



# Draft Statement of Common Ground

## Inglewood, Torbay

January 2020

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Statement of Common Ground signed on behalf of Torbay Council (LPA)	
Print Name:	David Pickhaver for Torbay Council
Date:	
Position:	Senior Policy Planner

Statement of Common Ground signed on behalf of Abacus Projects Limited and Deeley Freed Estates Limited (Appellant)	
Print Name:	Simon Fitton for Alder King
Date:	
Position:	Partner

## 1.0 Introduction and Application Background

- 1.1 This agreed statement has been prepared by the Appellant, Abacus Projects Limited and Deeley Freed Estates Limited and Torbay Council, the Local Planning Authority (LPA).
- 1.2 The application reference P/2017/1133 was submitted to the Council on 3 November 2017 by Stride Treglown, acting as agent for the applicants. The application was confirmed as valid on 17 November 2017.
- 1.3 The description of development is:
- “Outline application for residential led development of up to 373 dwellings (C3) together with the means of vehicular and pedestrian/cycle access together with the principle of a public house (A3/A4 use), primary school with nursery (D1), internal access roads and the provision of public open space (formal and informal) and strategic mitigation. Details of access to be determined with all other matters reserved.”*
- 1.4 During the consideration of the application, extensive negotiations have occurred between the appellant, Council officers and statutory consultees. In response to comments received during the consideration of the application and these negotiations, the proposal was amended and a series of changes were made to the application, including the submission of amended plans on 8 March 2018.
- 1.5 The determination period was extended to 31 July 2019 and expired on that date.
- 1.6 The application has not been determined and an appeal has been lodged against non-determination.
- 1.7 Heads of terms for a section 106 agreement are agreed in principle. It is expected that the section 106 agreement will be agreed before the Public Inquiry.

## 2.0 The Appeal Site and its Surroundings

- 2.1 The appeal site is located wholly within the Torbay Council administrative area. It is located south of an area locally known as White Rock and is bounded on its eastern edge by the A3022/Brixham Road, a tree/hedge lined route serving the Brixham Peninsula. The wider context includes Torquay situated to the north-east, Brixham Peninsula to the south-east, and the South Devon Area of Outstanding Natural Beauty (AONB) to the south and west that surrounds the River Dart.
- 2.2 The western boundary is formed of field margin/hedgerows and follows the administrative boundary between the Torbay and South Hams District Council areas.
- 2.3 The eastern edge of Brixham Road, broadly referred to as Goodrington, is predominantly residential in nature with development typical of 1970-1990 style.
- 2.4 The village of Galampton is situated beyond the southern boundary of the site, separated by fields.

- 2.5 The hamlet of Waddeton is located to the south-west, accessed from the White Rock area by Waddeton Road and from Galmpton by Stoke Road.
- 2.6 The majority of building uses surrounding the site are residential properties located to the east of Brixham Road, within the White Rock development to the north, and at nearby Galmpton and Waddeton. Educational building uses include White Rock Primary School located directly to the north-east and South Devon College located to the north-west of the site.
- 2.7 Hookhills Community Centre is located within the predominantly residential district of Goodrington to the east of the site. Commercial/business building uses are also located within the White Rock area to the north of the site
- 2.8 The Nords, a clump of tall, mature trees are situated on the southern boundary. South Devon College and commercial properties are located to the north-west. The White Rock development currently under construction and associated mitigation planting exists directly to the north of the site and White Rock Primary School with associated open grounds is located to the north-east with Paignton beyond.
- 2.9 The land at White Rock was granted outline planning permission in April 2013 (P/2011/0197) for a mixed use development comprising 350 dwellings, employment space, a local centre, formal and informal public open space together with strategic landscaping. It has subsequently been the subject of a number of reserved matters submissions and the commencement of the first two phases of residential development.
- 2.10 The two sites are separated by an area of woodland planting, forming part of the strategic landscaping and secured as mitigation as part of the Section 106 Agreement in relation to the White Rock planning application.
- 2.11 In addition to the appeal site, the appellant owns further land immediately to the west and beyond Waddeton Road.
- 2.12 The land (appeal site and offsite) is currently used solely for agricultural purposes. The site topography is relatively undulating with high points at the north and south-east site boundaries. The site generally falls away to the south and south-west towards the Galmpton Watercourse. The contour lines at levels 64m and 65m AOD thread through the majority of the site and there is opportunity for relatively level vehicular circulation throughout the site to be established at this common level.
- 2.13 The existing fields are bounded on all sides by established hedgerows. Cirl Bunting habitats and flight corridors for Greater Horseshoe Bats exist within and close to the site.
- 2.14 A pond exists near to the south-east site boundary and a small 'sheep wash' depression within the ground exists adjacent to the central hedgerow.
- 2.15 An existing 11kV overhead cable cuts through the south-west corner of the site and is retained as part of the proposals.

## 3.0 Planning History

- 3.1 At the 1989 Torbay Local Plan Inquiry the appeal site, was considered as having the potential to be included as a housing and employment allocation, but ultimately rejected at that time.
- 3.2 Planning applications covering part of the study site were submitted in 1995 (ref. 95/0998/OA) and 1996 (ref. 96/1288/OA) for housing and associated open space, including the realignment of Brixham Road. The earlier of the two applications was refused planning permission in October 1995 and the latter application was withdrawn in June 1998. In broad terms, the first application was refused due to a lack of housing need at that time and the potential for adverse landscape and highways impacts.
- 3.3 In October 1995 an outline planning application (ref. 1995/1304/OA) was submitted for land to the north of the appeal site together with a large portion (but not all) of the site which is the subject of this appeal.
- 3.4 The application proposed the erection of units for employment purposes within classes B1, B2 and B8 (although B8 uses were subsequently withdrawn). In June 1996 Torbay Borough Council resolved to grant outline planning permission subject to agreeing a S106 Agreement and reductions in the development area. In July 1996 the Secretary of State called in the application and in July 1997 determined to refuse permission.
- 3.5 In refusing the application, the Inspector, on behalf of the Secretary of State, identified that the suitability of the site for the proposed development, particularly in terms of its visual impact on the surrounding area, was a prime consideration. In doing so, he accepted that national, strategic and local planning policies do not rule out all development near Areas of Outstanding Natural Beauty (AONB) and within Areas of Great Landscape Value (AGLV) and considered the key question to be whether the development would harm the special landscape qualities of these areas and the attractiveness of the area for tourists. In this instance, the decision was that the proposed development would have an unacceptable impact.

### **The Torbay Local Plan**

- 3.6 The Torbay Local Plan "A Landscape for Success - The Plan for Torbay 2012 to 2030", was adopted in December 2015.
- 3.7 The appeal site is not identified in the Local Plan because it had not yet been demonstrated to Natural England's satisfaction at the time of examination and adoption of the Local Plan that development of the site would comply with the requirements of Regulation 61 (regarding appropriate assessment) of the Conservation of Habitats and Species Regulations 2010 (as then was) due to it being situated within the 'sustenance zone' of a Special Area of Conservation (SAC) designated for its bat species. The Site is not situated within the SAC itself.
- 3.8 The Site was considered in the main modifications to the Local Plan and was considered in the SHLAA. The Inspector's Report following examination of the Local Plan was supportive in principle of the Site, concluding at paragraph 62 that, "...if the necessary work is undertaken and shows that from an

environmental point of view the site is developable, there is nothing to stop the Council from carrying out a partial review of the [Local] Plan as soon as it has the necessary evidence".

- 3.9 Ecology surveys to inform the proposals were undertaken in 2016. The results of these and discussions with Torbay, Natural England and the RSPB were integral to the design of the proposals. Through continued dialogue post submission and submission of further information (notably the Ecological Addendum (NPA, February 2018) both Natural England (April 2018) and the RSPB (March 2018) stated they had no objection to the proposals. Torbay Council, as the local authority, undertook a Habitat Regulations Assessment (March 2018) which concluded there would not likely be a significant effect alone or in combination on a European Site (i.e. the Soth Hams SAC or the Lyme Bay and Torbay SCI).
- 3.10 Torbay Council also produced a memorandum (11th April 2018) which concluded "they were satisfied that the key ecological issues raised through consultation have been resolved by the applicant.... and that there are currently no ecological grounds for objection to the application". Subsequent to the People over Wind case<sup>1</sup> Torbay updated the HRA (May 2018) to accord with the findings of that case, but came to the same conclusions as the original HRA.
- 3.11 The appellant and Council confirm that they are satisfied there would be no adverse effect on the integrity of the South Hams SAC (for which Greater Horseshoe Bats are a primary reason for its selection) alone or in combination with other proposals or projects. Moreover the appellant and Council confirm that there would be no significant impacts on other ecological receptors (including Cirl Buntings).
- 3.12 The Local Development Scheme (LDS) (March 2017) states at Section 3.5 - Site Allocations Development Plan Document (provisional) *'where there appears to be a lack of deliverable housing sites to provide for the 5 year requirement, the Council will seek to bring forward additional housing sites through a number of mechanisms, including:*
- *Promotion of outline planning applications, or a Local Development Order, for the land south of White Rock, as per Policy SS1 (Growth strategy for a prosperous Torbay), paragraph 4.1.41 and the Local Plan Inspector's Report.*
- If these measures do not result in at least a 5 year supply of housing land, or if the Neighbourhood Forums are unable to allocate sufficient housing land, the Council will produce a Site Allocations DPD allocating additional sites (in the context of Policies SS1 - Appendix C, SS12 and SS13).'*
- 3.13 Whilst no LDO or Site Allocations DPD has been progressed, the statement establishes that the Council considers the appeal site to be an appropriate and sustainable location for growth, and reflects the fact that the only reason the site does not feature in the Local Plan is by virtue of the HRA issues at the time of the Local Plan examination referred to above.

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<sup>1</sup> *People Over Wind and Sweetman v Coillte Teoranta*; European Court of Justice Case C-323/17

## 4.0 Appeal Proposals

4.1 The description of development is proposed to be controlled via the Urban Design Regulatory Plan (scale parameter plan) that is submitted for approval in order to guide the preparation and approval of reserved matters. This plan and an associated Illustrative Masterplan form the basis upon which the ES was prepared; the Illustrative Masterplan demonstrates how the development could be delivered under the terms of the scale parameters depicted on the Urban Design Regulatory Plan. The Illustrative Masterplan makes provision for:

- Up to 373 homes at varying density and height, 30% of which will be affordable homes secured through the S106 Agreement.
- A 2 Form Entry Primary School (incorporating nursery) together with associated outside space (including sports pitch) and car parking (staff/drop-off).
- A public house with associated car parking and outdoor seating.
- Public open space, including:
  - 1 Neighbourhood Equipped Area of Play;
  - 2 Locally Equipped Areas of Play;
  - Incidental open space (c. 25,000 sq m) with the ability to accommodate Local Areas of Play and/or trim trails and to include a community orchard; and
  - Allotments (5,700 sq m).
- Tree planting within and on site edges.
- Highways access and improvement works (not all shown on the Masterplan), including:
  - Provision of site access from Brixham Road via a new 4 arm roundabout;
  - Provision of 2 new crossing points on Brixham Road, one close to the junction of Hunters Tor Drive and one to the north of the proposed site access; and
  - Localised road widening on the bend North of the site, in the vicinity of White Rock.
  - Wider improvement works at Windy Corner (South) and the junction of Brixham Road/Long Road (North)

4.2 The proposals make provision for a significant proportion of the site (c.7ha plus 25ha offsite land under control of the appellant) to be retained for mitigation purposes, principally in relation to ecology and potential landscape and visual impacts.



- 4.3 Beyond the form/quantum of development, and in addition to the proposed mitigation land within the site boundary, the concept masterplan provides for:
- a. the retention where possible of hedgerows and trees within the site;
  - b. strengthened hedgerows offsite, secured via changes to farm management practices, details of which are provided elsewhere in the application;
  - c. the provision of public open space, both formal and informal;
  - d. the means of providing active travel linkages to and from the site, via new crossing points on Brixham Road and via woodland to the north of the site connecting to White Rock;
  - e. the extension of a local bus service to provide a half hourly service operating from new stops within easy walking distance of the entire site;
  - f. the provision of a countryside access route;
  - g. land for community food production, including orchards and allotments; and,
  - h. c.3.5km of new hedgerows, both on site and off site, representing a net gain of 3km.
- 4.4 In addition to the Environmental Statement and technical reports, the application is accompanied by a suite of documents which describe the parameters for delivery of the site, should the appeal be allowed.
- 4.5 These documents set out the necessary controls and protections which the developer would be required to comply with. A S106 Agreement will secure the provision of items for the purposes of mitigating those impacts of development that are not capable of being mitigated by condition.

## 5.0 Matters agreed

- 5.1 A letter from the LPA dated 28 August 2019 (**Appendix 1**) provides a series of statements that the appellant and Torbay Council is able to agree:
- a. The Council is unable to demonstrate three years' supply of deliverable housing sites.
  - b. The provision of housing, the policy-compliant level of affordable housing, provision of a school site and other economic benefits arising from the proposal are very significant and should be given considerable weight in the decision-making process.
  - c. In relation to the Local Plan, the Presumption in Favour of Sustainable Development at paragraph 11 of the NPPF is applicable.
  - d. The Local Plan is nearing its five year review deadline and the standard methodology derived local housing need figure is higher than the Local Plan's housing requirement.

- e. The appeal should be determined on the basis of a shortfall against three years' housing land supply against the Council's five year housing land requirement and that, as a result the presumption is engaged.
- f. The NPPF regards the BPNP as being out of date. The "tilted balance" in favour of granting permission applies.
- g. The Neighbourhood Plan should be given limited weight in decision-making.
- h. "Prematurity" against the Local Plan review should not be used as a reason to dismiss the appeal, providing the proposals can be shown to constitute sustainable development in all other respects. It is to be noted that any plan review is at its most incipient stage.
- i. The proposed development at Inglewood would be seen from several public vantage points in the AONB particularly from Fire Beacon Hill, Dittisham area, and John Musgrave Heritage Trail near Galmpton. The representative viewpoints were agreed in the scoping exercise for the LVIA.
- j. The scheme is well-landscaped and is outside the AONB. The key visual impacts are from some distance and viewed against the backdrop of Torbay. It is a significantly different proposal to that refused in 1997.
- k. There are a much wider range of issues that will need to be taken into account in reaching a decision, including but not limited to, ecology, farm management, agricultural impact, highways, sustainable transport, open space, employment, education provision, conservation and archaeology. There are however no outstanding technical problems that could not be overcome through legal agreement/conditions.

5.2 Subsequent discussions since 28 August have led to agreement that Habitats Regulations Assessment matters have been satisfactorily addressed through the proposed mitigation measures (as rehearsed above), and the latest changes such as the recent South Hams SAC Greater Horseshoe Bats HRA guidance have not changed this situation.

5.3 Matters not agreed:

- a. The proposal would adversely affect the AONB when seen from the above-mentioned public vantage points, particularly from Fire Beacon Hill.
- b. That the landscape impact is sufficiently significant to outweigh the significant benefits of the proposal.

5.4 Relevant elements of the correspondence are given further consideration below.

## 6.0 The Housing Requirement

6.1 The Local Plan is less than five years old so remains the basis for calculating the deliverable housing land supply against the five year housing requirement:

	Homes
Torbay LP Housing Requirement 2012-19	2,990
Completions 2012-2019	2,719
Shortfall 2012-2019	271
Five Year Requirement 2019 to 2024	2,595
<b>Plus Shortfall and 5% Buffer</b>	<b>3,009</b>

6.2 It is agreed that TBC has a supply of less than three years against this requirement.

6.3 The implication of falling below a five year supply of land is that paragraph 11d of the NPPF is engaged. The implication of falling below a three year supply is that paragraph 14 of the NPPF is not engaged. The 'tilted balance' applies equally to the Torbay Local Plan and Brixham Peninsular Neighbourhood Plan. The development plan is out of date insofar as it relates to the supply of housing.

## 7.0 Planning Policy Context

7.1 In accordance with Paragraph 38(6) of the Planning and Compulsory Purchase Act 2004, the planning policy framework relevant to the determination of the application comprises the adopted Development Plan and relevant material considerations.

7.2 The adopted Development Plan for the appeal site comprises the Torbay Local Plan and Brixham Peninsular Neighbourhood Plan (BPNP).

7.3 Relevant material considerations include Government policy guidance contained within the National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG).

### National Planning Policy Framework

7.4 It is agreed that the most relevant sections of the National Planning Policy Framework (February 2019) are as follows:

- Chapter 2 'Achieving Sustainable Development' including the presumption in favour of sustainable development' (paragraphs 11-14);
- Chapter 3 'Plan Making' (including paragraphs 20 – 23; 31 – 33; and 35 - 37);

- Chapter 4 'Decision Making' (including paragraphs 47 – 50 and 54 - 57);
- Chapter 5 'Delivering a Sufficient Supply of Homes' (including paragraphs 59 – 76);
- Chapter 6 'Building a Strong Competitive Economy' (including paragraphs 80 - 82);
- Chapter 8 'Promoting Healthy and Safe Communities (including paragraphs 91 - 96);
- Chapter 9 'Promoting Sustainable Transport' (including paragraphs 102 - 111);
- Chapter 12 'Achieving Well Designed Places' (including paragraph 127 - 130);
- Chapter 14 'Meeting the Challenge of Climate Change, Flooding and Coastal Change.' (including paragraphs 150; 153; 155 - 165);
- Chapter 15 'Conserving and Enhancing the Natural Environment' (paragraphs 170-183);
- Chapter 16 'Conserving and Enhancing the Historic Environment' (paragraphs 189-202);

### **The Torbay Local Plan**

7.5 It is agreed that the relevant policies of the Local Plan are:

- Policy SS1: Growth Strategy for a prosperous Torbay
- Policy SS2: Future Growth Areas
- Policy SS3: Presumption in favour of sustainable development
- Policy SS7: Infrastructure, phasing and delivery of development
- Policy SS8: Natural environment
- Policy SS9: Green Infrastructure
- Policy SS11: Sustainable communities
- Policy SS12: Housing
- Policy SS13: Five year housing land supply
- Policy SS14: Low carbon development and adaption to climate change
- SDB1: Brixham Peninsular
- Policy TA1: Transport and accessibility
- Policy TA2: Development access
- Policy C1: Countryside and the rural economy
- Policy C4: Trees, hedgerows and natural landscape features
- Policy NC1: Biodiversity and geodiversity
- Policy H1: Applications for new homes
- Policy H2: Affordable Housing
- Policy DE1: Design
- Policy DE2: Building for life

- Policy DE3: Development amenity
- Policy DE4: Building heights
- Policy SC2: Sport, leisure and recreation
- Policy ES1: Energy
- Policy ER1: Flood risk
- Policy ER2: Water management

### **The Brixham Peninsular Neighbourhood Plan**

7.6 It is agreed that the relevant policies of the Neighbourhood Plan are:

- Policy BH1: Affordable housing site allocations
- Policy BH2: Occupation of new affordable homes
- Policy BH3: Delivery of new homes
- Policy BH4: Housing Development - brownfield and greenfield sites
- Policy BH5: Good design and the town and village Design Statements
- Policy BH7: Sustainable construction
- Policy E1: Landscape beauty and protected areas
- Policy E2: Settlement boundaries
- Policy E3: Settlement gaps
- Policy E6: Views and vistas
- Policy E8: Internationally and nationally important ecological sites and species
- Policy T1: Linking of new developments to travel improvements
- Policy L2: Matching educational provision to local need
- Policy S&L2: Sport and recreational facilities in new developments

7.7 In the context of paragraph 11d of the NPPF it is important to establish the 'policies which are most important for determining the application that are out-of-date'. The policies are out of date by virtue of the fact that Torbay Council cannot demonstrate a three year supply of land when assessed against the five year requirement. The following Local Plan policies relate to the supply of housing and restriction of development on non-allocated sites:

- Policy SS1: Growth Strategy for a prosperous Torbay
- Policy SS2: Future Growth Areas
- Policy SS11: Sustainable communities
- Policy SS12: Housing
- Policy SS13: Five year housing land supply
- Policy C1: Countryside and the rural economy (insofar as it relates to the supply of housing, the strategy of focusing development only at future growth areas and restrictions over development beyond settlement boundaries)
- Policy H1: Applications for new homes

- SDB1: Brixham Peninsular

7.8 In respect of the Brixham Peninsular Neighbourhood Plan the following policies, insofar as they relate to the supply of housing are considered out of date:

- Policy BH3: Delivery of new homes
- Policy BH4: Housing Development - brownfield and greenfield sites
- Policy E2: Settlement boundaries
- Policy E3: Settlement gaps (insofar as it refers to Policy C1 of the Local Plan)

## 8.0 Technical Position on the Appeal Proposals

8.1 The following sets out the agreed position with the Council's Officers and Statutory Consultees in relation to the technical matters applicable to this Appeal.

### **Environmental Statement**

8.2 A request for an EIA scoping opinion for proposals to erect up to 450 dwellings on land at Inglewood was submitted to Torbay Council on 22 December 2016, **CD 1.37**. The Council responded on 16 February 2017, CD 1.38.

### **Traffic and Transport**

8.3 A separate Statement on transport matters is provided at **Appendix 2**.

### **Ecology**

8.4 A Statement summarising the history and process of resolving ecological and HRA matters is provided at **Appendix 3**.

### **Economic development**

8.5 The Senior Economic Development Officer does not raise any objections to the proposals. S106 contributions are requested in line with Torbay Council's Planning Contributions and Affordable Housing SPD to go towards the development of new employment space on land owned by Torbay Council to in lieu of some onsite provision (letter dated 23rd March 2018, CD 4.27).

### **Flood risk and drainage**

8.6 Torbay Council's drainage officer has confirmed that the outline drainage strategy complies with the requirements of the Torbay Critical Drainage Area. Additional infiltration testing and surface water drainage design is requested, however this is only required prior to any construction works commencing on the site rather than prior to determination of the planning application (letter dated 9th April 2018, CD 4.6). An appropriate condition has been advanced.

8.7 South West Water – no comment (email dated 20 March 2018, CD 4.20).

### **Urban Design**

8.8 The Council's Urban Design Consultant initially provided comments which raised several concerns including the lack of difference between 'character areas', the key locations chosen for 3 storey buildings, the variety of streets, amount of open space at 'high point copse', it was also suggested that parameter plans were provided, a single Urban Design Framework drawing submitted and general architectural principles were expanded. All these issues were suitably addressed within the updated submission pack issued to the Council in March 2018 and no further design comments were issued in relation to the appeal application. It is therefore agreed between the parties that all these issues have been adequately resolved and there are no specific areas of disagreement in relation to urban design.

### **Heritage**

8.9 Historic England has confirmed that it does not wish to offer any comments and confirm that it is not necessary for them to be consulted on the application again unless material changes are proposed (letter dated 23 March 2018 CD 4.8).

8.10 The Historic Environment Officer has confirmed no objections to the submitted information. Excavation of evaluation trenches should be undertaken to determine the date, character and state of preservation of potential archaeological features within the site but this can be secured by condition to be undertaken prior to determination of reserved matters (email dated 11 December 2017, CD4.9).

### **Landscape**

8.11 Jacobs was appointed by Torbay Council in May 2018 to provide an independent second opinion on the landscape and visual impacts of the proposed development, and concludes (CD1.42) that the landscape and visual impacts of the application proposals would be greater than that reported in the applicant's LVIA and addendum. The number of affected views is relatively limited however their opinion is that the proposed development would result in significant residual adverse visual effects on some representative viewpoints within the AONB, including views from PRoWs on Fire Beacon Hill and from the John Musgrave Heritage Trail. Whilst extensive mitigation is proposed, they do not consider that this would overcome the fundamental impacts of the proposed development on the setting of the AONB.

8.12 The Torbay Landscape Officer (CD 4.24) identified that the amendments to the scheme (in March 2018) eliminated the short term adverse effects on the Waddeton Conservation Area and the South Devon AONB and made the proposals more acceptable in landscape terms.

8.13 Teignbridge District Council (landscaping), CD 4.25 agreed with the findings of the LVIA and concluded that the impact on landscape is not of significance. They were also confident that the LVIA produced had fully appreciated the likely landscape impacts.

South Devon AONB provided an objection letter on 10th May 2018, CD4.16. Whilst acknowledging positive steps had been made through the re-submission material, it concludes by stating that the proposal has, *'an unacceptable impact on the special landscape qualities of the nearby South Devon AONB, is contrary to the principal material protected landscape policies and fails to conserve and enhance the rural setting to the South Devon AONB.'*

- 8.14 It concludes that if the Council is minded to weigh against this objection in the planning balance it is requested that the parameters contained in the outline application are captured within appropriately worded conditions and robustly enforced to minimise harm to the AONB as far as possible.
- 8.15 South Hams District Council objected 4 December 2017 , CD 4.19, on the basis that the development would result in an unacceptable level of residual harm to the South Devon AONB.

### **Affordable Housing**

- 8.16 It is agreed that the development would be policy compliant in respect of affordable housing provision. Housing Services are fully supportive of the application and commend the application for providing 30% affordable (email dated 27 March 2018, CD 4.28).

### **Public Art**

- 8.17 No public art consultation comments were provided during the course of the application. It is agreed that no public art provision is required.

### **Sport England**

- 8.18 Sport England objected to the proposal on the basis that there was no provision of new playing pitches and raised concern relating to the provision of an artificial pitch within the primary school. But noted that they would withdraw their objection if the sporting needs can be addressed, either through on site provision, and/or off site contributions for outdoor and indoor sport and recreation.
- 8.19 The appellant sought to overcome the objection by moving from a 3G to grass pitch, welcoming a condition for a community use agreement and agreeing a contribution with the Planning Authority to mitigate a shortfall of onsite provision. As such the Planning Authority are satisfied that the Sport England objection has been overcome and there is no disagreement between the appellant and the Council.
- 8.20 Sport England were re-consulted in March 2018 and did not provide any further comments.

### **Minerals and Waste**

- 8.21 Devon County Council (DCC) initially provided comments noting concern that the development of the site for housing would impose increased constraints on potential mineral extraction in the adjoining Mineral Safeguarding Area contrary to adopted Policy M2 of the Devon Minerals Plan (2017). Further information was subsequently submitted by the appellant as subsequent consultation response acknowledged that, *"... at the present time, the available information suggests that this area of limestone resource is unlikely to be*



commercially or environmentally viable to extract.” DCC withdrew its minerals objection (29<sup>th</sup> March 2018, CD 4.8). There are no further areas of disagreement between the appeal parties in relation to minerals and waste.

#### **Police**

- 8.22 The Police Designing Out Crime Officer has not raised any objections to the development. The Officer does set out advice and recommendations in relation to the illustrative masterplan, CD 4.14. Specifically it is requested that the level of parking provision and the design of parking spaces are carefully considered prior to determination of reserved matters.

#### **Education/Children’s Services**

- 8.23 Children’s Services responded to the consultation to confirm that they supported the provision of the primary school within the application proposals (email dated 16 January 2018). There are no areas of disagreement relating to education provision.

#### **Healthcare - Torbay and South Devon NHS Trust**

- 8.24 The NHS Trust objected to the proposals given it is operating at full capacity in respect of acute and planned healthcare and does not have the ability to cater for increasing patient demand from unanticipated growth, CD4.12. The Council is satisfied that no contribution is needed or justified.

#### **Air Quality**

- 8.25 The development raises no issues regarding air quality.

#### **Noise**

- 8.26 The development raises no issues regarding noise impact.

## **9.0 Draft Conditions**

- 9.1 A draft set of conditions is provided at **Appendix 4**.

## **10.0 Section 106 Agreement**

- 10.1 A draft S106 Agreement is provided at **Appendix 5**.

## **11.0 Core Documents**

- 11.1 A draft Core Document list is provided at **Appendix 6**.

## Appendix 1: Letter from LPA of 28 August 2019



**Please reply to:** David Pickhaver  
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**Website:** [www.torbay.gov.uk/planning](http://www.torbay.gov.uk/planning)  
**Date:** 28 August 2019

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Dear Lauren

### **Application P/2017/1133 Inglewood**

Further to our recent conversations and the meeting between Andrew England, Rob Brigden, me, Andrew Maltby and Max Freed on 15<sup>th</sup> August, I thought that it may be useful to set out my ongoing concerns about the Inglewood application. I note that you are meeting with the applicants later this week to consider the way forward on the proposal. I remain of the view that a proposal of this scale and nature should be pursued through the development plan process.

I emailed Mike Harris in December 2018 and identified three principal areas of concern:

- Departure from the Adopted Torbay Local Plan and appropriateness of approving a strategically significant development outside of the Local Plan Review.
- Conflict with the (then) emerging Brixham Peninsula Neighbourhood Plan, particularly Policy E3 settlement gaps.
- Impact on the AONB.

Since that time, the Brixham Peninsula Neighbourhood Plan (BPNP) has passed referendum in May 2019 and subsequently been made by full Council in June 2019. The definition of “deliverable” has also been finalised in the February 2019 NPPF and the PPG has also been updated. There is an emerging consensus in the Planning profession that the NPPF definition of deliverable makes it significantly harder for local planning authorities to demonstrate five year land supply where major sites do not have full planning permission.

As you know, the Council has recently consulted upon its five year land supply position, and Stride Treglown made detailed submissions on this. Whilst we need to report the findings to Members, there is a significant body of appeal decisions that indicates that Inspectors require a high level of “clear evidence” to demonstrate that major sites with less than full planning permission are deliverable. Accordingly, it seems likely in my

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professional view, that the Council is unable to demonstrate three years' supply of deliverable sites. I have to say that there are significant areas of land allocated for development in Torbay in the Local Plan and two of the three Neighbourhood Plans, although many of these cannot currently be treated as deliverable under the NPPF definition.

Council officers have always indicated that the provision of housing, the policy-compliant level of affordable housing, provision of a school site and other economic benefits arising from the proposal are very significant and will be given considerable weight in the decision-making process. In relation to the Local Plan, I consider that the Presumption in Favour of Sustainable Development at paragraph 11 of the NPPF is applicable. The Local Plan is nearing its five year review deadline and it is noted that the standard methodology derived local housing need figure is higher than the Local Plan's housing requirement. I must add that the application of the standard methodology in Torbay will be controversial and has yet to be agreed by Members or subject to consultation or other scrutiny. However, whilst it is my view that the Inglewood site would be more appropriately determined through the Local Plan review/update; I would not recommend that "prematurity" against the Local Plan review could be used as a reason to refuse the application, if it could be shown to constitute sustainable development in all other respects.

It would be my advice that the council will need to determine the Inglewood application on the basis of a shortfall against three years' land supply (based on the current level of permissions, government policy etc.) and that, as a result paragraph 14 of the NPPF will not apply. The implication of this is that the NPPF regards the BPNP as being out of date. Members will need to weigh the implications of this as a "tilted balance" in favour of granting permission. Notwithstanding this, it remains my view that the clear conflict with the Neighbourhood Plan must be given significant weight in decision-making. The Neighbourhood Plan has undergone a legal process and has recently been strongly supported by local referendum. Full Council has unanimously supported the Neighbourhood Plan on two recent occasions (November 2018 and June 2019). The NPPF is a material consideration, but does not change the statutory status of the development plan as the starting point for decision-making. Given this, and the huge amount of effort the local community has gone to in preparing the plan in pursuance of the Government's localism agenda, I do not consider it appropriate for me to give Members a firm recommendation that the need for housing overturns the Neighbourhood Plan.

As previously set out, there are conflicting views from various landscape consultants about the impact of the proposal upon the AONB. The proposed development at Inglewood would be clearly seen from several public vantage points in the AONB particularly from Fire Beacon Hill, Dittisham, and John Musgrave Heritage Trail near Galmpton. Views into the AONB will also be affected. The AONB Partnership has maintained its objection to the proposal (along with a significant number of other organisations and individuals). Footnote 6 of the NPPF indicates that NPPF policies relating to AONBs can be a reason for refusing applications under paragraph 11 d)i. of the NPPF. In any event, the Council has a legal duty to have regard to conserving and enhancing the natural beauty of the AONB under the CROW Act. AONB impact was also a critical reason why the Secretary of State refused the business park proposal in 1997.

Against this, I am aware that the scheme is well-landscaped, that the site is outside the AONB, and the key visual impacts are from some distance and viewed against the backdrop of Torbay; and also that it is a significantly different proposal to that refused in 1997. Nevertheless, it is my opinion (albeit as a planner and not a landscape architect)

that the proposal would adversely affect the AONB when seen from the above-mentioned public vantage points. Particularly in my assessment, from Fire Beacon Hill. I would much rather that this harm could be balanced against all other options for meeting housing need through the Local Plan process, where a full range of options and considerations can be weighed up. As a standalone application, I am afraid that I cannot recommend that the landscape impact can be overturned by the, albeit significant, benefits of the proposal.

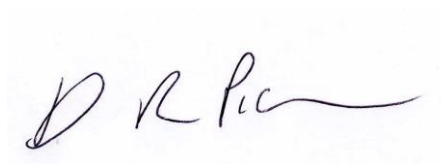
There are clearly a much wider range of issues that will need to be taken into account in reaching a decision, including but not limited to, ecology, farm management, agricultural impact, highways, sustainable transport, open space, employment, education provision, conservation and archaeology. As you know there is a very high level of opposition to the proposal, which raise a range of objections. Strictly without prejudice to full consideration of these matters by Members, based on a full report, I am not aware of other outstanding technical problems other than those outlined above, that could not be overcome through legal agreement/conditions. I would of course need to ensure that HRA matters in particular are satisfactorily addressed through the proposed mitigation/compensation measures, and that the latest changes such as the recent guidance have not changed this situation.

We have offered you the opportunity to present the scheme to Planning Committee informally in order to present the scheme's benefits. This offer remains open, although it would not now be practicable to do so in September 2019. Alternatively, we can move towards determining the application, although this would be unlikely to be before the November 2019 Planning Committee.

I hope that the above sets out my views fairly, and would reiterate that I would rather that a scheme of this nature, complexity and controversy were considered through the plan-making stage. You will appreciate that the above are my views as the case officer and policy planner, and are made without prejudice to any future decision of the local planning authority.

I am happy to discuss further when you and the applicants have met to consider your next steps.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'D R Pickhaver', written in a cursive style.

**David Pickhaver**  
Senior Policy Planner

c.c. Andrew Maltby

## Appendix 2: Transport and Highways Statement



# Inglewood: Statement of Common Ground – Transport Issues

Title	P/2017/1133: Inglewood, Paignton, Torbay – Statement of Common Ground on Transport Issues				
Prepared by	Roger Key	Key Transport	Reviewed by	Adam Luscombe	Torbay Council
Date	10 <sup>th</sup> January 2020		Version	3.0	

## 1. Introduction

- 1.1. This Statement of Common Ground describes the transportation aspects of the Inglewood planning application.
- 1.2. The statement continues in the next section by summarising the application transport documents. Recent work undertaken to review the validity of the traffic analysis is described in section three and a list of current highway improvement drawings is provided at section four. Suggested planning conditions are set out in section five and policy compliance is considered at section six. **All matters addressed in sections two to six are agreed.**
- 1.3. A single matter remains under investigation and has yet to be agreed. This is addressed in section seven.
- 1.4. Documents highlighted in bold provide the transport evidence to support the application.

## 2. The Application Transport Documents

- 2.1. A supporting **Transport Assessment (TA)** and **Framework Travel Plan (TP)** were submitted as part of the planning application. With the exception of the proposed works at the junction known as Windy Corner, drawings showing offsite highway improvements and sustainable travel infrastructure were included at Appendices E and F of the TA. Current drawings for Windy Corner are provided at **Annex A** to this document.

### Highway Access Proposals

- 2.2. The highway access to the Inglewood site is proposed via a four-arm roundabout on the A3022 Brixham Road, located on a straight section of the road south of White Rock Primary School. The roundabout would provide two access roads into the development site (see **drawing 0734-057**).
- 2.3. Improvements to Brixham Road on the bend alongside the school to the north are proposed to widen the carriageway to 7.3m and improve visibility, both to increase capacity and for safety reasons (see **drawings 0734 – 018 Rev A and 020 Rev A**). Evidence presented prior to submission of the application demonstrated that these improvements would be sufficient to mitigate the impact of the development traffic. In 2016 Torbay Council Highways Department (TCHD) agreed the principle of these highway access proposals for the scheme. The supporting information is presented in section three of the TA.

### Sustainable Transport

- 2.4. The application proposes to extend bus services that currently terminate at the nearby South Devon College to terminate instead at the site. The operator, Stagecoach, has written to confirm its willingness to make this change and to express its support for the application (**see TA Appendix I**). Two bus stops are included on the highway layout immediately to the west of the proposed site access roundabout for use by the extended bus service (**see drawing 0734-057**). Two stops are included to allow space for two buses to be present at one time, allowing terminating services to lay over. A Bus Service Agreement is being drafted to enable the applicant to secure the delivery of the extension of the bus service.
- 2.5. The application proposes a network of new footway/cycleway links connecting to neighbouring areas. These include a new signal-controlled Toucan crossing on A3022 Brixham Road, a new pedestrian/cycle route to the north and improvements to the pedestrian route to the south.
- 2.6. The Toucan crossing on Brixham Road was included to provide a safe traffic signal-controlled pedestrian and cycle priority crossing, linking the existing Hookhills residential area of Goodrington, to the east of Brixham Road, to the development site (**see drawing 0734-023 Rev B**). The need for this crossing was carefully considered, jointly with TCHD. Although crossing footfall is not expected to be particularly high, the signal-controlled crossing was included because it was agreed that it would be necessary specifically to provide a safe priority crossing for use by parents taking children to school in the morning peak period. The crossing would be used either by residents of the existing houses to the east of Brixham Road to take their children to the new primary school within the development, or by residents of the new development taking their children to White Rock Primary School. The crossing would also provide a safe route for less confident cyclists to cross Brixham Road to connect to the footway/cycleway that runs parallel to and east of Brixham Road, extending from the A385 Totnes Road junction to the north, through to Hunters Tor Drive to the south.
- 2.7. A safe off-highway pedestrian and cyclist route is proposed to the north, linking to the White Rock development area and the education, employment and retail areas to the north (**see drawing 0734-055**).
- 2.8. Improvements are also proposed to the crossing of Brixham Road serving the pedestrian route to the south, leading to Hunters Tor Drive and on to the local shops, library, Post Office and health care facilities at Broadsands Road (**see drawing 0734-029 Rev A**).
- 2.9. All the above sustainable travel proposals are agreed.



## Traffic Analysis

- 2.10. The scope of the traffic capacity analysis was agreed prior to submission of the application. The TA included capacity assessments at four junctions along the A3022 Brixham Road corridor, these being at Long Road/Goodrington Road and Kingsway Avenue/White Rock Way to the north, at the site access roundabout and at the junction with A379 Dartmouth Road to the south, a junction known as Windy Corner (see drawing 0734-045 Rev B). The capacity assessments identified that Inglewood development traffic impacts required mitigation at two junctions on the A3022 Brixham Road:
- at the Brixham Road/Long Road/Goodrington Road junction, 850m to the north of the proposed site access; and
  - at Windy Corner, 850m to the south.
- 2.11. At the Long Road/Goodrington Road junction, modest improvements located on highway land and land controlled by the appellant were shown to be sufficient to mitigate the impact of development traffic (see drawing **0734-040 Rev A**). These proposed improvements have been agreed.
- 2.12. The situation at Windy Corner was more complex. The A379 Dartmouth Road and A3022 Brixham Road are the two north/south A classified routes through the Torbay area. The two roads converge at Windy Corner, making the junction an important node in the local road network. The junction is tightly constrained by built development and common land and telecommunications equipment further constrains the scope for improvement of the layout.
- 2.13. Traffic congestion occurs at the junction and, at the time the application documents were being prepared, TCHD were developing their own improvement scheme, comprising re-routing of the southbound lane of the A379 south of the junction to release space for both lanes of the existing carriageway to be allocated to the northbound approach to the junction (**see drawing 0734-060<sup>1</sup> at Annex A**). Consequently, the TA took the TCHD scheme as the baseline layout for assessment of the future junction capacity.
- 2.14. The capacity analysis showed that the impact of development traffic would require mitigation at Windy Corner, so a further improvement was designed (see drawing 0734-061 Revision A2 at Annex A). The proposed improvement is located wholly on public highway land and land owned by Torbay

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<sup>1</sup> The Torbay Council works proposed at the time were shown on their drawing 8/9/7\_01 Rev B. With the exception of the bus stop location, the works implemented in 2019 were essentially the same and were shown on Torbay drawing 8/9/7\_100. To aid understanding, Drawing 8/9/7\_100 has been transferred onto KTC drawing **0734-060**. This drawing shows the full extent of the Windy Corner junction, not all of which is shown on the Torbay drawing.

<sup>2</sup> The drawing used at the time the application was submitted was 0734-053. To aid understanding of the scope of the works, drawing 0734-053 has been replaced by drawing **0734-061 Revision A**. In traffic capacity terms the drawings are similar but the layout on drawing **0734-061 Revision A** has been amended slightly, both to tie in to the layout of the works implemented in 2019 by Torbay Council and to address further comments from TCHD.

Council and avoids the telecommunications equipment. Capacity analysis presented in the TA demonstrated that the further improvement would provide sufficient additional capacity to mitigate the impact of Inglewood development traffic.

#### Post-Application Submissions

- 2.15. Two further documents were submitted in the period following submission of the application: first, a **TA Addendum 1 (TAA1)** in January 2018; and secondly, **Technical Note 5 (TN5)** in June 2018.
- 2.16. **TAA1** addressed a series of comments raised by TCHD's consultant on the content of the TA. **TAA1** section two addressed all except one of the points raised, while section three addressed the final point by correcting an error found in the underlying traffic analysis and providing a complete substitution for section six of the original TA.
- 2.17. Instigated by a request from TCHD in May 2018, **TN5** reassessed the capacity of the Windy Corner junction after adding in traffic generated by development sites proposed within the Brixham Peninsular Neighbourhood Plan (BPNP). The revised analysis included traffic from just one site within the BPNP, the Wall Park site. The further analysis of Windy Corner in TN5 considered the same scenarios in 2024 as those tested previously: the layout existing in 2018; the layout with the Torbay Council improvement implemented; and the layout with the proposed Inglewood further improvement. This demonstrated again that the further Inglewood improvement (then shown on drawing **0734-053**) would fully mitigate the impact of Inglewood development traffic.
- 2.18. By the summer of 2018 the transport submissions had addressed and resolved all the issues raised at that time by TCHD.

### **3. Recent Update Work**

#### Traffic Count Updates in 2019

- 3.1. As noted above, at the time of the application submission, TCHD were planning to implement their own improvement scheme at the Windy Corner junction, so the traffic impact in the TA was based upon the planned improvement layout contemplated at the time. The TCHD works were undertaken and substantially completed before the summer holidays in 2019. This meant that the capacity of the junction, the traffic flows through it, and perhaps elsewhere along the A3022, may have changed.
- 3.2. In light of the above and in order to inform the determination of the application, KTC repeated the traffic surveys at all four junctions along the A3022 in late July 2019 after the start of the state school holidays. This period was chosen because, based on previous surveys, it was a known peak period.
- 3.3. The results of the July 2019 surveys showed traffic flows in the morning and evening peak periods that were almost universally lower than those surveyed in May and July 2017, which had been used

as the base data for the TA analysis. For this reason, the surveys were repeated in week commencing 21st September 2019 by when TCHD advised that all final works at Windy Corner eg. completion of verges and street lighting, would be completed and traffic was considered likely to have returned to normal, term time conditions. September surveys are also considered to represent a neutral month for traffic flows.

- 3.4. **Technical Note 6 (TN6)** is a report that compares the results of the May 2017 baseline surveys used in all previous traffic analysis with the results of the new surveys undertaken in July and September 2019.
- 3.5. The comparison in **TN6** indicates that the July 2019 morning and evening peak hour flows were almost comprehensively lower than those surveyed in May 2017.
- 3.6. The comparison of the September 2019 and May 2017 surveys shows that, with one exception, the September 2019 surveyed flows into the junctions were generally similar to, but lower than, the flows surveyed in May 2017. The exception was the traffic flow at the A3022 Brixham Road/Goodrington Road/Long Road junction in the morning peak hour, where flows in September 2019 were some 7% higher than in May 2017. A significant proportion of the increase in the morning peak hour is considered likely to be due to the addition of development traffic that is now on the local road network but which was not in 2017 because the developments in question had not been constructed at that time. As this traffic was allowed for in all the previous traffic analysis, as traffic from committed or consented developments, the report found that the traffic capacity analysis undertaken in the TA need not be repeated using the September 2019 traffic flows. It follows that the results of the May 2017 surveys, on which the analysis of the Inglewood proposals have been analysed to date, continue to represent a robust set of traffic flows for traffic impact analysis purposes.
- 3.7. On the above basis it is agreed that the traffic capacity analysis undertaken in the TA and subsequent submissions, TAA1 and TN5, need not be repeated using 2019 survey data.

*Further Revisions to the Layout at Windy Corner*

- 3.8. KTC submitted drawings **0734-060** and 061 to TCHD in October 2019 to seek TCHD's agreement that, as previously established, the proposed highway improvement measures would mitigate the development impact. Submission of drawing 0734-061 prompted renewed detailed dialogue in November 2019 on the proposed improvement and this led to the production of **drawing 0734-061 Revision A**, which is included in **Annex A**.
- 3.9. The key changes in this revision were the allocation of the nearside approach lane on Brixham Road to left turns only, and the offside lane to right turns only - on previous drawings right turns were permitted from both lanes - and the introduction of a central island in Dartmouth Road to the south of the junction, to prevent southbound vehicles inadvertently crossing to the wrong side of the segregated carriageway

to the south. The changes to the lane designations on Brixham Road affected the traffic capacity analysis, so the revised drawing and supporting, updated traffic capacity analysis were submitted to TCHD for comment in **Technical Note 8 (TN8)**. It is agreed that the results of the traffic analysis in **TN8** show an impact on the junction in the PM peak hour but that there is a clear improvement on the existing junction and that the level of impact modelled could not be considered to be significant. It is also agreed that the offsite highway works (shown on drawing **0734-061 Revision A**) would need to be secured by way of condition.

#### Agreement Summary

3.10. In light of all the above, it is agreed that:

- all highway improvements proposed as part of the Inglewood application would be safe and sufficient to mitigate the impact of the development traffic;
- appropriate measures are proposed to enhance the walking, cycling and public transport network serving the development;
- the highway and sustainable travel measures are deliverable and can be secured by condition or agreement; and
- once delivered, any residual impacts will not be significant.

Consequently, it is agreed that there are no highway or transport grounds to object to the application.

## **4. Current Highway Drawings**

4.1. An agreed list of current drawings showing the works considered to be necessary and sufficient to mitigate the transport impacts of the development is provided in Table 4.1.

<b>Table 4.1 List of Current Highway Drawings</b>			
<b>Number</b>	<b>Title</b>	<b>Source Document</b>	<b>Comment</b>
<b>0734-057</b>	<b>Proposed Site Access Junction and Proposed Bus Stop Infrastructure</b>	Transport Assessment App E	Proposed site access junction including on- and off-site highway works and bus stops
<b>0734- 018 Rev A</b>	<b>On-Line Road Widening on A3022 Brixham Road to 7.3m with 70m Forward Visibility</b>	Transport Assessment App F	Offsite highway works
<b>0734- 020 Rev A</b>	<b>Investigation of On-Line Widening of A3022 Brixham Road to 7.3m  Long Section Along 70m Forward Visibility Splay</b>	Transport Assessment App F	Offsite highway works
<b>0734- 023 Rev B</b>	<b>Potential Northern Crossing  Toucan Crossing</b>	Transport Assessment App F	Offsite highway works
<b>0734- 029 Rev A</b>	<b>Potential Southern Crossing  Option 3 – Uncontrolled Crossing</b>	Transport Assessment App F	Offsite highway works
<b>0734- 040 Rev A</b>	<b>Proposed Long Road Junction Improvements</b>	Transport Assessment App F	Offsite highway works
<b>0734- 045 Rev B</b>	<b>Summary of Onsite and Offsite Highway Works</b>	Transport Assessment App F	Location plan showing all proposed offsite highway works
<b>0734-055</b>	<b>Shared Footway/Cycleway to the North</b>	Transport Assessment App F	On site works
<b>0734-060</b>	<b>Torbay Council Windy Corner 2019 Junction Improvement</b>	Attached at Annex A	Site works now completed by Torbay Council
<b>0734-061 Rev A</b>	<b>Windy Corner Highway Improvements Tying in to Torbay Council 2019 Improved Layout</b>	Attached at Annex A	Inglewood off site highway works. Revised drawing to improve clarity of scope of works, together with minor

Table 4.1 List of Current Highway Drawings			
			changes on Brixham Road approach.

## 5. Suggested Planning Conditions and Agreement

[Section to be inserted by TCHD]

5.1. The appellant proposes that:

- a) the highway and transport infrastructure works listed at Table 4.1 be secured by planning condition;
- b) a planning condition be imposed requiring the development to be designed to enable charging of plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations; and
- c) a planning condition be imposed requiring the provision and delivery of a TP following on from the proposals set out in the **Framework TP** submitted as part of the application.

5.2. The appellant confirms its willingness to enter into a binding legal agreement, or to accept a condition, to secure the delivery of the proposed extension of a bus service operated by Stagecoach to serve the proposed development.

## 6. Planning Policy Context

6.1. It is agreed that the transport policies in the National Planning Policy Framework, Torbay Local Plan and Brixham Peninsular Neighbourhood Plan are relevant to the application.

### National Planning Policy Framework

6.2. Paragraphs 102 to 111 of the Framework address promotion of sustainable transport. In particular, with regard to paragraphs 108, 110 and 111 it is agreed that the application:

- includes appropriate measures to promote and encourage take up of sustainable transport modes (108 a));
- provides safe and suitable access for all users (108 b));
- includes cost effective measures to mitigate all significant impacts on the transport network and on highway safety (108 c));

- gives priority to pedestrians, cyclists and public transport (110 a));
- addresses the needs of people with disabilities and reduced mobility (110 b);
- creates a safe, secure and attractive place that would minimise conflicts between pedestrians, cyclists and vehicles (110 c);
- allows for efficient delivery of goods and access for emergency service vehicles (110 d);
- will be designed to enable charging of plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations (110 e)); and
- will provide a travel plan (111).

Torbay Local Plan

6.3. It is agreed that the proposed development satisfies the transport policy requirements of the Adopted Torbay Local Plan 2012-2030 because:

- the development will be easily accessible and safely reached by foot, cycle, public transport, other sustainable transport or car (TA1 1);
- the most sustainable and environmentally acceptable modes of transport are promoted as an integral part of the development, having regard to the hierarchy of sustainability set out in the policy (TA1 2);
- the development will improve road safety, quality of life and equality of access for all (TA1 3);
- the development is designed so that use of the car is reduced wherever possible and residents have access to employment, retail and community facilities within safe walking and cycling distances and via close proximity to bus stops, served by frequent bus services. In addition, the indicative layout will contribute to a connected network of footpaths and cycle routes (TA1 4);
- the development will incorporate appropriate levels of car and cycle parking (TA1 5);
- the development will reduce the impact of signage and transport infrastructure within the street scene (TA1 6);
- the development will make appropriate provision for works and contributions to ensure an adequate level of accessibility and safety, and will satisfy the transport needs of the development (TA2)
- the development will satisfy all the listed requirements for access (TA2 items 1 to 7);

- the development will provide a good standard of access for walking, cycling, public and private transport and will include measures for emergency service, waste collection and public transport vehicles to access the site and a compliant Travel Plan (TA2 for major developments); and
- The development will be designed in detail to meet the requirements (TA3 and Appendix F).

*Brixham Peninsular Neighbourhood Plan*

6.4. It is agreed that the proposed development meets the requirements of the BPNP Policy T1 because:

- it includes safe walking and cycling access (T1.1);
- it has provided a travel plan proportionate in breadth and detail to the size and complexity of the development (T1.2);
- it will provide more detail on how the carbon footprint of travel can be minimised and the health and well-being of travellers maximised from travel in a further travel plan, delivery of which can be secured by planning condition (T1.2); and
- the development seeks to minimise commuting distances by making it easy to travel to work by public transport, walking and cycling to local employment and education centres and includes improvements to the safety of pedestrians and cyclists (T1.3).

6.5. Having regard to all the above, it is agreed that there would be no unacceptable impacts on highway safety, or severe residual cumulative impacts on the road network to warrant refusal on highway grounds in line with NPPF 2018 paragraph 109.

**7. Matters Not Agreed - Pedestrian Crossing Facilities at Windy Corner**

- 7.1. Dialogue in November 2019 brought to light a TCHD desire to improve pedestrian amenities at the Windy Corner junction by providing priority to pedestrians at the crossing movements, none of which are given pedestrian priority within the current layout.
- 7.2. It was agreed that KTC should investigate options to include controlled crossings for pedestrians on all existing crossings within the junction, for further consideration by TCHD. It was recognised that this may have an impact on the capacity of the junction for vehicular traffic but would be policy compliant in prioritising pedestrian movements.
- 7.3. At the time of writing, further changes to the layout of the proposed improvements at Windy Corner have not been agreed. However, TCHD and KTC propose to report further on the findings of this work to the inquiry. []



Statement of Common Ground signed on behalf of Torbay Council (LPA)	
Print Name:	Adam Luscombe for Torbay Council
Date:	
Position:	Service Manager – Strategy and Project Delivery Team (Planning and Transport)

Statement of Common Ground signed on behalf of Abacus Projects Limited and Deeley Freed Estates Limited (Appellant)	
Print Name:	Roger Key for Key Transport Consultants
Date:	
Position:	Director

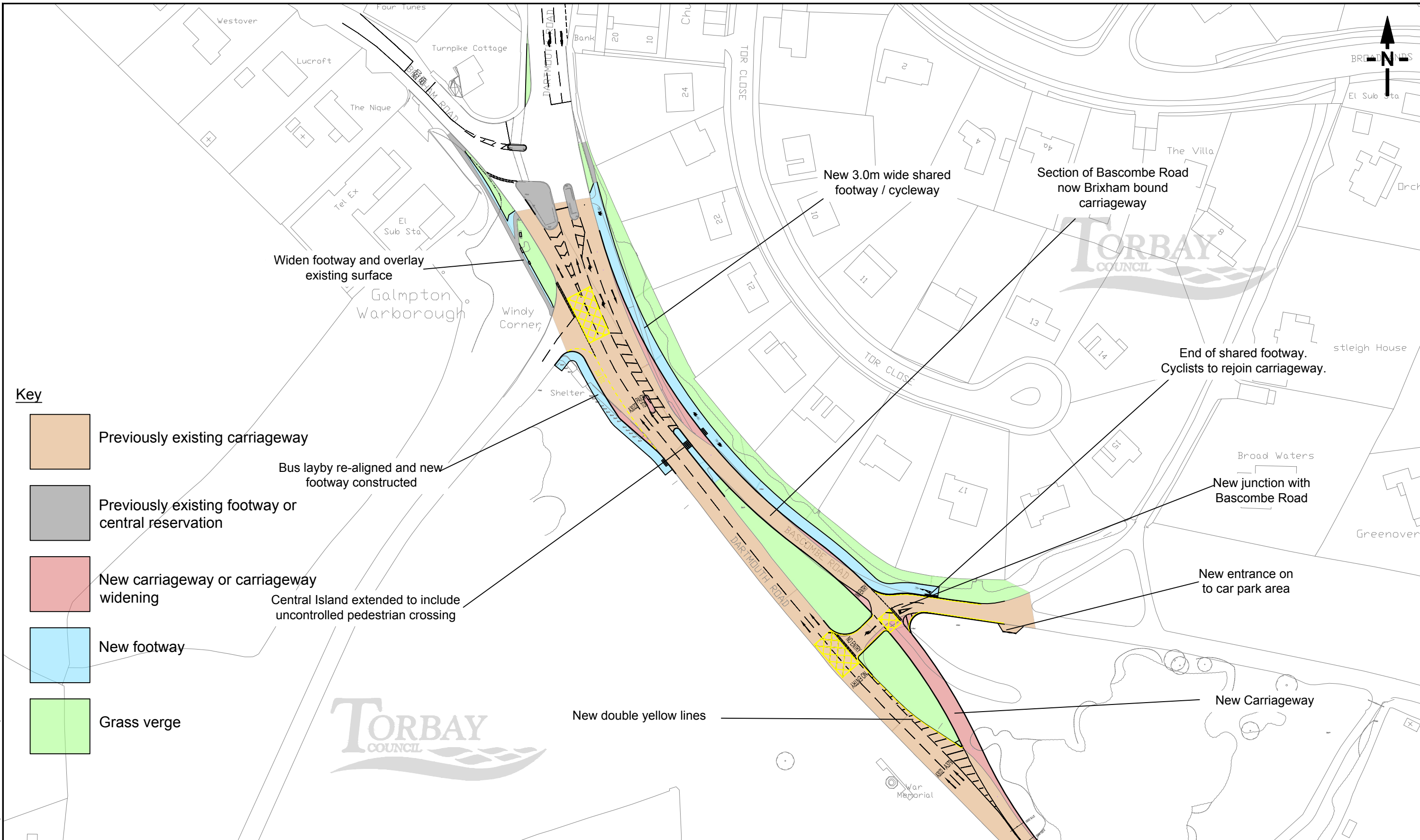
8.1.

**Annex A**  
**Current Drawings**  
**(Not Provided Elsewhere)**

**0734-060 Existing Windy Corner Layout**

**0734-061 Revision A Windy Corner Highway Improvements**

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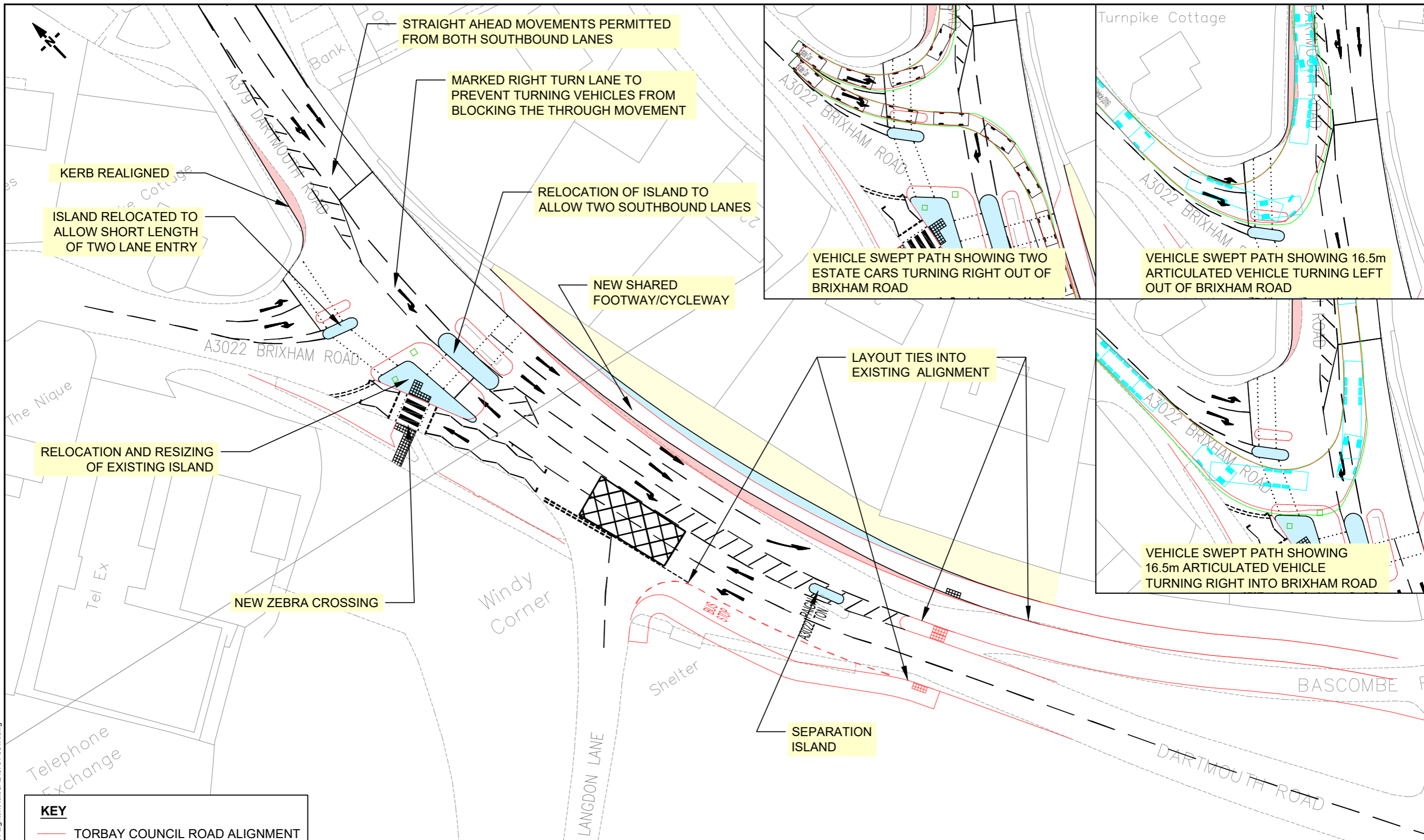


REV	DR	CH	PA	DATE

INGLEWOOD, PAIGNTON					
EXISTING WINDY CORNER LAYOUT INCLUDING TORBAY COUNCIL 2019 IMPROVEMENTS					
DRAWN BY	CHECKED BY	PASSED BY	DATE	SCALE @ A3 SIZE	ISSUE STATUS
BE	MJ	RK	OCT 19	1:1,000	PRELIMINARY

ABACUS PROJECTS LTD	
	KEY TRANSPORT CONSULTANTS LTD 26 BERKELEY SQUARE BRISTOL BS8 1HP Tel : 0117 920 9430 E-mail : info@key-transport.com
DRAWING NUMBER	REV.
0734-060	

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KEY				
<span style="color: red;">—</span>	TORBAY COUNCIL ROAD ALIGNMENT			
<span style="background-color: lightblue;">■</span>	NEW FOOTWAY			
<span style="background-color: lightred;">■</span>	NEW CARRIAGEWAY			
<span style="background-color: yellow;">■</span>	TORBAY COUNCIL GRASS VERGE			

<b>INGLEWOOD</b>					<b>ABACUS PROJECTS LTD</b>				
WINDY CORNER HIGHWAY IMPROVEMENTS TYING IN TO TORBAY COUNCIL 2019 IMPROVED LAYOUT					KEY TRANSPORT CONSULTANTS LTD 26 BERKELEY SQUARE BRISTOL BS8 1HP Tel : 0117 920 9430 E-mail : info@key-transport.com				
DRAWN BY	CHECKED BY	PASSED BY	DATE	SCALES @ A3 SIZE					
DRT	DRK	DRK	OCT 19	1:500@A3	PRELIMINARY	0734-061	A		

A	AMENDMENTS TO BRIXHAM ROAD APPROACH. CENTRAL SEPARATION ISLAND ADDED ON DARTMOUTH ROAD	DRT	SLF	DRK	NOV'19
REV		DR	CH	PA	DATE

## Appendix 3: Ecology Statement

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**INGLEWOOD: CHRONOLGY OF ECOLOGY MATTERS – March 2020**

- I.1 The following text provides a chronology of the key ecology matters in relation to the Inglewood application.
- I.2 The Site was subject to ecology surveys in 2010 and 2015/16 by EcoSulis to inform the White Rock application (P/2011/0197 and subsequent reserved matters applications) to the north and the potential allocation of the Inglewood land in the Local Plan. Whilst the White Rock application was approved, Inglewood was not selected for inclusion in the Local Plan (with insufficient ecology survey data cited as a key reason for it not to be included).
- I.3 Nicholas Pearson Associates (NPA) started to undertake ecology surveys to inform the current proposals in 2016. These comprised of surveys of habitat, Badgers, bats, breeding birds, Cirl Buntings, Dormice, Great Crested Newts, invertebrates and reptiles. The surveys were undertaken in accordance with best practice. As the application site is within the sustenance zone for Greater Horseshoe Bats associated with the South Hams Special Area of Conservation (SAC) the detailed scope of the bat surveys was agreed with Torbay and Natural England (NE) in April 2016.
- I.4 NPA provided ecology text for the Scoping Report (December 2016), with Torbay issuing the EIA scoping opinion (16th February 2017, CD 1.38). Torbay broadly agreed with the contents of ecology section and generally supported the survey effort undertaken/proposed.
- I.5 Dialogue continued with Torbay, Natural England and the RSPB through the design process. This dialogue and the results of the ecology surveys were integral to the design of the proposals. The dialogue included a pre-app meeting with Torbay (5<sup>th</sup> January 2017) and a site meeting with Torbay and the RSPB (February 2017). It also included a meeting (28<sup>th</sup> September 2017) with NE and Torbay, through NE's Discretionary Advice Service. NE advised (letter 12<sup>th</sup> October 2017, CD 3.2) that they supported the overall conclusions of the draft ecology chapter regarding screening of risk regarding designated sites, they concurred that key potential impacts relate to Greater Horseshoe Bats associated with the South Hams SAC and welcomed the enhancement and mitigation measures that had been put forward.

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- I.6 NPA then prepared the finalised ecology chapter of the ES in November 2017, CD I.17, which was submitted as part of the planning application. The chapter predicted that there would be no significant negative residual impacts to any of the ecological receptors identified (including the South Hams SAC), with significant positive impacts predicted for bats and birds in the long term.
- I.7 NE responded to the application (December 2017, CD 4.10) requesting further information (a comprehensive mitigation, avoidance and enhancement package, and a Habitat Regulations Assessment) in order to determine the significance of potential significant effects on Greater Horseshoe Bats associated with the South Hams SAC.
- I.8 The RSPB objected (December 2017, CD 4.15) to the application and requested clarification/more information on a number of detailed matters.
- I.9 The concerns raised were discussed with Torbay, NE and RSPB and led to meeting with Torbay (1<sup>st</sup> February 2018) and the production of an Ecological Addendum (February 2018), updated Proposed Farming Practices Plan (February 2018), Phasing Plan (March 2018) and revised Framework Landscape and Ecological Management Plan (March 2018) to provide further information/clarification.
- I.10 Following receipt of further information in March 2018, Natural England's further response was received 12 April 2018 CD 4.11. This states that Natural England have no objection subject to appropriate mitigation being secured. Without appropriate mitigation the application would: have an adverse effect on the integrity of South Hams Special Area of Conservation and a range of mitigation measures is set out that need to be secured through S106 Obligation or condition. Natural England noted that the enhancement measures affect the landscape and ecology mitigation measures for the White Rock development and stated that their agreement to this course of action was exceptional and has only been accepted because the enhancement measures being proposed are sufficiently robust to address concerns with this type of approach.
- I.11 The RSPB (letter 22<sup>nd</sup> March 2018, CD 4.16) responded that if the RSPB has confirmation that Natural England is satisfied that the amended proposals are adequate in relation to greater horseshoe bats and that the funding and security mechanisms are acceptable to Torbay Council and South Hams then they will withdraw the objection. RSPB reiterated this position in January 2020.

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- I.12 Jacobs on behalf of Torbay undertook a Habitat Regulations Assessment (March 2018, CD 2.28) which concluded there would be no likely significant effect, alone or in combination with other proposals or projects, on a European Site (i.e. the South Hams SAC or the Lyme Bay and Torbay SCI). Torbay also produced a memorandum (11<sup>th</sup> April 2018, CD 2.29) which concluded “*they were satisfied that the key ecological issues raised through consultation have been resolved by the applicant... and that there are currently no ecological grounds for objection to the application*”. Subsequent to the People over Wind case, CD 8.4, Jacobs for Torbay carried out an Appropriate Assessment (May 2018) and came to the same conclusions of the original HRA.
- I.13 Given the progress of the application and the time elapsed since the surveys which supported the application had been undertaken, update surveys were undertaken for breeding birds, badgers (included in the habitat assessment), bats, Cirl Buntings and habitat between November 2018 and November 2019, CD 2.41, 2.42, 2.43, 2.44, 2.45. The assessment of the results of the update surveys concluded that there were no significant changes in the result and that the conclusions made within the ecology chapter of the Environmental Statement remain valid, CD 1.17. During the course of these surveys the South Hams SAC Greater Horseshoe Bat HRA Guidance (July 2019, CD 6.13) was finalised. The updated guidance does not affect/change any of the survey work or conclusions of the assessments undertaken.
- I.14 The Council’s Strategic Appraisal Officer reviewed Jacobs’ HRA in December 2019 in light of the passage of time and updated Greater Horseshoe Bat guidance. The conclusions of this were broadly the same as the previous AA, i.e. “that In light of the mitigation measures identified and consideration of the implications for the sites Conservation Objectives in Section 17 and 18 there is NO Adverse Effect on the Integrity of the South Hams SAC - alone or in combination with other proposals or projects.”
- I.15 The Council’s updated Habitats Regulations Assessment identified a possible marginal effect upon calcareous grassland habitats (at the Berry Head component of the SAC).
- I.16 The Appellants do not agree with the Berry Head Grassland aspect of the HRA and consider that the proposal will not have a significant impact on the grassland. The appellants and Council are seeking to resolve this issue in the context of the ongoing discussions about the s106 Agreement.



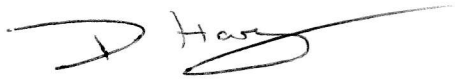
- I.17 The Habitats Regulations Assessment was further updated on 10<sup>th</sup> February by the Council's officer to take account of the GHB Survey undertaken in 2019. Its conclusion was the same as above i.e. that the proposal, with the various mitigation measures proposed, would not have an adverse effect on the integrity of the South Hams SAC.
- I.18 The Council notes that there are outstanding objections on HRA grounds. In recognition of concerns raised by a third party (Farrer & Co April 2018 and November 2018, CD 5.1 restated in later objections), an ecology briefing note was prepared to explain the difference between mitigation and compensation measures (2<sup>nd</sup> December 2019, CD 2.35). Based on this and further advice from Jacobs, the officer report to Planning Committee on 10<sup>th</sup> February concluded that the ecological package that is proposed with the development scheme constitutes mitigation and not compensation (as is Natural England's view confirmed in e-mail of 16<sup>th</sup> December 2019, CD 3.3) and that all ecology matters have been satisfactorily addressed subject to the mitigation measures within Torbay and South Hams being secured in perpetuity through a S106 Agreement and/or planning condition.
- I.19 In the light of representations made to the Committee by Greg Jones QC on behalf of Farrer and Co, the Planning Committee also requested that the Council seeks legal advice about the objectors' argument that the proposal does not comply with legal requirements under the Habitat Regulations and include this as part of the reasons for refusal if applicable.
- I.20 The Council's barrister subsequently advised that the application was supported by updated surveys and a full Appropriate Assessment in consultation with Natural England. The measures designed to avoid impacts will be in place before those impacts arise and there is no direct loss to a European Protected Site. This means they are properly considered under the Article 6(3) procedure (mitigation) rather than the Article 6(4) procedure (compensation). Accordingly, had it determined the application, the LPA would not have imposed an HRA reason for refusal, providing the mitigation measures were secured through a S106 Agreement on the basis of the information before it at the time.

Inglewood Chronology of Ecology Matters signed on behalf of Torbay Council (LPA)



Print Name	David Pickhaver
Date	20 July 2020
Position	Senior Planner, Strategy and Project Management - Spatial Planning

Inglewood Chronology of Ecology Matters signed on behalf of Abacus Projects Limited and Deeley Freed Estates Limited (Appellant)



Print Name	David Harvey for Nicholas Pearson Associates
Date	17 July 2020
Position	Senior Ecologist

## Appendix 4: Draft Conditions

**P/2017/1133 - Inglewood**

**Draft conditions as proposed by Stride Treglown**

**16/01/2020**

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**Reserved matters**

1. Details of the layout, scale, appearance and landscaping (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development takes place in accordance with the time limits set out in Condition 2 below.

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

**Timing**

2. Application for approval of the reserved matters referred to in Condition 1 shall be made to the Planning Authority for the whole development or if the development is to be phased, for the first phase of the development before the expiration of three years from the date of this permission.

Reserved matters for subsequent phases of the development shall be made to the Local Planning Authority no later than three years from the date of approval of the previous reserved matter application or the last of the reserved matters to be approved, whichever is the later.

The development hereby permitted shall be begun either before the expiration of five years from the date of this permission, or before the expiration of two years from the date of approval of the reserved matters for the first phase of the development, whichever is the later.

**Approved plans and documents**

3. The development hereby permitted shall be carried out in complete accordance with the approved plans listed below:
  - 0734-018 Rev A On-line widening Brixham Road
  - 0734-020 Rev A Investigation of On-Line Widening of A3022 Brixham Road to 7.3m, Long Section Along 70m Forward Visibility Splay
  - 0734-023 Rev B Potential Northern Crossing, Toucan Crossing
  - 0734-029 Rev A Potential Southern Crossing, Option 3 – Uncontrolled Crossing
  - 0734-040 Rev A Proposed Long Road Improvements
  - 0734-057 Proposed Site Access Junction and Proposed Bus Stop Infrastructure
  - 0734-061 Rev A Windy Corner Highway Improvements Tying in to Torbay Council 2019 Improved Layout

And in accordance with the principles outlined within the plans and documents listed below:

- Regulatory Plan

## **Phasing**

4. A phasing plan shall be submitted to and approved in writing by the Local Planning Authority as part of the first application for reserved matters approval. The plan shall demonstrate how the development will be implemented in relation to an agreed timetable of works, and shall include the provision of the proposed public open space, landscaping, ecological enhancement, highway works and other ancillary infrastructure. The development shall then be implemented in accordance with the approved phasing plan unless otherwise agreed in writing.

## **Construction Environmental Management Plan**

5. No development (including demolition and ground works) or vegetation clearance works shall take place for 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 (may be provided as a set of method statements).
  - 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: Biodiversity, 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 unless otherwise agreed in writing by the Local Planning Authority.

## **Construction Method Statement**

6. No development (including demolition and ground works) shall take place within any given phase until a Construction Method Statement for that phase has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period of the phase of development to which they relate. 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) A scheme for recycling/disposing of waste resulting from demolition and construction works, with priority given to reuse of building materials on site wherever practicable.
- h) Measures to minimise noise nuisance to neighbours from plant and machinery.
- i) 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.

### **Highways**

7. No development shall commence unless and until an agreement has been entered into with the Council under section 278 of the Highways Act 1980 for the following works and all relevant fees which require payment prior to completion of such agreement(s) have been paid to the Council, details of which shall have been submitted to the Local Planning Authority:
  - a) access to the Site via a new four arm roundabout and a toucan crossing both on Brixham Road in accordance with the details submitted with the Application [as shown indicatively on drawing ref: 0734-057, 0734-023 Rev B])
  - b) widening works on Brixham Road to facilitate safety improvements, namely widening and lowering of the road surface in the vicinity of White Rock Cottages/White Rock Primary School [as shown indicatively on drawing ref: 0734-018A and 0734-020A];
  - c) improvement works at Long Road/Brixham Road junction [as shown indicatively on drawing ref: 0734-040A];
  - d) improvement works at Windy Corner junction [as shown indicatively on drawing ref: 0734-061 Rev A]
  
8. Prior to the commencement of each agreed phase of the development, pursuant to the phasing condition, details of the provision of cycle parking and bin storage for each dwelling shall have been submitted to and approved in writing by the Local Planning Authority. The cycle parking and bin storage shall then be provided in accordance with the approved details prior to the occupation of the each of the dwellings and shall be retained to serve the dwellings for such use at all times thereafter.
  
9. No building shall be occupied until the garages and/or car parking areas and access roads serving said building has been provided and made available for use in accordance with details approved under Condition 1 of this consent, or to a stage previously agreed in writing with the Local Planning Authority. The car parking areas and access roads shall be kept permanently available to serve the development at all times thereafter.

### **Affordable Housing**

10. As part of any application for reserved matters relating to the proposal's layout and scale, a scheme of affordable housing shall be submitted for the written approval of the Local Planning Authority. The submitted details shall include information about the siting, size, and tenure type of the affordable units. The development shall be undertaken in accordance with the approved details.

#### **School Land**

11. No development shall commence until the area of land that is to be offered as the School Land has been identified and pegged out on site, evidence of which is to be provided to the Local Planning Authority.

#### **Countryside Access**

12. No more than [TBC] dwellings shall be occupied until the Countryside Access Scheme has been approved by the Council and no more than [TBC] dwellings shall be occupied until the Countryside Access Scheme has been implemented.
13. No development shall commence until details of the Northern Access Route which provides the pedestrian/cycle link to enable access to the White Rock site to the north of the Site have been submitted to and approved in writing by the Local Planning Authority.
14. No more than 100 dwellings shall be occupied until the Northern Access Route has been provided in accordance with the approved Northern Access Route Specification and transferred to the Management Entity.

#### **Landscaping**

15. No dwelling shall be occupied until details of the layout and equipment to be included in the Neighbourhood Equipped Area for Play (NEAP) has been submitted to and approved in writing by the Local Planning Authority.
16. No dwelling shall be occupied within the first phase of residential development until details of the layout and equipment to be included in the Local Equipped Area for Play (LEAP) has been submitted to and approved in writing by the Local Planning Authority.
17. No dwelling shall be occupied within the second phase of residential development until details of the layout and equipment to be included in the Local Equipped Area for Play (LEAP) has been submitted to and approved in writing by the Local Planning Authority.

#### **Trees**

18. No development (including demolition and ground works) or vegetation clearance works shall take place for any phase of the development until an Arboricultural Method Statement and Tree Protection Plan for that phase have been submitted to and approved in writing by the Local Planning Authority. This information shall be prepared in accordance with BS 5837:2012 (or any superseding British Standard) and include details of tree protection fencing, which must be erected prior to the commencement of the development and retained until the completion of the development in the phase of the development that they relate to. No vehicles, plant or materials shall be driven or placed within the areas enclosed

by the fences. The approved Arboricultural Method Statements and Tree Protection Plans shall be adhered to throughout the construction of the development.

19. 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.

### **Drainage**

20. All reserved matters applications shall include a detailed surface water drainage scheme and SUDS maintenance scheme for the phase to which they relate. The detailed drainage design is to conform with the principles established in Addendum to FRA/DS Report (WB03590/FRO1 V5) (WB03590-TN01(V4)) dated 13 March 2018. Thereafter the approved scheme shall be implemented and maintained appropriately in accordance with the approved details.
21. No building shall be occupied within any given Phase until ownership and responsibility for management and maintenance of the surface water drainage scheme has been transferred to the Management Entity. The Management Entity shall thereafter manage and maintain the drainage surface water scheme in accordance with the SUDS maintenance scheme in perpetuity or for as long as any dwelling remains occupied on the Development.

### **Ecology**

22. All reserved matters applications shall include a Landscape and Ecological Management Plan (LEMP) for the phase to which they relate. The LEMP should build upon the principles established in the Framework Landscape and Ecological Management Plan (Stride Treglown, March 2018). The Landscape and Ecological Management Plans for the application site shall include an implementation strategy and timetable for implementation, and shall be implemented in accordance with the agreed timetable for the duration of the agreed management plan period.
23. Vegetation clearance that involves the removal of habitats such as scrub or hedges, including bramble patches, should occur outside of the bird breeding season (1st March to 30th September). Any vegetation clearance during the bird nesting season must be undertaken under an Ecological Watching Brief with a competent professional ecologist advising on the works on site and such clearance works shall only take place where there are no nesting birds present.

### **External Lighting**

24. All reserved matters applications shall include a Lighting Assessment for the phase to which they relate, demonstrating compliance with the principles established in the External Light Report Rev P05 dated 18/10/17. The Lighting Assessment shall include lux contour plans, for



both public-realm and domestic lighting in combination with any existing light sources in the locality.

### **Site Investigations**

25. Prior to the commencement of each phase of the development, pursuant to the phasing condition, a site investigation survey report and any relevant remediation strategy required in relating to ground conditions and contamination shall be submitted to and approved in writing by the Local Planning Authority. The works within the relevant phase of development shall then take place in accordance with the recommendations agreed in the approved remediation strategy. Following completion of measures identified in the approved remediation scheme a verification report must be prepared and submitted to the Local Planning Authority in writing.

### **Archaeology**

26. No development shall take place until a Written Scheme of Investigation (WSI), comprising an archaeological field evaluation with trial trenching, shall be submitted to and approved in writing by the Local Planning Authority. Within 3 months of the completion of the archaeological field evaluation a further WSI for a programme of archaeological mitigation in respect of any areas of significant buried archaeological remains shall be submitted to the Local Planning Authority for approval, and this WSI shall also include the programme (including timetable) for post-investigation assessment and subsequent analysis, publication, dissemination and deposition of the resulting material. No development shall take place on land within the further WSI other than in accordance with that WSI and the post-investigation assessment and subsequent analysis, publication, dissemination and deposition of the resulting material shall be in accordance with the approved programme and timetable.

## Appendix 5: Draft S106 Agreement

DATED

2020

THE COUNCIL OF THE  
BOROUGH OF TORBAY

- and -

ABACUS PROJECTS LIMITED

PLANNING OBLIGATION

under Section 106 of the  
Town & Country Planning Act 1990  
relating to land to the south of White Rock,  
adjacent to Brixham Road, Paignton

in the Borough of Torbay

Torbay Council  
Town Hall  
TORQUAY

DRAFT

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**THIS AGREEMENT** is made on

**BETWEEN:**

- (1) **THE COUNCIL OF THE BOROUGH OF TORBAY** of Town Hall Castle Circus Torquay Devon TQ1 3DR (“the Council”)
- (2) **ABACUS PROJECTS LIMITED** (Co. Regn. No. 1460919) of Eaton Court, Maylands Avenue, Hemel Hempstead, Hertfordshire, HP2 7TR (“the Owner”)

**WHEREAS :-**

1. The Council is the Local Planning Authority for the purposes of the 1990 Act for the area which includes the Site
2. The Owner has by the Application applied to the Council for planning permission for the Development
3. The Owner is the registered proprietor of the Site and the Farmland with title absolute under Title Numbers DN346107, DN562334, DN690151, DN523013 and DN577590 subject to the entries disclosed on the Charges Register of the said titles but otherwise free from incumbrances
4. The Council has not determined the Application and the Owner has appealed under reference [APP/ ]
5. This Deed is conditional upon the matters hereinafter referred to

**NOW THIS DEED WITNESSETH** as follows:

**1 Definitions**

In this Deed unless the context otherwise requires the following expressions shall have the following meanings:-

- 1.1 **“the 1990 Act”** means the Town & Country Planning Act 1990
- 1.2 **“Adapted Dwelling”** means Affordable Dwelling(s) constructed to be suitable for occupation by households which include a person who has a physical disability and/or a need for wheelchair access
- 1.3 **“Administration Charge”** means the sum of [five thousand eight hundred and fifty pounds (£5,850) Index Linked] towards the Council's costs incurred in monitoring and administering the Ecological Mitigation provided pursuant to Part [10] of the [First] Schedule
- 1.4 **“Affordable Dwellings”** means the Dwellings on the Site that are to be used as Affordable Housing
- 1.5 **“Affordable Housing”** means affordable housing within the meaning of Annex 2 of the NPPF being Dwellings on the Site:
  - (a) to be let on Social Rent Tenancies or Affordable Rent Tenancies through a Registered Provider (or alternative approved by Torbay Council); or
  - (b) disposed of on the basis of Equity Sharing Leases or the Rent-to-Homebuy Scheme;  
or

- (c) such Intermediate Housing tenure as may be approved in writing by the Council where all the resulting homes are let sold or disposed of to Eligible Persons and are covered by a Local Authority Building Control New Home Warranty or other suitable warranty provider
- 1.6 **“Affordable Housing Manager”** means the Council’s Affordable Housing Manager or similar post-holder carrying out the Council’s housing functions employed by the Council from time to time
- 1.7 **“Affordable Rent Dwelling”** means a Dwelling that may only be occupied under an Affordable Rent Tenancy
- 1.8 **“Affordable Rent Tenancy”** means a tenancy regulated by Homes England for a minimum term of two years at a rent of up to 80% of gross Market Rent (including service charges) whereby an Affordable Rent Dwelling is let to an Eligible Person and provided by a Registered Provider
- 1.9 **“Allotments”** means an area of allotment plots of at least 5,700 sq metres as identified indicatively [hatched brown] on Plan 2 to be used for the purpose of producing flowers fruit and/or vegetables for personal use
- 1.10 **“Appeal”** means the appeal lodged in respect of the non-determination by the Council of the Application and given the appeal reference [APP/ ]
- 1.11 **“the Application”** means an outline planning application for the Development with details of access to be determined with all other matters reserved by the Owner and validated by the Council on 13<sup>th</sup> November 2017 with number P/2017/1133
- 1.12 **“Assistant Director of Planning & Transport”** means the Council’s Assistant Director of Planning & Transport or similar post holder responsible for the Council’s spatial planning functions employed by the Council from time to time.
- 1.13 **[“Berry Head Grassland Contribution”** means a sum calculated and paid in accordance with [paragraph 3.3 of the First Schedule] to be used towards the mitigation of the effects of the Development on calcareous grassland at Berry Head based on a sum of £49.50 per Dwelling **[Note: subject to confirmation on CIL Reg 122 compliance]**]
- 1.14 **“Bidding Period”** means the period from 12:00am on a given Wednesday to 11:59pm the following Monday being the time within which Devon Home Choice will advertise available Affordable Dwellings
- 1.15 **“Bus Service”** means a bus service operated to serve the Development in accordance with the Bus Service Operational Plan
- 1.16 **“Bus Service Agreement”** means a contractual arrangement between the Management Entity and a bus service operator for the provision of the Bus Service in accordance with the Bus Service Operational Plan
- 1.17 **“Bus Service Operational Plan”** means the operational plan approved by the Council in accordance with paragraph [8] of the First Schedule
- 1.18 **“Ceiling Rent”** means in respect of Social Rented Dwellings, the total weekly sum payable in rent which sum shall be limited to Homes England’s Target Rents for social rented accommodation in Torbay or successor regime approved by the Affordable Housing Manager
- 1.19 **“Commencement of Development”** means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of

site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, landscaping works and the erection of any temporary means of enclosure, the temporary display of site notices or advertisements SAVE in respect of paragraph [9] of the First Schedule where such operations shall not be excluded in relation to the use of the term "Commencement of Development" and "Commence Development" shall be construed accordingly

- 1.20 "**Community Orchard**" means the area of Open Space to be set aside and used as an orchard for the benefit of the community in accordance with paragraph [4.2.5] of the Second Schedule
- 1.21 "**Delivered**" means in respect of an area of Open Space built and equipped in accordance with the Open Space specification for that area of land, transferred to the Management Entity and the Forward Fund payable in respect of that area of land has been paid to the Management Entity and "**Deliver**" shall be construed accordingly
- 1.22 "**Detailed Travel Plan**" means a travel plan in accordance with the Framework Travel Plan annexed at Annex [7] to be prepared and implemented by the Owner to encourage use of modes of transport other than by single occupancy private motor car for occupiers, staff and visitors to the Development pursuant to paragraph 10 of the First Schedule
- 1.23 "**the Details**" means with respect to individual Affordable Dwellings:
- 1.23.1 the physical location
  - 1.23.2 layout
  - 1.23.3 specification (including that of any common parts serving the Affordable Dwellings);  
and
  - 1.23.4 the type and tenure
- 1.24 "**the Development**" means the development of the Site of up to 373 dwellings (C3) together with the means of vehicular and pedestrian/cycle access together with the principle of a public house (A3/A4 use), primary school with nursery (D1), internal access roads and the provision of public open space (formal and informal) and strategic mitigation
- 1.25 "**Dispute Notice**" means notice in writing which shall set out the matters which the party giving the Dispute Notice disagrees with and the detailed reasons for that disagreement
- 1.26 "**Dwelling**" means a dwelling (including a house, flat or maisonette) designed for residential occupation by a single household and to be constructed pursuant to the Planning Permission and shall include the Affordable Dwellings
- 1.27 "**Ecological Mitigation**" means the Ecological Mitigation Stage 1 Works, the Ecological Mitigation Stage 2 Works and the ongoing management and maintenance of the Farmland in accordance with the Farmland Management Plan and the Open Space for the purposes of providing and protecting suitable habitat and fly paths for cirr buntings and greater horseshoe bats
- 1.28 "**Ecological Mitigation Stage 1 Works**" means those works detailed in Part 1 of Annex 6
- 1.29 "**Ecological Mitigation Stage 2 Works**" means those ecological mitigation works detailed in Part 2 of Annex 6
- 1.30 "**Eligible Person**" means any person or persons who immediately prior to the occupation of an Affordable Dwelling satisfies the criteria below:



- (a) is on the 'Devon Home Choice' waiting list or 'South West Homes ' waiting list (or such waiting lists allocation or policies adopted by the Council in their replacement) managed by or on behalf of the Council, or is eligible for an allocation of housing accommodation pursuant to Section 16 of the Homelessness Act 2002 in Torbay; or
- (b) is identified by the Council as being:
  - (i) on a low income and/or on housing and/or other welfare benefits or in low paid employment and having low capital and not being entitled to housing or other welfare benefits; and
  - (ii) would be given reasonable preference for an offer of accommodation under Torbay Council's allocation scheme under Section 167 of the Housing Act 1996, provided that if in relation to any proposed person the Council fails to indicate whether or not that person would be given preference under the said allocation scheme within 15 working days of receiving a request for such information (or if the said allocation scheme shall be discontinued without replacement), that element of the test as to whether the person is an Eligible Person shall be deemed to have been satisfied and the expression "Eligible Persons" shall be construed accordingly;

and in the case of both (a) and (b):

- (c) satisfy the requirements of policy BH2 of the Brixham Peninsula Neighbourhood Plan in that they
  - (i) have had a minimum period of 5 years in the last 10 years of permanent and continuous residence in the area of the Brixham Peninsula Neighbourhood Plan ('the Peninsula'); or
  - (ii) have lived in the Peninsula for at least 5 years and whose parents or children are currently living in the Peninsula and have at least 10 years continuous residency; or
  - (iii) are a key worker as defined by the UK Government and are working within the Peninsula

and where no persons who meet the criteria in all of (a) (b) and (c) have bid for an Affordable Dwelling within the relevant Bidding Period

- (d) satisfy both (a) and (b) and the Local Connection Criteria unless otherwise agreed in writing by the Affordable Housing Manager (not to be unreasonably withheld or delayed)

- 1.31 **"Employment Contribution"** means [the sum of five hundred thousand pounds (£500,000) paid in accordance with [paragraph 3.1 of the First Schedule] to be used towards the delivery of the Claylands Industrial Park, Paignton and/or the creation of B1/B2/B8 jobs in the Borough of Torbay
- 1.32 **"Equity Share Dwelling"** means a Dwelling that may only be let under an Equity Sharing Lease or such similar or equivalent means of tenure being of a type approved by Homes England or by the Council
- 1.33 **"Equity Sharing Lease"** means a lease (of not less than 99 years) of an Equity Share Dwelling substantially in the form of Homes England's model form shared equity lease published from time to time whereby:

- (a) the leaseholder acquires an initial equity share in an Affordable Dwelling the value of which is not more than fifty per cent (50%) of the market value except in cases where Homes England (in cases where financial assistance has been given to a Registered Provider) has agreed the Equity Sharing Leases shall be granted on the basis of a higher percentage of value being transferred to purchasers; and
  - (b) the purchaser pays to the Registered Provider a rent in respect of the remaining equity of up to 2.75% of unsold equity
- 1.34 **"the Farmland"** means that area of land [edged/hatched] [ ] on Plan [3]
- 1.35 **"Farmland Management Plan"** means the farm management plan annexed hereto at Part 3 of Annex [6] or as may otherwise be approved in writing by the Council
- 1.36 **"the Financial Contributions"** means
- (a) [the Employment Contribution]
  - (b) the Lifelong Learning Contribution
  - (c) the Sports Contribution
  - (d) the Sustainable Transport Contribution
  - (e) the Waste Management Contribution
- Index Linked and payable in accordance with the [First] Schedule
- 1.37 **"Forward Fund"** means the sum of [xxxx] payable by the Owner to the Management Entity for maintenance of the Farmland, Northern Access Route, Open Space and SUDS until such time as the Rentcharge received from the owners and occupiers of the Dwellings pursuant to the Rentcharge Agreement is sufficient to fund the continued management and maintenance of such items broken down as follows:- [.....]
- 1.37.1 NEAP:
  - 1.37.2 Phase A LEAP:
  - 1.37.3 Phase B LEAP:
  - 1.37.4 Community Orchard:
  - 1.37.5 Allotments:
  - 1.37.6 Incidental green space:
  - 1.37.7 Trim trail
  - 1.37.8 Farmland
  - 1.37.9 SUDS:
  - 1.37.10 Northern Access Route:
- 1.38 **"Homes England"** means the executive non-departmental public body, sponsored by the Ministry of Housing, Communities & Local Government, national agency for funding housing regeneration in England being the successor to the Homes and Communities Agency which definition shall include any statutory successor to that function
- 1.39 **"Inspector"** means the inspector appointed by the Secretary of State for Housing Communities and Local Government to preside over the Appeal

- 1.40 **"Intermediate Housing"** means Affordable Housing which is within the definition of intermediate housing contained in Annex 2 of the NPPF
- 1.41 **"Index Linked"** means an adjustment in the amount of any sums paid under this Deed in accordance with the provisions set out in the Fourth Schedule
- 1.42 **"Lifelong Learning Contribution"** means a sum calculated and paid in accordance with [paragraph 3.1 of the First Schedule] to be used towards [the provision of adult community learning centres or museums or libraries in the vicinity of the Development] based on the following figures:
- £125 per 37-60 sqm Dwelling
- £170 per 61-79 sqm Dwelling
- £232 per 80-108 sqm Dwelling
- £267 per 109+ sqm Dwelling
- 1.43 **"Local Connection Criteria"** means the criteria set out in Annex 3 or such other criteria adopted from time to time by the Council (including, inter alia a residency test) which ensures that prospective occupants of Affordable Housing have an established connection with Torbay
- 1.44 **"Management and Maintenance Scheme"** shall mean a framework for the Management Entity setting out its purpose, powers, responsibilities and internal procedures and the detailed specification for the upkeep and future maintenance and management of the Open Space, the Farmland, the SUDS and the Northern Access Route following the satisfactory laying out and provision of the same in accordance with this Deed and the Planning Permission and shall include the details set out in Appendix [8 ]
- 1.45 **"Management Entity"** means any organisation approved in writing by the Council pursuant to paragraph 7 of the First Schedule whose object and responsibilities shall include the ownership management and maintenance of the Farmland, Open Space, the Northern Access Route and the SUDS
- 1.46 **"Market Dwellings"** means any Dwellings that are not Affordable Dwellings
- 1.47 **"Market Rent"** means the rent that a willing tenant at arm's length would be willing to pay to rent a Dwelling on an assured shorthold tenancy if this Deed had not been made
- 1.48 **"Mortgagee"** means a bone fide arm's length
- 1.48.1 mortgagee
- 1.48.2 chargee
- 1.48.3 a security trustee; or
- 1.48.4 other person
- regulated under the Financial Services and Markets Act 2000 (as amended) and who holds a charge over the Site or any part thereof
- 1.49 **"NEAP"** means the Neighbourhood Equipped Area for Play to be located within an area of Open Space as identified indicatively [with a blue star] on Plan 2 and which is to be no smaller than 1000 sq metres
- 1.50 **"Nomination Agreement"** means an agreement to be entered into between the Council and the Registered Provider which sets the terms of the letting protocol for occupation of the

- Affordable Dwellings during the Perpetuity Period whether vacant by reason of first availability for Occupation or after initial Occupation
- 1.51 **"Northern Access Route"** means the pedestrian/cycle link to enable access to the White Rock site to the north of the Site as shown indicatively marked [dashed blue] on Plan 4
- 1.52 **"NPPF"** means the Government's National Planning Policy Framework dated March 2012 or any amendment or replacement thereof
- 1.53 **"Occupation" "Occupy" and "Occupied"** means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations
- 1.54 **"Open Market Value"** means the price that a willing purchaser at arm's length would be willing to pay for a Dwelling if this Deed had not been made
- 1.55 **"Open Space"** means those parts of the Site to be set aside for public recreation or amenity including the NEAP, the Phase A LEAP, the Phase B LEAP and the Allotments and incidental green space of up to 25,000 sq metres including the Community Orchard all as indicatively shown [hatched green] on Plan 2
- 1.56 **"the Parties"** means the parties to this Deed being the Owner and the Council as defined
- 1.57 **"Perpetuity Period"** means the period of one hundred and twenty five years (125) from the date of this Deed and **"in Perpetuity"** shall be construed accordingly
- 1.58 **"Phase"** a distinct part of the Development as described in any Phasing Plan submitted to and agreed in writing by the Assistant Director – Corporate and Business Services
- 1.59 **"Phase A LEAP"** means the Local Equipped Area for Play to be located within an area of Open Space as identified indicatively [with a red star] on Plan 2 and which is to be no smaller than 400 sq metres
- 1.60 **"Phase B LEAP"** means the Local Equipped Area for Play to be located within an area of Open Space as identified indicatively [with a green star] on Plan 2 and which is to be no smaller than 400 sq metres
- 1.61 **"Phasing Plan"** means a plan or plans setting out details for the implementation of the Development in distinct sections
- 1.62 **"Plan 1"** means the plan at Annex 2 and marked "Plan 1" (showing the Site edged red)
- 1.63 **"Plan 2"** means the plan at Annex 2 and marked "Plan 2" (showing the indicative location of features of the Development)
- 1.64 **"Plan 3"** means the plan at Annex 2 marked "Plan 3" (showing the Farmland)
- 1.65 **"Plan 4"** means the plan at Annex 2 and marked "Plan 4" (showing the Northern Access Route dashed blue)
- 1.66 **"the Planning Permission"** means a planning permission issued pursuant to the Application and the expression Planning Permission shall include all approvals granted thereunder or such other permission as may be granted in respect of the Site pursuant to an application for planning permission to amend such permission made pursuant to section 73 of the 1990 Act
- 1.67 **"Practical Completion"** means the date of issue of a certificate of practical completion by the Owner's architect or contract administrator or, if the Development is constructed by a party other than the Owner, by that other party's architect or contract administrator or a CML Professional Consultant Certificate or the production of the warranty provider cover note

- 1.68 **“Registered Provider”** means a social landlord registered pursuant to the Housing Act 1996 and/or a non-profit registered provider of social housing pursuant to Section 80 of the Housing and Regeneration Act 2008 and/or a ‘for profit’ registered provider of Affordable Housing to whom Affordable Housing on the Site is transferred
- 1.69 **"Rentcharge"** means the perpetual yearly variable estate rentcharge imposed on each Dwelling to be paid to the Management Entity to cover the annual costs of complying with its obligations under the Management and Maintenance Scheme PROVIDED ALWAYS THAT the rentcharge on each individual Dwelling shall be a fair and proportionate share of the total annual costs incurred by the Management Entity in relation to its obligations under the Management and Maintenance Scheme SAVE THAT nothing in this Schedule shall require the payment of such rentcharge by the occupier of any Affordable Dwelling which is not Intermediate Housing and such rentcharge shall instead be payable by the relevant Registered Provider
- 1.70 **"Rentcharge Agreement"** means an agreement to be entered into between the Management Entity and each owner and/or occupier of each Dwelling and with the Registered Provider detailing the services that the Management Entity will provide and the Rentcharge that may be levied by the Management Entity and which shall include a disputes mechanism and the specification for the management and maintenance of the SUDS, the Open Space, the Northern Access Route and the Farmland
- 1.71 **“Reserved Matters”** means those aspects (specified in article 2 of the Town and Country Planning (Development Management Procedure) (England) Order 2015) of the Development which the First Owner has through the Application reserved for later determination
- 1.72 **“Right to Acquire”** means the right pursuant to s.180 of the Housing & Regeneration Act 2008 as amended of a tenant of a Registered Provider to acquire the dwelling of which he is a tenant
- 1.73 **"School Land"** means the land shown indicatively edged yellow on Plan [2] or such other part of the Site as may be agreed between the Owner and the Council PROVIDED THAT wherever it is located on the Site such land shall consist of a single area of not less than [XX] hectares in area and shall be free of ecological and archaeological constraints
- 1.74 **"Serviced Land"** means an area of land which has vehicular and pedestrian access completed to an adoptable standard which is connected to an adoptable highway with foul and surface water sewers connected to adoptable sewers and with pipes and cables which are connected to mains services so as to be suitable for the supply of gas water electricity and telephone (consisting of the provision of ducting from a suitable telecommunications distribution point up to the boundary of the School Land to facilitate the provision of broadband)
- 1.75 **“the Site”** means the land to the south of White Rock, adjacent to Brixham Road, Paignton, Devon shown edged red on Plan 1
- 1.76 **“Social Rent Dwelling”** means a Dwelling that may only be Occupied under a Social Rent Tenancy
- 1.77 **“Social Rent Tenancy”** means a tenancy regulated by Homes England being either a weekly or monthly periodic assured or secure tenancy or an assured shorthold tenancy used solely to serve the purpose of a probationary or introductory tenancy in accordance with paragraph 4.2.2 of the Second Schedule at a Ceiling Rent whereby the Dwelling is let to an Eligible Person and provided by a Registered Provider

- 1.78 **"Sports Pitches"** means a grassed sports pitch and hard standing physical education courts of 4,694 square metres in total to be incorporated within the School Land together with ancillary facilities, including changing facilities for referees and two teams, and Surface Water Infrastructure required to serve these facilities for dual use by the school and the community
- 1.79 **"Sports Contribution"** means the sum of seventy three thousand five hundred and ninety pounds (£73,590) to be spent on the provision or improvement of sports facilities in Torbay
- 1.80 **"Staircase"** means where a tenant under an Equity Sharing Lease purchases an increased share of the equity up to and including the whole of the equity and accordingly becomes the freehold owner
- 1.81 **"SUDS"** means a sustainable drainage system comprising treatment and drainage systems of surface water including any pipework and typical SUDS components such as swales reed beds ponds filter trenches attenuation tanks and detention basins
- 1.82 **"SUDS Maintenance Scheme"** means a scheme for the management and maintenance of the SUDS in any Phase
- 1.83 **"SUDS Scheme"** means a scheme for a Phase of the Development setting out the location and specification and detailing the ongoing maintenance obligations for the SUDS including:
- 1.83.1 On-plot soakaways;
- 1.83.2 Attenuation tank(s);
- 1.83.3 Pumping station(s); and
- 1.83.4 The timing of the transfer of the SUDS or any part or parts thereof to the Management Entity
- 1.84 **"Supplementary Sustainable Transport Contribution"** means the sum of five hundred thousand pounds (£500,000) to be spent on alternative sustainable transport measures
- 1.85 **"Sustainable Transport Contribution"** means the contribution calculated and paid in accordance with [paragraph 3.1 of the First Schedule] to be used towards [the provision of ] based on the following figures:  
£690 per 37-70 sqm Dwelling  
£860 per 71-108 sqm Dwelling  
£1,110 per 109+ sqm Dwelling
- 1.86 **"the Waste Management Contribution"** means the sum of eighty five pounds (£85) (Index Linked) per Dwelling to be used towards the provision of waste collection/recycling bins for each Dwelling
- 1.87 **"Working Day"** means any day Monday to Friday (other than bank or public holidays)

## **2 Construction of this Deed**

- 2.1 Where in this Deed reference is made to a clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa

- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successor(s) to its statutory functions
- 2.7 The headings and contents list are for reference only and shall not affect construction

### **3 Legal Basis**

- 3.1 This Deed is made pursuant to Section 106 of the 1990 Act, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to section 106 of the Act and are enforceable by the Council as local planning authority against the Owner

### **4 Conditionality**

- 4.1 The covenants contained in this Deed are conditional and shall take effect only upon the grant of the Planning Permission and Commencement of Development save for the provisions of Clause 6.1 (legal costs) and paragraph 2 of the First Schedule (notification of disposal) which shall come into effect immediately on completion of this Deed
- 4.2 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by statutory procedure or expires before the Commencement of Development

### **5 Covenant on behalf of the Owner**

The Owner hereby covenants with the Council to observe and perform the obligations contained in the First and Second Schedules

### **6 General**

- 6.1 Upon the completion of this Deed the Owner shall pay the Council's reasonable legal costs incurred in the negotiation, preparation and execution of this Deed
- 6.2 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed
  - 6.2.1 where that person has no interest in that part of the Site in respect of which the breach was committed; or

- 6.2.2 after it shall have parted with its entire interest in that part of the Site in respect of which the breach was committed but without prejudice to liability for any subsisting breach arising prior to parting with such interest
- 6.3 A person who is not a party to this Deed shall have no rights under the Contract (Rights of Third Parties) Act 1999 to enforce any of its terms other than the parties to it under that Act
- 6.4 Where in this Deed approval consent or expression of satisfaction is required by the Owner from the Council such approval consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such approval consent or expression of satisfaction if not otherwise specified in this Deed shall be given by the Council's Assistant Director - Corporate and Business Services
- 6.5 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than as specified in the Planning Permission) granted (whether or not on appeal) after the date of this Deed
- 6.6 This Deed is a Local Land Charge and shall be registered as such
- 6.7 If the Inspector or Secretary of State (as the case may be) in his decision letter concludes that any of the planning obligations contained herein (or relevant part of a planning obligation) are incompatible with any one or more of the tests for planning obligations set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and accordingly attaches no weight to that planning obligation in determining the Appeal then the relevant planning obligation(s) (or part of the planning obligation as appropriate) shall from the date of the decision letter immediately cease to have effect and the Owner shall be under no obligation to comply with it
- 6.8 The Council will upon the written request of the Owner at any time after the obligations of the Owner under this Deed have been fulfilled issue written confirmation thereof and thereafter cancel all related entries in the Register of Local Land Charges
- 6.9 Nothing in this Deed is or amounts to or shall be construed as a Planning Permission or approval
- 6.10 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid or unenforceable then such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed
- 6.11 This Deed shall not be enforceable against:
- 6.11.1 owner-occupiers or leaseholders or tenants of individual Dwellings nor against those deriving title from them (except paragraphs [4, 5, 6 and 7] of the Second Schedule which shall apply in respect of the Affordable Dwellings) or any mortgagee or chargee of any such persons;
- 6.11.2 any statutory undertaker or other person who acquires any part of the Site or any interest in it for the purposes of the supply of electricity, gas, water, drainage, telecommunications services or public transport services or any mortgagee or chargee of any such persons; or
- 6.11.3 any Management Entity except in respect of the restrictions and obligations relating to the part or parts of the Site which are transferred to the Management Entity pursuant to this Deed



## **7 Termination**

This Agreement will come to an end if:

- 7.1 the Appeal is dismissed; or
- 7.2 in determining the Appeal the Secretary of State or the Inspector state in the decision letter that the Agreement is not a material planning consideration

## **8 Interest**

If any payment due under this Deed is late, interest will be payable from the date payment is due until the date of payment at the rate of the National Westminster Bank PLC base rate from time to time in force plus 4 per cent

## **9 Waiver**

No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default

## **10 Covenant on behalf of the Council**

The Council hereby covenants with the Owner to observe and perform the obligations contained in the Third Schedule

## **11 Dispute Resolution**

- 11.1 In the event of a dispute or difference arising between the parties touching or concerning any matter or thing arising out of this Deed any party may serve on another a Dispute Notice and such dispute or difference may be referred to an expert being an independent and fit person holding appropriate professional qualifications to be appointed (in the absence of agreement) by the president (or equivalent person) for the time being of the professional body chiefly relevant in England to such qualifications
- 11.2 In the absence of agreement between the relevant parties to the dispute or difference (the "Relevant Parties") as to the professional qualifications of the expert to be appointed pursuant to clause 10.1 or as to the appropriate professional body within ten (10) Working Days after any one of the Relevant Parties has given to the other Relevant Party or Parties a written request to concur in the professional qualifications of the expert to be appointed pursuant to clause 10.1 then the question of the appropriate qualifications or professional body shall be referred to a solicitor to be appointed by the president for the time being of the Law Society for England and Wales on the application of a Relevant Party and such solicitor shall act as an expert and his decision as to the professional qualifications of such person or as to the appropriate professional body shall be final and binding on the Relevant Parties and his costs shall be payable by the Relevant Parties in such proportion as he shall determine and failing such determination shall be borne by the Relevant Parties in equal shares
- 11.3 The expert shall act as an expert and not an arbitrator and his reasonable costs shall be at his discretion

- 11.4 The expert shall be required to give notice to the Relevant Parties inviting each of them to submit to him within fifteen (15) Working Days of his appointment written submissions and supporting material and shall afford to the Relevant Parties an opportunity to make counter submissions within a further fifteen (15) Working Days in respect of any such submission and supporting material and the expert's decision shall be given in writing within fifteen (15) Working Days from receipt of any counter submissions or in the event that there are no counter submissions within fifteen (15) Working Days of receipt of the written submissions and supporting material with reasons unless such time periods are varied by agreement between the Relevant Parties
- 11.5 The Expert's decision shall be final and binding on the Relevant Parties unless one or more of them has notified the other(s) in writing of its dissatisfaction with it in accordance with clause 10.6 of this Agreement
- 11.6 If after the expert has made a decision pursuant to clause 10.5 any one of the Relevant Parties is dissatisfied with it and such Party has notified the other Relevant Parties in writing of his dissatisfaction within ten (10) Working Days of the date of receipt of the expert's decision, the Relevant Parties shall be entitled to commence legal proceedings in the court

**IN WITNESS** whereof the parties hereto have executed and delivered this document as a deed the day and year first before written

EXECUTED AS A DEED by affixing )  
 THE COMMON SEAL OF )  
 THE COUNCIL OF THE BOROUGH OF TORBAY )  
 in the presence of :- )

Proper Officer  
 and Authorised Signatory

Executed as a deed by  
**ABACUS PROJECTS LIMITED**  
 acting by .....

*[NAME OF FIRST DIRECTOR]*  
 a director and  
 .....  
*[NAME OF SECOND DIRECTOR OR SECRETARY],*  
 a director **OR** its secretary

.....  
 [SIGNATURE OF FIRST DIRECTOR]  
 Director  
 .....  
 [SIGNATURE OF SECOND DIRECTOR OR SECRETARY]  
 [Director **OR** Secretary]

## **FIRST SCHEDULE**

### **Owner's Covenants**

#### **Commencement of Development, Notification of Disposal, Payment of Financial Contributions, Open Space, SUDS, Management Entity, Northern Access Route and Ecological Mitigation**

Save as may otherwise be agreed in writing by the Council the Owner covenants as follows:

#### **1. Commencement of Development**

To notify the Council's Assistant Director of Planning and Transport in writing of the Commencement of Development of each Phase within seven (7) Working Days of the same.

#### **2. Notification of Disposal**

Save for individual plot sales, to give immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations in this Deed have been discharged such notice to give details of the transferee's full name and registered office (if an company or usual address if not) together with the area of the Site transferred by reference to a plan

#### **3. Payment of Financial Contributions**

3.1 The Owner shall pay the Financial Contributions by Phase and proportionately in tranches prior to the Occupation of fifty percent (50%) of the Dwellings on the Phase in question

3.2 The Owner shall pay the Administration Charge to the Council on or prior to Commencement of Development[

3.3 The Owner shall pay the Berry Head Grassland Contribution by Phase and proportionately prior to the Occupation of any Dwelling on the Phase in question]

#### **4. Open Space**

4.1 Not to Occupy or cause or allow to be Occupied any Dwelling or building on any Phase without having first paid the Forward Fund in relation to the Open Space, and the Northern Access Route (as applicable) for that Phase to the Management Entity

4.2 The Management Entity shall thereafter manage and maintain the Open Space and the Northern Access Route (as appropriate) transferred to it in accordance with the Management and Maintenance Scheme in Perpetuity or for as long as any Dwelling remains Occupied on the Development whichever is the earlier

## **5. SUDS**

- 5.1 No Dwelling shall be Occupied on any Phase until the ownership and responsibility for management and maintenance of the SUDS Scheme has been transferred to the Management Entity and the Forward Fund in relation to the SUDS for that Phase has been paid to the Management Entity
- 5.2 The Management Entity shall thereafter manage and maintain the SUDS Scheme in accordance with the SUDS Maintenance Scheme in Perpetuity or for as long as any Dwelling remains Occupied on the Development whichever is the earlier

## **6. Management Entity**

- 6.1 Not to Commence Development without having first obtained the Council's written approval to the Management and Maintenance Scheme and having established (where necessary) and appointed the Management Entity to the reasonable satisfaction of the Council
- 6.2 If the Council does not approve or reject the proposed Management Entity or proposed Management and Maintenance Scheme pursuant to paragraph 7.1 of this First Schedule within thirty (30) Working Days of receipt of such proposal such failure to do so shall be treated as the Council's deemed approval to the Management Entity or Management and Maintenance Scheme respectively
- 6.3 Not to cause or permit Occupation of the Development without having first obtained the Council's written approval to the template Rentcharge Agreement
- 6.4 If the Council does not approve or reject the proposed Rentcharge Agreement pursuant to paragraph 7.3 of this First Schedule within thirty (30) Working Days of its receipt such failure to do so shall be treated as the Council's deemed approval to the Rentcharge Agreement
- 6.5 No Dwelling shall be Occupied unless a Rentcharge Agreement substantially in accordance with the template approved by the Council pursuant to paragraph 6.4 above has been entered into between the Management Entity and the owner and/or occupier of that Dwelling
- 6.6 The Management Entity shall manage the Open Space, Farmland, SUDS and Northern Access Route in accordance with the Management and Maintenance Scheme and the Rentcharge Agreement

## **7. Northern Access Route**

- 7.1 The Owner/Management Entity shall maintain the Northern Access Route and keep the Northern Access Route open as a permissive route and freely available for use by the public SAVE THAT the Owner/Management Entity may close all or part of the said route for the purposes of maintenance and repair or for reasons of public safety as and when is reasonably necessary PROVIDED THAT any such closure shall be for the minimum amount of time as is reasonably necessary

## **8. Bus Service**

- 8.1 Not to Commence Development without having first obtained the Council's written approval to the Bus Service Operational Plan
- 8.2 If the Council does not approve or reject the proposed Bus Service Operational Plan pursuant to paragraph 8.1 of this First Schedule within twenty (20) Working Days of its receipt such failure to do so shall be treated as the Council's deemed approval to the Bus Service Operational Plan
- 8.3 No more than one hundred [(100)] Dwellings shall be Occupied until the Owner or Management Entity has used reasonable endeavours to enter into a Bus Service Agreement with a bus service operator
- 8.4 If the Bus Service Agreement cannot be entered into for reasons outside of the reasonable control of the Owner/Management Entity then the Owner shall pay the Supplementary Sustainable Transport Contribution to the Council

## **9. Ecological Mitigation**

- 9.1 Not to Commence Development until :
- 9.1.1 The Ecological Mitigation Stage 1 Works have been completed to the Council's reasonable satisfaction
- 9.1.2 A restriction has been placed on the title of the Farmland in the following terms
- "No disposition of the registered estate by the proprietor of the registered estate is to be registered without a certificate signed by the Council of the Borough of Torbay or its conveyancers that the terms of paragraph 8 of the First Schedule of the Section 106 Agreement dated [ ] 2020 and made between (1) the Council of the Borough of Torbay and (2) Abacus Projects Limited have been complied with:

9.1.3 the Farmland has been transferred to the Management Entity and the Forward Fund in relation to the Farmland has been paid to the Management Entity

9.2 No more than [ ] Dwellings shall be Occupied until the Ecological Mitigation Stage 2 Works have been completed to the Council's reasonable satisfaction

9.3 To manage the Farmland in accordance with the Farmland Management Plan in Perpetuity and not to permit or carry out any activities on the Farmland which would impede or interfere with implementation of the Farmland Management Plan

9.4 To ensure that any tenancies created or interests granted in respect of the Farmland or any part thereof shall require management of the Farmland in compliance with the Farmland Management Plan

**10. Travel Plan**

10.1 Not to Occupy or cause or allow to be Occupied any Dwelling or building on any Phase until a Detailed Travel Plan has been submitted to and approved in writing by the Council To comply with all obligations and requirements of the Detailed Travel Plan for the duration of the Detailed Travel Plan.

## SECOND SCHEDULE

### Owner's Covenants

#### Affordable Housing

#### 1. Type and Tenure

1.1 Thirty per cent (30%) of the Dwellings to be constructed on Site (with fractions of 0.5 or more rounded up to give a whole number of Dwellings) shall be Affordable Dwellings which (save for the provisions of this Deed) for the Perpetuity Period shall not be Occupied other than as Affordable Housing subject to the provisions of this Schedule

1.2

Save as may otherwise be agreed in writing between the parties, the Affordable Housing shall be provided in accordance with the details shown in Table A below and shall comprise a mixture of Dwelling types matching and in proportion to the overall mixture of Dwelling types on the Site and shall be distributed throughout the Site

**Table A**

Social Rent				Number based on total scheme of 400 units
Percentage	Housetype	Min Size m	Size ft	
14.0%	1b2p flat	46	495	17
13.0%	2b4p flat	67	721	16
6.0%	4b6p house	96	1033	7
				40
Affordable Rent				
Percentage	Housetype	Size m	Size ft	
18.0%	2b4p house	76	818	22
15.0%	3b5p house	86	926	18
				40
Shared Ownership				
Percentage	Housetype	Size m	Size ft	
19.0%	2b4p house	76	818	23
15.0%	3b5p house	86	926	18
				41
100.0%				120

1.5 At least five per cent (5%) of the Affordable Dwellings shall be Adapted Dwellings

- 1.6 Prior to the Commencement of Development of each Phase, the Developer shall agree with the Affordable Housing Manager the following matters with respect to the Affordable Dwellings –
- a. the physical location
  - b. layout
  - c. specification (including that of any common parts serving the Affordable Dwellings); and
  - d. type and tenure of individual Affordable Dwellings
- (collectively referred to as “**the Details**”) which shall thereafter be annexed to this Deed and shall be interpreted as having formed part of this Deed from the date hereof subject to changes as may be agreed in writing between the Parties from time to time

## **2. Specifications for Affordable Dwellings**

- 2.1 The Affordable Dwellings shall be constructed either in accordance with the minimum quality and design standards set by Homes England or to a standard equal to the Market Dwellings so as to be tenure blind; additionally
- 2.2 The Adapted Dwelling(s) shall be constructed to the specification contained in Annex 1 to this Deed (or such amendments to Annex 1 which may be agreed by the Affordable Housing Manager in writing) and shall comprise part of the Details to be agreed by the Affordable Housing Manager pursuant to paragraph 1.7 of this Schedule

## **3. Delivery of Affordable Housing**

- 3.1 The Owner shall not cause or permit Occupation of more than 75% of the Market Dwellings on any Phase until the Affordable Dwellings for that Phase have been:
- a. constructed to Practical Completion;
  - b. transferred to one or more Registered Provider on such terms as agreed between the Owner and the Registered Provider; and
  - c. made available for Occupation
- unless otherwise agreed by the Affordable Housing Manager in writing

## **4. Social Rent Dwellings**

- 4.1 The Social Rent Dwellings shall not be Occupied unless they are
- 4.4.1 let as Social Rent Dwellings; and
  - 4.1.2 Occupied by Eligible Persons
- 4.2 The Social Rent Dwellings shall not be let other than
- 4.2.1 on Social Rent Tenancies unless the resident of any such Social Rent Dwelling exercises their Right to Acquire; or
  - 4.2.2 initially (both on initial lettings of the Dwellings and on subsequent relets), as an assured shorthold tenancy for a period of 12 months, unless otherwise agreed in writing by



the Council, (or where the incoming tenant has rights to be issued an assured tenancy due to holding a full assured tenancy immediately prior to occupying the property) to serve as a probationary tenancy. At the expiry of the 12 month period, an assured tenancy shall then be granted to the tenant unless he or a member of his household has breached the terms of the probationary tenancy

- 4.3 The Owner shall give to the Affordable Housing Manager not less than 6 weeks' notice in writing of the date on which the Social Rent Dwellings will be available for first Occupation

## **5. Adapted Dwelling**

- 5.1 No Adapted Dwelling shall be Occupied unless it is
- 5.1.1 let as a Social Rent Dwelling (and the provisions of paragraph 2.1 above shall apply); and
  - 5.1.2 Occupied by Eligible Persons who are or are part of a household which includes a person who has a physical disability and/or a need for wheelchair access
- 5.2 The Owner shall give to the Affordable Housing Manager not less than 6 months' notice in writing of the date on which the Adapted Dwelling will be available for first Occupation

## **6. Affordable Rent Dwellings**

- 6.1 The Affordable Rent Dwellings shall not be Occupied unless they are
- 6.1.1 let as Affordable Rent Dwellings; and
  - 6.1.2 Occupied by Eligible Persons
- 6.2 The Affordable Rent Dwellings shall not be let other than on Affordable Rent Tenancies
- 6.3 The Owner shall give to the Affordable Housing Manager not less than 6 weeks' notice in writing of the date on which the Affordable Rent Dwellings will be available for first occupation

## **7. Equity Share Dwellings**

- 7.1 Subject to paragraph 7.5 below the Equity Share Dwellings shall not be Occupied unless they are Occupied by Eligible Persons
- 7.2 The Owner shall give to the Affordable Housing Manager not less than 6 months' notice in writing of the date on which the Equity Share Dwellings will be available for first Occupation
- 7.3 Subject to paragraphs 7.4 and 9 (Mortgagees and Certain Purchasers) of this Schedule the Equity Share Dwellings shall not be disposed of other than on Equity Sharing Leases or such similar or equivalent means of tenure being of a type approved by Homes England or the Affordable Housing Manager
- 7.4 Nothing in this Deed shall prevent an Occupier of an Equity Share Dwelling to Staircase to 100% ownership
- 7.5 In the event that the Occupier of an Equity Share Dwelling does Staircase and through this process acquires the whole of the equity, the Dwelling in question shall no longer be Affordable Housing and the provisions of this Schedule shall not apply to that Dwelling

## **8. Nomination Agreement**

- 8.1 The Owner shall procure that
- 8.1.1 the Registered Provider shall enter into a Nomination Agreement at least six months prior to any of the Affordable Dwellings being available for Occupation and at least six months prior to the Adapted Dwellings being available for Occupation and shall not cause or permit any of the Affordable Dwellings to be Occupied until the Nomination Agreement has been entered into; and
- 8.1.2 the Registered Provider pays the Council's reasonable legal costs incurred in the negotiation and preparation of the Nomination Agreement

## **9. Mortgagees and certain purchasers**

- 9.1 The provisions of this Schedule shall not be binding upon a Mortgagee of the Affordable Dwellings or any one of them or of an individual Equity Share Dwelling or any receiver (including an administrative receiver) appointed by a Mortgagee either of whom may manage or sell the Affordable Dwellings free from the terms of this Schedule, provided that:-
- 9.1.1 the Mortgagee or receiver (including an administrative receiver) (as the case may be) first gives written notice to both the Council and Homes England that it is seeking a purchaser for the Affordable Dwellings; and
- 9.1.2 after a period of 60 days from the date of such notice the Council or a Registered Provider has not exchanged contracts unconditionally with the Mortgagee or receiver for the purchase of the Affordable Dwellings with a completion date no later than one month from exchange of contracts
- 9.2 The purchase price payable by the Council or another Registered Provider shall be limited to:-
- 9.2.1 the Open Market Value of the Affordable Dwellings in question (subject to the provisions of this Deed); or
- 9.2.2 if higher, the amount required to redeem the outstanding borrowing (including interest accrued plus costs and reasonable expenses the Mortgagee is entitled to recover under the terms of its mortgage) secured upon the Affordable Dwellings concerned, up to a maximum amount being the Open Market Value of the Affordable Dwellings as if unencumbered by the provisions of this Deed
- 9.3 If the provisions in paragraph 9.1.1 and 9.1.2 of this Schedule are met, the Council will forthwith certify to that effect, and the Mortgagee or receiver (including an administrative receiver) and any person deriving title under such Mortgagee or receiver (including an administrative receiver) may manage and/or sell the Dwelling or Dwellings concerned free from the terms of this Schedule
- 9.4 If the former lessee under an Equity Sharing Lease granted by a Registered Provider exercises his Right to Acquire the whole of the equity in the whole of the Dwelling then upon the transfer of Ownership to that person that Dwelling shall, so far as is legally permissible, be subject to a right of pre-emption in favour of the Registered Provider, exercisable within 28 days, provided that if such right of pre-emption is not exercised on the first occasion on which it arises, the

former lessee shall be entitled to transfer the Dwelling free from the provisions of this Schedule

9.5 Subject to paragraph 9.4 above the provisions of this Schedule shall not be binding upon

9.5.1 a tenant (or their mortgagee or successors in title) of the Registered Provider or an occupier of an Affordable Dwelling who has exercised a Right to Acquire or a Right to Buy in respect of an Affordable Dwelling; and/or

9.5.2 a tenant (or their mortgagee or successors in title) of an Equity Share Dwelling where the tenant has Staircased out and acquired 100% of the equity of the Dwelling

## THIRD SCHEDULE

### School Land

The Parties covenant as follows:-

#### **Council to serve notice**

1. Prior to occupation of the [XXXth] Dwelling on the Site the Council shall serve written notice on the Owner informing it whether or not it wishes the School Land to be transferred to either the Council or a nominee of the Council in order for the School Land to be developed for a primary school and nursery

#### **School Land required**

2. If the Council serves notice indicating that it wishes the School Land to be transferred to either the Council or a nominee of the Council in order for the School Land to be developed for a primary school ('a Positive Notice') then the Owner shall as soon as reasonably practicable thereafter transfer the School Land to the Council or the Council's nominee at nil cost and substantially in the form of the draft transfer contained in Annex 4 to this Deed
3. In the event that the Council serves a Positive Notice in accordance with paragraph 1.1 of this Schedule then immediately prior to the transfer of the School Land the Owner shall ensure that the School Land:
  - 3.1 is clear of all buildings plant apparatus and other structures;
  - 3.2 is in a clean and tidy condition free from contamination and all waste materials rubbish debris and refuse;
  - 3.3 has installed up to the boundary of the School Land in locations to be agreed with the Council or its nominee and of a size and standard acceptable to relevant utility companies statutory undertakers and service providers all such means pipes mains sewers drains gullies culverts wires cables and any other service conducting media and any ducts conduits channels or trenches carrying the same and any necessary pumps housing supports plant engineering works equipment and means of access thereto or egress therefrom as shall be necessary to ensure the proper provision of services to the School Land; and
  - 3.4 has carried out and completed such other works required for the School Land to become Serviced Land
4. During construction and development of the School Land the Council or its nominee shall
  - 4.1 hold the Owner harmless and keep the Owner indemnified from and against any claim in connection with or incidental to the carrying out of any development of the School Land including the carrying out of any highway works by or on behalf of the Council required solely in connection with the School Land or the construction and operation of the School Land by or on behalf of the Council or its nominee pursuant to this Deed

- 4.2 not obstruct or unreasonably interfere with the rights of the Owner or occupiers of any Dwellings in carrying out the development of the School Land
- 4.3 cooperate in accepting the transfer of the School Land from the Owner pursuant to the provisions of this Schedule and to hold develop and use the School Land thereafter solely for the provision of a primary school and/or nursery open to the public without the payment of fees and for no other use or purpose
- 5 The Council shall use all reasonable endeavours to ensure that the use of the School Land for the provision of a school/nursery shall commence by the September following five (5) years after the transfer of the School Land to the Council or its nominee
- 6 In the event that the Council elects for the School Land to be transferred either to the Council or a nominated transferee the Council shall procure that the Sports Pitches are Delivered as part of the development of the school and are made available for community use as a dual use facility in Perpetuity

#### **School not delivered**

- 7 If the use of the School Land as a school and/or nursery has not commenced within 5 years of the School Land being transferred to the Council or its nominee then the transfer of the School Land to the Council or its nominee shall be treated as void and title in the School Land shall revert to the Owner or their nominated successors in title to adjoining land and the Council or its nominee shall cooperate in effecting registration of the School Land back into the Owner's or nominated successor's name and the restrictions on use of the School Land set out in this Deed shall cease to have effect

#### **School Land not required**

- 8 If the Council
- 8.1 serves notice confirming that it does not wish the School Land to be transferred to either the Council or a nominee of the Council in order for the School Land to be developed for a primary school and nursery; or
- 8.2 fails to serve notice pursuant to paragraph 1.1 of this schedule prior to Occupation of [XXX] Dwellings on the Site
- then, SUBJECT TO section 1.9 below, the Owner shall be at liberty to apply for planning permission to develop the School Land but excluding the Sports Pitches for an alternative use
- 9 Where the School Land is not transferred to the Council or alternative nominee in accordance with paragraphs 1 and 3 above or where the Council has confirmed pursuant to paragraph 1 that it does not require the School Land to be transferred then the following shall apply:
- 9.1 the Owner shall:
- 9.1.1 Deliver the Sports Pitches;
- 9.1.2 obtain the Council's approval to the Sports Pitches Management Scheme; and

9.1.3 transfer ownership management and maintenance of the Sports Pitches to the Management Entity;

each to take place on or before Occupation of the [XXXth] Dwelling

and no more than [XXX] Dwellings shall be Occupied unless the Sports Pitches have been Delivered, the Sports Pitches Management Scheme has been approved in writing by the Council and ownership management and maintenance obligations of the Sports Pitches have been transferred to the Management Entity

9.2 If the Council does not approve or reject the proposed Sports Pitches Management Scheme submitted pursuant to paragraph 9.1.2 of this Schedule within twenty (20) Working Days of its receipt such failure to do so shall be treated as the Council's deemed approval to the Sports Pitches Management Scheme

9.3 The Management Entity shall thereafter manage and maintain the Sports Pitches as part of the Open Space and the provisions of paragraph 7.4 of the First Schedule shall apply mutatis mutandis to the Sports Pitches

**FOURTH SCHEDULE**  
**Council's Covenants**

The Council covenants:

- 10 To use all the sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the Council shall agree in writing
  
- 11 To repay to the Owner with interest at the rate of 1% over the base rate of National Westminster Bank PLC any elements of the Financial Contributions paid by the Owner to the Council under this Deed which are
  - 11.1 unspent 5 years after receipt by the Council (and money shall be deemed to have been expended if the Council has properly entered into a contract for the expenditure of the money for the purpose for which it is paid which is reasonably likely to result in the fulfilment of that purpose); or
  - 11.2 used for purposes other than those referred to in this Deed
  
- 12 To provide to the Owner such evidence as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this Deed
  
- 13 At the written request of the Owner to provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed

**FOURTH SCHEDULE**  
**Provisions for Index Linked Payments**

1. **“The Index”** means the All Items Index of Retail Prices issued by the Office for National Statistics or any publication substituted therefor
2. **“Increase”** means the amount (if any) by which the Index for the month preceding the date of payment exceeds the Index for the month in which this Deed is dated
3. **“Base Figure”** means any sum payable under the provisions of this Deed and stated to be Index Linked
4. **“Additional Payment”** means the sum that bears the same proportion to the Base Figure as the Increase bears to the Index for the month in which the Deed is dated PROVIDED ALWAYS that:
  - 4.1 If the reference base used to compile the Index shall change after today’s date the figure taken to be shown in the Index after the change shall be the figure which would have been shown in the Index if the reference base current at today’s date had been retained
  - 4.2 If it becomes impossible by reason of any change after today’s date in the methods used to compile the Index or for any other reason whatever to calculate the Additional Payment by reference to the Index or if any dispute or question whatever shall arise between the Parties with respect to the amount of the Additional Payment or the construction or effect of this paragraph the determination of the Additional Payment or other matter of difference shall be determined by an Arbitrator to be appointed either by agreement or in the absence of agreement between the Parties by the President for the time being of the Royal Institute of Chartered Surveyors (or his duly appointed deputy or any person authorised by him to make appointments on his behalf) on the application of either party who shall have full power to determine on such date as he shall deem appropriate what would have been the increase in the Index had it continued on the basis and in view of the information assumed to be available for the operation of this clause or (if that determination shall also be impossible) shall determine a reasonable Additional Payment having regard to the purposes and intent of the provisions of this paragraph
5. Any sum payable under this Deed and stated to be Index Linked shall be increased by the Increase and any Additional Payment shall be payable at the same time as the sum to which it refers.



**Annex 1**

**Specification for Adapted Dwellings**

*(please note – the terms of this annex are not negotiable)*

**Annex 2**

**Plan[s]**

**Annex 3**  
**Local Connection Criteria**

*(please note – the terms of this annex are not negotiable)*

1. The applicant (or member of the applicant's household) must have lived within Torbay for 5 years.
2. Applicants who are not currently resident in the district/area but who can demonstrate a strong association to the local area will be able to qualify (e.g. through family association or employment). This is defined as:
  - 2.1 Need to work in Devon. The Local Government Association guidelines define this as employment other than of a casual nature. For the purposes of this policy this will be defined as having had permanent work with a minimum of a 16 hour contract per week for the previous 6 months, and without a break in the period of employment for more than three months.
  - 2.2 Have family connections in Devon. The Local Government Association guidelines define this as immediate family members (parents, siblings and nondependent children) who have themselves lived in the area for 5 years.
3. Exceptions to the 5 year residency test will be:
  - 3.1 Existing Social Housing tenants, in Devon.
  - 3.2 Members of the Armed Forces and former Service personnel, where the application is made within five years of discharge
  - 3.3 Bereaved spouses and civil partners of members of the Armed Forces leaving Services Family Accommodation following the death of their spouse or partner
  - 3.4 Serving or former members of the Reserve Forces who need to move because of a serious injury, medical condition or disability sustained as a result of their service
  - 3.5 People who are assessed as being within the reasonable preference categories – Bands A, B, Emergency and High Housing Need, as per the DHC Policy.
  - 3.6 Applicants requiring Sheltered Housing

**Annex 4**

**Draft Form of Transfer for School Site**

## **Annex 5**

### **Management Entity - Management & Maintenance Scheme**

- 1 Identify the relevant areas of Open Space, Farmland, SUDS and Northern Access Route to be covered by the Management and Maintenance Scheme.
- 2 Include full details of the maintenance specifications for the Open Space, Farmland, SUDS and Northern Access Route.
- 3 Identify and include details of the Management Entity (including emergency contact details constitution composition objectives responsible person and management arrangements).
- 4 Include details of the management of the Open Space, Farmland, SUDS and Northern Access Route including ecological landscape, hydrological function, social wildlife and amenity use.
- 5 Include details of funding arrangements to ensure the maintenance and management of the Open Space, Farmland, SUDS and Northern Access Route in Perpetuity (which may involve the imposition of a rent or service charge) including arrangements to cover the periodic costs of replacement and or refurbishment of features, facilities and/or equipment.
- 6 Include details of the procedure to be implemented to safeguard the Open Space, Farmland, SUDS and Northern Access Route should the Management Entity become insolvent or fail in its duties.

## **Annex 6**

### **Farmland Management**

#### **Part 1**

##### **Ecological Mitigation Stage 1 Works:**

- Planting/creation of approximately 3.5km of new hedgebanks and associated fencing.
- Hedge planting to include diverse/species-rich mix of native plants, mature stock and standard trees at least every 30m;
- Reversion of approximately 16ha of arable land off-site to cattle grazed pasture to achieve no net loss of potential cattle grazed pasture (which is an important habitat for GHS);
- Creation of approximately 4ha of spring sown barley crops to be left as over-wintering stubble;
- Preparation and seeding of margins around pasture and over-wintering stubble fields with wildflower meadow mixture to create 0.6ha of unimproved neutral grassland margins;
- Preparation and seeding of 2.5m margins around pasture and over-wintering stubble fields of an additional (i.e. over and above the 2m margins currently required under ELS option, plus new margins adjacent to new hedgerows) 1.0 ha tussock grassland (see Figure 5.4);
- Creation/planting of 1.0ha of broad-leaved native woodland, 0.4ha of orchards, groups of native trees (e.g. Oak) within the proposed pasture to the south of the main development to establish wood pasture and a wildlife pond;
- Creation of a bat house, located within cattle grazed pasture next to commuting features;
- Installation of bird boxes on retained trees and integral to the new buildings;

#### **Part 2**

##### **Ecological Mitigation Stage 2 Works:**

***[Those items in the ecological mitigation package that are not listed in Part 1 above]***

#### **Part 3**

***[Append Proposed Farming Practices Plan]***

**Annex 7**  
**Framework Travel Plan**

## Appendix 6: Draft Core Document List



## **DRAFT Core Document List**

### **Set A: Appeal Ref: P/2017/1133**

#### **CD1 Application Documents, Plans and Reports**

- 1.1 Application Covering Letter (3 November 2017)
- 1.2 Application Form (3 November 2017)
- 1.3 Application Road Map (3 November 2017)
- 1.4 Owner Letter (Tully) 3 November 2017
- 1.5 Owner Letter – (Tully) 3 November 2017
- 1.6 Owner Letter (Seagrave) 3 November 2017
- 1.7 S.106 agreement Draft Heads of Terms (3 November 2017)
- 1.8 Planning notice - Inglewood –for Herold Express ref 326066573 (3 November 2017)
- 1.9 Notice number 1 - 15230\_T\_171103\_Notice no 1 (3 November 2017)
- 1.10 Notice Number 2 - 15230\_T\_171103\_Notice no 2 (3 November 2017)
- 1.11 Community Infrastructure Levy Form (3 November 2017)
- 1.12 Air Quality Assessment, Air Quality Consultants (3 November 2017)
- 1.13 Cultural Heritage Assessment (3 November 2017)
- 1.14 Archaeological Magnetometer Survey (3 November 2017)
- 1.15 Flood Risk Assessment and Drainage Strategy (3 November 2017)
- 1.16 Ecological Baseline Report (3 November 2017)
- 1.17 Environmental Statement (3 November 2017)
- 1.18 Environmental Statement Non-Technical Summary (3 November 2017)
- 1.19 Farm Management Plan (3 November 2017)
- 1.20 Phase 1 Desk Study (3 November 2017)
- 1.21 Preliminary Geoenvironmental Investigation (3 November 2017)
- 1.22 Landscape and Visual Impact Assessment (3 November 2017)
- 1.23 Report of Community Involvement (3 November 2017)
- 1.24 Noise Impact Assessment (3 November 2017)
- 1.25 Rapid Health Impact Assessment (3 November 2017)
- 1.26 Outline Sustainability Strategy (3 March 2017)
- 1.27 Framework Travel Plan (3 November 2017)
- 1.28 Application Red Line Boundary (8 November 2017)
- 1.29 Indicative Proposed Site Sections (3 November 2017)
- 1.30 Shared Footway/Cycleway to the North Plan (3 November 2017)

- 1.31 Potential Southern Crossing Option 3 Plan – Uncontrolled Crossing (3 November 2017)
- 1.32 On-line Road Widening on A30322 Brixham Road to 7.3m with 70m Forward Visibility (3 November 2017)
- 1.33 Investigation of On-Line Widening of A3022 Brixham Road to 7.3m / Long Section Along 70m Forward Visibility Splay (3 November 2017)
- 1.34 Potential Northern Crossing / Toucan Crossing (3 November 2017)
- 1.35 Summary of Onsite and Offsite Highway Works (3 November 2017)
- 1.36 Regulation 18(5) Statement in respect of Environmental Statement (3 November 2017)
- 1.37 Request for Environmental Impact Assessment Scoping Opinion (22 December 2016)
- 1.38 Environmental Impact Assessment Scoping Opinion (16 February 2017)
- 1.39 Jacobs Ecology Report (March 2018)
- 1.40 Jacobs review of Transport Impact (December 2017)
- 1.41 Jacobs Landscape Advice (7<sup>th</sup> June 2018)
- 1.42 Jacobs Landscape Advice (27<sup>th</sup> July 2018)
- 1.43 NPA Rebuttal (June 2018)

**CD2 Additional/Amended Plans, Reports and Technical Notes**

**2.0 White Rock 2 Urban extension Visual Assessment and Landscape Analysis (July 2014 / February 2015)**

- 2.1 Public House Assessment (30 November 2017)
- 2.2 Waste Management Strategy Report, (30 November 2017)
- 2.3 Drainage Strategy Technical Note 1, Clarkebond, (21 December 2017)
- 2.4 Transport Assessment (4 parts) (20 November 2017) (RK- should be in CD 1)
- 2.5 Transport Assessment Addendum (3 parts) (24 January 2018)
- 2.6 Proposed Long Road Junction Improvements Plan (24 January 2018)
- 2.7 Public Open Space Obligation Schedule (21 February 2018)
- 2.8 10 Principles of Active Design Note (5 February 2018)
- 2.9 Minerals Safeguarding Assessment, (5 February 2018)
- 2.10 Minerals Rebuttal, (12 March 2018)
- 2.11 Inglewood Proposed Context Masterplan (8 March 2018)
- 2.12 Inglewood Proposed Green Infrastructure Plan (8 March 2018)
- 2.13 Proposed Masterplan (8 March 2018)
- 2.14 Inglewood Proposed Nodes and Views Plan (8 March 2018)
- 2.15 Inglewood Proposed Street Hierarchy Plan (8 March 2018)
- 2.16 Inglewood Proposed Townscape Analysis Plan (8 March 2018)

- 2.17 Inglewood Proposed Phasing Plan (8 March 2018)
- 2.18 Tree Protection Plan with Arboricultural Method Statements (8 March 2018)
- 2.19 Tree Survey and Constraints Analysis Arboricultural Impact Assessment and Tree Protection Plan (8 March 2018)
- 2.20 Ecological Addendum (8 March 2018)
- 2.21 Framework Landscape and Ecological Management Plan (8 March 2018)
- 2.22 Landscape and Visual Impact Assessment Addendum (8 March 2018)
- 2.23 Planning Design and Access Statement (8 March 2018)
- 2.24 Urban Design Framework (8 March 2018)
- 2.25 External Lighting Report (8 March 2018)
- 2.26 Addendum to Flood Risk Assessment and Drainage Strategy Report, (14 March 2018)
- 2.27 Urban Design Regulatory Plan (March 2018)
- 2.28 Habitats Regulation Assessment (March 2018)
- 2.29 Torbay / Jacobs Memorandum (11 April 2018)
- 2.30 Habitat Regulation Assessment (May 2018)
- 2.31 Landscape and Visual Review David Wilson Partnership ( July 2018)
- 2.32 Abacus Response to Torbay Five Year Housing Supply 2019 Draft Statement for Consultation and the Implication for application (6 August 2019)
- 2.33 Torbay Council Windy Corner 2019 Junction Improvement (October 2019)
- 2.34 Ecology Briefing Note (2 December 2019)
- 2.35 Technical Note 4 (6 April 2018)
- 2.36 Technical Note 5 (17 December 2019)
- 2.37 Technical Note 6 (17 October 2019)
- 2.38 Technical Note 8 (17 December 2019)
- 2.39 Windy Corner Highway Improvements Tying in to Torbay Council 2019 Improved Layout (January 2020)
- 2.40 Update Habitat Assessment 2019 (January 2020)
- 2.41 Cirl Bunting Winter Survey 2018/19 & Breeding Survey 2019 (January 2020)
- 2.42 Greater Horseshoe Bats 2019 (January 2020)
- 2.43 Other Bats 2019 (January 2020)
- 2.44 Breeding Bird Survey 2019 (January 2020)
- 2.45 Agricultural Land classification Report (January 2020)
- 2.46 Landscape and Visual Impact Assessment Addendum (Incorporating VVM's) (January 2020)
- 2.47 Socio-economic Benefits Statement (January 2020)
- 2.48 Habitats Regulation Assessment (December 2019)
- 2.49 Highways Advice Note 135/10 (2010)

**CD3 Correspondence with Local Authority and other Statutory Bodies**

- 3.1 Email from Torbay Landscape Officer re scheme development (5 May 2017)
- 3.2 Letter Natural England (12 October 2017)
- 3.3 Email Natural England (16 December 2019)
- 3.4 Correspondence from LPA's case officer to **the appellants**
  - a) South Devon AONB Correspondence (15 December 2017)
  - b) Letter from Torbay Council to Stride Treglown (28 August 2019)
  - c) Email from David Pickhaver to Stride Treglown (7 December 2018)
- 3.5 Stride Treglown Representation (15 December 2017)
- 3.6 Stride Treglown (DAC Beachcroft / NPA) representations (31 May 2018)
- 3.7 Stride Treglown accompanying emails (31 May 2018)
- 3.8 Stride Treglown representation (21 June 2018)
- 3.9 Email from Torbay Green Infrastructure Coordinator (31 January 2017)
- 3.10

**CD4 Consultation Responses**

- 4.1 Arboriculture Report
- 4.2 Brixham Peninsula Neighbourhood Forum
- 4.3 Brixham Town Council
- 4.4 Campaign to Protect Rural England
- 4.5 Cornworthy Parish Council
- 4.6 David Stewart – Drainage Report (9 April 2018)
- 4.7 Devon County Council (29 March 2018)
- 4.8 Historic England (23 March 2018)
- 4.9 Historic Environment Officer (11 December 2017)
- 4.10 Natural England (8 December 2017)
- 4.11 Natural England (April 2018)
- 4.12 NHS (December 2018)
- 4.13 Paignton Neighbourhood Forum
- 4.14 Police Designing Out Crime (6 December 2017)
- 4.15 RSPB (December 2017)
- 4.16 RSPB (March 2018)
- 4.17 South Devon AONB (27 March 2018)
- 4.18 South Devon AONB (10 May 2018)
- 4.19 South Hams District Council (4 December 2017)
- 4.20 South West Water (20 March 2018)
- 4.21 Sport England
- ~~4.22~~ Stagecoach (21 October 2017)
- 4.22

- a. Stagecoach (4 December 2017)
- 4.23 Stoke Gabriel Parish Council
- 4.24 Teignbridge District Council (Torbay Landscape Officer) (8 January 2018)
- 4.25 Teignbridge District Council Landscape (28 March 2018)
- 4.26 Torbay and South Devon NHS Foundation Trust (DATE 3 March 2020?)
- 4.27 Torbay Development Agency (23 March 2018)
- 4.28 Torbay Development Agency (27 March 2018)
- 4.29 Natural England (30 January 2020)
- 4.30 RSPB (27 January 2020)
- 4.31 RSPB (9 December 2020)

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**CD5 Third Party Representations**

- 5.1 Farrer & Co. (On behalf of Mr and Mrs Yallop and Mr and Mrs Brownsword) (Incorporating Michelle Bolger Report) (23 November 2018)
- 5.2 Farrer & Co. (On behalf of Mr and Mrs Yallop and Mr and Mrs Brownsword (7 February 2020)
- 5.3 Speaking note by Gregory Jones QC (10 February 2020)

**CD6 Plans, and Policies and Guidance**

- 6.1 Torbay Landscape Character Assessment Part 1
- 6.2 Torbay Landscape Character Assessment Part 2
- 6.3 Devon Landscape Character Assessment (Extracts)
- 6.4 National Character Area profile: 151 South Devon (Extracts)
- 6.5 Brixham Peninsula Neighbourhood Plan (Aecom Update Site Appraisal for Submission July 2017) (Para 5.7, page 31 and Appendix B Site Proforma: White Rock Extension)
- 6.6 Brixham Peninsula Neighbourhood Plan Housing Site Assessment
- 6.7 Torbay Green Infrastructure Delivery Plan (Extracts)
- 6.8 Guidance for Landscape Visual Impact Assessment Third Edition
- 6.9 Fareham Landscape Assessment 2017 (Extracts)
- 6.10 South Devon Area of Outstanding Natural Beauty Management Plan, AONB Planning Guidance and other Annexes
- 6.11 Natural Environment PPG (Extracts) ([www.gov.uk/guidance/natural-environment](http://www.gov.uk/guidance/natural-environment))
- 6.12 Torbay Five Year Housing Land Supply Draft Statement for Consultation (July 2019)
- 6.13 South Hams SAC Greater Horseshoe Bat HRA Guidance (June 2019, updated October 2019)
- 6.14 Consultation Statement (2<sup>nd</sup> version) (October 2017)
- 6.15 Torbay Housing Delivery Test Action Plan 2019
- 6.16 Torbay Local Plan 2012-2030
- 6.17 Brixham Peninsula Neighbourhood Plan 2012-2030
- 6.18 Five Year Land Supply Statement (25 February 2020)

**Field Code Changed**

- 6.19 Torbay Five Year Housing Supply 2019 (February 2020)
- 6.20 Torbay Five Year Land Supply Spreadsheet
- 6.21 Torbay Five Year Housing Supply Consultation Response 2019 (October 2019)
- 6.22 Employment Site Assessment
- 6.23 Green Space Site Assessment
- 6.24 Broadsands Village Design Statement
- 6.25 Churston Village Design Statement
- 6.26 Galmpton Village Design Statement
- 6.27 Brixham Town Design Statement
- 6.28 Brixham Town Centre Master Plan
- 6.29 AECOM Habitats Regulations Assessment Screening (November 2018)
- 6.30 AECOM Strategic Environmental Assessment (August 2017)
- 6.31 Devon Historic Landscape Characterisation Extract Map
- 6.32 Landscape Institute Technical Guidance Note TGN 06/19
- 6.33 Planning and Contributions and Affordable Housing Supplementary Planning Document
- 6.34 National Planning Policy Framework
- 6.35 Planning Policy Guidance Relevant Extracts
- 6.36 2020 Housing Delivery Test Action Plan
- 6.37 Torbay Five Year Housing Supply 2020 (May 2020)
- 6.38 Torbay Five Year Housing Supply 2020 (August 2020)
- 6.39 Torbay Five Year Housing Supply 2020 Officer Summary Schedule (August 2020)
- 6.40 Local Development Scheme (2017)
- 6.41 Annual Monitoring Report (2018)
- 6.42 Annual Monitoring Report (2019)
- 6.43 Wildlife and development Guidance Note: Cirl Bunting (October 2017)
- 6.44 Agri-environment Schemes in England 2009
- 6.45 English Nature – The Management of feeding areas for greater horseshoe bats
- [6.46](#) English Nature – Greater horseshoe bat Project 1998-2003
- [6.46.47](#) [English Nature – Dispersal and Foraging behaviour of greater horseshoe bats, Brixham, Devon](#)
- [6.47.48](#) Cirl Bunting Project RSPB (2017)

**CD7 Other Relevant Documents**

- 7.1 Tranquillity – An Overview (Landscape Institute Technical Information Note 2017)
- 7.2 Guidance for Assessing Landscapes for Designation as National Park or Area of Outstanding Natural Beauty in England (Extracts - Natural England 2011)
- 7.3 Planning history:

- a) 1997 Inquiry Inspector's Report-conclusions
- b) Secretary of States Refusal
- c) Torbay Local Plan Examiner's Report (October 2015)
- 7.4 Statement by Right Honourable Robert Jenrick MP
- 7.5 Landscapes Review Final Report, Julian Glover (September 2019)
- 7.6 Article "--" The Habitats Regulations Assessment Journal (DATE)
- 7.7 Footprint Ecology Assessment (2014)
- 7.8 Footprint Ecology Assessment (2016)
- 7.9 Abacus Projects Statement of Case (DATE)
- 7.10 Torbay Council Statement of Case (DATE)
- 7.11 Brixham Town Council Statement of Case (DATE)
- 7.12 Statement of Common Ground (DATE)
- 7.13 Highways / Transport Position Statement (DATE)
- 7.14 Ecology Position Statement (DATE)
- 7.15 Landscape Position Statement (DATE)
- 7.16 Housing Land Supply Position Statement (DATE)
- 7.17 Highways / Transport Proofs of Evidence (DATE)
- 7.18 Ecology Proofs of Evidence (DATE)
- 7.19 Landscape Proofs of Evidence (DATE)
- 7.20 Housing Land Supply Proofs of Evidence (DATE)
- 7.21 Agreed Conditions
- 7.22 s.106

**CD8 Relevant Judgements**

- 8.1 Barker Mill Estates v SSCLG & Test Valley BC [2016] EWHC 3028 (Admin)
- 8.2 City and District of St Albans and The Queen (On the application of) Hunston Properties LTD and SSCLG [2013]EWCA Civ1610
- 8.3 Crane v Secretary of State for Communities and Local Government [2015] EWHC 425 (admin)
- 8.4
- 8.5 Edward Ware Homes Ltd vs SSCLG and Bath and North East Somerset Council [2016] EWHC 103 (Admin)Gladman Developments and SSHCLG and Corby Borough Council [2020]EWHC518 Admin
- 8.6 Hargreaves v Secretary of State for Communities and Local Government [2011] EWHC 1999 (Admin)
- 8.7 Lee Valley and Regional Park Authority v Epping Forest District Council 2015 EWHC 1471 (Admin)
- 8.8 People Over Wind,Peter Sweetman v Coillte Teoranta [2018] Ecr I-244 c-323/17
- 8.9 R. (on the application of East Bergholt Parish Council) v Babergh District Council [2019] EWCA Civ 2200
- 8.10 St Modwen Developments V SSCLG & East Riding of Yorkshire Council [2016] EVVHC 968

(admin)

- 8.11 Suffolk Coastal DC v Hopkins Homes & SSCLG and Richborough Estates V Cheshire East BC & SSCLG [2016] EWCA Civ 168
- 8.12 Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and Another (Respondents) v Cheshire East Borough Council (Appellant) [2017] UKSC 37
- 8.13 Wavendon Properties [2019] EWHC 1524 (Admin)
- 8.14 Forest of Dean District Council v SSHCLG and Gladman Developments Limited [2016] EWHC 2429 (Admin)
- 8.15 Stroud district Council v SSHCLG and Gladman Developments Limited [2015] EWHC 488 (Admin)
- 8.16 Hawkhurst Parish Council v Tunbridge Wells BC and Progressive Developers Land Ltd and McCarthy and Stone Retirements Lifestyles Limited [2020] EWHC 3019 (Admin)

**CD9 Relevant Appeal Decisions**

- 9.1 Dymock Road, Ledbury HR8 2HT; Appeal Ref: APP/W1850/W/19/3225309
- 9.2 Land at Clavering Walk, Cooden, Bexhill on Sea; Appeal Ref: APP/U1430/W/19/3234340
- 9.3 Land off Colchester Road, Bures Hamlet, Essex; Appeal Ref: APP/Z1510/W/18/3207509
- 9.4 Maple House, Gilberts End Lane, Hanley Castle WR8 0BX: Appeal Ref: APP/J1860/W/18/3207450
- 9.5 Mead Park Bickington, Barnstaple, Devon EX31 2PF; Appeal Ref: APP/X1118/A/14/2224465
- 9.6 Land at Junction of Narrowleys and Moor Road, Ashover : Appeal Ref: APP/R1038/W/15/3133527
- 9.7 Land to the north of Totnes Road, Collaton St Mary, TQ4 7PW APP/X1165/W/20/3250977
- 9.8 Land South East of Williamthorpe Road and West Tibshelf Road, Holmewood, Derbyshire. Appeal Ref: APP/R1038/W/20/3251554

**CD10 Committee Report and Decision Notice**

- 10.1 Officer's Report
- 10.2 Minutes of committee meeting
- 10.3 Decision Notice (13 February 2020)