicative masterplan showed a large employment block provided between the two with linear parking to either side. The indicative building was circa 44m wide by 86m deep, with a building line very close to Long Road.

Relocating the access point to a distance of 33m from the western-most access appears to reduce the land available for employment. Plan 14290-007Rev F shows 0.9433ha. To achieve the 5,574sqm of employment space specified in the outline permission would entail 55.74% site coverage, which is above the 35-40% generally assumed for employment layouts. Considering the constraints of the site area at present it is uncertain that the revision would demonstrably harm the potential to deliver the amount of employment floor space approved at outline (5574sqm). In addition at present it is uncertain that the revision would not demonstrably harm the potential to deliver the quantum of garden centre floor space approved at outline (515sqm) as the outline layout supporting the submission shows an area below this level.

It is recommended, for the reasons above that prior to the grant of permission, the applicant should submit revised indicative plans that demonstrate that 5574sqm of business floorspace and 515sqm of garden centre could be provided within the constraints of the revised access points.

The applicant has been requested to provide this information and members will be updated.

#### 1(b) Impact upon the Highway Network

Relocating the access point closer to the adjacent access servicing the back of the retail units reduces the inter-visibility between the two accesses and will provide two access points in relatively close proximity.

Long Road offers principally unobstructed sightlines as it is a relatively straight and flat section of highway. Notwithstanding this due to the close proximity of the two junctions there could be an impact upon highway safety should both junctions be in regular use.

The Highway Authority has requested that the access to the rear of the retail units is built as a commercial vehicle standard junction and limited to servicing vehicles only. This would avoid confusion between the two junctions and limit the regularity of use of one of the junctions and limit any conflict in terms of vehicle movement.

It is recommended that the submitted plans are amended to show (annotated) that the westernmost access is to be built to a commercial vehicle standard and limited to servicing vehicles and serves the rear of the commercial uses.

Subject to the above the proposal is considered acceptable on highway safety grounds and compliant with the aims and objectives of policies TA2, and DE1 of the Torbay Local Plan 2012-2030.

### **S106/CIL**

The existing Section 106 agreement will need to be tied to the new application through a deed of variation

This should be completed prior to the decision being issued.

The proposal is not CIL liable as it is an amendment to an extant planning permission and does not increase floorspace..

### **Statement of Pro-active Working**

The Council has sought to work positively and proactively with the applicant through pre-application discussions and through open dialogue throughout the application process including requests for further information.

### **Local Finance Considerations**

Delivery of this development will bring a number of economic benefits to Torbay through the mixed provision of housing, retail and employment space.

### **Human Rights and Equality Issues**

Human Rights Act - The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests/the Development Plan and Central Government Guidance.

### **Conclusions**

The revised access is considered acceptable subject to (i) the receipt of indicative plans that demonstrate that the quantum of development approved within the original outline consent can be adequately achieved, and (ii) the receipt of amended plans that confirm that one of the two access points in close proximity of each other is to be built to a commercial vehicle standard and limited to use by servicing vehicles only, in order to reduce vehicular conflict.

## **Condition(s)/Reason(s)**

01. Prior to the submission of any application for approval of the reserved matters, a Tree Survey of the site shall be submitted to and approved in writing by the Local Planning Authority. The Tree Survey shall be carried out in accordance with BS 5837:2012 (or any superseding British Standard). The approved Tree Survey shall be used to inform the details of the reserved matters.

Reason: To ensure that appropriate trees are retained on the site and integrated into the detailed design of the scheme in accordance with Policy C4 of the Adopted Torbay Local Plan - A landscape for success 2012-2030. These details are required pre-commencement as specified to ensure that appropriate existing trees and/or hedgerows are retained in the development and taken into account in the detailed design proposals.

02. Details of the reserved matters set out below ("the reserved matters") shall be submitted to the Local Planning Authority for approval within three years from the date of this permission:
- (i) layout;
  - (ii) scale;
  - (iii) appearance; and
  - (iv) landscaping.

Approval of all reserved matters shall be obtained from the Local Planning Authority in writing before any development is commenced. The reserved matters shall be carried out as approved.

Reason: To enable the Local Planning Authority to control the development in detail and to comply with Section 92 of the Town and Country Planning Act 1990 (as amended).

03. The details of reserved matters shall include the mitigation and enhancement measures set out in Section 6 of the submitted Ecology and Landscape Report (Engain, September 2014). The artificial bat roost shall be constructed as approved prior to the first occupation of any of the dwellings hereby permitted. The artificial feature for reptiles shall be constructed as approved prior to the commencement of development and used in connection with the provisions of condition 10.

Reason: In the interests of biodiversity and to minimise impacts on protected species in accordance with Policy NC1 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraphs 109 and 118 of the NPPF.

04. The details of reserved matters shall include bird nesting/bat roosting boxes

in the design of the buildings in accordance with the RSPB comments received on 24.11.2014. Prior to the commencement of the development of the buildings, the design specification(s) of the bird nesting/bat roosting boxes that will be used in the buildings shall be submitted to and approved in writing by the Local Planning Authority. The bird nesting/bat roosting boxes will be provided in the buildings as approved.

Reason: In the interests of biodiversity in accordance with Policy NC1 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraphs 109 and 118 of the NPPF. These details are required pre-commencement as specified to ensure that appropriate bird nesting/bat roosting boxes are provided in the buildings.

05. The details of reserved matters shall include noise mitigation measures in accordance with the Noise Impact Assessment (24 Acoustics, September 2014) submitted with the application. No dwelling shall be occupied until the noise mitigation measures have been provided as approved. This includes any measures to be provided on land outside the application site boundary in accordance with Para 5.2 of the Noise Impact Assessment. The noise mitigation measures to be provided on site shall form an integral part of the landscaping details and shall be designed to not have an adverse impact on views of the site or on visual amenity. The details shall be accompanied by technical information to demonstrate to the satisfaction of the Local Planning Authority that the measures will be adequate to prevent any noise nuisance to the dwellings from the business and retail uses, including any plant and associated traffic and deliveries, as well as the surrounding uses and roads. The technical information shall demonstrate that the level of noise at the nearest noise sensitive receptor will be 10db below background noise levels when measured and rated using BS 4142:2014 'Methods for rating and assessing industrial and commercial sound' (or any superseding British Standard).

Reason: In the interests of residential and visual amenity in accordance with Policies DE1 and DE2 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraphs 58 and 123 of the NPPF.

06. The details of reserved matters shall include details of cycle parking and bin storage/waste recycling facilities for the dwellings and any retail or business unit formed from the retail, business and/or warehousing floorspace hereby permitted. The cycle parking shall be secure, covered and located where it is well overlooked, wherever practicable, to reduce opportunities for crime. The relevant cycle parking and bin storage/waste recycling facilities shall be provided as approved prior to the first occupation or first use of the dwelling or unit to which it relates.

Reason: To promote cycling as an alternative mode of transport to the

private car in accordance with Policy TA1 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and to ensure appropriate space is provided for the storage and removal of waste, including waste recycling facilities, in accordance with Policy W1 of the Torbay Local Plan - A landscape for success 2012-2030.

07. No development (including demolition and ground works) or vegetation clearance works shall take place until a Scheme that includes the following components to deal with the risks associated with contamination of the site shall each be submitted to and approved in writing by the Local Planning Authority:
- 1) A preliminary risk assessment which has identified:
    - o all previous uses;
    - o potential contaminants associated with those uses;
    - o a conceptual model of the site indicating sources, pathways and receptors; and
    - o potentially unacceptable risks arising from contamination on the site
  - 2) A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
  - 3) The results of the site investigation and detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
  - 4) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the express written consent of the Local Planning Authority. The Scheme shall be implemented as approved.

If, during development, contamination not previously identified is found to be present at the site then no further development shall be carried out until a remediation strategy has been submitted to and approved in writing by the Local Planning Authority detailing how this unsuspected contamination shall be dealt with. The remediation strategy shall be implemented as approved.

Reason: To minimise contamination risks to future users of the site and surrounding land, including controlled waters, and to ensure the development can be carried out safely in accordance with Policy ER3 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and

paragraphs 120 and 121 of the NPPF. These details are required pre-commencement as specified to ensure that contaminated material is not released into the environment from building operations and there are no risks to workers, neighbours or other receptors.

08. No development (including demolition and ground works) or vegetation clearance works shall take place until a detailed surface water drainage scheme for the site has been submitted to and approved in writing by the Local Planning Authority. Priority shall be given to sustainable urban drainage systems, where soakaways must be designed in accordance with Building Research Establishment Digest 365 and include details of how they have been designed to cater for the 1 in 100 year critical rainfall event plus an allowance for climate change. Evidence that trial holes and infiltration tests have been carried out in accordance with Building Research Establishment Digest 365 in the same location as any soakaways or sustainable drainage features must be provided. The scheme shall demonstrate that there will be no increased risk of flooding to surrounding buildings, roads and land. The development shall not be occupied or brought into use until the approved surface water drainage scheme has been completed as approved and it shall be continually maintained thereafter.

Reason: To manage water and flood risk in accordance with Policies ER1 and ER2 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraph 103 of the NPPF. These details are required pre-commencement as specified to ensure that an appropriate drainage system is provided for the development and there will be no increased risk of flooding to surrounding buildings, roads and land.

09. No development (including demolition and ground works) or vegetation clearance works shall commence until:
- a) a detailed survey and evaluation of the public foul sewerage network has taken place (at the Owner's expense) to identify improvements necessary to be funded in advance and executed to accommodate the discharge of foul sewage from the development; and
  - b) the Owner has submitted an application to the relevant Sewerage Undertaker for a public foul sewer requisition under s98 of the Water Industry Act 1991 (which shall include the provision of public sewerage improvement works identified as necessary). The development hereby approved shall not be occupied or brought into use and there shall be no discharge to the public foul sewerage network, unless approved in writing by the Local Planning Authority (as in accordance with the scheme of improvement works identified by the Sewerage Undertaker as necessary to accommodate the discharge of foul sewage from the development).

Reason: To ensure the public foul sewerage network has capacity to accommodate the development and any necessary improvement works are carried out in accordance with Policies ER2 and W5 of the Adopted Torbay Local Plan - A landscape for success 2012-2030. These details are required pre-commencement as specified to ensure that the public foul sewerage network has capacity to accommodate the development.

10. No development (including demolition and ground works) or vegetation clearance works shall take place of any phase of the development until a Construction and Environmental Management Plan (CEMP) for that phase has been submitted to and approved in writing by the Local Planning Authority. The CEMPs shall be prepared in accordance with specifications in clause 10.2 of BS 42020:2013 (or any superseding British Standard) and shall include the following:
- a) Risk assessment of potentially damaging construction activities.
  - b) Identification of 'biodiversity protection zones'.
  - c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction.
  - d) The location and timing of sensitive works to avoid harm to biodiversity features. This includes the use of protective fences, exclusion barriers and warning signs.
  - e) The times during construction when specialist ecologists need to be present on site to monitor works to ensure compliance with the CEMP, and the actions that will be undertaken.
  - f) Responsible persons and lines of communication.
  - g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.

The approved CEMPs shall be adhered to and implemented throughout the construction period of the phase of the development that they relate to strictly in accordance with the approved details.

Reason: In the interests of biodiversity and to minimise impacts on protected species in accordance with Policy NC1 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraphs 109 and 118 of the NPPF. These details are required pre-commencement as specified to ensure that biodiversity is not harmed by building operations or vegetation removal.

11. No development (including demolition and ground works) or vegetation clearance works shall take place until a Lighting Design Strategy to maintain "dark areas" on the site has been submitted to and approved in writing by the Local Planning Authority. The Strategy shall include:
- a) A map showing the "dark areas" that will be maintained on site.
  - b) An evidence based assessment of light levels of the proposed development, including buildings, vehicle headlamps and street

lighting, comprising a written report and accompanying drawings of the site with the levels of predicted illuminance and light spill in and adjacent to the "dark areas" shown by appropriate isolines.

- c) Evidence to demonstrate that a light spill no higher than 0.5 lux will be achieved within the "dark areas".
- d) Where c) is achieved either fully or in part through landscaping, details of the landscaping and its management to ensure it will maintain the "dark areas" in perpetuity. These details shall be incorporated into the Detailed Landscaping Scheme and Landscape and Ecological Management Plan (LEMP) where applicable. The Lighting Design Strategy shall be implemented and maintained as approved.

Reason: To prevent disturbance to bats, including greater horseshoe bats, in accordance with Policy NC1 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraphs 109 and 118 of the NPPF. These details are required pre-commencement as specified to ensure that bats are not harmed by the construction and operation of the development.

- 12. No tree works or felling, cutting or removal of hedgerows or other vegetation clearance works shall be carried out on the site during the bird breeding season from March to September, inclusive. If this period cannot be avoided, these works shall not be undertaken until the reasons why have been submitted to and approved in writing by the Local Planning Authority. The works shall not be undertaken except in the presence of a suitably qualified ecologist. If breeding birds are found or suspected, the works will not be permitted until the ecologist is satisfied that breeding is complete.

Reason: To ensure no harm to breeding birds in accordance with Policy NC1 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraphs 109 and 118 of the NPPF. The reasons why works must be carried out during the bird breeding season are required pre-commencement as specified to ensure that breeding birds are not harmed by building operations or vegetation removal.

- 13. No development (including demolition and ground works) or vegetation clearance works shall take place of any phase of the development until a Construction Method Statement for that phase has been submitted to and approved in writing by the Local Planning Authority. The Statements shall provide for:
  - a) The parking of vehicles of site operatives and visitors.
  - b) Loading and unloading of plant and materials.
  - c) Storage of plant and materials used in constructing the development.
  - d) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where

- appropriate.
- e) Wheel washing facilities.
- f) Measures to control the emission of dust and dirt during construction.
- g) Measures to minimise noise nuisance to neighbours from plant and machinery.
- h) Construction working hours from 8:00 to 18:00 Monday to Friday, 8:00 to 13:00 on Saturdays and at no time on Sundays or Bank Holidays.

The approved Statements shall be adhered to throughout the construction period of the phase of the development that they relate to.

Reason: To safeguard the Local Planning Authority's rights of control over these details to ensure that the construction works are carried out in an appropriate manner to minimise the impact on the amenity of neighbouring uses and in the interests of the convenience of highway users. These details are required pre-commencement as specified to ensure that building operations and vegetation removal are carried out in an appropriate manner to avoid nuisance to neighbouring uses and inconvenience to highway users.

14. No development (including demolition and ground works) or vegetation clearance works shall take place of any phase of the development until a Waste Audit and 5 year Waste Management Plan for that phase has been submitted to and approved in writing by the Local Planning Authority. The Waste Audits and 5 year Waste Management Plans shall include measures to:
- a) Prevent and minimise, re-use and recycle waste (including composting where appropriate).
  - b) Minimise the use of raw materials.
  - c) Minimise the pollution potential of unavoidable waste.
  - d) Seek alternative modes of transport (to the use of roads) to move waste (wherever possible).
  - e) Make provision for the storage and collection of waste.
  - f) Dispose of unavoidable waste in an environmentally acceptable manner.

The Waste Audits and 5 year Waste Management Plans shall be implemented as approved.

Reason: To minimise waste from the development in accordance with Policy W2 of the Adopted Torbay Local Plan - A landscape for success 2012-2030. These details are required pre-commencement as specified to ensure that waste generation is minimised from the start of the development and is dealt with in a sustainable way.

15. No development (including demolition and ground works) or vegetation clearance works shall take place of any phase of the development until fences have been erected and any other protection measures put in place for the protection of trees and/or hedgerows to be retained in accordance with a Scheme for that phase which has been submitted to and approved in writing by the Local Planning Authority. The Schemes shall be prepared in accordance with British Standard BS 5837:2012 (or any superseding British Standard). The fences and any other protection measures required in the approved Schemes shall be retained until the completion of the development in the phase of the development that they relate to and no vehicles, plant or materials shall be driven or placed within the areas enclosed by the fences.

Reason: To protect the trees and hedgerows to be retained in the interests of the amenities of the area, in accordance with Policy C4 of the Adopted Torbay Local Plan - A landscape for success 2012-2030. These details are required pre-commencement as specified to ensure that trees and hedgerows to be retained are not damaged by building operations or vegetation removal, including biodiversity interests.

16. The development shall not be occupied or brought into use until a Section 278 Highways Agreement has been entered into in order to secure the necessary works to the public highway. The s278 works shall include a waiting lane in the centre of the carriageway of Brixham Road for vehicles exiting the site and turning right onto Brixham Road from the vehicular access on the eastern site boundary, and provision of a shared footpath/cycleway linking this access to the pedestrian crossing at the Brixham Road/Long Road junction. The development shall not be occupied or brought into use until the s278 works have been implemented in full to the satisfaction of the Local Highway Authority.

Reason: To provide safe and sustainable access to the site for drivers, cyclists and pedestrians in accordance with Policies TA1, TA2 and DE1 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraph 32 of the NPPF.

17. Prior to the first occupation of any of the dwellings hereby permitted, a Detailed Landscaping Scheme for the residential part of the site shall be submitted to and approved in writing by the Local Planning Authority. The Scheme shall include details of hard and soft landscaping, including all boundary treatments. This will include tree and plant species and methods of planting. The hard landscaping forming part of the curtilage and boundary of any dwelling, and access thereto, shall be constructed as approved prior to the occupation of the dwelling. The soft landscaping shall be planted in the first planting season following the occupation of the dwellings or completion of the residential development, whichever is the sooner, or in

earlier planting seasons wherever practicable, and any trees or plants which within a period of 5 years from the completion of the residential development as a whole die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Reason: In the interests of amenity and design in accordance with Policy DE1 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraph 58 of the NPPF.

18. Prior to the first use of any business unit formed from the business and/or warehousing floorspace hereby permitted, a Detailed Landscaping Scheme for the business and/or warehousing part of the site, including associated parking areas, shall be submitted to and approved in writing by the Local Planning Authority. The Scheme shall include details of hard and soft landscaping, including all boundary treatments. This will include tree and plant species and methods of planting. The hard landscaping shall be constructed as approved prior to the first use of the business unit(s). The soft landscaping shall be planted in the first planting season following the occupation of the business unit(s) or completion of the business unit(s), whichever is the sooner, or in earlier planting seasons wherever practicable, and any trees or plants which within a period of 5 years from the completion of the business unit(s) die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Reason: In the interests of amenity and design in accordance with Policy DE1 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraph 58 of the NPPF.

19. Prior to the first use of any retail unit formed from the retail floorspace hereby permitted, a Detailed Landscaping Scheme for the retail part of the site, including associated parking areas, shall be submitted to and approved in writing by the Local Planning Authority. The Scheme shall include details of hard and soft landscaping, including all boundary treatments. This will include tree and plant species and methods of planting. The hard landscaping shall be constructed as approved prior to the first use of the retail unit(s). The soft landscaping shall be planted in the first planting season following the occupation of the retail unit(s) or completion of the retail unit(s), whichever is the sooner, or in earlier planting seasons wherever practicable, and any trees or plants which within a period of 5 years from the completion of the retail unit(s) die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Reason: In the interests of amenity and design in accordance with Policy

DE1 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraph 58 of the NPPF.

20. Prior to the first occupation of any of the dwellings hereby permitted, a Landscape and Ecological Management Plan (LEMP) for the residential part of the site shall be submitted to and approved in writing by the Local Planning Authority. The content of the LEMP shall be prepared in accordance with the specifications in clause 11.1 of BS 42020:2013 (or any superseding British Standard) and shall include the following:
- a) Description and evaluation of features to be managed.
  - b) Ecological trends and constraints on site that might influence management.
  - c) Aims and objectives of management.
  - d) Appropriate management options for achieving aims and objectives.
  - e) Prescriptions for management actions.
  - f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five year period).
  - g) Details of the body or organisation responsible for implementation of the plan.
  - h) On-going monitoring and remedial measures for biodiversity features included in the LEMP.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(s) responsible for its delivery.

All post-construction site management shall be undertaken in accordance with the LEMP.

Reason: In the interests of amenity and biodiversity in accordance with Policies DE1 and NC1 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraphs 58, 109 and 118 of the NPPF.

21. Prior to the first use of any business unit formed from the business and/or warehousing floorspace hereby permitted, a Landscape and Ecological Management Plan (LEMP) for the business and/or warehousing part of the site shall be submitted to and approved in writing by the Local Planning Authority. The content of the LEMP shall be prepared in accordance with the specifications in clause 11.1 of BS 42020:2013 (or any superseding British Standard) and shall include the following:
- a) Description and evaluation of features to be managed.
  - b) Ecological trends and constraints on site that might influence management.
  - c) Aims and objectives of management.
  - d) Appropriate management options for achieving aims and objectives.
  - e) Prescriptions for management actions.

- f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five year period).
- g) Details of the body or organisation responsible for implementation of the plan.
- h) On-going monitoring and remedial measures for biodiversity features included in the LEMP.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(s) responsible for its delivery.

All post-construction site management shall be undertaken in accordance with the LEMP.

Reason: In the interests of amenity and biodiversity in accordance with Policies DE1 and NC1 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraphs 58, 109 and 118 of the NPPF.

22. Prior to the first use of any retail unit formed from the retail floorspace hereby permitted, a Landscape and Ecological Management Plan (LEMP) for the retail part of the site shall be submitted to and approved in writing by the Local Planning Authority. The content of the LEMP shall be prepared in accordance with the specifications in clause 11.1 of BS 42020:2013 (or any superseding British Standard) and shall include the following:
- a) Description and evaluation of features to be managed.
  - b) Ecological trends and constraints on site that might influence management.
  - c) Aims and objectives of management.
  - d) Appropriate management options for achieving aims and objectives.
  - e) Prescriptions for management actions.
  - f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five year period).
  - g) Details of the body or organisation responsible for implementation of the plan.
  - h) On-going monitoring and remedial measures for biodiversity features included in the LEMP.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(s) responsible for its delivery.

All post-construction site management shall be undertaken in accordance with the LEMP.

Reason: In the interests of amenity and biodiversity in accordance with Policies DE1 and NC1 of the Adopted Torbay Local Plan - A landscape for

success 2012-2030, and paragraphs 58, 109 and 118 of the NPPF.

23. Prior to the first occupation of any of the dwellings hereby permitted, an External Lighting Scheme for the residential part of the site shall be submitted to and approved in writing by the Local Planning Authority. The Scheme shall include the location and specification of all external lighting, and be designed to minimise harm to nearby properties and biodiversity. The External Lighting Scheme shall be implemented as approved prior to the occupation of the dwellings. Should any of the external lighting become damaged and need replacement it shall be replaced with external lighting of the same specification. No additional external lighting shall be installed on this part of the site.

Reason: In the interests of amenity, design, crime prevention and biodiversity in accordance with Policies NC1, DE1 and DE3 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraph 125 of the NPPF.

24. Prior to the first use of any business unit formed from the business and/or warehousing floorspace hereby permitted, an External Lighting Scheme for the business and/or warehousing part of the site shall be submitted to and approved in writing by the Local Planning Authority. The Scheme shall include the location and specification of all external lighting, and be designed to minimise harm to nearby properties and biodiversity. The External Lighting Scheme shall be implemented as approved prior to the first use of the business unit(s). Should any of the external lighting become damaged and need replacement it shall be replaced with external lighting of the same specification. No additional external lighting shall be installed on this part of the site.

Reason: In the interests of amenity, design, crime prevention and biodiversity in accordance with Policies NC1, DE1 and DE3 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraph 125 of the NPPF.

25. Prior to the first use of any retail unit formed from the retail floorspace hereby permitted, an External Lighting Scheme for the retail part of the site shall be submitted to and approved in writing by the Local Planning Authority. The Scheme shall include the location and specification of all external lighting, and be designed to minimise harm to nearby properties and biodiversity. The External Lighting Scheme shall be implemented as approved prior to the first use of the retail unit(s). Should any of the external lighting become damaged and need replacement it shall be replaced with external lighting of the same specification. No additional external lighting shall be installed on this part of the site.

Reason: In the interests of amenity, design, crime prevention and biodiversity in accordance with Policies NC1, DE1 and DE3 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraph 125 of the NPPF.

26. Prior to the first occupation of any of the dwellings hereby permitted, evidence shall be submitted to and approved in writing by the Local Planning Authority to demonstrate that the residential development meets Secured by Design standards as far as practicable.

Reason: In the interests of crime prevention in accordance with Policy DE1 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraph 58 of the NPPF.

27. Prior to the first use of any business unit formed from the business and/or warehousing floorspace hereby permitted, evidence shall be submitted to and approved in writing by the Local Planning Authority to demonstrate that the design of the business and/or warehousing part of the site meets Secured by Design standards as far as practicable.

Reason: In the interests of crime prevention in accordance with Policy DE1 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraph 58 of the NPPF.

28. Prior to the first use of any retail unit formed from the retail floorspace hereby permitted, evidence shall be submitted to and approved in writing by the Local Planning Authority to demonstrate that the design of the retail part of the site meets Secured by Design standards as far as practicable.

Reason: In the interests of crime prevention in accordance with Policy DE1 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraph 58 of the NPPF.

29. Prior to the first occupation of any of the dwellings hereby permitted, a Residential Travel Plan shall be submitted to and approved in writing by the Local Planning Authority incorporating measures to promote the use of sustainable modes of travel instead of private car by future residents of the dwellings. The Residential Travel Plan shall be implemented as approved and shall be continually monitored by a Travel Plan Coordinator (TPC) appointed by the developer of the dwellings to ensure that it meets its objectives and targets. The contact details of the TPC shall be provided in the Residential Travel Plan. In the event that the objectives and targets of the Residential Travel Plan are not met, the Residential Travel Plan shall be updated by the TPC setting out further measures in order to rectify this. A copy of the Residential Travel Plan or updated Residential Travel Plan, as the case may be, shall be made available to the Local Planning Authority

upon request during normal business hours. A summary of the Residential Travel Plan shall be provided to the first occupier of each dwelling hereby permitted setting out the options for sustainable modes of travel in the area.

Reason: To promote sustainable modes of travel in the interests of reducing greenhouse gas emissions and pollution, in accordance with Policies SS13, TA1, TA2 and DE3 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraph 36 of the NPPF.

30. Prior to the first use of any business unit formed from the business and/or warehousing floorspace hereby permitted, a Travel Plan shall be submitted to and approved in writing by the Local Planning Authority incorporating measures to promote the use of sustainable modes of travel instead of private car by staff of the business unit. The Travel Plans required by this condition shall be implemented as approved and shall be continually monitored by a Travel Plan Coordinator (TPC) appointed by the relevant occupier of the business unit or the developer of the business and/or warehousing floorspace to ensure that they meet their objectives and targets. The contact details of the TPC shall be provided in each Travel Plan required by this condition. In the event that the objectives and targets of any Travel Plan required by this condition are not met, the Travel Plan shall be updated by the TPC setting out further measures in order to rectify this. A copy of any Travel Plan or updated Travel Plan, as the case may be, shall be made available to the Local Planning Authority upon request during normal business hours.

Reason: To promote sustainable modes of travel in the interests of reducing greenhouse gas emissions and pollution, in accordance with Policies SS13, TA1, TA2 and DE3 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraph 36 of the NPPF.

31. Prior to the first use of any retail unit formed from the retail floorspace hereby permitted, a Travel Plan shall be submitted to and approved in writing by the Local Planning Authority incorporating measures to promote the use of sustainable modes of travel instead of private car by staff and customers of the retail unit. The Travel Plans required by this condition shall be implemented as approved and shall be continually monitored by a Travel Plan Coordinator (TPC) appointed by the relevant occupier of the retail unit or the developer of the retail floorspace to ensure that they meet their objectives and targets. The contact details of the TPC shall be provided in each Travel Plan required by this condition. In the event that the objectives and targets of any Travel Plan required by this condition are not met, the Travel Plan shall be updated by the TPC setting out further measures in order to rectify this. A copy of any Travel Plan or updated Travel Plan, as the case may be, shall be made available to the Local Planning Authority upon request during normal business hours.

Reason: To promote sustainable modes of travel in the interests of reducing greenhouse gas emissions and pollution, in accordance with Policies SS13, TA1, TA2 and DE3 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraph 36 of the NPPF.

32. The retail floorspace (Use Class A1) hereby permitted shall not be used for the sale of any goods other than those within the following categories:
- (i) Do-It-Yourself goods and materials;
  - (ii) new kitchens and bathrooms;
  - (iii) garden centre goods and materials, including plants;
  - (iv) furniture and home furnishings
  - (v) carpets and other floor coverings;
  - (vi) gas and electrical goods;
  - (vii) camping and associated leisure goods, no more than 10% of the net sales floor area of this category to be used for the sale or display of clothing and/or footwear;
  - (viii) motor vehicle and bicycle related goods;
  - (ix) pets and pet products;
  - (x) office furniture; and
  - (xi) ancillary products reasonably related to the categories above and restricted to a maximum floor area within each retail unit of 10% of the net sales floor area.

Reason: To protect the vitality and viability of Paignton and Torquay Town Centres and other nearby centres in accordance with Policies TC1 and TC3 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraphs 24 and 27 of the NPPF.

33. The total gross floor area of the retail floorspace (Use Class A1) hereby permitted, including ancillary storage and office space, shall be no more than 8,501 sq m. The total gross floor area, together with any external area, of the garden centre hereby permitted shall be no more than 515 sq m. The total gross floor area of the retail floorspace (Use Class A3) hereby permitted, including ancillary storage and office space, shall be no more than 139 sq m.

Reason: For the avoidance of doubt and to protect the vitality and viability of Paignton and Torquay Town Centres and other nearby centres in accordance with Policies TC1 and TC3 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraphs 24 and 27 of the NPPF.

34. The minimum gross floor area at ground floor level of any retail unit formed from the retail floorspace (Use Class A1) hereby permitted shall be 929 sq m and the retail units shall not be sub-divided into smaller retail units.

Reason: For the avoidance of doubt and to protect the vitality and viability of Paignton and Torquay Town Centres and other nearby centres in accordance with Policies TC1 and TC3 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraphs 24 and 27 of the NPPF.

35. Any retail unit formed from the retail floorspace (Use Classes A1) hereby permitted and the garden centre shall be used by a single operator and shall not include any independently operated concessions, unless they are reasonably related to the goods sold by the unit as permitted by condition 32.

Reason: For the avoidance of doubt and to protect the vitality and viability of Paignton and Torquay Town Centres and other nearby centres in accordance with Policies TC1 and TC3 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraphs 24 and 27 of the NPPF.

36. No delivery vehicular movements to any retail unit formed from the retail floorspace hereby permitted or business unit formed from the business and/or warehousing floorspace hereby permitted nor any loading or unloading of vehicles in connection with the aforementioned units shall take place except between the hours of 08:00 and 18:00 Monday to Friday and 08:00 and 13:00 on Saturdays. There shall be no deliveries to the units nor any loading or unloading in connection with the same on Sundays or Bank and Public Holidays.

Reason: To protect residential amenity in accordance with Policy DE3 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraph 123 of the NPPF.

37. No dwelling shall be occupied until its allocated parking space(s) and access thereto, as shown in the approved details of reserved matters, has been provided and made available for use. The parking space(s) and access thereto shall be kept permanently available for parking and access purposes thereafter.

Reason: To ensure that adequate off-street parking and access thereto is provided for the dwellings and kept permanently available for use in the interests of highway safety and residential amenity, in accordance with Policies TA2 and TA3 of the Adopted Torbay Local Plan - A landscape for success 2012-2030.

38. No business unit formed from the business and/or warehousing floorspace hereby permitted shall be brought into use until its allocated parking spaces

and access thereto, as shown in the approved details of reserved matters, have been provided and made available for use. The parking spaces and access thereto shall be kept permanently available for parking and access purposes thereafter.

Reason: To ensure that adequate off-street parking and access thereto is provided for the business units and kept permanently available for use in the interests of highway safety and amenity, in accordance with Policies TA2 and TA3 of the Adopted Torbay Local Plan - A landscape for success 2012-2030.

39. No retail unit formed from the retail floorspace hereby permitted shall be brought into use until its allocated parking spaces and access thereto, as shown in the approved details of reserved matters, have been provided and made available for use. The parking spaces and access thereto shall be kept permanently available for parking and access purposes thereafter.

Reason: To ensure that adequate off-street parking and access thereto is provided for the retail units and kept permanently available for use in the interests of highway safety and amenity, in accordance with Policies TA2 and TA3 of the Adopted Torbay Local Plan - A landscape for success 2012-2030.

**Relevant Policies**

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**Application Number**

V/2017/0001

**Site Address**

Land At Brixham Road  
Yannons Farm (Areas C And D)  
Paignton

**Case Officer**

Mr Scott Jones

**Ward**

Blatchcombe

**Description**

Deed of Variation required to S106 to allow for nomination Agreement to be backdated - P/2015/0124/MPA.

**Executive Summary/Key Outcomes**

A minor amendment is sought to the wording of the S106 Legal Agreement that accompanies the grant of consent of 140 dwellings at Yannons Farm (Phases C and D).

The existing wording requires the registered provider of the affordable housing to enter in to a nomination agreement with the Council (in its capacity as Local Housing authority) at least 6 months prior to the first occupation of any affordable dwelling.

The affordable dwellings are due to be occupied and an amendment to the wording of the S106 to allow the nomination agreement to be completed prior to occupation rather than 6 months prior to occupation will allow families to move in to these properties without delay.

The amendment will have no material impact upon the S106 Legal Agreement.

Members are asked to agree the amendment.

**Recommendation**

That completion of a deed of variation of the S106 Legal Agreement that accompanies planning permission P/2015/0124 to allow a Nomination Agreement for affordable housing to be entered into prior to occupation of the affordable housing instead of 6 months prior to occupation is ratified.

**Statutory Determination Period**

17th July 2017.

**Site Details**

The application relates to Yannons Farm Phases C and D, which is a residential development site of 140 dwellings that is presently partly built out. The site is accessed off the Brixham Road and is set to the west of the earlier phases of residential development, the Yannons Farm Local Centre, and residential

development on the site of the former garden centre adjacent to the Brixham Road.

### **Detailed Proposals**

A minor amendment is sought to the wording of the S106 legal agreement that accompanies the residential development approved for Phases C and D granted under planning reference P/2015/0124.

The amendment seeks to modify the wording relating to the affordable housing provision and specifically the notification period for the Nomination Agreement for the Affordable Dwellings.

The current S106 states the following:

"The owner shall procure (Para 9.1) that the Registered Provider shall enter into a Nomination Agreement b/i at least 6 months prior to any of the Affordable Dwellings being Occupied and shall not cause or permit any of the Affordable Dwellings to be Occupied until the Nomination Agreement has been entered into.." (Para 9.1.1)

The amendment seeks to deletion of the words "at least 6 months" from para 9.1.1 and for the clause to read as follows:

"the Registered Provider shall enter into a Nomination Agreement prior to any of the Affordable Dwellings being Occupied and shall not cause or permit any of the Affordable Dwellings to be Occupied until the Nomination Agreement has been entered into".

### **Summary Of Consultation Responses**

#### Legal Officer:

The proposed amendment has no material impact upon the key areas of the S106 and the amendment will permit the affordable units to be occupied without undue delay.

Completion of the Nomination Agreement was delayed but has now taken place. Occupants of shared ownership houses were due to complete their purchases and move in on 26th May 2017 but were prohibited from doing so by the s.106 agreement as originally worded. After consultation with senior members of the committee a deed of variation in the terms requested was completed on 26th May 2017 in order to allow the purchases to proceed.

Recommend that the amendment is presented to members at the next available Development Management Committee for ratification.

### **Summary Of Representations**

None.

### **Relevant Planning History**

P/2015/0124 - Hybrid application. Full planning application for 70 dwellings, related infrastructure, landscaping, play areas and a hill top park. Outline planning permission for up to 70 dwellings with all matters reserved except - Approved

P/2016/0610 - Submission of Reserved Matters relating to layout, scale, appearance and landscaping in relation to P/2015/0124 (Hybrid application. Full planning application for 70 dwellings, related infrastructure, landscaping, play areas and a hill top park. Outline planning permission for up to 70 dwellings with all matters reserved except for access) - Approved

### **Key Issues/Material Considerations**

#### **Principle and Planning Policy -**

The amendment will not affect the principal parameters of the development and there is no change to how the scheme complies with general principle and planning policy. Proposal retains the schemes compliance with strategic policies SS1, SS3, SS1 and SS12.

#### **Economy -**

The amendment will not negatively affect upon the economy. The amendment will permit dwellings within the development to be occupied without delay which may help support the vitality and viability of the Local Centre. The proposal retains the schemes compliance with Policies ss1, SS3, SS4.

#### **Closing the gap -**

The amendment will permit affordable housing units to be occupied without further delay, which will support social mobility in providing housing for those in need. Proposal retains the scheme's compliance with Policies H1, H2 and SS11 and SS12.

#### **Climate change -**

No impact.

#### **Environmental Enhancement -**

No impact.

#### **Accessibility -**

No impact.

#### **Vibrant Town Centres -**

The occupation of houses within close proximity of the Yannons Farm Local Centre will potentially support the vitality and viability of this centre. Proposal retains the schemes compliance with policies SS1, SS3 and TC2 of the Local Plan.

#### **Human Rights and Equalities Issues -**

The proposal will aid the provision of housing for those in need by removing a somewhat arbitrary 6 month time delay from this moment for occupation. Proposal

retains the scheme's compliance with policies H1, H2, and SS11 of the Local Plan.

**S106/CIL -**

The amendment will not materially alter the content of the S106 Legal Agreement.

**Conclusions**

The amendment allows the occupation of affordable units without undue delay.

It is requested that Members ratify the amendment in the deed of variation completed on 26th May 2017.

**Relevant Policies**

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